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NICRA'S SUBMISSIONS

EXECUTIVE SUMMARY: THRUST OF NICRA SUBMISSIONS

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EXECUTIVE SUMMARY: THRUST OF NICRA'S
SUBMISSIONS

Introduction

Throughout the Inquiry the tribunal has insisted that it is not engaged in conducting an appeal, either by way of rehearing or reviewing the findings of Lord Widgery in April 1972. Nevertheless, it has canvassed several procedural aspects of the Widgery tribunal in February/March 1972, although not for the purpose of judging whether the procedures were followed in 1972, but as to what reliance can now be placed on evidence at that time.

The investigation of the taking of witness statements by the civil liberties organisations, such as the National Council for Civil Liberties (NCCL, now LIBERTY) and the Northern Ireland Civil Rights Association (NICRA), was only one of the many procedural matters to which the tribunal's attention has been

directed and upon which it adduced evidence from witnesses. NICRA submits that its involvement in the taking of statements in the days following Bloody Sunday was conducted with complete propriety.

NICRA neither appeared nor was represented before the Widgery tribunal. None of the members of the Executive Committee of NICRA, ten of whom gave oral evidence to this tribunal in June 2001 (together with written statements from other members), was called by Lord Widgery to give evidence before him. The fact of the non-appearance of NICRA officials at the Widgery tribunal would not have been of any significance, had it not been for Lord Widgery's first finding in his report. Lord Widgery found NICRA to have been blameworthy for the deaths and injuries suffered on that day, in that it had organised a march, wherein it must have realised that it was exposing large numbers of people to a dangerous situation. For such a finding to have been arrived at, without those corporately blamed having been alerted to potential

criticism in the report and not having had an opportunity to argue otherwise, was a grave injustice on those whose aims were peaceful, non-violent protest against internment, the more so since the organisers were never aware of any 'arrest operation' by 1 PARA. These individuals who were the elected leaders of NICRA in 1971/1972 and who organised the march, welcome the opportunity, which this tribunal has afforded in full measure, to assist in the search for the truth as to what happened on the day and to put NICRA's case for concluding that it was blameless in respect of the fatalities and injuries on Bloody Sunday. Apart from Lord Widgery's adverse finding, the Prime Minister of Northern Ireland (Brian Faulkner) had instantly, on the night of 30 January 1972, on the eve of a public inquiry to determine blameworthiness for the tragedy, likewise proceeded impermissibly NICRA submits - to blame NICRA stating that:

"Today's events illustrate precisely why it was found necessary, with the full support of the Government of Westminster to impose a general ban on all processions throughout Northern IrelandThose who organised this march must bear a terrible responsibility for urging people to lawlessness and for providing the IRA with the opportunity to again bring death to our streets".

While the march has been consistently and repeatedly described throughout this Inquiry as illegal, NICRA submits (in Chapter VII below) that the Ministerial ban was itself unlawful. While, no doubt, the true legal conclusion to be drawn from the ministerial action on 9 August 1971 was totally unknown publicly at any relevant time, a finding now by the tribunal of the unlawfulness of the ban retrospectively justifies, from a moral standpoint, NICRA's defiance of the ban in January 1972. As Bishop Daly stated in his evidence to the Tribunal, the civil rights march was the only way in which citizens could demonstrate democratically their political opposition. (See chapters I and II).

NICRA was granted legal representation before this tribunal in November 2000, and thereafter appeared by counsel and solicitors, as and when witnesses gave evidence which might affect the rights and interests of NICRA. In its questioning of witnesses and its submissions to the tribunal, NICRA has regarded its main function as assisting the tribunal to fulfil its

role under the terms of the Tribunals of Inquiry (Evidence) Act 1921 and Parliament's terms of reference of 29 January 1998. NICRA's submissions are framed with that objective in mind.

Main submissions

The bulk of evidence adduced by the tribunal, naturally and correctly, has been focused on the details of the events of the day. A major responsibility for the Tribunal is to provide a factual assessment of those events and to determine, as far as possible, what happened and why they happened as they did. NICRA assumes from the breadth of the inquiry, that the tribunal will further address the questions of any responsibility for the events, as extending far beyond both the actions of individual soldiers who fired live rounds of ammunition and the orders of army officers who implemented the operation to arrest rioters.

Blameworthiness or culpability does not lie exclusively with the individuals directly responsible for the wrongdoing.

Given the terms of reference of the Tribunal, which reflect a ceaseless search for the truth of what happened on Bloody Sunday and why and how the events occurred, there is an imperative to go beyond the primary facts. Responsibility for the tragic events of the day can be traced to all levels, the soldiers on the ground, the company commander interpreting the orders from the military hierarchy, the authors and architects of the superior orders from the generals. Responsibility can be traced, beyond the stated levels, to the public institutions and the structures – put in place by the legislators, politicians and administrators – which determine systematically the behaviour of individuals operating within these parameters. Finally, there are the politicians who failed to question why the response to a civil rights march in Derry on 30 January 1972, was a purely military operation, when made aware of this by the Chief of

Staff at a briefing meeting of GEN47 on 27 January 1972 G
79.486/487.

Factors that extend beyond the bounds of criminal and civil justice may, and often do, inform public opinion of the untoward event as seen in its proper control of governmental policy. Individuals frequently operate within the confines of a public institution or organisation, and are thus subject to direction and context. They are part of a system which pre-determines their sphere of operation and the scope of their activities. A classic example has been the tasks of social workers functioning within the structure of the child protection system. Failures in social work training, the generality of social work (minimising specific child protection work); failures in communication between agencies of child health and child welfare; the division of child health under the authority of the Secretary of State for Health and child welfare under the aegis of local authorities – all these have contributed to the scene of child abuse.

When General Ford devised his plan in January 1972, what military definition did he adopt for meeting the campaign for civil disobedience provoked by the re-introduction of interment, itself opposed by the military authorities? NICRA submits (Chapter VIII) that the commander's duty when acting in aid of the civil power was to proceed upon the footing that he would be adopting police attitudes and police powers.

The security matters between the armed forces of the Crown and the RUC never percolated the thinking, let alone the actions, of the Commander of Land Forces in Northern Ireland. General Ford, throughout his evidence before the Tribunal and reflecting upon his conduct in 1972, talked exclusively in terms of a military operation conducted on military lines.

NICRA submits that the policy of deploying armed forces to deal with the disorder in Northern Ireland were insufficiently explicit as to what was expected. Since the military had advised against the use of internment, there was arguably no public

emergency threatening the life of the nation, such as to give rise to a derogation under Article 15 of the ECHR (Chapter IX). The plain fact was that Northern Ireland was in political crisis. In terms of culpability, the Heath Government continued a consistent policy of British Governments of a "hands off" approach. Its reluctance was born out of a deference to devolved government ever since 1920 and the dread of being embroiled in Irish affairs. The British Government can properly be criticised from having held back from earlier, effective involvement in maintaining law and order in a part of the United Kingdom.

Significantly, in the context of systemic failure, there was a palpable failure to take the observance of the rule of the law seriously. Firstly, the inability to anticipate the ruling in the Hume v Londonderry Justices case and to ensure that the Army's arrest process was beyond legal challenge. The authorities were made aware in the Scarman Report that the events of 1969 gave rise to constitutional issues, but failed to

respond to that alert. Secondly, there was the disdain and dismissiveness exhibited by Stormont politicians and most administrators towards the minority population, as evidenced by Mr Leach's letter to the Attorney-General – which revealed an unavailing voice within the Stormont administration – annexed to Professor Palley's written statement (see KP2.00). Thirdly, there is, overall, Professor Palley's criticism of the Emergency Powers regime. Her views were vindicated, but only after Direct Rule. Fourthly, the failure of systems of protection and communication is only too apparent from the documentary evidence disclosed to the tribunal. How was it that no notice was taken of the joint instructions of 19 January 1972 in guiding the military and civilian authorities to the policing of the NICRA march a fortnight away? And why did the military make no contact with NICRA Officials about the conduct of the march?

All these factors point, in NICRA's view to a stream of systematic failures. They show a society in political crisis, for

which the organs of Government were inadequate. The stream of systemic failures were overlooked, if not deliberately ignored. Had they functioned to produce a viable system for the maintenance of law and order, Bloody Sunday might never have happened. Indeed, the instruments of government, fully appreciated and properly applied, might have headed off the march. Internment was the catalyst of outrage. It was also the spur to renewed civil disobedience that in turn prompted the civil rights movement to take to the streets of Northern Ireland. The reason for the fatalities on Bloody Sunday are traceable to defective government and poor systems for the democratic control of the armed forces. In no sense was the Army on Bloody Sunday a peace-keeping force.

Public inquiry procedure

There has been much public discussion about the practices and procedures of the tribunal, about which NICRA concludes that nothing is to be gained from any comment here, save for one

general observation. The former Prime Minister, Sir Edward Heath, during a debate in the House of Commons, on 8 July 1982, to approve the appointment of the Falkland Islands review under the chairmanship of Lord Franks, said: "The plain fact is that we have never succeeded in finding the perfect form of inquiry". Two decades later, the statement still holds good. Following the Arms to Iraq Inquiry report of Sir Richard Scott (now Lord Scott of Foscote) on 15 February 1996, the Lord Chancellor (Lord Mackay of Clashfern) asked the Council on Tribunals to offer advice. On 21 November 1996 the Lord Chancellor published that advice, which was to the effect that "it would be wholly impracticable to attempt to devise a simple set of model rules of guidance that would provide for the constitution, procedure and powers of every inquiry". But the Council went on to advise that the procedure and powers of public inquiries "should be addressed by taking into account, for each inquiry, the objectives of effectiveness, fairness, speed and economy".

The use of the 1921 Act and other forms of public inquiry, more recently, clearly calls for considered study and review by Government, in the form of a Royal Commission nearly forty years after the Salmon Commission. NICRA respectfully urges the Tribunal to recommend a review of the 1921 Act.

I

THE NORTHERN IRELAND CIVIL RIGHTS ASSOCIATION (NICRA) - HISTORY

Origins

The Northern Ireland Civil Rights Association (NICRA) was formally established at a meeting on 27 January 1967, at the International Hotel, Belfast¹. It was disbanded in 1981². At its height in 1972 NICRA had approximately 500 members. Its archives are held in the Linen Hall Library, Belfast. The Association was unincorporated. It had two constitutions; the original was modelled on that of the National Council of Civil Liberties (NCCL).³ The second was adopted at an Annual General Meeting in February 1970. Under both constitutions the ruling elected body was known as the Executive Council or Committee.

¹For an account of the origins of NICRA see Ann Hope *From Civil Rights to Guerrilla War, The Northern Ireland Civil Rights Association's Struggle for Democracy 1969-1972*, Diploma thesis, Ruskin College Oxford, 1976/ Ann Hope was a founding member and treasurer of the Association from 1970-1972.

²The then Executive Committee, whose chairman was Mr P J McClean, took the decision.

³GEN 5.21-3

The Tribunal has received extensive documentary material on NICRA. It has had also written statements from the following who were officers or members of the Executive Committee in 1971-2: Mr Ivan Barr (chairman), Mr Jimmy Doris (vice-chairman), Mrs Edwina Stewart (secretary), Ann Hope (treasurer), Mr Kevin McCorry (organiser), Mr Kevin Boyle (press officer), Mr Hugh Logue, Mr Michael Havord, Mr John McClelland, Professor George Huxley, Mr Rory McShane, Mrs Margot Collins-Rice, Ms Brid Ruddy, Mr Seamus Rogers, Mr Finbar O'Kane, (members). It has heard oral evidence from Mrs Stewart, Mr Doris, Mr McCorry, Professor Kevin Boyle, Mr Logue, Mr Havord, Mr McShane, Mrs Collins-Rice and Ms Ruddy. In addition, the Inquiry received statements from Mr Johnny Bond, Chairman, Derry CRA, and the husband of Mrs Brigid Bond (Executive Committee member 1971-2 deceased) and Mr Fred Bond, their son (AB36.1-14) Mr Tony Smythe, former General Secretary NCCL, Mr Larry Grant and Mr Jack Dromey, former executive members of NCCL. The tribunal had statements and heard oral evidence from Mr Bobby Heatley, executive member, Belfast CRA,

Mrs Mavis Sheerin (Hyde), secretary Derry CRA, Ms Kathy Keville and Mr William Smyth.

Some Features of NICRA

There were a number of aspects of NICRA as an organisation that deserve to be highlighted from the evidence before the tribunal.

It was not established as a political party seeking to be elected and to take part in government. It was formed as a pressure group for civil liberties along the lines of the NCCL in London and with whom it maintained informal links. A further distinctive feature was the extent to which NICRA was shaped by events external to Northern Ireland, including the rise of the Civil Rights movement in the United States of America in the 1960's.⁽⁴⁾ That influence was reflected in the adoption of the US movement's song for NICRA meetings and

⁽⁴⁾ See "CR Group from the US here" Irish News 12 February 1972.

marches “We shall overcome”* NICRA borrowed its techniques and rhetoric as much from Martin Luther King as from Daniel O’Connell. Its emphasis initially was on social problems, while its later policy of taking to the streets reflected its concentration on civil rights, in particular the freedom to assembly. In a manner that was wholly unforeseen (hence the need to change its constitution), it was to grow rapidly into a grass roots campaigning political movement, albeit a short-lived one.

It was unique as a political movement in the Northern Ireland experience. The Cameron Commission described it as a “novel phenomenon”. It sought to challenge injustices and inequalities without looking south of the border for direction or support. Instead, it directed its demands to both the Stormont authorities and the Westminster Government.

Its agenda was limited, directed at removing injustices and seeking

*Law 1.66

new safeguards for civil and political rights in Northern Ireland, primarily through advocacy for a Bill of Rights. It did not agitate over the constitutional issue of Northern Ireland's status within the United Kingdom, and accepted the constitutional framework as the basis for the resolution of grievances. The linchpin of its campaign was Westminster responsibility. It sought to have Westminster exercise its responsibilities towards all its citizens, unionist and nationalists, as the sovereign authority under the Government of Ireland Act 1920, Section 75 of which provided:

“Notwithstanding the establishment of the Parliaments of Southern and Northern Ireland, or the Parliament of Ireland, or anything contained in this Act, ‘the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Ireland and every part thereof”.

NICRA was dedicated to constitutional and non-violent means of social and political change. It was a public and democratic organisation, with a constitution, elected officers and membership. It consciously sought to attract as wide a political and religious membership as possible, and as a corollary propagated non-

sectarianism as a fundamental principle.⁴ It publicly rejected and condemned all forms of violence.³ It was distinctly not a secret organisation.

³See for example, statements reported in the Irish News: "Resist Violence" 26 August 1971 "NICRA hits out at violence" 7 September 1971.

⁴See statement to the tribunal of Kevin McCorry, 24 January 2001, para 5.

Demands

The Cameron Commission (*Disturbances in Northern Ireland* (Cmd 532), which reported on 16 August 1969, fairly summarised the demands advanced by NICRA at that date:

- “1. Universal franchise in local government elections in line with the franchise in the rest of the United Kingdom.

2. The redrawing of electoral boundaries by an independent Commission to ensure fair representation.

3. Legislation against discrimination in employment at local government level and the provision of machinery to remedy local government grievances.

4. A compulsory points system for housing which would ensure fair allocation.

5. The Repeal of the Civil Authorities (Special Powers) Act (“SPA”)*.
6. The disbanding of the Ulster Special Constabulary (B Specials) (“USC”). and later;
7. The withdrawal of the Public Order (Amendment) Bill.”⁶

The Civil Authorities (Special Powers Acts)

At the commencement of the Civil Rights Movement, the Special Powers Act was the last of a long list of Coercion Acts commencing with the 1351 Treason Act. This legislation became part of the fabric of control to address the perceived Republican, Nationalist and Communist threats as perceived by the Northern Ireland Government. The Specials Powers Act was renewed annually from 1923 until 1927. In 1928 it was extended for a five year period and in 1933 the

⁶Para 187.
* Law 2.1-21

Government made the Statute indefinite. The following is not an exclusive but a sample demonstration of the powers conferred under the Act and its subsequent use.*

1. Detention and Internment.

Regulation 23 of the Special Powers Act as amended allowed for the arrest without warrant of any individual suspected of acting, having acted or being about to act in a manner prejudicial to the preservation of peace or maintenance of order or upon whom any items were found which could be interpreted as prejudicial to the preservation of the peace. Any individual arrested under Regulation 23 could be detained either in Prison or brought before a Court of Summary Jurisdiction. Gradually the provision governing detention became more extreme. It permitted the use of Internment without trial which was used by successive Unionist Governments, the latest of which was used in

*For further discussions on The Civil Authorities (Special Powers Act) see "Emergency Law in Ireland 1918 - 1925," Colm Campbell Oxford and "Counter-Terrorist Law and Emergency Powers in the United Kingdom 1922-2000". Laura K O'Donoghue, Irish Academic Press.

1971. This most recent use of Internment was the spark to ignite the Civil Rights Movement.

Curfew

The very first regulation of the Special Powers Act empowered the Ministry of Home Affairs to impose curfews. The vast majority of which were used between 1922 – 1925. The most recent curfew was entitled 'The Lower Falls curfew 1970'. The vast majority of the curfews were imposed in the Belfast area. Blocking roads as and from 1 May 1922, the security forces closed 25 roads in Co. Fermanagh, 15 roads and bridges in Co Derry and 15 roads in Co. Tyrone.

Powers of entry, search and seizure

Perhaps the most widely used power under the Special Powers Act was those granted to the Security Forces related to entry, search and

seizure of property. Regulation 18 of the Special Powers Act authorised any member of the security forces on duty to enter any house, building, land, vessel, vehicle, aircraft or other premises at any time of day or night if reason existed to suspect that these places were being, had been or were about to be constructed, used or kept for any purpose prejudicial to the peace or at which place an offence against the regulations was being or had been committed. Later, a further provision was made requiring the registration of all occupants renting rooms and lodgings. As late as April 1971, Mr Gerry Fitt the leader of the SDLP met with British Minister of State in the Home Office to warn him of serious consequences that could result if searches of houses in West Belfast continued.

Prohibition of meetings, assemblies and processions

Between 1922 and 1950, the Northern Ireland Ministry of Home Affairs banned more than 90 meetings, assemblies and processions. The vast majority of the assemblies and processions prohibited were known as Easter Sunday Commemorations at or near Milltown

Cemetery and Brandywell Cemetery in Belfast and Derry respectively. Also prohibited under this Order were Derry Unemployed processions in 1933, Irish Unemployed Workers Movement in 1933, Irish Unemployed Workers Movement in 1934 in Belfast, a Gaelic Athletic Association Junior Championship in Larne in 1938 together with St Patricks Day gatherings in Derry in 1949.

Censorship

Similar to the provision prohibiting meetings and assemblies, the Unionist regime increasingly used measures governing censorship of printed material. Thus Regulation 26 empowered the Government to prohibit the circulation of any newspaper for any length of time and this was extended in 1943 to prohibit publication of any newspaper, periodical book, circular or any other printed matter. In this area, the Government banned over 140 publications which were largely Socialist and Communist in character. For instance, banned newspapers included "The Workers Life", "The Irish World", The

American Industrial Labour and included the Communist Party's "The Red Hand" and the "Irish Workers Weekly".

The film industry did escape the provisions of the Special Powers Act either. A film entitled "Ourselves Alone" was a factitious story about Sinn Fein made by a British film company and previous released in Britain. The film was to be shown in the Hippodrome. The Inspector General of the RUC and the Belfast City Commissioner attended a private viewing of the movie and on the following day the Belfast Corporation Police Committee also saw it and said that there was no reason to interfere with its release in the province. However, in response to a telephone call from the RUC Inspector General, the Minister of Home Affairs banned the said film.

Proscription

In 1918, the British Government had already proscribed the Sinn Fein organisation, Sinn Fein Clubs, the Irish Volunteers, and the Gaelic League. These organisations were added to or amended but it was in

1967 with SR & O 42/67 that the Minister of Home Affairs banned Republican Clubs. On 19th March 1968, the Police charged Mr McIlldowney with being a member of Slaughtneil Republican Club. The case was brought before local Resident Magistrates who dismissed the charge on the grounds that the club in question was not a threat to peace and order in Northern Ireland within the terms of the Regulation. The Northern Ireland Court of Appeal reversed the Magistrates decision and in the majority opinion of the Court, affirmed that the Minister for Home Affairs bore the sole responsibility for which organisation should be proscribed. In a minority decision, the Lord Chief Justice McDermott dissented from this decision claiming that the regulation was too vague to relate to the specifications laid out in the Special Powers Act.

In April 1969, the case reached the House of Lords where again the majority decision affirmed the decision of the Court of Appeal and consequently Republican Clubs remained outlawed.

Powers of questioning

In addition to the normal powers of questioning used under the Special Powers Act, in 1933 the Ministry added new provisions aimed at imprisoning Republicans. In this respect, Regulation 22 provided for the Civil Authority to require by order any person to furnish what information may be specified. Thus the measure allowed for a person to attend at a time and place to be specified in order to furnish information and failure to do so would be considered an offence under the regulations.

When a police officer suspected that an offence had been, was being or was about to be committed, a Constable could arrest without warrant and bring before a Resident Magistrate, any person from whom he believed information could be obtained. The Magistrate could then examine the individual under oath, and most critically the person examined under this regulation, was not excused from answering any question on the ground that the answer may incriminate or tend to incriminate himself.

The Regulation also removed any legal representation from the individual being so questioned.

Identity Documents

The requirement for identity documents was first introduced in 1940. The aim of the measure was to ensure that the Police could ascertain on demand, particulars as to the name and permanent address of any individual address in Northern Ireland. However, quickly, they became a problem with travel between people in the Republic of Ireland and Northern Ireland. A concession was initially granted to enable people to travel from the South through Northern Ireland so long as they did not leave the train or bus. Eventually this regulation was allowed to lapse. In 1957 the Ministry issued Regulation 37 empowering the Minister to prevent individuals who were entering Northern Ireland ports from coming ashore and in January of that year, the cargo ship "City of Waterford" arrived into Belfast Harbour. A Regulation was immediately put into effect to prevent individuals entering Northern Ireland from the ship and after a search of the

vessel, the Government found only the declared shipment of fruit, flax and beer in it.

In 1957, the Government extended various powers enshrined in the Regulations to the Armed Forces. It was this regulation that ultimately led to the case of Hume v Londonderry Justices.

Perhaps the best criticism of the Special Powers Act was delivered in report of the National Council for Civil Liberties which stated

“the Northern Government has used the Special Powers towards securing the domination of one particular faction and at the same time, towards curtailing lawful activities of its opponents.”*

The substance of these demands had been conceded, legislated and implemented by the mid-1970s⁷ - A number of features of these

*The Special Powers Act of Northern Ireland: report of a commission of Inquiry appointed to examine the purpose and effect of Civil Authorities (Special Powers) Act Northern Ireland”. London 1936.

⁷See the Electoral Law Act 1971; The Police Act 1970; The Fair Employment Act 1973; Northern Ireland (Emergency Provisions) Act 1973.

demands should be noted. They were classic complaints in relation to civil liberties and democratic rights. The demands fell into two categories.

Some such as the abolition of plural franchise at local government level, fair boundaries and action on discrimination was directed at catching up with general UK standards. Others such as the abolition of the USC and the SPA were demands related to institutions peculiar to Unionist misrule in Northern Ireland. Thus the demands made both from Stormont and Westminster were widely understood and easily communicated, which helped to popularise them.

The civil right reforms sought by NICRA and the analysis of what was wrong with Northern Ireland that they implied, were little different to the grievances which had been made by individuals and other groups over many years. On reflection, one would conclude that NICRA's main contribution was to make these grievances the cause of a new popular movement that would campaign through mass peaceful action to achieve them.

FJ 10 . 32

As the Stormont authorities began to act on its demands from 1969 onwards, NICRA, apart from maintaining a monitoring role on implementation of the reforms, began to promote a new idea, that of a Bill of Rights for Northern Ireland to entrench the reforms. It was the first body to campaign on this issue.

The re-introduction of internment in August 1971, however, brought a new phase of confrontation with the Westminster and Stormont authorities. NICRA found itself the focus of a mass campaign to end it. The core of that campaign was a programme of civil disobedience which embraced withdrawal of appointees from public bodies and the refusal to pay to local councils or the Stormont authorities, rent, rates and other financial dues. NICRA also held many public meetings to press its demands and, following the failure of the Government to respond to its Christmas appeal for an end to internment, it returned to a programme of marches in January 1972.

Methods

NICRA also pursued its objectives through the conventional means of research, lobbying and advocacy of change. It lobbied members of the Westminster Parliament and Stormont. It gave evidence to various bodies, for example to the Cameron Inquiry and to the Hunt Commission into reform of policing. While NICRA had not envisaged itself at the outset as a body that would engage in mass action, events brought that about from the summer of 1968. It became involved in public meetings and demonstrations which it pursued in a wholly peaceful and non-violent manner. This approach was maintained despite an official policy of banning and re-routing of demonstrations, police violence and aggressive counter demonstrations from Loyalist groups.

A commitment to non-violence, and the avoidance of confrontation with hostile counter demonstrators, was equally NICRA's approach during the later phase of street protest following internment in August 1971. Kevin Boyle aptly portrayed NICRA's view of its role and function in 1972 in his oral testimony to the tribunal.

FS 10 . 34

“This [NICRA] was an open organisation, a democratic organisation working in an extremely unusual environment of mass violation of human rights, particularly arising out of internment, where there was violence going on from paramilitary groups on different sides. Nevertheless, we maintained a non-violent stand, but a militant stand: it was non-violence, adjusted to the problem we faced.....but we never invoked or sought to participate or in any way was encouraged or incited violence against anyone”.
Day 123/153/19 to Day 123/154/20.

In the relevant period of the tribunals concerns, the NICRA Executive was responsible for three marches - in Belfast on 2 January 1972, the Derry march of 30 January 1972 and, following Bloody Sunday, in Newry on 8 February 1972⁸. The Newry march was the last public demonstration to be organised by NICRA, and the largest.⁹ It was entirely peaceful.

⁸The march at Magilligan on 22 January 1972 was organised by North Derry CRA and supported by NICRA.

⁹See Irish News 17 February 1972 which gives a figure of 50,000 as the numbers who marched.

The Cameron Report acknowledged this record:

“190. Nevertheless the Civil Rights Association maintained that it was non-sectarian and concerned only with obtaining the reforms and changes in the law which it sought and always by peaceful and non-violent means. It is undoubtedly the case that it has been the policy of the Association to refuse to permit the display of provocative symbols and banners in particular the Republican Tricolour, at any demonstration or march which it organised or authorised; it is also undoubted that on no occasion were weapons carried by demonstrators acting under Civil Rights Association auspices. The use on 5 October [1968] of placard and banner poles as missiles by certain demonstrators - mainly Young Socialists who had come specially from Belfast - was an exception to this generality, and an illustration of the inefficiency with which that demonstration was organised and conducted and of the absence of any effective Civil Rights Association control.”

This disciplined approach continued during the difficult years that followed the Cameron Report. For example, the Chairman of the Association in 1971-2, Ivan Barr, circulated a Memorandum to *Clarify the Executive Position on Civil Rights Marches and Demonstrations* to all civil rights branches on 15 March 1971 (attached to his statement to the Tribunal (6 March 2001). The memorandum underscores the fact that the organisation had the

FS 10. 36

capacity to direct and ensure that its policies were upheld in its demonstrations.

“Civil rights demonstrations must be about Northern Ireland Civil Rights and Social Justice issues. This must be clearly shown in the organisation and the presentation of a demonstration:

1. The Committees which are organising demonstrations should contact the Office well in advance and if possible they should supply a list of platform speakers. The names of speakers should at least be known by the Executive one week before the demonstration and if possible an Executive Committee speaker should be on the platform. The Executive Speaker or a main local Civil Rights Speaker should be the last to speak. All requests for Executive speakers should be in writing to the above address.

2. There has been a tendency recently to allow other organisations to carry their organisation's banners. This means in fact that the aims and objectives of those organisations are added, in the people's minds to the objectives of the Civil Rights March. This only causes confusion at a time when clarity of objectives is essential among Civil Rights supporters.

3. At Public Meetings the Chairman should ensure that any speeches which stray from Civil Rights issues should not go unchallenged.

The obvious deterioration in the Civil Rights situation demands maximum clarity of objective among all democrats and these recommendations are made to that end”.

FS 10. 37

Marches and meetings

All major civil rights marches were either stopped or banned under Ministerial orders made pursuant to the Public Order Act 1951, as amended in 1971. The template was created at the beginning. On 24 August 1968, the first civil rights march set out from Coalisland for the market square in Dungannon. There were 6000/7000 people on the six mile march. They sang civil rights songs and chanted demands on the road. The march was stopped by the RUC when it reached Dungannon, at a locality known as Quarry Lane. Beyond the police barricades, there were a few hundred Paisley supporters. The senior police officer present told the organisers that the march must pass down Quarry Lane if they intended to go to the market square. This diversion was totally unacceptable to NICRA. Quarry Lane led into the "Catholic" area of Dungannon; to accede to the order would infuse a sectarian dimension to the march. The organisers held a meeting, where they were stopped by the RUC. The pattern was set. Sir John

10. 38

Hermon's comment in his autobiography – Holding the Line (Gill and Macmillen 1997) is apt:

“I certainly sensed the uneasiness aroused within the community by the Civil Rights march from Coalisland to the Market Square, Dungannon on 24 August 1968. Since I had served in Coalisland, I took a particular interest in how the police handled the march and the loyalist opposition, encouraged mainly by Paisley's Ulster Protestant Volunteers. The latter were incensed by the fact that the nationalist parade was allowed by the police to enter the town square, something that had never before been permitted. Such was the threat of imminent violence that the local RUC re-routed the Civil Rights march. This, I felt, was regrettable because, if more police resources had been committed to duty in Dungannon, they could have ensured the safety of the march into the square, despite loyalist resistance. The RUC had never before been faced with such emerging social turmoil and, with the Stormont Government itself in internal turmoil, a proper lead was not given at this crucial time”.

NICRA refused to be confined to marching through “Catholic” areas because the message of NICRA and the demands of NICRA were universal. They were always non-sectarian, non-party political and non-violent.

It is noteworthy that the Unionist Government, which disallowed NICRA the right to walk through “Protestant” areas of local towns, used large numbers of the security forces to force Orange marches through towns like Dungiven, an overwhelmingly Nationalist town.

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The Northern Ireland Civil Rights movement sought social, economic and political justice, in a non-violent, non-sectarian manner. The campaign issues were models of egalitarianism. There were no banners and no placards, save the blue civil rights banner and placards highlighting One Man/One Job or One Man/One Vote. There were no flags. Trouble at civil rights marches meant, in general, violence inflicted on marchers by men in uniform and other props of the local Establishment. The march at Magilligan the week before Bloody Sunday was only the latest example of ordinary citizens being roughly manhandled - on that occasion, ominously, by the paratroopers.

A simple question was asked of Unionism. Can you live with the rule of law? There was no need to ask for revolutionary reforms from a reactionary Government at Stormont. Simply seeking social justice caused the Unionist Government to fall apart on the rocks of its own intransigence. But there was a price to pay along the way. Fifty-year-old Governments do not go quietly, nor do they go graciously. They choose - and this one was no exception - the way of repression, culminating in the deployment of internment in the effort to escape

the bar of history. By 30 January 1972, the Unionist concept of minority participation in Government was a "Catholic" Committee, a type of political 'homeland' in the South African sense, where Catholics who believed in the British link would be corralled, consulted and ignored. Nationalists were consigned to political darkness, not even made more viable by enlightened debate or peaceful protest. A similar example of the Unionist approach to the "Catholic" minority emerged in 1962. The Ulster Unionist Council and the Orange Institution organised, in that particular year, a monster demonstration to celebrate the jubilee of the signing of the Covenant. This was an exclusively Protestant affair in 1912. It was the bedrock upon which the Orange state was built and is a seminal event in Unionist history. Not to be outdone, the Unionist Government declared a public holiday on Jubilee Day.

There was no place for Catholics or Nationalists in the Unionist hegemony. There was no room for dissent. On 3 November 1971, Mr Brian Faulkner, in the course of a Stormont debate, shared with his

exclusively Unionist audience the view that enemies of Ulster considered the Stormont Parliament to be:

a useless and discredited institution, that was morally and politically bankrupt.

The particular 'enemy' of Ulster may have understated the case, but the phrase has a powerful, descriptive resonance even now.

Successive British Governments did not respond to the core demands of the civil rights movement. They turned their face against genuine reform and acceded, however reluctantly and conditionally (See chapter VII), to Brian Faulkner's wish to introduce internment - detention without trial. The civil rights agenda was extended, not diminished, by internment; it was in fact the spur to more protests on the streets. The ban on marches, had been imposed by a Government, that had lost any moral or political authority and had acceded the control of marches from the civil power (the RUC) to the armed forces of the UK. The Unionist Government had no authority either to grant powers or impose duties upon the Army, which was

specifically a reserved matter under the Government of Ireland Act 1920. (See Chapter VIII)

The streets were the court of last resort for NICRA and the gateway to international opinion via media coverage. There remained positively no legitimate means of protest; protest had been stifled by legislative and executive power. As Bishop Daly told this Tribunal "The right to protest about something perceived as a great injustice is a very important right in a democracy" Day 75/70/25 to Day 75/71/16. The civil rights movement did not, as a last resort, seek recourse to rebellion. Its supporters and sympathisers took to the streets in large numbers in opposition to social and political injustice and inequality, in an attempt to have human rights protected by the rule of law.

Flags and emblems

Another source of irritation of direct relevance to all those involved in the civil rights movement, in particular those of the Republican persuasion - minor by comparison with other grievances - was the

Flags and Emblems (Display) Act (Northern Ireland) 1954, for which there was no counterpart in the rest of the United Kingdom. The Act was generally thought to prohibit the display of the national flag of the Republic of Ireland, although that was an incorrect interpretation of the Act. It certainly prohibited the display of any flag (except the Union Jack) in circumstances likely to lead to a breach of the peace. Any flag (including the Union Jack) might be displayed which would, on occasion, result in a breach of the peace; the display of the tricolour of the Republic of Ireland was, perhaps more than other flags, calculated to induce public disorder. While, properly interpreted, the Act was directed solely to public order, it was nevertheless seen as an inhibitor among Republicans and other opponents of Unionism. The first report of the Standing Advisory Commission on Human Rights (SACHR) in November 1975 regarded the Act as discriminatory, and recommended its repeal, bringing Northern Ireland into line with the rest of the United Kingdom. On Bloody Sunday, only 2 banners announcing the march under the auspices of NICRA were in evidence, an acknowledgement of its adherence to non-party and non-sectarian attitudes and actions.

NICRA's public image

General Ford, in his report on the occasion of his visit to Derry on 7 January 1972, significantly acknowledged NICRA's good intentions towards its organisation of the projected non-violent march to take place later that month (G48.299). Other public figures and respected authors have similarly written about NICRA. We cite a few extracts from written material.

Sir John Hermon, in his autobiography, *Holding the Line* (Gill & Macmillan 1997) at p.75, wrote of the Northern Ireland Civil Rights Association as being best described in the book, *Paisley* , by the two distinguished journalists, Ed Moloney and Andy Pollak as:

“a coalition of Republicans, the Campaign for Social Justice, left-wing activists, the Communist Party and middle class Catholics. Initially, NICRA attempted to be broad-based and moderate in its methods and demands. It even included a member of the Unionist Party on its executive.

But eventually, NICRA, which was at first uneasy about mounting street protests and worried about a Protestant backlash, succumbed to Catholic pressure for action.....”

- a reference to the beginning of parades and street marches in Northern Ireland in 1968. Professor Paul Arthur, apart from his report to the Tribunal (E6-0015) about the aims of NICRA, wrote in *Political Realities : Government and Politics of Northern Ireland* (Longman, 2nd ed 1984), at p.103 that:

“A more contentious organisation [than the pressure group, Campaign for Social Justice] was the Northern Ireland Civil Rights Association (NICRA) founded in February 1967, preaching a policy of non-violent direct action and fighting for the more pressing social problems like housing and unemployment rather than issues of personal liberty.....Both [organisations] met predictable defeats. Hence formal political action switched to the streets”.

And, at p.115, in connection with the supposed infiltration of Republicanism into the civil rights movement and citing the Cameron report (at para 214) that, although “there is evidence that members of the IRA are active in the organisation, there is no sign that they are in any sense dominant or in a position to control or direct policy of the Civil Rights Association”, Professor Arthur adds.

“.....in fact the only Republican representative on the first Executive of NICRA was Kevin Agnew, a solicitor. The Commanding Officer of the

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Belfast IRA had declined nomination since his presence might embarrass NICRA”.

J H Whyte, in an essay on Ireland, 1916-1982, in *The Course of Irish History* Edited by T W Moody and F X Martin (revised and enlarged edition, September 1984) at p. 344 wrote:

“1966-9. A sign of the new mood of the Catholic community was the growth of the Northern Ireland Civil Rights Association, founded in 1967.

This body, unlike previous organisations representing primarily the Catholic minority, did not challenge the existence of the Northern Ireland state, but demanded merely the ending of abuses within it. From August 1968, marches and demonstrations in support of this objective were held in various towns. The police and the Protestant right wing, however, saw this development as a new attempt to undermine Northern Ireland, all the more dangerous because more insidious than an overt campaign against partition. Successive demonstrations were broken up by police and harassed by Protestant extremists. To describe the main confrontations - Derry (5 October 1968). Burntollet (4 January 1969), Derry and Belfast (12-15 August 1969) - would take up disproportionate space. Suffice it to say that by mid-August 1969 disorder had reached such a height that the police could no longer contain it, and the Northern Ireland Government was obliged to request the British Government to send in troops to restore order. The troops, whose arrival was taken in Catholic areas as a sign that the police had been defeated, were welcomed”.

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Alleged infiltration of NICRA

Ever since the founding of NICRA there has been a staple kind of attack from Unionist politicians that NICRA was in some fashion not an independent body but was manipulated, controlled or infiltrated by other groups of more radical, subversive or violent intent. The allegation persisted during the Inquiry. The Unionist party attitude came in the evidence of a prominent politician, John Taylor, (now Lord Kilclooney), who in his evidence to the Tribunal categorically refuted the assessment of the Cameron Commission.

With two exceptions, the tribunal did not receive or hear evidence from anyone to the effect that NICRA was a front organisation for subversive groups. John Taylor (Lord Kilclooney) was one and the other was "David", the Director of Intelligence. The recantation of his evidence before the tribunal is considered below.

Lord Kilclooney in his evidence on Day 197/23/10 stated:

“NICRA was not just simply a Civil Rights movement. It was an organisation infiltrated by Irish Republicanism, in which it actually went so far as to provide two places on its Executive Committee for the Official IRA Sinn Fein people, and of course, the organisation was used as a cover by terrorists.....”

When questioned about this and asked if he had any documents to support this, he replied: Day 197/24/8

“Yes, I believe, I think in this file that was provided for me by the Tribunal there is reference to it....”

Later in his evidence he stated Day 197/70/22

“ what I have in this file provided by the Tribunal. I will look at that more closely to see why I concluded that two places were reserved on the Executive of NICRA for the Official IRA. As I said, this has to be checked and I will do this in writing to leave no doubt in anyones mind”

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Accordingly NICRA wrote to the Inquiry on 17 October 2003 and 12 December 2003 asking the Inquiry if Lord Kilclooney had provided chapter and verse in relation to his allegations about NICRA. In a reply letter from the Inquiry, NICRA was informed that Lord Kilclooney had not responded to the Tribunal requests for the said information.* Nor has there been any indication that there had been anything in the file, which was provided to Lord Kilclooney by the Tribunal, relevant to the allegations that Lord Kilclooney was making.

The Inquiry did receive and hear evidence, including from all NICRA witnesses, that denied allegations of infiltration. From their evidence, it clearly emerges as it does from Cameron, that the civil rights movement in Northern Ireland was an open amalgam of different political parties, groups and individuals. The movements included republican, nationalist, communist, anti-communist left, as well as community-based and issue-focused groups, as well as unaligned individuals. There were men and women among its membership who were pro-Union and anti-Union. There were English, as well as Irish

* See attached correspondence

nationals. The majority of members of Derry CRA, were English born¹⁰. There were Protestants and Catholics, although the majority was for obvious reasons Catholic. In the relevant year, 1971-2, there were four Protestants on the NICRA and Belfast Executives, and in each year from its launch to disbandment, the Association had Protestant members. The Executive in 1971-2, in terms of occupation included; a teacher, a professor of Greek, a university law lecturer, a graduate student, several farmers, a painter and decorator, and several unemployed. All members were united around a set of reform goals, and were committed to the policies and discipline of NICRA.

There was a conscious policy of reflecting the diversity of political views and allegiances and the broad support for NICRA's goals in Britain and the Republic of Ireland in the speakers invited to address NICRA rallies. Speakers invited to address the 30 January rally, for example, included Lord Fenner Brockway and Reverend Terence McCaughey, a Presbyterian and lecturer in Trinity College Dublin.

¹⁰See attachment to Maevis Sheerin-Hyde statement (Press Release "From a group of British people resident in Derry to British public opinion", 27 January 1972, and also the opening lines in Johnny Bond and Michael Havord's statements to the Tribunal.

Tom Driberg MP addressed the Newry march in February 1972. Other speakers in earlier public meetings had included Lawrence Daly, National Union of Miners (Falls Park August 1971) and Dr Conor Cruise O'Brien (Newry).

The question of infiltration was addressed directly in Kevin McCorry's statement to the tribunal, at para 24:

"NICRA was a non-party political organisation. It was not a secret organisation. It held an AGM, and the Electoral Reform Society oversaw the elections of the Executive. At the annual general meeting, most of the members of the Executive were elected directly at the meeting and the remainder of the members were elected as local representatives from the various Counties, Derry and Belfast. The AGM was open to the media and was covered by the media.....The voting forum was proportional representation before it became the formal voting mechanism in Northern Ireland. NICRA was a legitimate organisation with democratic accountability. In the constitution any member who acted in contravention of the objects of NICRA could be dismissed from his position, subject to an appeal to an annual general meeting. In my experience, members of the Executive Committee represented a spectrum of anti-Unionist opinion with no organisation dominating its policy. I have been asked if the Official IRA were subverting NICRA's aims or using NICRA marches as a shield for IRA gunmen. This never happened. It was never even talked about. I have also been asked whether marches were used by the Official IRA for the purposes of recruitment. This never happened either....."

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The labelling or demonising of protest movements as subversive is a commonplace reaction of Establishments in many societies. In the case of the United States Civil Rights Movement, which had its influence on the Northern Ireland civil rights campaign, for example, it was alleged by the FBI that it was vulnerable to communist influence or infiltration.* Ironically the open involvement of the Communist Party in NICRA seemed to disturb no one. Instead the focus was on Republicans and to a lesser extent the “new left” politics of the Peoples Democracy.

The Cameron Report explored these issues in some depth.

“The Irish Republican Army and minor Republican organisations
212. The IRA, whose campaign of violence between 1956 and 1962 had failed, subsequently adopted a marked change of tactics, although its overall strategy and objectives remained and remain profoundly the same. No secret has been made of this or of the consequent adoption

* Taylor Branch, Parting the Waters: America in the King Years 1954-63 (New York: Simon and Schuster, 1988), pp. 835-836.

of a policy which included permeation or infiltration of bodies or organisations which might operate in opposition to the current Government of Northern Ireland.

Because the Civil Rights movement and its published objects were (at the time) wholly rejected by the Government it was to be expected that the IRA or members of it in Northern Ireland would seek to turn that situation to their advantage. In this, they were assisted by the declared policy of the Northern Ireland Civil Rights Association to accept support from any person who could subscribe to their objects, without regard to their political affiliations or opinions. This was in accordance with the principle on which the Association was based - that it should be non-sectarian and non-party-political. From the very nature of things the Association could not of course avoid being political in a very real sense: only the most naive could believe otherwise.

Consequently it was easy for persons identifiable as members of the IRA either to join the Association itself or to take a greater or less part in its activities.

213. We have investigated this matter with particular care in view of the extent to which it is surmised that the IRA had become a prominent or even dominant factor in shaping or directing policy of the Civil Rights Association. There is ample evidence that in most of the larger demonstrations promoted by the Civil Rights Association identified members of the IRA have taken part as marchers or stewards. In point of fact, it has been noticeable that as stewards they were efficient and exercised a high degree of discipline on marchers or demonstrators. There is no evidence - and had there been we have no doubt that the vigilance of the RUC would have observed and prevented it - that such members themselves either incited to riot or took part themselves in acts of violence. Here no doubt they were acting in accordance with the well-known current policy of the IRA itself. At the same time it should be noted that there is evidence, which we judge reliable that when the so-called 'Free Derry' was set up following the rioting on the night of 4/5 January [1969] and especially in the Lecky Road district, members of the IRA were active in the organisation of 'Defence Committees' set up on a street by street basis.

214. *While there is evidence that members of the IRA are active in the organisation, there is no sign that they are in any sense dominant or in a position to control or direct policy of the Civil Rights Association.* (Italics supplied.) At the same time however, the extent to which IRA policies and objectives are directed to the same ends politically and socially as are sought by the extreme left-wing political elements who are operating within the People's Democracy is another matter which, although it lies outside the precise scope of our Enquiry, appears to us to deserve closer attention than so far at least it has received.

In addition to reference to the IRA and its members, reference was also made in evidence from time to time of the activity within the Civil Rights movement of persons associated with such organisations as Sinn Fein, Republican Clubs, James

Connolly Clubs and the Wolfe Tone Society. These are of course organisations of generally republican or extreme nationalist leaning, some of literary and cultural rather than of practical political significance, though in the case of the Connolly Club the emphasis is as much on its socialist as its nationalist or republican character. We found no evidence however that these as organisations took or played an active part in the disorders which the Commission was asked to investigate or that the organisations themselves had any effective share in organising the various demonstrations or obtaining publicity for the programme of reforms enunciated by the Civil Rights Association.

The evidence of INQ2225 (a captain in the Military Intelligence Unit) echoes these statements of the Cameron Commission. Asked what he meant by saying that the Officials had some interest in NICRA, he explained that on 30 January it was “just to attend” the march. Day 354/108/10-11.¹² The Scarman Tribunal, which reported contemporaneously with the Widgery tribunal report in April 1972, also refuted the claim made by Unionist politicians that NICRA was merely a front for the resurgence of the IRA in the late 1960s and early 70s. The Scarman Tribunal specifically determined that there was neither a plot to overthrow the Stormont administration, nor any evidence of an armed insurrection (*Violence and Civil Disturbance in*

¹²The same applied he said to the Provisional *ibid* 11.15-17

Northern Ireland 1969) Cmd 566.

Two paragraphs in the Cameron Commission report - 193 and 213 were specifically endorsed by Sir Kenneth Bloomfield, Day 216/132-134. He also confirmed that the Stormont government accepted the Commission's report in full and had implemented the recommendations, although "that action provoked a sort of counter-reaction which had all sorts of consequences". Mr Edwin Glasgow QC, representing a number of individual soldiers, referred to a passage in Sir Kenneth's book, *Stormont in Crisis: a memoir* (1994 Blackstaff Press), at p.134: "The dust of the civil rights campaign was now clearing and out of the gloom advanced on to the stage the spectral and menacing shapes of the Provisional Irish Republican Army". Mr Glasgow's question, re-phrasing (hence slightly distorting) the quote, - PIRA was "advancing like a spectre, menacingly out of the civil rights movement" - was pointedly referring to the oft-repeated and unsubstantiated Unionist assertion that NICRA had been "infiltrated" by the IRA, implying, wrongly, that the non-violent aims of NICRA were being diluted or undermined. Earlier in

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his memoir (p.117) Sir Kenneth had observed that “some members of the IRA were undoubtedly *active around the fringes of the civil rights movement* from the outset” (italics supplied). Sir Kenneth was giving no support to the suggestion that by the beginning of 1972 PIRA was directly, or even indirectly influencing the activities of NICRA. The transcript showed Mr Glasgow’s question as having inserted the word “As”, before the phrase, “the dust of the civil rights campaign.....” thus conflating the aftermath of the 1968/9 NICRA campaign with the emergence of PIRA in 1970. Sir Kenneth’s answer to Mr Glasgow was telling:

“I mean no one for a moment thought that it was the Northern Ireland Civil Rights Association who were shooting people in the streets, blowing up buildings and doing all these other horrific things and I mean in an ideal world sensible politicians, and Mr Faulkner certainly was one, would have wanted to see a society where legitimate political protests within the law, whether one agreed with it or not, you know, could proceed and be given a fair wind but where notorious illegality would be brought to an end”.¹³

What Sir Kenneth was in fact alluding to was the impact of the threat presented in 1970 by growing activities of PIRA when the campaign conducted by NICRA in 1968/9 had abated. He was not referring to the renewal of the post-internment marching activities in the autumn

¹³A similar view was expressed personally by INQ 1900 (para 18).

of 1971 leading up to the massive march planned for Bloody Sunday in January 1972. Civil Service colleagues in London considered that NICRA had a range of supporters, “shared with the more enlightened members at Stormont and certainly many in Whitehall” (see Kevin White, an official in the Foreign & Commonwealth Office, Day 269/10/11 to Day 269/11/8. Sir Arthur Hockaday who was AUS (GS) on the relevant days before Bloody Sunday, and later became the Permanent Secretary to the Ministry of Defence, made clear that the prevailing view in military circles was that NICRA was the “ally of the IRA”. He said that the suggestion of alliance was “in the sense that it [NICRA] had the same ultimate objectives, yes. But in the sense that it was in any way with methods of operation, no”. Day 271/48/4-8. In further questioning he later resiled from his earlier suggestion that NICRA and the IRA had the same objectives.*

* When Richard Rose conducted his survey in 1965 it suggested that a third of Northern Ireland Catholics approved the constitution of Northern Ireland, in spite of gerrymandering and the absence of proportional representation. See Townsend Political Violence in Ireland: Government and Resistance since 1948 (Lavender Press, Oxford (1983) p 389 citing R Rose Government without consensus: An Irish Perspective, London 1971, p 189

He said:

“Well, perhaps I should explain what I had in mind when I said it. All I had in mind then was the objective of a united Ireland. Perhaps you will tell me I was wrong.

Q. You are wrong, and if this is not so, would you withdraw the remarks that the same ultimate objectives were of NICRA as of the IRA?

A. Certainly.”

Sir Arthur’s attention was drawn to the evidence of Mr Kevin White, to which the Chairman [Lord Saville] said “Is it really necessary [to refer to the transcript of Mr Whites’ evidence] in view of what Sir Arthur as said in reply to your [counsel’s] questions?”.

Sir Edward Heath in his evidence to the tribunal Day 271/161/15 to Day 271/162/18 was adamant that NICRA was a peaceful organisation engaged in a peaceful non-violent activity. He rejected the notion that it had become the “ally of the IRA” (the expression unwisely used by General Tuzo), but he was informed that the

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organisation was “being taken over by the IRA and hooligans” G79.4-87 and Day 286/97/20 to Day289/98/21. In answer to questioning by Mr Lavery QC on Day 287/117/9-20 he described the organisers of the march as “pleasant agreeable people not wanting a row”.

A similar, politician’s view has been expressed by Lord Hattersley (at the time of the August 1969 arrangements, Minister of State at the Ministry of Defence and substituting for the Secretary of State, Mr Dennis Healey, absent from office for a surgical operation) wrote in *Fifty Years On* (p.197):

“Critics insisted that the NICRA was a front for the previously dormant Irish Republican Army, and there is little doubt that IRA members and sympathisers played an important part in its development. But it is impossible to argue against its aim - one man one vote in local elections, the redrawing of gerrymandered boundaries, laws against discrimination in local government, council houses to be allocated on a points scheme, a repeal of the Special Powers Act (which allowed arbitrary arrest) and the disbanding of the B-Specials, the police auxiliary which had always (rightly) been regarded as the instrument of Protestant supremacy”.

Peoples Democracy

In para 214 above, Cameron signalled concern over the Peoples Democracy (PD) and the Civil Rights movement. The role of the

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Peoples Democracy, which sprang from student protest over the NICRA march on 5 October 1968, is not part of this Inquiry and has been written about elsewhere.¹⁴ PD was not involved in any way in the march on 30 January in Derry. The relationship between PD and NICRA reflected left - right political tensions but had little bearing on events or decisions. For the “traditional” left and the unaligned on the Executive, the PD - student 60s radicalism was seen more often as a distraction.

The generational aspect should not be forgotten. It is nicely caught by Brid Ruddy in her statement to the Inquiry (8 April 2001).

“PD always regarded NICRA as old fashioned and staid, rather like NCCL had been. They were quite pedantic and slow whereas PD was seen as a bit hot-headed and radical. We would have been encouraging people to oppose the regime more radically. My mother [Mrs Rebecca McGlade executive NICRA member] and I had lots of heated discussions about the various methods, advantages and disadvantages of PD as opposed to NICRA, which usually ended with my mother telling me off.

¹⁴See Paul Arthur *The Peoples Democracy 1968-73*, Blackstaff Press 1974.

Northern Resistance Movement

The tribunal has before it evidence about a different body, the Northern Resistance Movement (NRM) that emerged in November 1971, after the introduction of internment. It was seen as more sympathetic to the Provisional IRA, and a more militant body than NICRA. NICRA's attitude to the NRM is set out in Kevin McCorrys evidence Day 129/29/2 to Day 129/30/15.

At attempt had been made by some members of the NICRA Executive (Kevin Boyle, Frank Gogarty, Hugh Logue, Jimmy Doris and George Huxley) to unite the energies of both organisations, NICRA and Northern Resistance Movement around the civil disobedience campaign against internment in the hope that unity could be restored among local groups and IRA violence ended. As a result, there was no joint activities between the NRM and NICRA and NRM had no involvement in the 30 January march.

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If anything, these disputes reflected concern of the majority of the Executive over the integrity of the limited and non-violent mandate of NICRA and suspicion over the bona fides of the NRM. It did not represent some transformation of policy or take-over by republicans.

Simon Winchester Article

A focus of some Counsel at the Inquiry has been on the composition of the Executive NICRA elected after Bloody Sunday in February 1972. This concern appears to be entirely based on an article by the journalist Simon Winchester published in The Guardian, 18th February 1972 (L.187 'Official IRA supporters, gain civil rights control'). The article concerned the supposed pre-dominance of NICRA's Executive by Officials following the elections.

Kevin Boyle who was re-elected to the Executive, commented in his oral evidence:

“[the Winchester article] is an extraordinary lesson of how not to read a subhead, because if you read the article it is perfectly clear that this is a political dispute between groups in which there is no suggestion or

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shadow of suggestion that you are dealing with people engaged in or trading in violence. They are dealing in what is the best way to move forward to deal with their human rights situation and for the future in terms of political structures in Northern Ireland.” (Page 132.)

Jimmy Doris commented on the Winchester article in his statement of 6 March 2001:

“The title of this piece and its contents are very offensive to me. They are quite wrong. I have already stated that the Executive of NICRA was made up of people of various political views but was never used by any particular party or organisation as a front for their views”.

The article reported that some 14 of the 22 Executive Committee Members elected were “Officials or supporters of Officials”. The terms “supporter” is open to interpretation and is of little merit. However, analysis of the membership of the Executive in 1971 against the incoming Executive of 1972/73, indicates that the number who could be described as “Officials” (the label used by Mr Winchester) was in fact two less.*

The Winchester article also reported that Frank Gogarty and Kevin Boyle were not re-appointed as Vice-Chairman and Press Officer

* See appendix – Table of NICRA Executive 1971/72 and 1972/73.

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respectively. These latter decisions reflected political differences within the Executive in a large part over the efforts by Kevin Boyle, Frank Gogarty, Hugh Logue and Professor George Huxley to bring the Northern Resistance Movement into co-operation with NICRA. If anything, such disputes reflected the concern of the majority of the Executive over the integrity of the limited and non-violent mandate of NICRA and suspicion over the bona fides of the NRM. It did not represent some transformation of policy or take over by Republicans.

As reported above, Kevin Boyle and Frank Gogarty were both re-elected by the Executive. In fact no one who had been on the Executive in 1971/1972 and stood for re-election was not elected. In contrast to the previous year in 1972/1973, an Independent Chairman was elected, Mr Jimmy Doris. The Vice-Chairman was Ivan Barr who had been the previous years' Chairman. In 1972/1973 the Treasurer was the same person as for the four previous years, Ann Hope. The Secretary for 1972/973 was also the same, Edwina Stewart.

Beyond the headline, the Winchester analysis, was accurate in noting the fragmentation of the civil rights movement. It noted the withdrawal of many from NICRA who were now involved in parliamentary politics through the SDLP. Others had aligned themselves with the NRM and others withdrew for personal reasons. It was thus not surprising that Official Republicans, among the most consistent supporters of NICRA from its birth, were well represented on the 1972 Executive.

Attitude of the Provisionals to NICRA

The Provisionals' attitude to NICRA is set out in the statement of Sean Keenan (16th October 2003):

“I have been asked to comment on NICRA. I was not a member, but I supported them, I went on some of the marches they organised. The movement saw them as useful in the sense that they organised peaceful demonstrations against British policy. That was the extent of it We did not regard the Civil Rights

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Movement as part of the struggle but they were certainly of benefit”.

The Provisional IRA had no involvement or relationship with NICRA. Their aims and methods contradicted completely those of the association.

Against a background of escalating violence, NICRA continued its campaign against internment which was finally ended in 1975. It published a draft Bill of Rights, being the first organisation to do so. A Bill of Rights for Northern Ireland was later taken up by most other political groupings in Northern Ireland. NICRA continued its watching brief on civil rights reforms. It published a report on police complaints machinery and assisted human rights applications to the European Commission on Human Rights.

Beyond the headline, the Winchester analysis was accurate in noting the *fragmentation* of the civil rights movement. It noted the withdrawal of many from NICRA who were now involved in

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parliamentary politics through the SDLP. Others had aligned themselves with the NRM and others withdrawn for personal reasons. It was thus not surprising that Official republicans, among the most consistent supporters of NICRA, from its birth were well represented on the 1972 Executive.*

NICRA organised no further demonstrations after the election of the Executive of February 1972. Against a background of escalating violence it continued its campaign against internment which was finally ended in 1975. It published a draft of a possible Bill of Rights, a subject that was later taken up by other groups and it continued its watching brief on civil rights reforms until it disbanded in 1981.

NICRA submits that there is no evidence that its fundamental aims, objectives or commitment to non-violence had deviated during the post-Cameron period leading up to 30 January 1972. It agrees with one of its members, Professor Huxley, who had chaired the Executive Committee meeting on 27 January 1972 and who did not stand for

* See appendix – Table of NICRA Executive 1971/72 and 1972/73.

election in 1972-3 for personal reasons:

“Bloody Sunday... woke up the British Government of the seriousness of the constitutional problems that NI presented. However Bloody Sunday was damaging to the peaceful civil rights movement which diminished in influence as violence grew”. (Statement para 55).

“David’s recantation

When the Director of Intelligence (anonymised as “David”) at the time of Bloody Sunday gave his evidence on video-link he was confronted with the telegram sent by him on 27 January 1972 to “Julian” in London. In essence, the message from the intelligence services of the Army in Northern Ireland was that the march planned for 30 January 1972 was being organised by those in the civil rights movement in close association with those Republicans and the “lunatic left” engaged in hostile attitude and action against the Unionist hegemony of Northern Ireland. The like message was expressed with military insouciance by the GOC, General Tuzo: “NICRA was the ally of the IRA”.

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Under questioning by counsel for the families of the victims, "David" totally negated the message of 30 years ago: He did not think that NICRA and the IRA were linked Day 330/62/5 he did not think that both were subversive (ditto: 6-11); he did now think that it was NICRA alone which organised the march (ditto: 17-24); he did not think that NICRA was part of the "lunatic left" Day 330/62/15 to Day 330/65/16 he did not think "it follows" that the Security Service may have formed the view that the IRA were organising the march (65: 2-5) and that all these dissident groups were not combining together in an attempt to cause maximum embarrassment to the Security Forces (65: 10-16).

How does one explain the fact that what the Director of Intelligence (with the senior rank of Major-General) said so imperiously in 1972 was so completely recanted in 2003? Putting aside the frailties of memory, combined with the physical decline of old age, the explanation must be the realisation that what was - no doubt sincerely believed by those exercising politico-military power in a state of high turbulence, if not critical insurrection, not the reality. It was the

figment of a frustrated military force's imagination struggling to combat an assumed nascent insurrection. NICRA was, indeed, objectively a classic civil rights movement in the style of Martin Luther King. But the bogey of paramilitarism lumped all political opponents in one camp. One of "David's" rare, forthcoming answers revealed the confluence of the two elements in any voluntary body that does not vet its membership. In answer to the suggestion of a liaison between NICRA and the IRA, David stated the blindingly obvious fact, that "there were individuals who needed to be looked at, but the organisation (NICRA) itself, no" (62: 4-5); the emphasis, coming from a weak voice, was nevertheless resoundingly clear and explicit.

The Cameron Commission in its introductory chapter wrote (para 11):

"We were impressed by the number of well-educated and responsible people who were and are concerned in, and have taken an active part in the Civil Rights movement, and by the depth and extent of the investigations which they have made, or caused to be made, to produce evidence to voice their grievances and support for their claims for remedy".

FS 10, 72

This ringing endorsement of the activities of NICRA, in pursuance of its aims of non-violent demonstration against social and political injustice, pertained in 1972 as it did in 1968/69. NICRA's resolve to pursue its aim was stiffened by the palpable injustice of internment in August 1971 which was, until late 1972 exclusively applied to the Catholic minority. We submit there is nothing that conceivably detracts from the considered observations of the Cameron Commission. The Executive Committee members of NICRA, who have given evidence before the tribunal, fully justify the conclusions of the Cameron Commission.

FS 10 . 73

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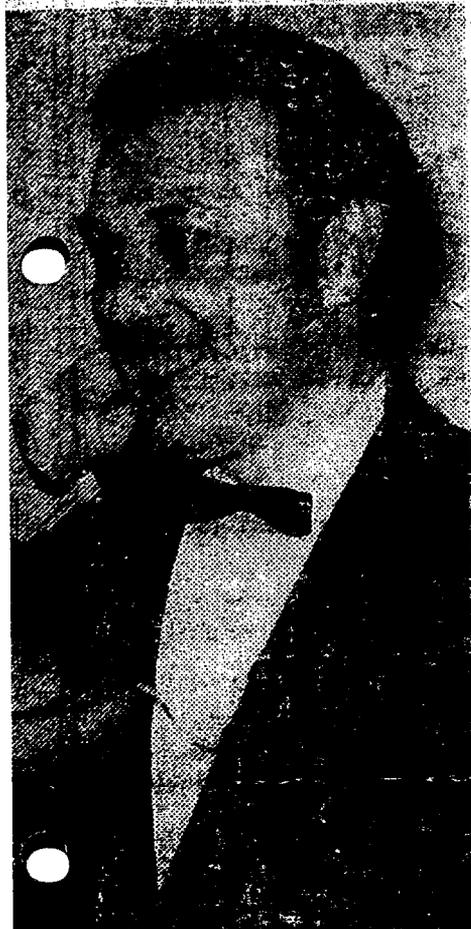


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Irish News
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was elected Chairman of the Chain of Office from Howard an.

'S BLUNT

U.S. GAIN LANDING RIGHTS

The deadlock between United States airlines and the Irish Government was lead

C.R. group from U.S. here

MR.S. RALPH ABERNATHY, wife of the American Civil Rights leader who succeeded Dr. Martin Luther King after he was assassinated, has arrived in Ireland at the head of a nine-man delegation.

The party, who will be here for a week, will attend the week-end conference of the Northern Ireland C.R.A.

Mrs. Abernathy's husband is President of the Southern Christian Leadership Conference.

Also included in the party is Rev. Bernard S. Lee, executive assistant to Abernathy, who said the trip was to give moral support to the people of Northern Ireland.

Another of the group, Carl E. Ferris, National Labour Co-ordinator of the SCLC, said the Northern Ireland Civil Rights Association had aims similar to their organisation. "We look upon the British as the fathers of racism. The provocateurs of violence are the British in Northern Ireland right now," he said.

Faulkner angers Armagh councillors

Members of Armagh City Council are angered by a "no

DERRY FACTORY DESTROYED BY BOMB AND FIRE

Belfast rocked by 5 blasts

BELFAST was rocked by five explosions and last night while in Derry followed by fire, destroyed a plant worth about £100,000 in a factory in Industrial Estate. During the explosion reported that troops found more mines in Co. Armagh area where two soldiers were killed Thursday night when their Land Rover was blown up.

A woman was taken to hospital with head injuries last night after a 20lb. bomb exploded in a canteen used by Belfast Corporation Transport Department.

It is understood the explosive was thrown from a car into the basement canteen in May Street. Two men were seen in the vehicle.

The woman, suffering from lacerations to her head from flying glass, was being detained in hospital overnight. Her condition, however, is not serious.

Damage to the building extensive and window adjoining property

who were a dozen in premises.

A 20lb. bomb badly damaged Station and fire engine damaged. reported.

Yesterday in Co. Armagh village of technical 3lb. mines personnel dev

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Greyhounds

D. Young, well-bred Grey-
— Phone Saintfield 262.

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where all communications
e addressed.

generations to come.

The statement was signed
by "E. O'Connor, Adjutant"

'Resist violence'

The Northern Ireland Civil Rights Association in a statement strongly condemned the explosion. "We see this latest act of violence as another attempt to increase sectarian tension within our community and this can only assist the forces who are opposed to democratic reform," the statement said. "The N.I.C.R.A. has always stood on the twin pillars of anti-sectarianism and non-violence despite attacks from the opponents of democracy, right from the beginning of our campaign for Civil Rights.

"We will continue to resist all efforts to channel the present frustrations into a sectarian conflict and urge all our people, Protestant and Catholic alike, to support our demands for reform.

"The Executive Committee of the N.I.C.R.A. wishes to express sympathy to the family of the young man killed in the explosion and to all those injured."

A meeting of the Council of the Liberal Party last night expressed "horror" at the explosion at the E.B.N.I. offices.

"Attacks on property are bad enough" said a statement, but this disregard for human life which must surely be condemned by everyone shows the sad state which the Province has reached.

Terrifying and pointless

Mr. Paddy Devlin, SDLP, M.P., for Falls at Stormont, said last night: "It is terrifying to think that a 23-year-old human being who went to his work yesterday morning is dead, should have lost his life in such a callous and inhuman fashion.

"I cannot see how any political aims can be achieved by taking the life of an inno-

terms the wicked perpetrators of this shameful and inhuman deed," he said.

Belfast Lord Mayor, Alderman Joseph Cairns, on his arrival at Belfast Airport last night from Chequers, said that on behalf of the City Council he had sent deepest sympathies to the relatives of the man killed and those injured in the office block bombing.

He said Mr. Heath had also expressed sympathy to the Belfast delegation.

The Northern Ireland Committee of the Irish Congress of Trade Unions in a statement said: "We condemn this dastardly and vicious assault on innocent workers. We are appalled at this manifestation of criminal violence.

The perpetrators by their cold act distinguish themselves as non-members of the civilised community."

'Army cannot solve North's problems'

The British Army cannot solve the North's problems, but it can give the Stormont Government's reforms a chance to "do their healing work", Mr. Geoffrey Johnson-Smith, Under-Secretary of State at the British Defence Ministry, said in Belfast yesterday.

"We can give a breathing space for restoring the confidence that intimidation will not work," he said. This would enable Irishmen, "with a little bit of outside assistance, to achieve their own solution."

Mr. Johnson-Smith, speaking at a news conference after a tour of the city, praised the Army.

"I believe that in these past few weeks they have carried out their duties in an exemplary fashion," he said. "I don't believe there is an army in the world which could have done better."

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Inside t

Sain News

26 August 1971

FS 10 . 75

NICRA hit out at violence

The Northern Ireland Civil Rights Association hit out last night at violence, and said that the present wave of bombing and shooting was devoid of politics and had no relevance in the struggle for justice and reform here.

The statement said that NICRA wished to dissociate itself from the indiscriminate violence and the mounting toll of civilian lives. No one group had the monopoly of resistant acts at the moment but NICRA was aware that the present phase of violence was precipitated by the repressive instruments of Government in the North.

The statement said that violence would only serve to set back the struggle for justice by heightening sectarian feelings and edging them close to sectarian civil war.

"The way to beat the repressive policies is not to respond with violence, but by developing a united and militant campaign of civil disobedience. It is this campaign which the people have demonstrated support for in the last month, not one that intentionally or otherwise provokes sectarianism and strengthen support for reactionary elements among the Unionist Party.

The statement described the response to the civil disobedience campaign in the first month of interment as "magnificent." It asked the people to continue their support this week as a special occasion of public protest. Rallies, begun at the week-end in Lurgan and Dungiven, would continue through the week, culminating in a major rally in Casement Park, Belfast, on Sunday.

The statement asked everyone to support other activities arranged as part of the week's protest by their own local committees. These would include school strikes, token voluntary shut-down of busi-

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No limit to period of detention, says spokesman

INTERNMENT orders do not have to be made to detain prisoners longer than 28 days under the Special Powers Act, according to a Stormont Government spokesman.

The spokesman said yesterday that there was no limit to the period the 240 men still held aboard the Maidstone and in Crumlin Road prison could be detained.

80 to be freed

Meanwhile, there was mounting speculation that the Heath-Lynch talks would be followed by the release of

Priest on obstruction charge

FS 10.76

Father Sean Gabriel McManus (27) a young

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Day 196

FK/smcs
17th October 2003

Bloody Sunday Inquiry
PO Box 18031
LONDON
SW1Y 4WG

Dear Sirs

RE. **Evidence of Lord Kilclooney**

I refer to the above named who gave evidence to the Saville Inquiry on Friday 15th March 2002, when he stated:

"NICRA was not just simply a Civil Rights movement. It was an organisation infiltrated by Irish Republicanism, in which it actually went so far as to provide two places on its Executive Committee for the Official IRA Sein Fein people, and of course the organisation was used as a cover by terrorists...."

When questioned about this and asked if he had any documents to support this, he replied:

"Yes, I believe, I think in this file that was provided for me by the Tribunal there is a reference to it..."

Later in his evidence he stated:

"I mentioned this yesterday and I will look through my documentation..... I will look at that more closely to see why I concluded that two places were reserved on the Executive for NICRA for the Official IRA. As I said this has to be checked and I will do this in writing to leave no doubt in any ones mind..."

In addition he agreed to provide chapter and verse that NICRA allowed its demonstrations to be used as a cover by the IRA.

FS 10 . 77

I would be obliged if you could confirm if evidence has been received from Lord Kilclooney in this matter in either or both of the specific matters.

I look forward to hearing from you.

Yours faithfully

Francis Keenan

FS 10 . 78

FK.GV
12th December 2003

Bloody Sunday Inquiry
PO Box 18031
LONDON
SW1Y 4WG

BY FAX: 020 7661 9933

Dear Sirs

RE: LORD KILCLOONEY - NICRA

We are close to submitting our closing submission and it would be extremely helpful if there was an answer to the question posed in our earlier correspondence in relation to the above matter in which we asked you if Lord Kilclooney had responded to his earlier indication that he would enclose to the Tribunal issues raised in the said correspondence.

I look forward to hearing from you.

Yours faithfully

FRANCIS KEENAN

FS 10 : 79



THE BLOODY SUNDAY INQUIRY
P O BOX 18031
LONDON SW1Y 4JS

Tel 020 7661 9625

Fax 020 7661 9933

e-mail gordond@bloody-sunday-inquiry.org

Francis Keenan Solicitors
Unit A
Lyndon Court
32-38 Queen Street
Belfast BT1 6EF

7 January 2004

Dear Mr Keenan

Lord Kilclooney-NICRA

I acknowledge receipt of your letter of 12 December.

At present I have not received any response from Lord Kilclooney to my requests. I have written to him again today on this matter.

Yours sincerely

Gordon Dickinson
Solicitor to the Inquiry

FS 10. 80

FK.GV
6th February 2004

Bloody Sunday Inquiry
PO Box 18031
LONDON
SW1Y 4WG

BY FAX: 020 7661 9933

Dear Sir / Madam

RE: LORD KILCLOONEY

I refer to my previous correspondence and in particular my letter of 17th October 2003 and subsequent correspondence in relation to the above-named and in particular to my request that he supply the Tribunal with the information that he undertook to so do during the course of his evidence. In particular, he stated that he would supply the Tribunal with:

- (a) Evidence that NICRA reserved two positions on each yearly Executive for members of the Official IRA.
- (b) Evidence that the IRA used NICRA demonstrations as cover for firing on the security forces.

His recent letter which unfortunately the date is blank in my copy of same, refers exclusively to the BBC Radio tape which was an entirely separate issue from the one raised above.

I would be obliged if he could be written a reminder in respect of the two issues above as we wish to append the said correspondence in our closing submission which we are currently preparing.

Yours faithfully

FRANCIS KEENAN

FS 10 : 81

1971 - 1972		1972 - 1973	
<u>NAME</u>	<u>POSITION</u>	<u>NAME</u>	<u>POSITION</u>
1. Ivan Barr	Chairman - Republic Clubs	1 Ivan Barr	Vice-Chairman - Republican Clubs
2. Frank Gogarty	Vice-Chairman - Independent	2 Frank Gogarty	Independent
3. Kevin Boyle	Press Officers - Peoples Democracy	3 Kevin Boyle	Peoples Democracy
4. Edwina Stewart	Secretary - Communist Party	4 Edwina Stewart	Secretary
5. Ann Hope	Treasurer - Independent	5 Ann Hope (1)	Substitute Treasurer - Independent
6. Jimmy Doris	Vice-Chairman - Independent	6 Jimmy Doris	Chairman - Independent
7. Rory McShane	Republican Clubs	7 Rory McShane	Republican Clubs
8. Kitty O'Kane	Republican Clubs	8 Kitty O'Kane	Republican Clubs
9. Des O'Hagan	Interned - Republican Clubs	9 Des O'Hagan	Still interned - Substitute - R Clubs
10. Dennis Cassan	Interned - Republican Clubs	10 Dennis Cassan	Still interned - Substitute - R Clubs
11. Hugh Logue	SDLP	11 Hugh Logue (2)	SDLP
12. Margo Collins	Republican Clubs	12 Margo Collins (3)	Republican Clubs
13. Rebecca McGlade	Republican Clubs	13 Rebecca McGlade	Republican Clubs
14. Kevin Agnew	Replaced by below - Republican Clubs	14	
14a. Finbar O'Kane	Regional Delegate - Independent	14a Finbar O'Kane	Independent - Sought asylum in USA
15. Aiden Corrigan	Replaced by below - Independent	15	
15a. Madge Davison	Communist Party	15a Madge Davison (4)	Not elected in the first election
16. Prof. G Huxley	Independent	16 Prof G Huxley	Independent - Did not stand for personal reasons
17. Malachy McGurran	Republican Clubs	17 Malachy McGurran	Did not stand
17a. Brid Ruddy	Co-opted - Peoples Democracy	17a Brid Ruddy	Did not stand - Peoples Democracy
18. Liam McMillen	Republican Clubs	18 Liam McMillen	Did not stand
18a. Miriam Daly	Co-opted - Irish Republican Socialist	18a Miriam Daly (5)	Joined Northern Resistance

1971 - 1972		1972 - 1973	
<u>NAME</u>	<u>POSITION</u>	<u>NAME</u>	<u>POSITION</u>
19. Sam Dowling	Republican Clubs	Sam Dowling	Did not stand
19a. Joe Deighan	Co-opted	Joe Deighan	Elected
20. Mike Havord	Derry Independent	Mike Havord	Derry Independent
		21. Kevin McCorry	Elected - Press Officer -
			Republican Clubs
		22. Raymond O'Hagan	Republican Clubs
		Sean Holywood	Independent SDLP
		Harry McCoy	South Derry Independent
		Seamus McAllister	Belfast - Irish Labour Party
		Tony Kearney	Antrim Independent

II

THE PLANNING AND ORGANISATION OF THE MARCH

It has already been recounted how after the introduction of internment in August 1971, NICRA found itself the focus of a mass campaign for its end. Over the ensuing months, NICRA was centrally involved in the organisation of a campaign of civil disobedience. The campaign involved the widespread withholding of rent and rates and the holding of public meetings. During this period, NICRA did not organise any marches. The reason for not so organising, was their fear that civil unrest and violence would follow. This was as a direct result of the level of civil unrest and violence that followed internment.

However, as the numbers arrested and interned continued to increase, reaching some 758 by the start of 1972* and as the

*See statistical table on internment and dissent in Northern Ireland, 1971-1975 at page 36 of the Opening Statement of the Executive Committee members of NICRA in 1972 to the Tribunal, February 2001.

protests to date clearly had no effect on Government, NICRA contemplated a return to the streets. NICRA made a Christmas Appeal for an end to internment addressed to the Prime Minister, Edward Heath. A final attempt to avoid a return to the streets led to the Christmas Appeal to the Prime Minister. This appeal warned that if there were no positive response to their plea for an end to internment and other reforms, NICRA would escalate its civil disobedience campaign by defying the ban on marches. **Gen 5.24** and Kevin Boyle Day 123/119-121. Their letter to Edward Heath was neither acknowledged nor answered.

It must be understood what was involved in the decision to escalate the anti-internment campaign by holding marches. NICRA was asking supporters to risk prosecution for defying the ban on marches and if convicted, face a mandatory sentence of six months imprisonment. People would therefore be naturally apprehensive about taking part in marches in the face of this threat and in the teeth of the usual heavy British army

and RUC presence that attached to any form of anti-internment protest.

On the other hand, if the marches were small the authorities would claim that opposition to internment was declining.

The decision to march involved the calculation that the NICRA name and reputation would persuade significant numbers of people to take part in non-violent but large-scale demonstrations.

Marches and the other parts of the civil disobedience campaign represented a mandate or authority for the NICRA demand for an end to internment. So if the escalation was to be successful, each march would have to be larger and more representative than the one that went before. This could only be achieved if there was a firm commitment to ensure that the demonstrations were properly organised and stewarded. NICRA is satisfied that

the Belfast, Derry and Newry marches conformed to these principles.

There was no response from the Government to the NICRA Christmas Appeal. Consequently the Association held the first of a series of marches on 2nd January 1972 along the Falls Road, Belfast. A number of members of the NICRA Executive were subsequently prosecuted under the Public Order Act and as a result were sentenced to six months imprisonment.

The plan to hold a march in Derry arose from a request from Derry Civil Rights Association for a march in the City. Derry Civil Rights Association organised the march with the active support of the central NICRA Executive.

Detailed recollections of the preparations for the march are to be found in the statements and evidence of Executive members, Jimmy Doris, George Huxley, Brid Ruddy, Edwina Stewart, Mike Havord and Kevin McCorry.

The NICRA Executive was fully engaged with the organisation of the Derry march. No march before Derry or subsequent to Derry commanded such time and effort from the Executive.

There was a discussion of arrangements during at least three executive meetings (7th January, 13th January and 28th January). Members of Derry CRA attended two of these meetings of the Executive and Members of the NICRA Executive travelled to Derry and met with Derry CRA. The Association's Organiser was in Derry to assist the local committee during the two weeks preceding the march.

Planning of the Derry march began at an Executive meeting on Friday 7th January. The Committee minutes record as follows:

"K McCorry reported that Derry CRA put in a request for a march on 16th January. It was recommended that this date should be put back to 30th January to allow adequate organisation. E Stewart, M Davidson, F O'Kane, F Gogarty and

K McCorry agreed to meet the Derry Committee”¹. The NICRA Executive postponed at least one other march (a march in Strabane) on the basis that they were not satisfied with the local planning of the march. See Ivan Barr’s Statement at Paragraphs 3-6. On 14th January the first item on the agenda of the Executive was the Derry march. The minutes record that there were delegates present from Derry CRA in addition to Executive members. The minutes record that:

“Edwina Stewart reported on the meeting with Derry Regional EC and Shantallow CRA. It was agreed that two marches should take place from Creggan and Shantallow finishing in the Guildhall. Outsiders should join with the Shantallow march. John Hume is to be asked to speak outlining his party’s policy on escalation. I. Cooper to be asked if he is unable to speak. We also agreed to protest at the closing of Magee College. A press conference is to be held before the march”

1. Gen 5.27.

A further meeting of the Executive chaired by Prof. George Huxley was held on Friday 28th January in Belfast. The main business at that meeting was to hear from a deputation from Derry CRA. A good account of that meeting is contained in Prof. Huxley's statement to the tribunal AH111.8 onwards

Paragraphs 43 – 54.

NICRA had guidelines on the holding marches. These are summarised in the statement of Ivan Barr:³

- The march is under the auspices of NICRA.
- The aims of the march to strictly meet the aims of NICRA.
- The march could only take place on the understanding that it would be adequately stewarded and that every necessary precaution would be taken with a view to ensuring that there would be no public disorder or confrontation.

3. Ivan Barr was not called to give oral evidence.

NICRA also had to approve proposed speakers at any rally after a march.

The aim of the march was to protest against internment. People attending were invited to carry placards with the name of local internees.

NICRA and Derry CRA agreed on the speakers to be invited. The leading speaker was to be Lord Fenner Brockway. Mr Bobby Heatley who had worked with him on the House of Lords Sub-Committee on Northern Ireland recommended Lord Brockway. Other speakers were Rev. Terence McCaughey, Mr John Hume MP, Ms Bernadette Devlin MP, Mrs Edwina Stewart and Ms Margo Collins. [Ivan Cooper was to speak in the absence of Mr Hume].

In accordance with NICRA practice the chairman for the rally was an Executive Member, Mr Rory McShane.

Preparations in Derry

The main preparations for the march took place in Derry. Derry CRA was an active branch of the Association. The leading personalities were Bridget Bond, her husband Johnny, Gerry Doherty, Tony Martin, Mavis Sheerin, Michael Havord, Charles and Kathleen Morrison. Meetings were held in Bridget Bond's house in the Creggan. Kevin McCorry, the NICRA organiser was sent to Derry by the Executive to help with the general preparations.

Particular responsibility for selecting stewards for the march fell to Gerry Doherty, who had a wide circle of contacts in Derry. Other members of Derry CRA also brought along additional stewards. Meetings were held for stewards in the Creggan and Shantallow. Ivan Cooper Day 419/82-83.

Armbands were made and distributed to stewards prior to the start of the march. At least 250 were made and distributed. Derry CRA organised the lorry that led the march.

The loud speaking equipment consisted of a sound system attached to the lorry and loud hailers that were distributed to stewards.

The estimated distance of the route of the march was in the region of 2/3 miles. The instructions for the stewards were that they were to ensure that participants kept behind the lorry and followed their instructions. As people were expected to join the march at various points along the way, the stewards were instructed to ensure that they did not join up in front of the lorry.

Stewards were put into position at all key points.

No authorised representations were made to either the Provisional or Official IRA's about the proposed march. It

would have been contrary to NICRA policy to make such representations. However, there were regular contacts between Bridget Bond and Chief Superintendent Lagan but these were about the destination of the march. There was no contact with the military authorities.

Estimates of the likely size of the march varied from a couple of hundred to thousands. The aim was to ensure that whatever the size of the march, it was a dignified and peaceful expression of popular revulsion to internment without trial. This point was emphasised in pre-march public statements and was repeatedly reiterated by Kevin McCorry from the lorry. No one envisaged the possibility of serious violence on Bloody Sunday. Kevin McCorry Day 129/101/1-8.

Marchers were made aware of the Free Derry Corner destination by announcements from the lorry, by stewards using loud hailer and by the stewards who were in position at the William Street/Rossville Street corner. These stewards were specifically

placed there to prevent the any breakaway group going down Rossville Street to Barrier 14. This was the last possible confrontation point as each other junction had been successfully manned by stewards and the marches had obeyed their every order.

Route of the march

The initial route of the march was from the Creggan to Guildhall Square. However, there was an active Civil Rights Committee in Shantallow and they raised the possibility of an additional march from Shantallow to join up with the main march at the Guildhall Square. This proposal was agreed by Derry CRA and the NICRA Executive but was later abandoned by agreement between the three groups because of the strain that it would put on the stewarding arrangements with the same number of stewards having to steward two separate marches. In the end it was agreed to have one march.

Bishop's Field in the Creggan was the starting point and the march went from Bishop's Field down Southway, along Brandywell turning left up Westland Street across Lone Moor turning right down past the Cathedral into the top of William Street. This route was decided upon to allow the greatest participation of the greatest number of marchers.

The destination of the march

Guildhall Square was the ideal destination for the NICRA march on Bloody Sunday. It was also the clear choice of the people as the natural place to hold a meeting since it contained an open square and it was also seen as the seat of the maladministration of the city. An anti-internment meeting addressed by local MP's had been held there on 14th August 1971. This passed off without trouble. It was also an open space in which people could safely gather and disperse from thus conforming to NICRA's policy on marches, see statement of Kevin McCorry.

A further reason why the Guildhall was a logical destination was that it fulfilled a central tenet of NICRA, in relation to the marching issue, namely the rejection of sectarian routing. NICRA contended that a non- sectarian civil rights organisation should be able to march peacefully in a democratic society without regards to so called “ghettos” and “Catholic” and “Protestant” areas. Kevin Boyle Day 123/132-133.

The role of Bridget Bond was crucial as to the question of the final destination of the march. There was a unique situation in Derry in that Mrs Bond had and was in direct and daily communication with the local police commander Chief Superintendent Frank Lagan. Effectively she was engaged in trying to persuade the Chief Superintendent that the march should be allowed to proceed to Guildhall Square.

It is clear from the evidence before the tribunal that the option of allowing the march to reach the Guildhall was still open until at least mid-day of the 30th January.

From the outset the NICRA Executive and Derry CRA decided that Free Derry Corner was the only safe alternative rally point should the route to the Guildhall be blocked by the security forces. It also conformed with NICRA guidelines on open space which enable marchers to assemble and disperse safely.

The meeting of the NICRA Executive chaired by Prof. Huxley on Friday 28th January 1972 in Belfast discussed and agreed that if the march was not able to reach the Guildhall the rally point would be Free Derry Corner AH 111.8 Paragraphs 41-43 and Michael Havord Day 125/28-30.

As outlined above, the Guildhall and Free Derry Corner were the only viable destinations agreed to by NICRA, as they alone were open areas, which allowed safe egress. A meeting at Barrier 14 in William Street where the route to Guildhall was blocked was never a realistic option and consequently was never considered. This was because it would lead to confrontation and

breached NICRA policy and crowd control guidelines. Kevin McCorry Day 129/43-47.

When did the organisers know that Guildhall Square was not an option?

Bridget Bond was talking to Chief Superintendent Lagan up to at least midday on 30th January. No final decision on the destination of the march had been made when Kevin McCorry met with the stewards on Sunday morning in the Creggan. He returned to Bridget Bond's house after a steward's meeting in the Creggan Centre. It was only then he finally learned that the march was not going to be allowed to go through the Guildhall Square. Members of the Derry Civil Rights Association called at Bridget Bond's house individually prior to going to Creggan Field for the start of the march. They agreed individually and collectively that the march would now end at Free Derry Corner. The change of route by NICRA was communicated to the authorities in a telephone conversation between Chief

Superintendent Lagan and Bridget Bond. Kathy Keville Day 180/56-57. Chief Superintendent Lagan confirms this in his statement at JL1.8 at paragraph 26. However, he did not name Bridget Bond as his NICRA contact. He later conveyed the information that the march was diverting down Rossville Street to Brigadier MacLellan, in the presence of General Ford. JL 1.15 Paragraph 87.

Why was Free Derry Corner Route not announced in Creggan Field?

There were strong political and safety reasons why no announcement was made. Central to the campaign against internment was a refusal to allow the State to decide what was and what was not legitimate protest against internment. To publicly announce that the march was not going to Guildhall Square would be to concede the right of a Government who NICRA believed had lost all moral authority to determine where Derry people could and could not protest.

From a safety standpoint, there was also the danger that elements of the crowd would leave the field and proceed in an unorganised manner in the direction of Guildhall Square. In addition, the march was going to attract marchers as it proceeded along its route and it was important to incorporate these additional supporters behind the Civil Rights lorry and not have them join the march ahead of the lorry. This arrangement was to ensure that the lorry was to be the focal point for the issue of instructions to marchers and potential marchers. Consequently, the decision taken not to announce in Creggan Field the destination of the march, was the correct decision in terms of crowd control.

The stewarding of the march

The tribunal has heard a considerable amount of evidence on the stewarding of the march.

The stewards were local people who were experienced in this

work and were of high standing in their own communities - Bogside, Shantallow and Brandywell. Some of them were from the Catholic Ex-Servicemens Association.

Stewards were divided into three groups: -

1. The majority of stewards accompanied the main body of the march and their function was to ensure that participants followed the banner and lorry and did not bunch up at the front of the march. In addition, they were to prevent newcomers from getting in front of the lorry as it picked up support along the way.
2. Static stewards were placed in areas where it was known large numbers would join the march. Their task was to funnel these new marchers onto the march in an orderly manner.
3. A team of stewards formed a mobile group to block side streets at areas of possible confrontation. As one street junction was successfully passed, these stewards moved on to the next possible flashpoint.

Members of the Derry CRA such as Gerry Doherty, Charles Morrison, Bridget Bond and others were involved in seeking out people who would act as stewards. At least three meetings for stewards were held where their duties and functions were outlined to them.

There is ample photographic evidence to show stewards wearing distinctive armbands and working to control the march.

The evidence is clear that the stewards acted professionally and effectively from the outset of the march and were successful in ensuring that there was no tension or trouble during the first hour of the march until it reached William Street/Rossville Street junction. [Chapter VI]

The proof of a sound organisation, and management of the march, coupled with effective stewarding on the ground, can be gleaned from the Army's own assessment. The intelligence services recorded in NISSEC 32 (G.116.759):

“Throughout it [the march] was well marshalled and great efforts were made by the appointed stewards to keep the crowd orderly and to follow their selected route”.

Further, despite the confrontation that developed at Barrier 14, the vast majority of the marchers continued to Free Derry Corner, thanks to the skill and determination of the stewards. The efforts of the stewards to contain the situation in William Street were frustrated and ultimately ended by the decision of the authorities to fire the water cannon. [Chapter VI].

Observers

NICRA appointed observers for the Derry march. These were Tony Smythe, General Secretary NCCL and Larry Grant, Legal Officer NCCL. The objective was to have them witness and observe the march and to report later. Jane Hyman also attended as a representative of Liberation. They were not appointed in

expectation of serious trouble. Rather, their objective was to witness and observe the march and report later. Observers had been invited to other marches on previous occasions. On this occasion, Tony Smythe and Larry Grant did not witness the march as the car in which they were travelling was stopped on a number occasions while travelling to Derry and they were finally arrested and held at a Police Station on the outskirts of the city.

Statement Taking

We would refer the tribunal to the opening statement of the Executive Committee of the Northern Ireland Civil Rights Association (NICRA) in 1972, to the Saville Tribunal. February 2001 (Pages 71-74).

III

THE PROVENANCE AND KNOWLEDGE OF ARREST ("SCOOP-UP") OPERATION

The first documented evidence of the plan to arrest hooligans with the use of 1 PARA, if and when rioting proved to be an outcrop of the march on 30 January 1972, emerged only from the pen of the Brigade Major of 8 Brigade (Colonel Steele) overnight on 26/27 January **B1315.053**. *Operation Forecast* appeared as a Brigade Order, dated 27 January 1972, and marked **SECRET** on 28 January 1972. It was *not* presented to the Joint Security Committee at its meeting of 27 January 1972, and no mention of an impending "arrest operation" was noted. *Operation Forecast* was given a circulation beyond its immediate author and the Brigade Commander, only as and when it was discussed at the Co-ordinating Conference held at Brigade HQ at 14.30 hours on 28 January, and even then the Brigade Order was limited to those at senior army level (all COs) directly involved in the security operation for the day. Chief Superintendent Lagan attended the co-ordinating conference but did not speak. Brigadier McLellan

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told him that 1 Para would be carrying out the arrest operation at the Saturday briefing session on 29 January 1972. While the Army's plans to deal with the impending march were generally known at that time to both the senior military and RUC officers, the arrest operation in embryo was restricted to a select few. There is no documentary evidence that politicians in Northern Ireland were aware of the arrest operation although attendance at unscheduled and unrecorded meetings between the Prime Minister of Northern Ireland and the GOC might have revealed what was afoot. Evidence of this ad hoc security committee, which included Brian Faulkner, Chief Constable Shillington and the GOC, was given by Dr Ramsey, David Gilliland and Ken Bloomfield Day 216/95/13 to Day 216/96. No record of matters raised at the secret ad hoc security committee meetings was kept. Since the tribunal is without evidence from those two actors in the scenario for security operations, the question whether, and to what extent, the GOC as Director of Operations was influenced politically must go unanswered but the Tribunal is referred to Chapter IV, Pages 2/3. Certainly, the governmental instrument of security policy and practice - namely, the Joint Security Committee (JSC) - was unaware

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of *Operation Forecast*, or any hints of what it would contain, other than the Army's plans for policing of the march on a prescribed route.

Nothing said at the JSC meeting of 13 January 1972 referred specifically to the impending NICRA march planned for 30 January 1972. During the discussion on the current security situation, General Tuzo indicated that, following a meeting with business men in Londonderry - presumably a reference to General Ford's visit to that city on 7 January 1972 - "certain measures were in hand with a view to putting down the troublesome hooligan element there". The GOC added, prophetically: "it was a very difficult problem to solve within the law". The delphic reference to "certain measures" may have been a reflection of the comment of an officer in the Northern Ireland administration, Mr Maurice Harris (KH 11.6) that "if an operation was being planned which required a degree of secrecy for its success the GOC might not have wanted to discuss details at a full meeting of the JSC".

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At the meeting of the JSC on 27 January 1972 the minutes record as follows::

“The Londonderry Marches* presented more serious difficulties and security action will be primarily an Army operation The basic plan here will be to block all routes into William Street and stop the march there. The operation might well develop into rioting and even a shooting war..... Prosecution for breaches of the ban on processions was disappointingly low”.

The two members of the JSC who might conceivably have known on 27 January 1972 what was being contemplated, were the GOC and the Chief Constable. Sir Graham Shillington, in his written evidence to the Inquiry (JS8.3 para 18 and 19) has said that he did not believe that “he was aware that the Parachute Regiment were going to be involved in the march” - an arrest operation is not a natural corollary to the policing of a march - and that he did not remember actually discussing the arrest operation at the D Ops meeting on 26 January, and he personally had no active involvement in the practical details of the day.

*Presumably this referred to the two marches - the one from the Creggan and the other from Shantallow, the latter subsequently aborted.

Chief Superintendent Lagan and his Deputy, Mr Patrick McCullagh, knew of the arrest operation, probably only, at the earliest moment, at the Co-ordinating Conference on 28 January 1972.

Nothing was in fact communicated either to the RUC or the JSC that 1 PARA had already been deputed earlier in the week to go to Londonderry to fulfil its allotted task of “scooping up” prospective rioters. Lieutenant 026, an officer in C Company of 1 PARA, has told the tribunal that 1 PARA were “not expected to carry out any static duties”, inferring that he and his colleagues knew that 1 PARA was engaged exclusively to carry out the arrest operation (1545.001, para 13). Only the military, however were privy to the arrest operation.

If General Tuzo was not revealing beyond military sources the “certain measures” he was anticipating to deal with rioting hooligans, the Ministry of Defence and the Home Office in London could know about the arrest operation only from either the GOC or the UK Representative at the JSC. It would not have obtained the information

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from Northern Ireland sources or the JSC itself. The information about the Army plans for policing the NICRA march might have been gleaned from the GOC in performance of his obligation to inform those in military authority “up the chain of Command as far as the Defence Council and ultimately to Her Majesty”. What precisely did Whitehall know of the Army’s plans for controlling the march and the arrest operation on 30 January 1972?

The focal point of non-military Whitehall attention to Northern Irish affairs resided in the unit (DS10) within the Ministry of Defence, headed by Mr AW Stephens, an Assistant Secretary in the Ministry. To the extent that anyone in the UK administration (politicians and civil servants) knew of the Army’s plans, such knowledge would inevitably have filtered through Mr AW Stephens, whose memorandum of 26 January 1972 for the two meetings the following day - the Northern Ireland Policy Group and the GEN 47 - adumbrated, without elaboration, arrests of marchers and possibly rioting hooligans once the march had run its course. His note stated:

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“The GOC and UK Rep consider, and the Home Office and MOD are inclined to agree, that it would however be unwise to attempt to arrest any prominent political figures who happen to be in the van of the march, since this would be quite likely to precipitate really serious rioting. For such people, the only feasible course remains to take out summonses as soon as possible afterwards. It might be difficult then to arrest others among the marchers, while ignoring the leaders. However, there would be no objection to arresting anyone on the fringe of the march who was causing trouble; and it seems only too likely that, once the march is brought to a halt, there will then be at least some hooliganism. The GOC therefore has in mind to arrest a fair number of such hooligans and to arrange for a special court sitting on Monday morning, before which they can be brought”. (KH 11.15.) (The suggestion of a special court for 31 January 1972 seems never to have been followed up).

The passage might have supplied the reader with an indication that General Tuzo was contemplating some positive action to arrest anticipated rioting hooligans in connection with, and probably at the end of the NICRA march. The passage did not, however, allude to General Ford’s plan for the “arrest operation” as part of the day’s operation, and it in no way descended to particulars. Indeed, Operation Forecast had emerged only on 27 January 1972. There was no inkling until then that 1 PARA (by that time alerted for action) was being exclusively deployed to effect an arrest operation. Sir Arthur Hockaday, had not thought that any arrest operation was

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contemplated. He stated (KH.9. 90, para 84) that “the military operation was there to deal with the civil rights march”.

Both Sir Edward Heath and Lord Carrington denied that they had any knowledge of the arrest operation, as planned by General Ford and Brigadier McClellan, prior to 30 January 1972. The only piece of evidence that might suggest that Lord Carrington as Secretary of State, did have some knowledge of, and gave approval to the plan, comes from the evidence of Sir Geoffrey Johnson-Smith, junior Minister at the MOD as Under Secretary of State (Army) to the Tribunal in answer to questions from Lord Gifford Day 279/65/2 to Day 279/67/9. . Sir Geoffrey did say in a broadcast interview on 19 April 1972, following Lord Widgery’s report the previous day, that he thought that the “general plan” to arrest rioters was approved by the Secretary of State. This evidence is insufficiently precise and was hesitantly given so as to be accorded any reliability. Previously in the interview Day 279/65/17-18 Sir Geoffrey inaccurately said that the

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“general concept of the plan” had been “discussed by the Joint Security Council [sic]”. It had not.

The conclusion must be that the arrest operation, as devised in *Operation Forecast*, was a well-guarded secret, knowledge of it being almost entirely confined to the inner circle of the military hierarchy in Northern Ireland and London. Politicians at Stormont might will have known about it through the ad hoc security committee. (See also the communication of Commander Anderson during the Stormont debate on 3 February 1972: Column 148 at 218 in the G Bundle Analysis submitted by NICRA). The question, to which the tribunal might provide an answer, is whether the GOC fulfilled his duty under the Directives of 1969/1971 to communicate, not just to military colleagues but also to Ministers of the Crown, the fact of the planned arrest operation on Bloody Sunday.

NICRA’s answer is that, whatever the level and degree of knowledge about the policing of the march, the specific ingredient of the arrest operation was conceived and implemented in total disregard of the

military obligation to collaborate and co-operate with the RUC. The evidence of Sir Graham Shillington establishes that. And no one outside of military circles had any knowledge of the arrest operation, at the very least not before the end of Thursday 28 January 1972. NICRA submits that, in the light of the close personal and official relationship of General Tuzo to the Prime Minister of Northern Ireland, it can reasonably be inferred that the Stormont Government did have knowledge of the projected “arrest operation” by 1 Para on Bloody Sunday. If so, the Stormont Government would, on its political record, have given the “arrest operation” at least tacit approval. If there was any appreciation by Stormont politicians of what was envisaged in Operation Forecast, the “arrest operation” was, NICRA submits, a pointless exercise* that should never have been contemplated.

* That was the view of Professor J J Lee, University of Cork, in his Ireland: 1912-1985, Cambridge University Press, 1989, P. 440.

Page FS10.117 is not used.

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IV

OVERSEEING SECURITY POLICY AND OPERATIONS

Apart from the existence of unscheduled and undocumented meetings between the GOC and the Prime Minister of Northern Ireland - as recounted by Sir Kenneth Bloomfield Day 216/95/13 to Day 216/96/6 and Mr Maurice Harris who regularly attended the meetings of the Joint Security Committee (JSC) (KH 11.5, para 11) - the overseeing of security policy and operations was the responsibility of the Joint Security Committee. Since there are no terms of reference for the JSC, it must be assumed that it had no executive function; it was, at most, an advisory body devised to give effect to the arrangements of the two Governments. Security operations were the primary responsibility of the GOC under the Directives of 19 August 1969 and 4 February 1971. The GOC was bound to work closely with the Northern Ireland Government in formulating security policy and authorising security operations planned by the Commander of Land Forces. The GOC would, however, undoubtedly have consulted privately with the UK representative, who was present at both the 13

and 27 January JSC meetings. That duet constituted the sole UK input to the deliberations of the JSC, overwhelmingly outnumbered by representatives of the Northern Ireland Administration.

Composition of the JSC

Constitutionally, the Northern Ireland Prime Minister chaired the Committee, with his Minister of Home Affairs (Mr John Taylor, now Lord Kilclooney) as his deputy. The JSC was thus politically driven, from the viewpoint of the Stormont administration. Apart from the GOC and the UK representative (Mr Howard Smith), all the other members and civil servants in attendance were from the Stormont administration, plus the Chief Constable of the RUC who was responsible for law and order in Northern Ireland. As such the Committee would have reflected the attitude of the NI Government which had insisted on bringing in internment, together with its acceptance of the banning of all marches. There was no representative from the minority community which was directly affected both by internment and by the ban on marches. Any voice in

opposition to Government policy on marches, from outside the JSC, hardly percolated to that body, unless it came from the loyalist side supportive generally of the Government. If there was a discordant note in JSC meetings, it was bound either to be muted or readily overridden by the politicians in power. The only dissentient note to any plan advanced by the GOC would come from the UK representative. And even he would be likely to communicate his views personally to the GOC, or in the last resort relay his opinions to the British Government in Whitehall. In the absence of any declared criticism of Government policy at JSC meetings, those responsible at Westminster would rely heavily on the minutes of JSC meetings. (It was apparently the Deputy UK representative (Unknown) who was present at the meeting on 13 January 1972 (G.52.316, para 5c) and not Mr Howard Smith.)

Meeting of 13 January 1972

The main item on the agenda was to obtain agreement that the intended extension of the general ban on marches should be approved,

which was duly given (G.52:315). In discussion it was noted that opposition to continuance of the ban would certainly come from the Orange Order, but there was no mention of the marches being organised by the Northern Ireland Civil Rights Association which returned to the streets only to protest against internment. On the contrary, the minute records that "loyalist opinion had been disturbed by the failure to stop completely the CRA march on 2 January". The view that the problem might be met by ensuring that there would be "no defiance of the ban by anyone" was hardly practicable. The GOC, in response, said that he could give no absolute guarantee of that, but he could give assurance that measures would be adopted "which will make it very difficult to carry out a march without incurring prosecutions and without being stopped at some stage on route". To which view the Chief Constable gave his support, "emphasising the importance of stopping marches decisively, leaving no room for infiltration". Thus, any prospect of the intended march on Bloody Sunday being allowed to go ahead unhindered was decidedly remote. Chief Superintendent Lagan's opinion, both on 24 January 1972 and possibly earlier, that the march should go

unimpeded seems to have received no recognition. Any police view was over-ridden by the military's exclusive control over the security operation.

The Army Paper of 5 January 1972, *Measures to Control Marches*, (tabled for the meeting on 13 January 1972) which contained proposals to modify existing procedures for handling banned marches (G.53.318) appears to have been given no consideration worthy of a noted minute. Since the Committee agreed to the extension of the ban (para 8a), it must be inferred that it accepted the "firmer measures proposed" in the Army Paper (para 86); to make an early announcement of the continuation of the ban; and the intention to adopt the firmer measures "including the liability of all those defying the ban to arrest and prosecution" (para 8c, G.53.319).

NICRA observes that, despite the reference to the liability for arrests, no one at the JSC meeting appears to have mentioned the Hume v. Londonderry Justices case. The hearing of the certiorari

proceedings had been concluded the previous day and the High Court had reserved its judgment. The two days of hearing, on 11 and 12 January 1972, had been prominently reported in the Belfast Telegraph and the Newsletter.* To have taken no notice of this important constitutional issue was in itself negligent, whether or not there was a risk that Mr John Hume and his colleagues would succeed in demonstrating that members of the armed forces had no power to arrest either rioters under the Special Powers Act or marchers under the Public Order Act. Paragraph 4b of the Army Paper of 5 January 1972 had alluded to the Army's participation in arrests under the Public Order Act, "if any violence were offered". And paragraph 7 stated that it was proposed that the current RUC Force Order on this subject should be amended....to define the military powers of arrest. The negligent omission on 13 January 1972 to take note of an important aspect of Army powers in implementing any arrest operation was seriously compounded a fortnight later when the RUC Force Order "would be reissued as a joint RUC/Army instruction".

*The extracts from the newspapers are contained in Bundle L4.3-5.

The instructions (NISSEC 11/1) of 19 January 1972: G140.935/6
(see Chapter V for the text).

Reiterating the ministerial order extending the ban on marches, the RUC and the Army jointly issued on 19 January 1972 *Instructions Regarding Government Ban on Processions*, with a sub-heading, *Action when Prohibition Defied*. The document is recorded as having been sent to MOD (D5.10), of which Mr Anthony Stephens was the head; in his memo of 26 January 1972 outlining HMG's position for the meeting the following day of the JSC, he made no reference to the Instructions of 19 January 1972. None of the relevant witnesses who give evidence before the tribunal could recall seeing or knowing of the existence of the document:

- (1) Mr Patrick McCullagh, Dep. Chief Superintendent, RUC.
- (2) Colonel Michael Steele (Brigade Major, 8 Brigade, author of *Operation Forecast*).
- (3) Col G S0/1 (Ops) who signed the covering note to the instructions issued to army units.
- (4) Lord Kilclooney, who chaired the JSC meeting on 27 January 1972.

(5) Brigadier Patrick MacLellan (Brigade Commander, 8 Brigade).

(6) The Assistant Provost Marshal, Brigadier INQ 1383: Day 304/188 to Day 304/190.

If it is entirely understandable, and even forgivable that none of these witnesses has, 30 years on, any recollection of the Instructions or their content, what is not forgivable is that at the time of the Instructions' issuance, at the very doorstep of a major security operation envisaging the arrest by army personnel of rioters and/or marchers, nothing was said or done by way of applying the Instructions to the control of events on Bloody Sunday. That stricture applies first and foremost to the members of the JSC when they met on 27 January 1972.

JSC meeting of 27 January 1972

The choice of tactics for dealing with the march on 30 January 1972 was, as Mr Anthony Stephens (head of DS10) noted in his memorandum of 26 January 1972 (KH4.11-13) a matter for the Joint

Security Committee to be determined at its meeting the following day. He observed that the Ministry of Defence and the Home Office had been in touch respectively with the GOC (General Tuzo) and the UK Representative (Mr Howard Smith) about the line to be taken by them at the JSC meeting.

It is not possible now to determine what the British Government's "line" was. Both General Tuzo and Mr Howard Smith are deceased, and nothing in the minutes of the meeting indicate what contribution they made to the discussion. Of those present at the meeting who are still alive - Lord Kilclooney (in the chair), Mr D Gilliland, Mr T Cromey and Mr Maurice Harris - none has been able to amplify the minutes of the meeting. NICRA submits that the tribunal must interpret the deliberations of the JSC as best it may. The salient features of those meetings are (a) the apparent absence of the precise terms of *Operation Forecast*, with the additional feature to the policing of the march, i.e. a prospective arrest operation against expected rioting; (b) the lack of any discussion about the views of Chief Superintendent Lagan against any hindrance to the projected

march, although the Chief Constable (who had already, on or before 26 January 1972, overruled the recommendation of his RUC Divisional Commander at Derry) led the JSC discussion on the general state of security; and (c) the preponderance of the discussion focusing on IRA infiltration rather than on arrests of rioters. Given those three factors, the JSC was hardly in a position effectively to advise on the choice of tactics for the march on 30 January 1972. The ultimate decision-maker of the tactics to be employed by the military operations thus rested solely with the architect and author of *Operation Forecast* - namely, the Commander Land Forces (General Ford). The authors of *Operation Forecast* who assisted in the process of decision-making were the Brigade Commander, 8th Brigade (Brigadier MacLellan) and the Brigade Major (Lieutenant-Colonel Steele).

At the JSC meeting, G76.463-466 the focus of discussion was on the "considerable problems" posed by the proposed march on 30 January 1972. The basic plan was to "block all routes into William Street and stop the march there". The minute goes on to consider that the

“operation might well develop into rioting and even a shooting war”.

While this entry envisages riotous behaviour, it does not directly envisage an arrest operation which hopefully would not in itself involve any use of firearms. Much forensic attention has focused on the notion of a “shooting war”, whatever prompted that emotive expression. What the expression does not evoke is a military desire to round up the hooligans who regularly rioted on the streets of Londonderry. Rather, it contemplates an encounter with terrorists who would be armed and ready to engage in a confrontation with security forces. No one would seriously suggest a “shooting war” between hooligan rioters and the security forces.

If the JSC was desirous of advising the security services on the tactics to be adopted to deal with a civil rights march of large proportion - namely, the RUC, with the army being requested by the RUC to act in aid of the civil power - it would have done better to await a sight of *Operation Forecast* and meet urgently before the day appointed for the march. The JSC could no doubt have even asked for Colonel

Steele's draft which had gone to the CLF by the time that the JSC was meeting on 27 January 1972.

What is more troubling about the deliberations of the JSC is its inattentiveness to the *Instructions regarding Government Ban on Processions*, issued jointly by the military and the police on 19 January 1972, the more so since it specifically detailed the action to be employed "when prohibition defied". Taken together with the omission to consider the implications of the Hume v. Londonderry Justices case, at that time under reserved judgment by the High Court, the failure by the JSC to operate effectively to ensure official guidance about security arrangements for banned marches demonstrate negligence on the part of the JSC which was an instrument of government in Northern Ireland as being responsible for law and order in the Province.

V

THE MARCH

Every civilian witness appearing before the tribunal who was present on the streets of Derry on the afternoon of 30 January 1972 has unqualifiedly testified to the pleasantness of the day that dawned so promisingly for a peaceful demonstration, and ended so tragically for the families of those killed and injured, as well as for the citizenry of Ireland for the next three decades. For a territory renowned for its inclement, not to say wet weather, the winter's day was astonishingly brightened by sunshine that warmed the crisp coolness of the afternoon and bristled with the prospect of happy marchers joining in their thousands in a display of support for civil rights. Knowledge of NICRA's civil rights march against internment was publicised well in advance of 30 January 1972. The assembly point was to be at Bishop's Field in the Creggan and the prescribed route through the Creggan and Bogside was likewise advertised. The one doubtful matter was the final destination of the march at the

point of the public meeting. In newspaper advertisements it had been stated that the march would end up outside Guildhall where several prominent public figures would be speaking. That destination was put in doubt after 26 January 1972 when Chief Superintendent Lagan's view, that the march should be left undisturbed to finish at Guildhall, was rejected by his superior, Sir Graham Shillington, the Chief Constable, in liaison with the military authorities. Some doubt, however, persisted until the morning of 30 January 1972; as a result there were some people who thought that the march was ending up at Guildhall.

The question about the final destination had been the subject of discussion within the Executive Committee of NICRA, in particular at its meeting of 28th January 1972: see the witness statement of Professor George Huxley, who chaired that meeting (AH 111.8) and the oral evidence before the tribunal of NICRA's organiser, Kevin McCorry Day 129/43-47.

The final decision to re-route the march to Free Derry Corner, which meant that the lead coal lorry would turn right (South) at the junction of William Street and Rossville Street, was publicly resolved only when Brigid Bond spoke on the telephone to Chief Superintendent Lagan on the morning of the march, (see **paragraph 26** of Lagan's written statement at JL1.8). The conversation between Brigid Bond and Chief Superintendent Lagan was overheard by the American student, Kathy Keville: see Day 180/56-57. The message was passed on, later that day, by Chief Superintendent Lagan to Brigadier MacLellan.

At the march's point of departure, at Bishops Field, no one could have judged how many people would join the march, but the prospect was for a bumper turn-out, although in numbers it was exceeded (and uneventfully so) a week later at Newry. The security forces expected a large crowd on the streets of Derry, certainly larger than had been experienced in the past. Although there were predictions about outbreaks of rioting, there was generally no anticipation of trouble on the march itself. NICRA

had made all the precautions necessary for protecting those on the march – a coalman's lorry led the way along the route to its designated end at Free Derry corner, with officials of NICRA aboard by pre-arrangement with local citizens. Stewards marshalled the crowds along the route, with first aid personnel from the Knights of Malta present to assist anyone needing medical treatment. Only the absence of police officers*, either accompanying the marchers or lining the route, was most noticeable, marking the occasion as a military exercise to police the banned march "in aid of the civil power" (See Chapter VIII). The security forces' plans for policing the march were focused on the march and its containment within the area of the Bogside. Had it not been for the incursion of 1 PARA at 16.07 hours, the day would have been unremarkable, save for the incident of the shooting of Johnson and Donaghy. The civil rights march would have made its political point, resoundingly.

* The only visible police officer was probably Inspector Junkin who had called for the breakaway group at Barrier 14 to disperse.

Once it had been decided not to prevent the NICRA march from setting out from its starting point at Bishops Field, any defiance of the ban on the march, apart from prosecuting offenders, became irrelevant. Whether the march on 30 January 1972 was illegal or not, it would have to be policed, either by the RUC as the enforcement agent of law and order, or by the Army in pursuance of its role in aid of the civil power. That was fully recognised, both by the Joint Security Committee at its meetings on 13 and 27 January 1972 and by the British Government at the GEN47 meeting on 27 January 1972. The latter meeting noted that there was "no hope of preventing these marches from starting and [the] aim must be to control areas of movement" (G79A.487.4). The policy adopted by the Army was that the security forces felt that they could not halt the march at the starting point and should be given "the latitude to stop marches at the best tactical position". (G74A.458.6.1). A handwritten note from General Tuzo to Mr Brian Faulkner, 25 January 1972).

NICRA submits that, while the Stormont Government was wishing to demonstrate "firmness" in its measures to control banned marches, it displayed no sign of wishing to enforce the ban in the most complete way, that is to say, by outright preventive action, such as halting the march before the day of the march, or perhaps at the point of assembly on the day (para

10, G116.753). Enforcing such a ban would have required the political will and the military (and perhaps the RUC) ability to pursue sterner means than anyone could calculate: see J J Lee Ireland, 1912 0 1986 (CUP, 1989) p. 440. The Stormont Government thus appears not to have contemplated injunctive relief against the organisers of the march, but limply acknowledged that it could not stop the march "at its outset". The availability of legal proceedings to enforce the ban on the march was, however, to hand, and not employed.

At a meeting held at 10 Downing Street on Friday 4 February 1972 (G114.724) between Ministers of the UK Government and the Northern Ireland Government, the Prime Minister of the UK Government asked whether there would be any merit in seeking from the courts an injunction restraining the organisers of the forthcoming (6 February 1972) march at Newry from proceeding with the march. There is no indication that a similar idea had been suggested before the march on 30 January 1972, but in so far as it might have been considered, the official response from the Northern Ireland authorities to the Prime Minister's suggestion would undoubtedly have been the same.

The minutes of that meeting records: "As the meeting proceeded, advice was taken the Attorney General of Northern Ireland, who was consulted, held that it would be

unsound law to seek an injunction against an event already, on the face of it, illegal [This view was] conveyed to Mr Heath, who did not press his [suggestion] further”.

NICRA submits that this legal advice from the Attorney-General of Northern Ireland was palpably wrong, and that had injunction proceedings been launched, it might have induced a perception that there should be consultation between the authorities for enforcing law and order and the organisers of civil right marches.

NICRA submits that, for the following reasons, injunctive relief could, and should have been sought by the Attorney-General.

In Hubbard v Pitt [1976] QB 142 (A case of tenants in Islington picketing the premises of estate agents) Forbes J's judgement rested principally upon the view that an assembly on the highway usually constitutes a public nuisance. The importance of the distinction between public and private nuisance is that the latter is an ordinary tort actionable at the suit of the victim (provided that he has a sufficient interest in land) but a public nuisance is both a common law misdemeanour and a tort. As a tort it has the peculiar feature that it is actionably only at the suit of the Attorney-General acting in the public interest. The question of the remedies for a public nuisance, in

addition to prosecution, is an action at the suit of the Attorney-General for an injunction. Public nuisance being a crime, it is, and would remain an offence to agree to commit a public nuisance. In Attorney-General v P.Y.A. Quarries Ltd [1957] 2 QB 169 at 190 Denning L.J. said that the Attorney-General can take proceedings for an injunction to restrain a public nuisance, and when he does so he acts in the defence of the public right, not for any sectional interest. The inaction to enforce the ban through legal proceedings against NICRA is perhaps explicable by the indecision between the civil authorities at Stormont and the military to take decisive action. Operation Forecast was an expression of military might as opposed to an application of the role of the law. In the absence of any legal proceedings to prevent the march taking place, the Security forces would have had to rely upon administrative action indicated by the Joint instructions of 19 January 1972 for dealing with the defiance of the ban on marches (G.140 935). These stated:

The instructions of 19 January 1972

Consultation by the police with the organisers of banned marches, as and when the police became aware of the organiser's intention to hold a procession in defiance of the ban, was the key to the respective duties of both parties. That was

made plain by the instructions, dated 19 January 1972, "regarding government ban on processions" (G140.935):

".....Action when Prohibition defied

(1) If the police become aware of an intention to hold a procession by any person(s) they should contact the persons whom they have reason to believe to be involved and warn them of the prohibition on processions and the severe penalties which are possible under the relevant acts.

(2) Except in the case of funerals, it is essential that the prohibition be strictly enforced and the necessary prior Police/Army planning should take place to ensure that the persons concerned know what action will follow should the procession take place. A detailed joint Police/Army plan will be made in respect of each procession.

(3) If persons assemble to take part in the parade, the obvious organisers or leaders should again be seen and their attention drawn to the prohibition on processions.

(4) When the parade forms up, the Divisional Commander or some person delegated by him, should address the assembled persons by loudhailer or PA equipment, draw their attention to the prohibition and order them to disperse forthwith. The demand to disperse forthwith should be made by a member of the RUC not below the rank of Inspector, or any Commissioned Officer of HM Forces on duty who suspects that any assembly of three or more persons may:

- (a) Lead to a breach of the peace.
- (b) Serious public disorder.

(c) Or make undue demands upon the Police Force or HM Forces.

Such Inspector or Commissioned Officer or any member of the RUC or HM Forces acting on his behalf may subsequently order the persons constituting the assembly to disperse forthwith. Failure to comply with such an Order constitutes an offence against Regulation 38 of the Special Powers Acts.

(5) If the assembled persons fail to disperse, the police should normally form a cordon, sited in accordance with the joint Police/Army plan and consisting of lines of policemen with linked arms across the path of the parade. It will be normal for the cordon to block the path of the parade completely and where necessary, alternative routes should also be closed. Dispersal arrangements for the procession must however be taken into account. In the event of the police cordon being forcibly broken by the procession, Army action will follow in accordance with the pre-arranged plan referred to in (2) above”.

On the evidence adduced before the tribunal, it is not possible to determine how far, if at all, any of the police/army took steps to comply with the instructions. Chief Superintendent Lagan says that he personally had informal conversations with Brigid Bond, but his written statement lacks particularity in that regard and his Deputy, Superintendent McCullagh, has denied that there were (or indeed, could be) any “consultations”. Lord Kilclooney (who chaired the JSC on 27 January 1972), in his oral evidence to the tribunal on 14 March 2002 said that he had no knowledge of any consultations.

NICRA submits that there was a prior obligation on the RUC to consult with NICRA officials about the projected march on Bloody Sunday; in the absence of such consultation, NICRA's duties involved ensuring that the march, as planned, was conducted in an orderly fashion, with a requisite supply of stewards and first aid officials in the form of the Knights of Malta. (Elsewhere in NICRA submissions, (Chapter II), it is indicated that such duties were fully complied with.)

The Joint Instructions went on strengthen the authorities' powers to deal with an illegal march.

“.....**Modification of Existing Procedures**

4. On the assumption that the extension of the ban is authorised, some of the existing enforcement procedures require strengthening and this involves departure from previous practice. Certain consequences which follow must also be recognised. These are set out below:

(a) The security forces will normally exercise the option of closing a march route entirely and will not normally permit marchers to continue on the pavement as has been done recently.

(b) On the spot arrests of ringleaders, including perhaps well known citizens, and other marchers may be made: this would normally be done by the RUC under the Public

Order Act, but the Army would participate if any violence were offered.

(c) The route closing policy described above may result, particularly in the case of multiple converging marches, in the closure of all routes leading to the place of assembly, thus in effect cordoning it off and preventing the assembly from taking place at all.

5. Although a certain degree of discretion must be retained by the Commander on the spot, particularly where women and children are to the fore, these measures indicate a generally firmer line to be adopted by the security forces. As a consequence violence may be precipitated in an otherwise non-violent situation. For example the complete closure of a route or on-the-spot arrests may cause rioting in which case the normal anti riot measures would be required.

6. A public announcement should be made to the effect that all those marching in defiance of the ban are liable to immediate arrest and subsequent prosecution. Steps should also be taken to ensure swift prosecution of offenders, without automatic reference to the Attorney General which is the current practice.

7. It is proposed that the current RUC Force Order on this subject should be amended to include the change of emphasis in control measures and define the military powers of arrest. It should re-issue as a joint RUC/Army instruction".

The recognition of policing the march had been discussed at the Joint Security Committee's meeting on 13 January 1972, when it concluded, *inter alia*, that operational plans to prevent

breaches of the ban should be worked out in detail “as soon as possible” **(G52.315)**. The Committee was supplied with a document, dated 5 January 1972, headed “Measure to Control Marches” **G53.318**.

The Joint Security Committee at that meeting, had prefaced its approval of the extension of the ban on marches until 8 February 1973, to be declared on 18 January 1972, and stated that “as far as possible consultations should be held with the various interested organisations”.

Mr Patrick McCullagh **(JM17)**, deputy to Chief Superintendent Lagan from 1971 to 1973, has stated **(paragraph 14, JM 17.3)** that “the march had been banned and consequently liaising with the organisers of the march was not really an option for us”, although he and his superior officer had “a rough contact with the organisers and knew the planned route of the march”. In his oral testimony to the tribunal on 12 September 2002, Mr McCullagh further maintained that “consultations” with NICRA officials would have been incompatible with an illegal march, and he did not regard the decision of the Joint Security Committee at its meeting on 13 January 1972 for “consultations to be held with the various interested organisations” as requiring the police or military to engage in any arrangements with NICRA about the routing of the march, or other matters

regarding the management or policing of the march. (G.52.315 Day 232/107 to Day 232/109.

NICRA submits that Mr McCullagh is wrong, and that the Joint Security Committee (as the consultative advisory body “established between the Northern Ireland Government, our Government here in London, the Police and the Armed Forces” (Law 13.0.1) did impose upon both police and military alike the duty, post 13 January 1972, to consult with NICRA about the projected forthcoming march in Derry, in like manner to a legal march in accordance with the Public Order Acts (Northern Ireland) 1951 to 1971.

The Joint Security Committee was invited to agree “to accept the firmer measures” to control marches which were contained in the paper of 5 January 1972 annexed to the documents before the Committee (G.53.318/9) and to that end, the Committee was asked to endorse “modification of existing procedures”. The modifications clearly proceeded upon the assumption that, in defiance of the ban, there would still be instances where marches would take place and would require to be policed by the authorities. Thus paragraph 4(a) in its reference to enforcement procedures, stated that “the security forces will normally exercise the *option* of closing a march route entirely and will not permit marchers to continue on the pavements as

has been done recently" (G53.318), and in its report (NISSEC 32: G116.755. para 4) the Army concluded "if the march took place entirely in the Bogside and Creggan it was to be *permitted to continue unchallenged*". It was in the context of the decision of the Joint Security Committee to renew the ban for another year, along with the measures to control marches, that it was agreed that, as far as possible, consultations should be held with the various interested organisations and that "operational plans to prevent breaches of the ban" should be worked out in detail as soon as possible. That subsidiary agreement was clearly referable to the instructions issued by the Chief Constable on 19 January 1972 (G.140.935/6) which had the expressed approval of the Director of Operations (D Ops) Committee. On 26 January 1972 the proposed NICRA march from the Creggan to Guildhall was further discussed at a meeting of the D Ops Committee, at which three courses of action were considered – namely, (a) to stop the march at its starting point in the Creggan; (b) to stop the march leaving the Bogside/Creggan area; (c) to stop the march short of the Guildhall. (b) was the selected option, it being agreed that the marchers would be prevented from leaving the Bogside/Creggan and that barriers would be placed up to 200 yards inside those areas. No consultation with NICRA officials appears to have taken place with a view to the appropriate means of controlling a march that was inevitably going to take place, ban or no ban.

Quite apart from the agreement of the Joint Security Committee that “interested organisations” should be consulted about a banned march, it cannot be suggested that the authorities responsible for maintaining public order on the streets of Northern Ireland – the RUC and the Army – were absolved from their duty to protect the lives and limbs of potential marchers and those other citizens (non-marchers) affected by the march. The official emphasis on the importance of “stopping marches decisively” (to use the words of the Chief Constable at the 13 January 1972 meeting of the Joint Security Committee: see G52.315) if that refers to stopping the march at the assembly point (Bishops Field), the consultation might not have been activated, except for warning “persons concerned” about the penal consequences that would follow from defiance of the ban (see para (2) of 19 January 1972 instructions: G.140.935). But once it was contemplated that the march would take place, without initial hindrance from the authorities, and that stopping the march would be only to control the marchers at some point (s) en route, the common law imposed a duty to ensure the safety of those marching. To that end, the authorities would positively need to communicate with the organisers the extent to which the march would in practice proceed, and to discuss with the organisers how the march would be stewarded and the precise route that would be permitted.

NICRA submits that any process of consultation between the police/military and NICRA officials in the days before Bloody Sunday would not have been incompatible with the existence of an "illegal" march. The absence of any dialogue about the policing of the march was a recipe for increasing the risks of trouble of one sort or another.

Great stress is placed in the authorities' documentation on the need to identify marchers and prosecute them as a method of law enforcement. This was an unnecessarily cumbersome approach. All the executive members of NICRA were publicly known, and would have been susceptible to prosecution for organising an illegal march; there had been prosecutions in respect of the march in January. Many of the ordinary citizens of Derry who participated in the march (and did not take part in the disturbances at Barrier 14) would have been readily identifiable by RUC Officers of N Division during a march over a distance of 3 miles and occupying more than an hour in mid-afternoon. None of the marchers was hiding from his or her act of defiance. Quite the reverse: prosecution was clearly envisaged as a consequence of participating in an illegal march. Law enforcement of the ministerial ban focused much too readily on criminal justice, rather than on the public weal. As Mr McCullagh stated (para 16. JM 17.4) the professional

approach of himself and Chief Superintendent Lagan to a civil rights march was “trying to save both property and lives”.

The Joint Security Committee, at its meeting on 27 January 1972, noted that “prosecution for breaches of the ban on processions was disappointingly low”, to which the Minister of State for Home Affairs undertook to look into the matter **(KH11.9 para 4)**. No official explanation was forthcoming why the policy of strict enforcement of the prohibition was being frustrated. It is apparent that some at least of the Special Branch Officers of the RUC who were on duty on Bloody Sunday said that they were given specific instructions only to identify anyone whom they suspected were terrorists or trouble-makers, but were not instructed to identify “as many persons as possible taking part in the procession and note their degree of involvement **(see para (6) of instruction of 19 January 1972)** see, for example, the evidence of Mr W G Hunter **(JH13)** and his oral testimony **Day 196/9/16 to Day 186/10/12**.

The Instructions of 19 January 1972 went on to deal with the powers of arrest:

(6) “The powers of arrest under the Public Order Act should be exercised at the time, if practicable, by the RUC. Uniformed and plain clothed police must in any case identify as many persons as possible taking part in the

procession and note their degree of involvement. Arrests under the Public Order Act will not be carried out by the Army, but should it be necessary for the Army to make any arrests, they will do so under Regulation 11 of the Special Powers Act on suspicion of committing acts prejudicial to the peace or of having committed an offence against Regulations.

(7) Circumstances will largely dictate subsequent police action but they will co-operate with the Army in all possible ways, e.g. arrest of persons guilty of disorderly behaviour or other offences; removal of arrested persons from the scene and their processing at reception Centre etc”.

The instructions with regard to the powers of the military to effect arrests under Stormont legislation, whether it be the Public Order Act or the Regulations made under the Special Powers Act, omit any recognition of the challenge, then pending in the courts to the constitutionality of the legislation as purporting to affect the armed forces in Northern Ireland. And, apart from Colonel Roy Jackson, no senior army officer appears to have been aware of the incident on 19 August 1971 in Londonderry, let alone the constitutional challenge to the conviction of Mr Hume and his colleagues from November 1971 (when leave to apply for certiorari was given) and the hearings in the High Court in Belfast, a fortnight before Bloody Sunday.

The omission, in the light of the hearing before the High Court in Belfast in R (Hume) v Londonderry Justices [1972] NI 91, on 11 and 12 January 1972, is not merely surprising; it discloses a high degree of negligence on the part of the army legal service, if not the military administrators. An awareness of the implications of a potentially adverse ruling on the armed forces might usefully have been at least the subject of consultation between those concerned with public order on Bloody Sunday.

The legal authorities were undoubtedly aware of the certiorari proceedings in Belfast, brought by John Hume and his colleagues. Sir Kenneth Jones, then the legal adviser to the Home Office stated in his memorandum of 25 February 1972 “that the Home Office were aware that the conferring of these powers [ie powers of arrest contained in the regulations under the Special Powers Act] were under attack, since they knew that they were being challenged by Hume and others. They were also raised in a general way by Mr [Brian] Garrett, a Northern Ireland Solicitor, and friend of Professor Palley, who had a meeting in November 1971 with Home Office Officials [probably Mr Denis Trevelyan and A.N. Other]” see KP 2.32. It is reasonable to infer that the legal advisers at the Ministry of Defence had the like knowledge of the legal challenge to the arrest powers of members of the armed forces. There is a dearth, indeed absence, of any documentation that such

knowledge at Whitehall was communicated either to GOC NI HQ at Lisburn or the government departments at Stormont. Clearly, there appears to have been no consideration given to the issue by the Joint Security Committee. No one raised any query at the JSC meeting on 27 January 1972 as to the correctness of the exposition in paragraph 6 of the 19 January 1972 Instructions about the relative powers of the police and the army to arrest anyone rioting during a banned march.

If the position was that Whitehall did not communicate to Stormont its legal views on the Hume case, it is nevertheless a strong case for maintaining negligence on the part of the military hierarchy and administrators at Lisburn for failing to respond to the proceedings in the Northern Ireland Courts, touching acutely on the arrest powers of the Army.

Of the four senior military and RUC personnel having to advise the GOC upon the policy to be pursued on Bloody Sunday, three of them – Chief Superintendent Lagan (RUC), Superintendent McCullagh (RUC) and Lieutenant Colonel Steele, (Brigade, 8th Brigade) – favoured the march proceeding unhindered to its meeting place at Guildhall. Only Brigadier MacLellan (Commander, 8th Brigade) on his own evidence (contradicted by Superintendent Lagan) was not supportive of that view, but passed on Lagan's view (presumably indicating that the Lagan

view was supported by the other two) to the Chief Constable and the Commander Land Forces. Sir Graham Shillington overruled Lagan in favour of General Ford's desire to control the march within the Creggan and Bogside areas. Was this process of policy-making in conformity with the GOC Directive of 4 February 1971? NICRA submits that there was a total failure to implement the Directive and, to carry out the process of consultation. And to the extent that it could be said that there was any meaningful communication between the army or the RUC, there was no conveyance of the plan to arrest rioters, should rioting break out, simply because that eventuality was kept secret (see Chapter III).

Given the secrecy (or at the very least strict confidentiality of Operation Forecast) surrounding the contingent plan to arrest rioters, if (or, as) and when rioting broke out, the focus of the security forces' action was to cope with the problems of a massive civil rights march. There is no evidence of substance that a civil rights march had ever been used or manipulated by the IRA to provide cover for sniping at the police or the army. No witness before the tribunal could say that rioting had in the past accompanied a civil rights march. The absence of any such evidence was stated by INQ 2225, an intelligence officer in the rank of Captain in the Military Intelligence Unit at the time. As he explained, "it was not the marches themselves that would be

used by the IRA as opportunities for sniping” (C2225.3 para 13). Nevertheless INQ 2225 stated: “It was riots like this [referring to Bloody Sunday] which was often manipulated to allow an opportunity for a sniper in a pre-positioned location to fire at the police or the military. It was always the case, therefore, that there was a risk of being sniped at where the Police and military were policing these riots.” He gave as an example the killing of Major Alers-Hankey by a sniper from a pre-prepared location in the area of William Street, from the direction of the Little Diamond (C2225.3 para 14) and Day 384/151 to Day 384/153. INQ 2225 notably conceded that there had been no shooting by the IRA at Barrier 14 on Bloody Sunday Day 384/141 to Day 384/142.

The absence of any shooting by the IRA during the one major disturbance of the day is most graphically borne out by the evidence of Soldier 128 who was a captain in the second Battalion of the Royal Green Jackets and now holds the rank of Colonel. The witness was deployed on Bloody Sunday as a sniper; it was an unusual assignment for a commissioned officer Day 303/14/5-7 to be used as a “rifleman under command.” His position gave him a perfect birds’ eye view of activity at Barrier 14. His evidence has particular significance in relation to the situation both before and after the water cannon was used for the second time. He was unaware that an arrest operation was going

to be carried out, or might be carried out that afternoon. Day 303/16/25 to Day 303/17/3 and he had not attended the Brigade Order group meetings.

The witness described in his written statement [B 1802.003.para17] and commented upon the situation in his oral evidence Day 303/22 to Day 303/26. The witness stated, significantly Day 303/23-24:

“it was my immediate feeling that it was too late for the Paras to go in as a snatch squad, as the rioting had finished and people had dispersed away from William Street. I could see no point in a snatch squad operation as the Paras had clearly missed the rioters. It seemed to me to be a pointless exercise the Paras going into the Bogside and I thought that it would be a seriously stupid and dangerous thing for them to do. It was not a tactic that made any sense to me, and not what I had anticipated”.

How far (if at all) was the experience of the military in relation to daily rioting in Derry, post-9 August 1971, relevant to the Army's perceived risk of rioting, not in isolation or occurring ad hoc but as an adjunct of, or incidental to the civil rights march on 30 January 1972?

The resident battalions in Derry were acutely aware of almost daily rioting by the Derry Youth Hooligans in the city centre.

The rioters would invariably seek to attract the attention of police officers or soldiers out from their police stations or army barracks, by hijacking or burning an available vehicle; the security forces would be compelled to attend with their body armour and shields, whereupon the rioters would set about the police or the troops. Into that scene the IRA would take advantage of the situation. As INQ 2225 described in his written statement to the tribunal (C2225.3, para 13: “[The IRA] could turn a riot on or off like a tap. There would be a pause for tea and there was often a resumption of the riot afterwards well into the evening”. Every soldier witness who referred to the perceived presence of the IRA using rioting as a cover for their sniping activities readily translated that military experience or knowledge to what they predicted would happen on 30 January 1972. Therein lay the problem. The two situations, NICRA submits, could not be equated. The dissimilarity between the two riot situations was only too apparent to anyone applying his mind to the safety of thousands of law-abiding citizens on a civil rights march. INQ 2225 drew on this background of Derry

rioting to conclude that the fear of the security forces was the potential danger of IRA involvement at or after the end of the civil rights march. He said (C2225.3, para 14):

“It was riots like this, which were often manipulated to allow an opportunity for a sniper in a pre-positioned location to fire at the police or the military. It would often be the case that firing angles would be worked out by the IRA in advance so that a shot could be attempted without even the need to stop the riot to clear a line of fire. It was always the case, therefore, that there was a risk of being sniped at when the police and military were policing these riots.”

Each bout of rioting in Derry of this nature was essentially impromptu, even if regularly experienced. It contained no health and safety warning to the population of Derry, and while it was calculated to provoke the security forces, there was no advance notice given by the rioters to the military or police. To

the extent that the security forces were always on alert, they would not know in advance precisely when and where rioting would take place. Even if the disturbance was likely to be in the commercial area of Derry on a daily basis, the response of the security forces to public disorder had to be instantaneous; there could be no "operational plan" as designed for the event on 30 January 1972. Preparations for dealing with rioting had to be tailored to the situation on the ground, as and when rioting broke out.

NICRA submits that those who devised "the arrest operation" in *Operation Forecast* failed to appreciate, either fully or at all, the uniqueness of the situation of potential rioting in the context of a massive civil rights march involving thousands of innocent, non-rioting civilians. Some acknowledgement of the specific problem of an arrest operation attached to a civil rights march appears in the recognition by the Brigade Commander, Brigadier MacLellan, of the need to ensure the separation of marcher from rioter. But that notion of separation was never

achievable, simply because there could be no sure method of operation devised to identify the fleeing rioter from the erstwhile marcher returning home instead of attending the public meeting at Free Derry Corner. Indeed, what in fact happened on the ground serves only to demonstrate the point. Marchers who were not rioting were arrested by the armed forces (which strictly did not even possess the legal power to arrest anyone on the day: see Chapter X below). Brigadier MacLellan's delay in issuing the order to 1 PARA to enter the Bogside recognised the problem – but too late, because he was committed to implementing the “arrest operation” under the insistence of General Ford and the agitation of the Commander of 1 PARA. In short, the frequent activities of the Derry Youth Hooligans was directed at the authorities responsible for maintaining law and order in the city and was aimed initially at property; as such it was unstructured, undisciplined, even anarchic. To the extent that it would occur in the course of the afternoon on 30 January 1972, unlike any other afternoon, the rioting could be fully anticipated by the security forces at the various barriers; the

Army had adequate resources at their disposal to deal with any contingency that might arise, coupled with adequate stewarding of the march. The policing of the civil rights march, whatever the expected outcrop of rioting, required an approach that was appropriate to large scale civil rights marches. General Ford approached the problem, which he identified in his memorandum to General Tuzo on 7 January 1972, and in his translation of the problem into practice in the week before 30 January 1972, in the wrong way. His prescription for dealing with the rioting in Derry was misconceived, disastrously.

The proper approach to the problem, at the relevant time, of disturbance at a civil rights march is contained in a letter, dated 4 February 1972, from Lord Carver (then Sir Michael Carver, Chief of the General Staff) to the GOC (NI) to Sir Harry Tuzo in relation to the civil rights march at Newry on 6 February 1972.

The letter stated (CO1.208:) Day 260/79/16 to Day 260/82/10.

“In confirmation of our telephone conversation at 10.30 hours, 4th February 1971[sic]* you will issue the following orders governing the use of firearms by the army in support of the RUC in Newry on 6th February 1972.

The Rules of the Yellow Card will be strictly adhered to. In particular it will be made clear to all ranks that fire is not to be opened for the purpose of preventing a barrier being broken or preventing a march from continuing. In the last resort, it, in spite of the use of methods short of opening fire, a barrier cannot be prevented from being overrun, the troops will withdraw” (CO1.208: 260/80/7-19).¹

* That must be a slip for 1972

1. At the meeting held at 10 Downing Street on Friday, 4 February 1972, at which Mr Brian Faulkner and his team from Stormont, attended, the Prime Minister, Mr Edward Heath, is reported to have said: “If the Army and RUC were forced to pull back, there would be serious implications for future marches; *but the forces could not simply fire into the crowd*. The “arrest operation” was not merely “a pointless exercise”; it ran counter to military action “in aid of the civil power”.

CHAPTER VI

WHAT REALLY HAPPENED AT BARRIER 14

Preamble

The contents in this chapter, which is an attempt to provide a sequential account of the disturbances at Barrier 14, are subject to the following qualifications:

- i. It is not certain that the photographs were taken in the numbered sequence displayed.
- ii. Each individual photograph is a snapshot within a sequence of photographs and other recorded visual material; as such the context is important.
- iii. Video footage represents a lengthier time span, and has its own context.
- iv. Available video footage has been edited and is often not in sequence.
- v. Video and photographic evidence can be checked against recorded radio communications.
- vi. Some attempt has been made to approximate time. Left and right hand sides of the street on the way to Barrier 14 in photographs 24-52.

Current best estimate involves the making of hypotheses and matching them to known facts. Sometimes a conclusion has been reached on the negative basis that all other conclusions seem impossible or unlikely.

The selected photographs are numbered - 1 to 75 to assist with the submission.

The typed captions below certain individual photographs have been inserted by NICRA.

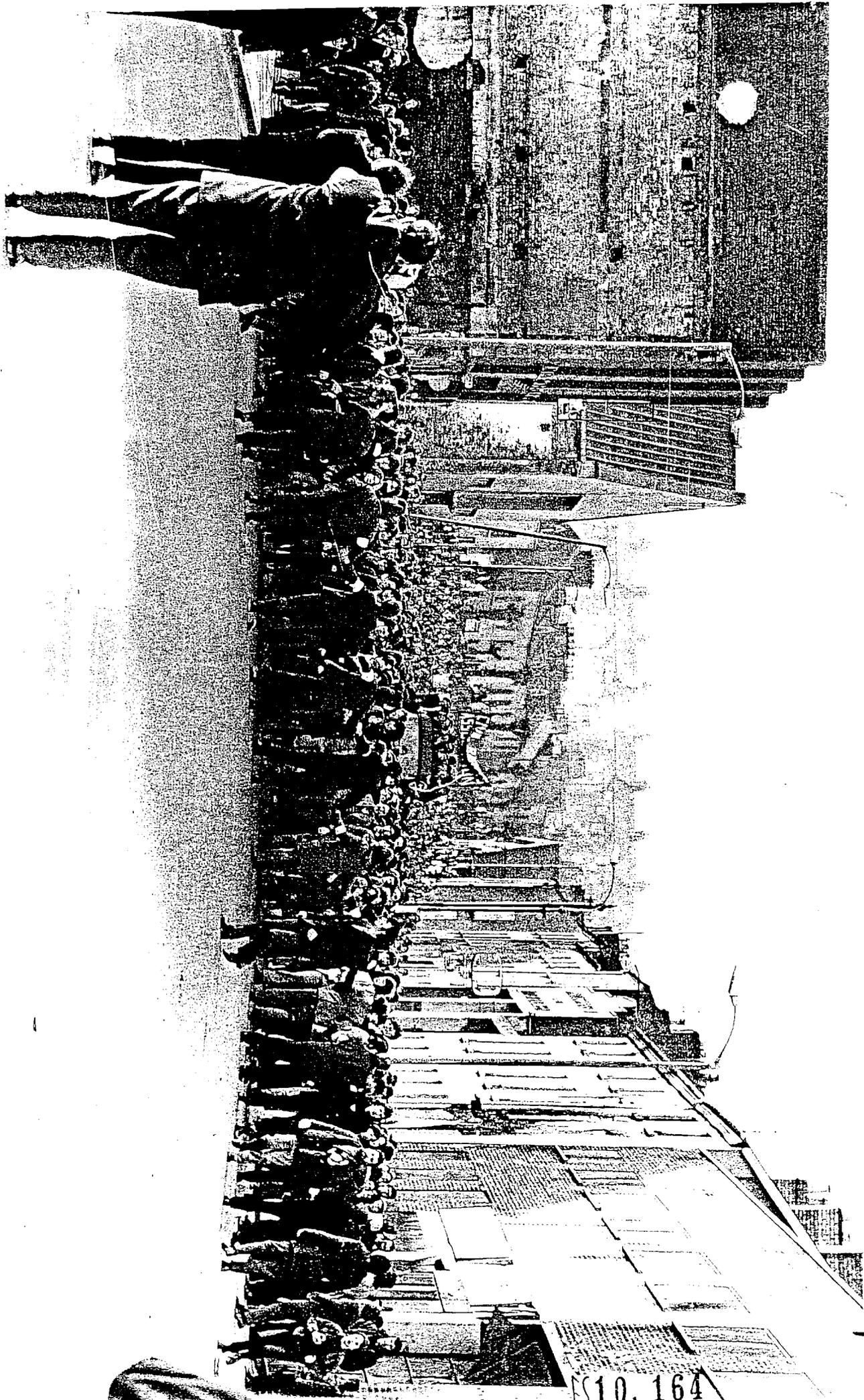
For an understanding of what really happened at Barrier 14, the starting point is the junction of William Street and Rossville Street. At this point, large numbers of marchers followed the directions of the stewards and went down Rossville Street stopping at various locations to talk or make their way to the public meeting at Free Derry Corner as described by Bishop Daly Day 75/5/23 to Day 75/6/15. Stewards with loudhailers walked along Rossville Street summoning marchers

to the public meeting. Relief is expressed that the march has passed off peacefully. Eamon McCann: Day 87/103/17 to Day 87/105/8.

Photographs 1-4

A line of stewards await the NICRA march at the junction of William Street/Rossville Street. They are placed there by the NICRA executive because the march had been re-routed to Free Derry Corner. Instructions are to direct marchers away from the original meeting place at the Guildhall. The aim is to avoid confrontation with the troops at Barrier 14, by diverting the march down Rossville Street.

ER 211



PS10. 164

7

FS 22/7



PS 10.165



10

FS 10. 166

W

EP 10/10/00

←
Lorraine
McGinley

←
William
Casson

←
Alec
Hobby

←
Thomas
McGinley

←
Eamon
McGinley

←
Maggie
Dunlop
(deceased)

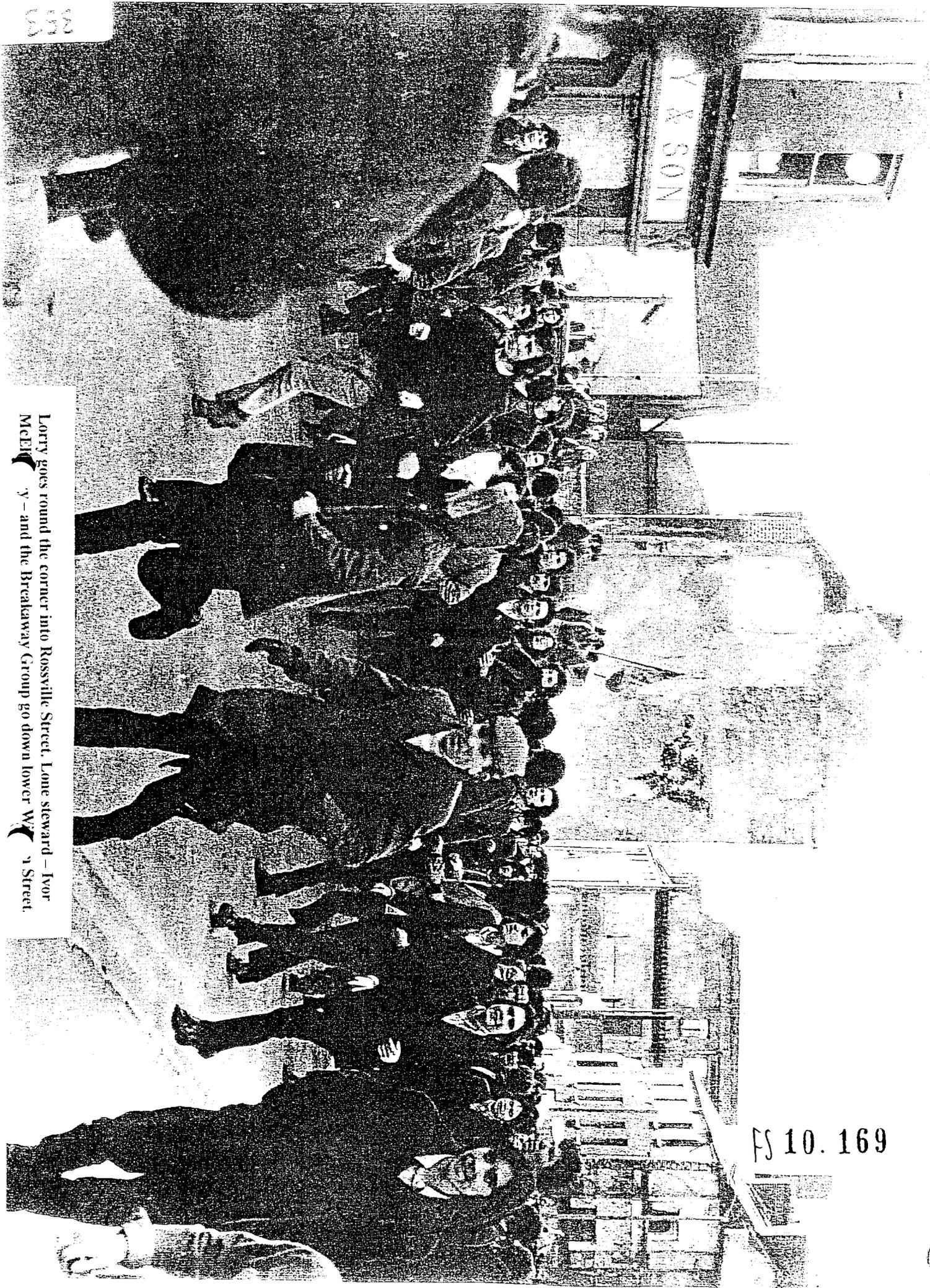
←
Emy
O'Doherty
(deceased)

PS 10. 167

4

Photographs 5-9

The coal lorry turns down Rossville Street, with the Civil Rights Banner on board. Some individuals break away from the march and proceed down William Street, ignoring the stewards who quickly follow them. A limited number leave the march for this purpose. Photographs 5-7. A few individuals have stones in their hands. The breakaway group halt at the junction of Quinns Lane/William Street. Some individuals throw stones at the soldiers positioned behind Barrier 14, which is shown in the foreground of Photograph 8.



Lorry goes round the corner into Rossville Street. Lome steward - Ivor McE... y - and the Breakaway Group go down lower W... n Street.

FS 10. 169

353

69

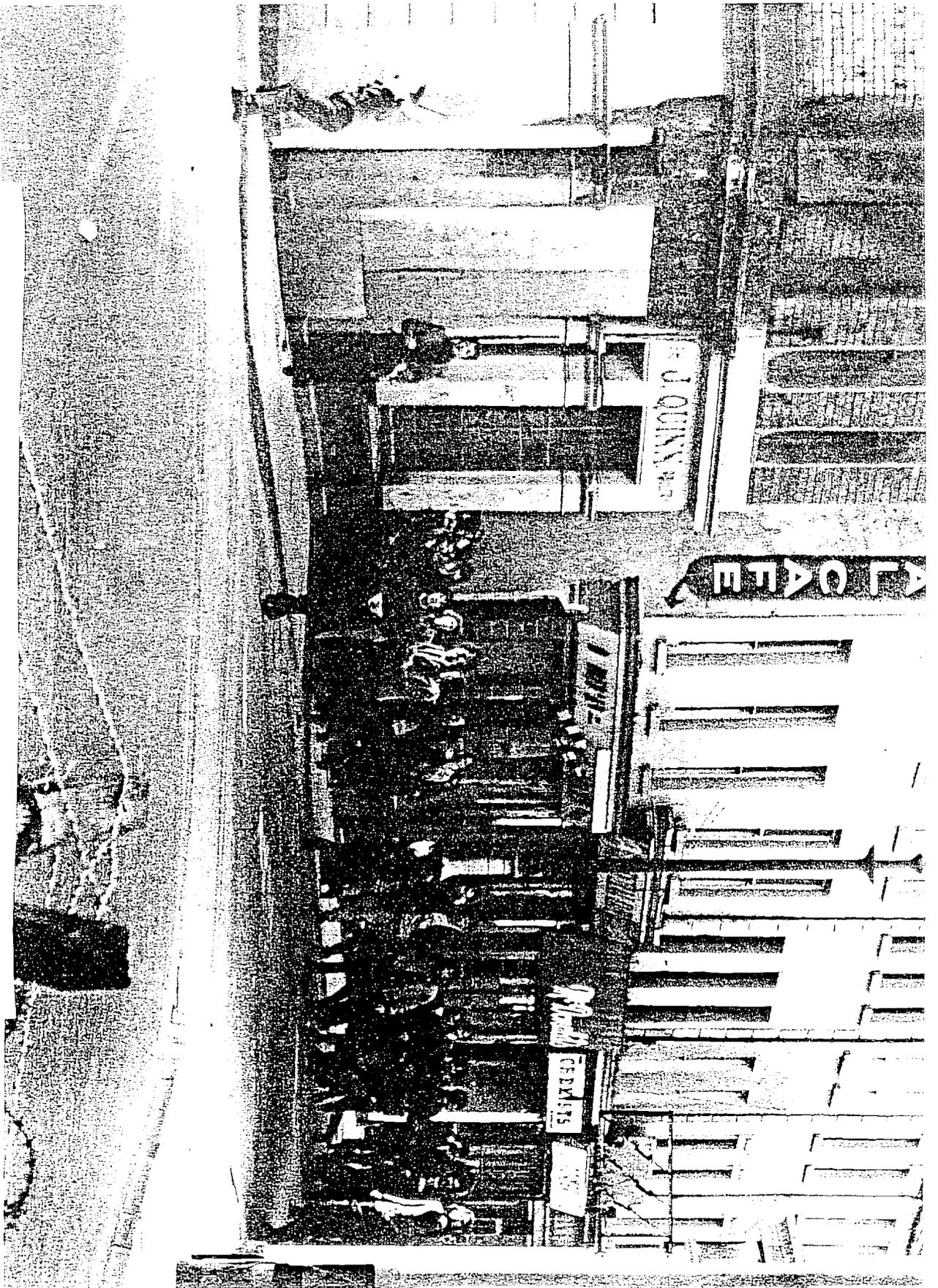


Lorry going round the corner into Rossville Street.. Breakaway group go down W Street. Some of the group are carrying stones in their hands. Michael Bridge exhorts them to go back.

FS 10.170



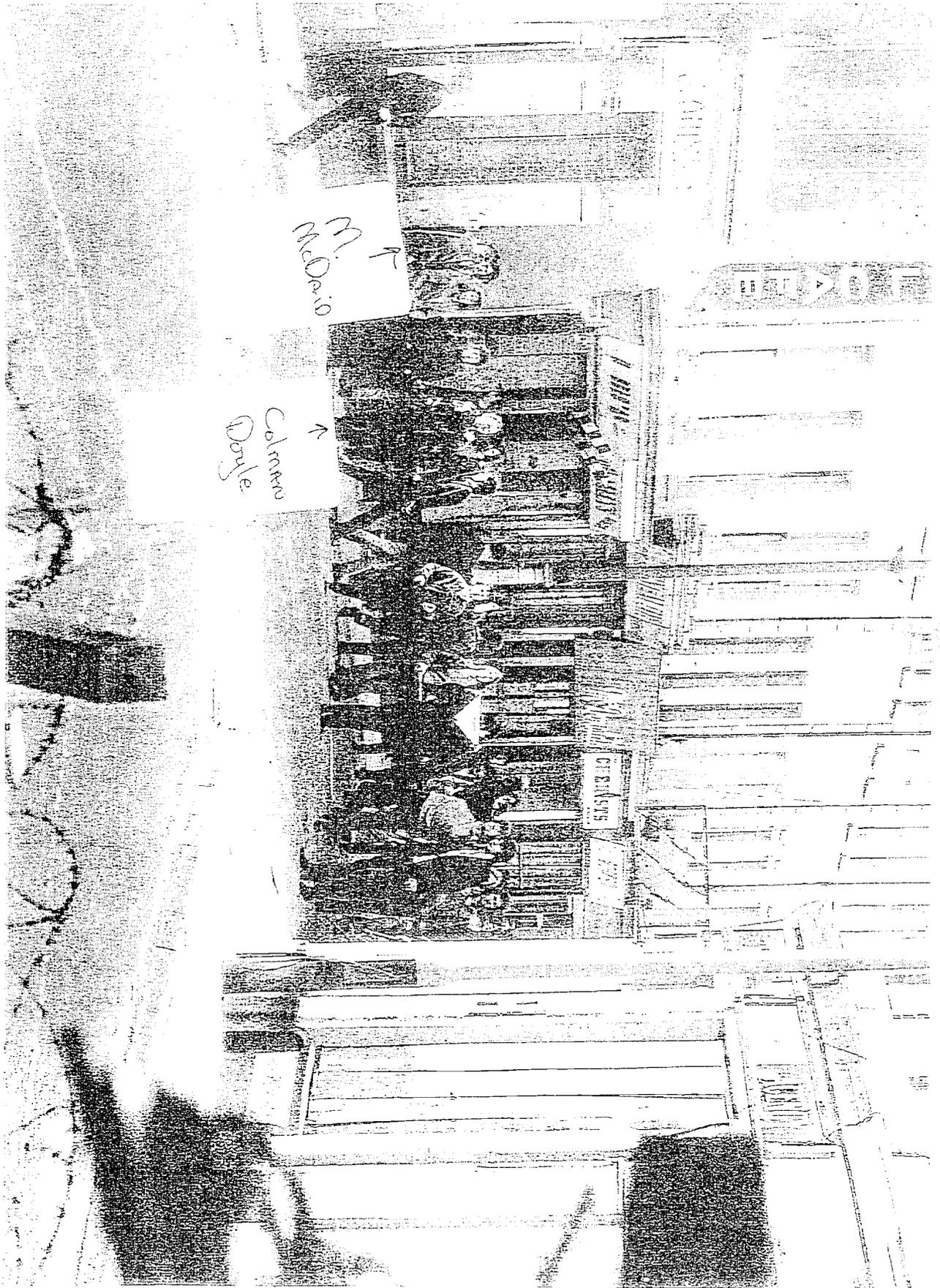
AS 10. 171 4



The breakaway group stop at Quinns Lane. Some missiles are thrown at this point.

FS 10. 172

EP4/12.001



McDario →

Columbo Doyle →

STEVENS

10

FS 10.173

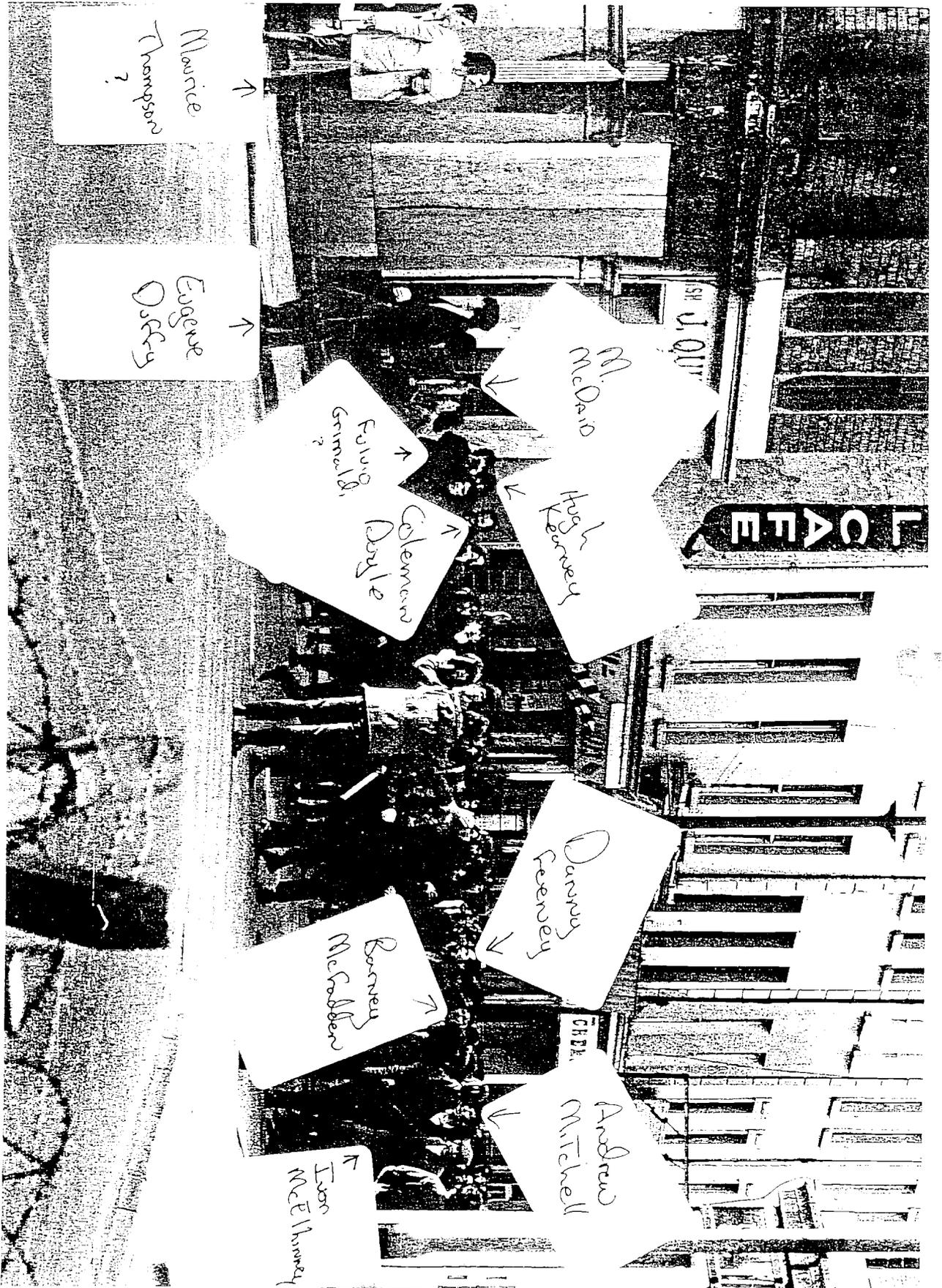
Photographs 10-23

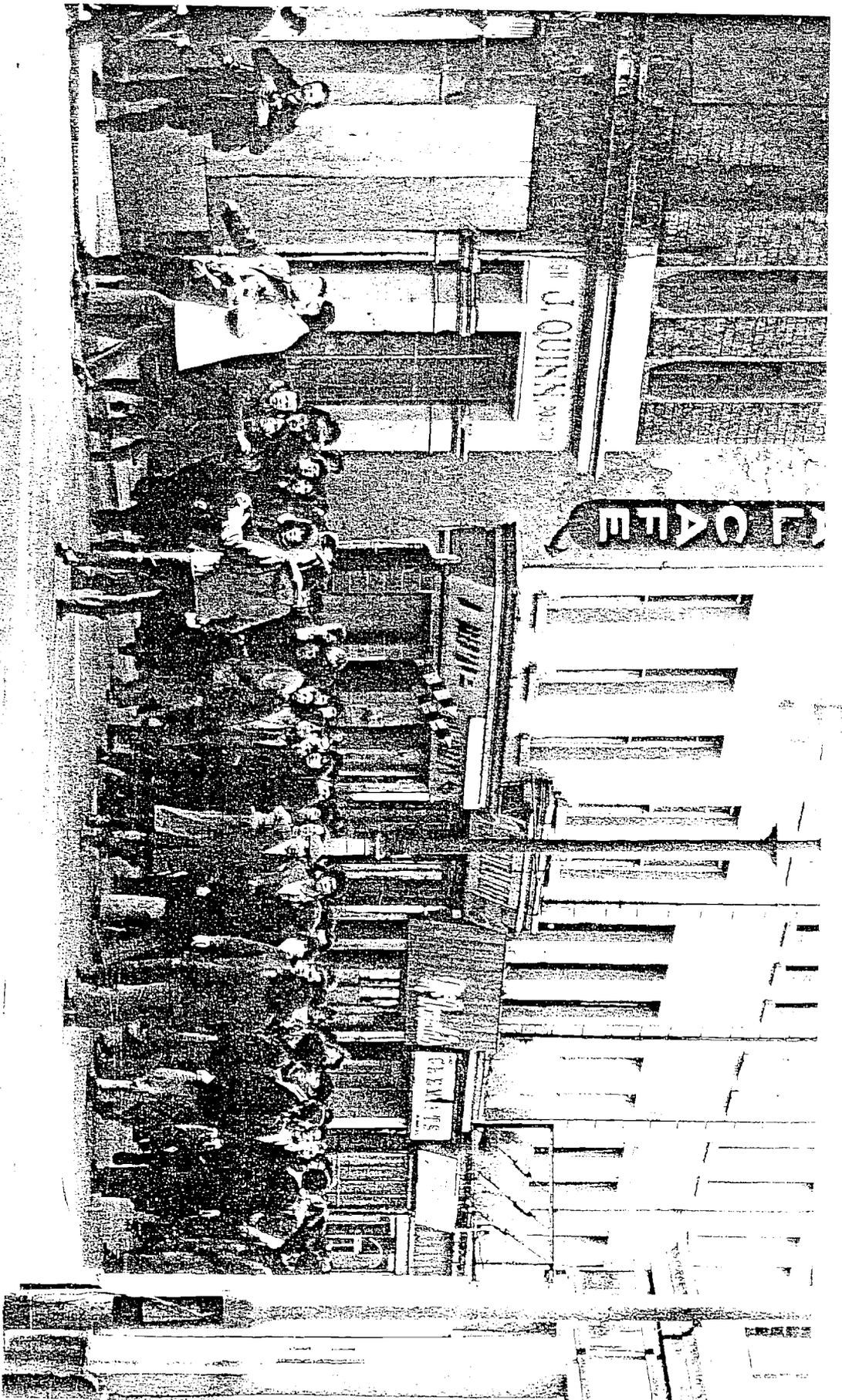
Stewards catch up with the breakaway group at the junction of Quinns Lane William Street. The stewards are mainly mature men. Early arrivals include Ivor McElhinney, Barney McFadden and Danny Feeney. They regroup and face the crowd. In Photograph 12, McElhinney seems to have decided to concede some ground and form a line of stewards at the location of the lamp post to the right of the photograph. This allows an exit route down Chamberlain Street. In the alternative, he may have decided to form a second line. Kevin McCorry arrives to assess the situation. He returns to the NICRA march soon after Photographs 20-23 are taken.



Group remain at Quirns Lane as the stewards come through and take control.

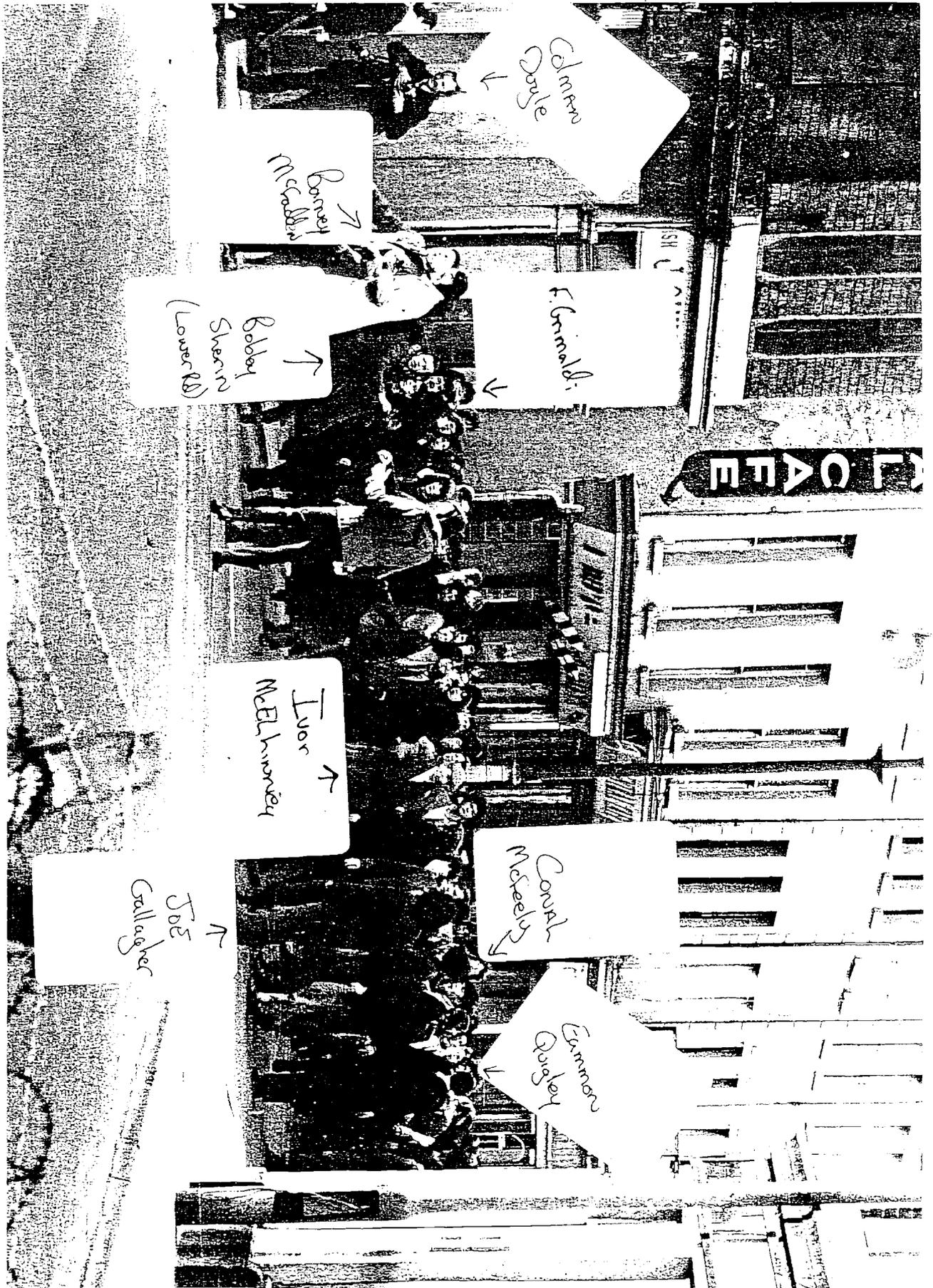
FS 10. 175 σ





McElhinney commences a second line of stewards and opens up an escape route down Chamberlain Street.

EP 4/12.001



FS 10.178

13

12



Control (C) verified at Quinns Lane. Sweeney, identified (C) McDaid, arrives.



John
Friel
AF 33.7

Edward
Carmelli

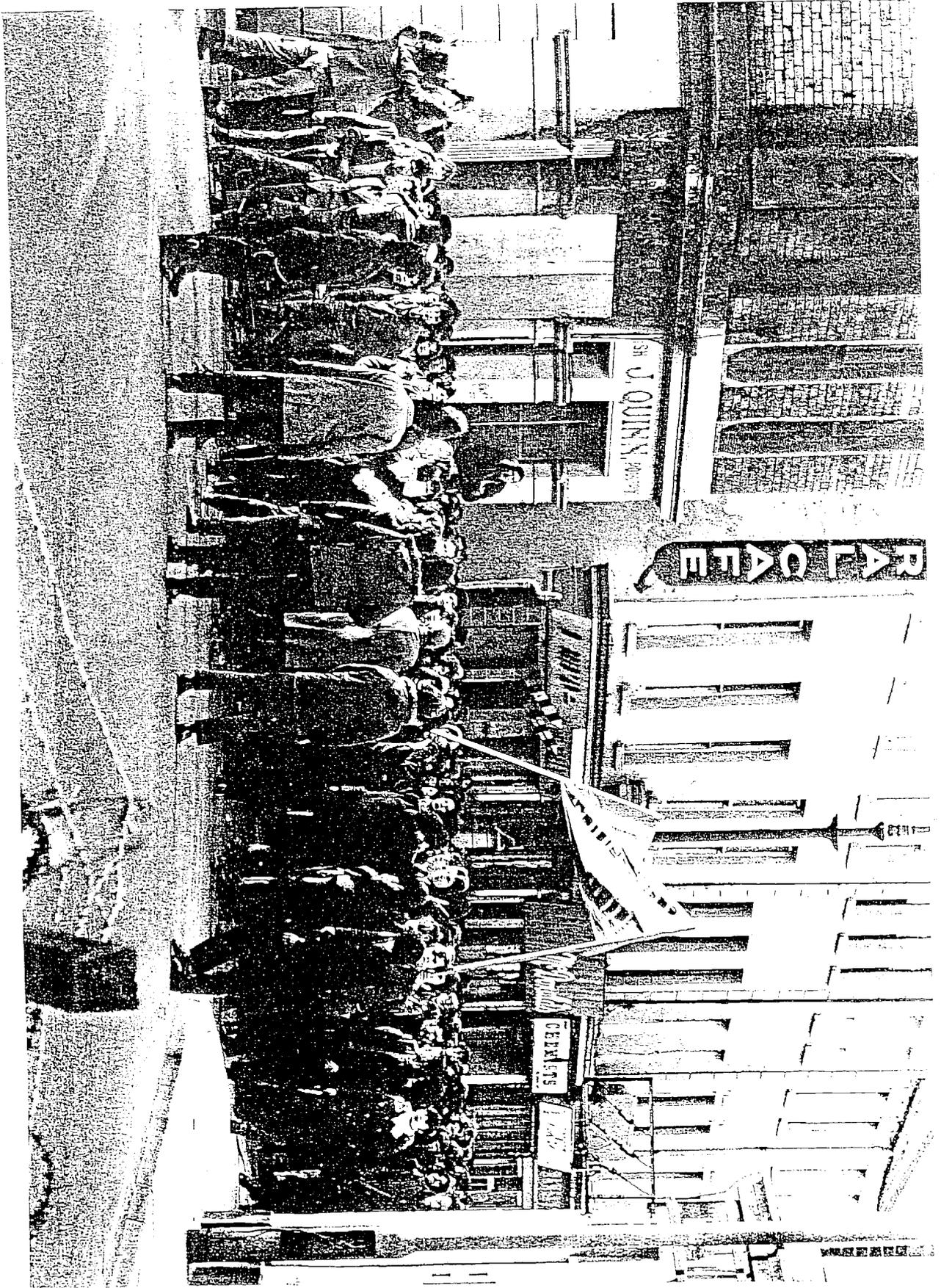
Tvor
McLinnery

Joe
Galagher

?
McBard

Contra
Mcneely

Erasmus
Douglas



The civil rights banner arrives. McElhinney nearer Quinns Lane than the lamp post. Time passing. The banner was on the lorry when the breakaway happened.

EP 4/14.001



Ivor Charles (R) McElaney

John Enel

James Quigley

Jim Deehan

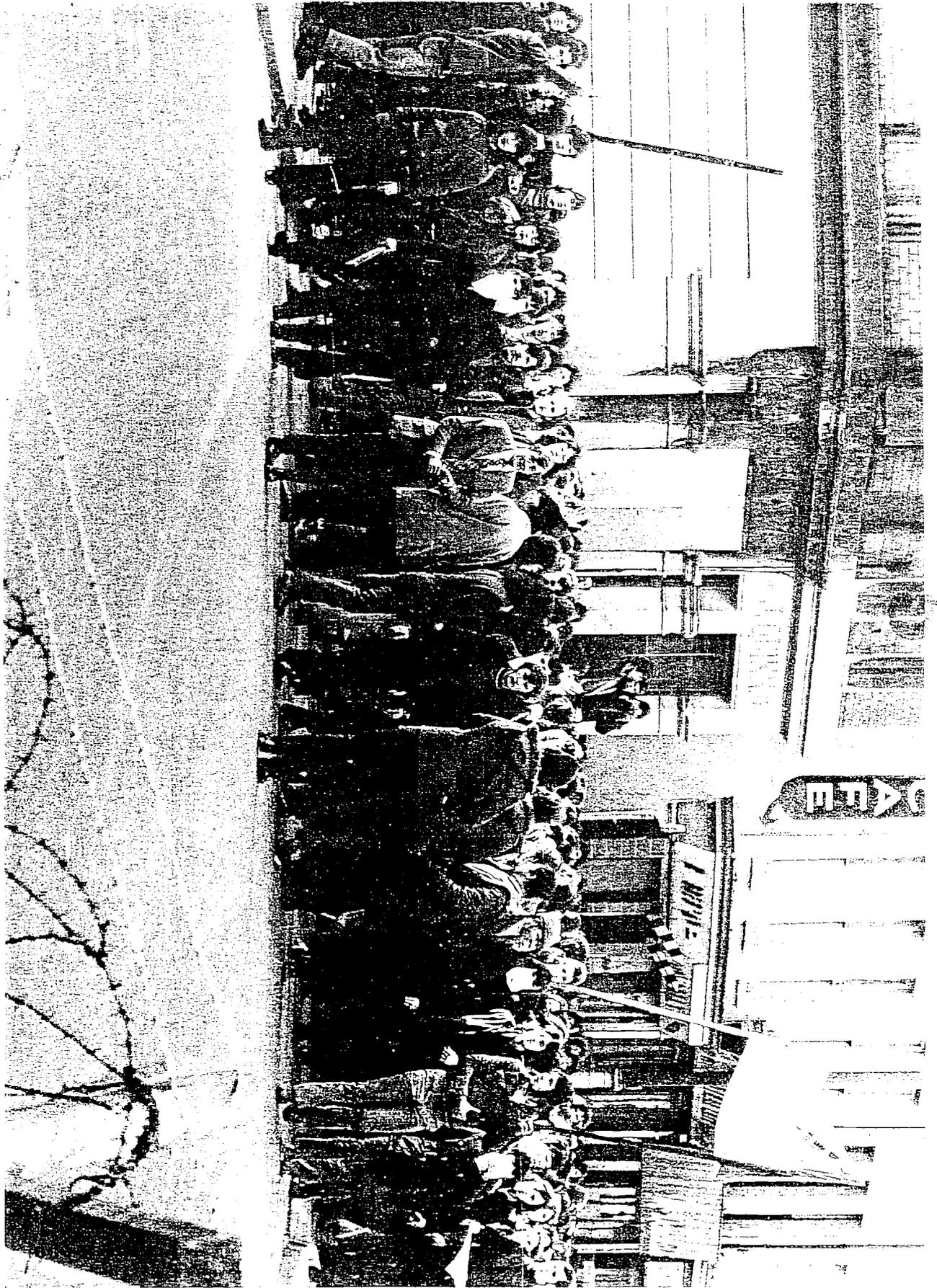
RAJOLEM

M. J. QUINN

FS 10.182

14

14



12

FS 10. 183

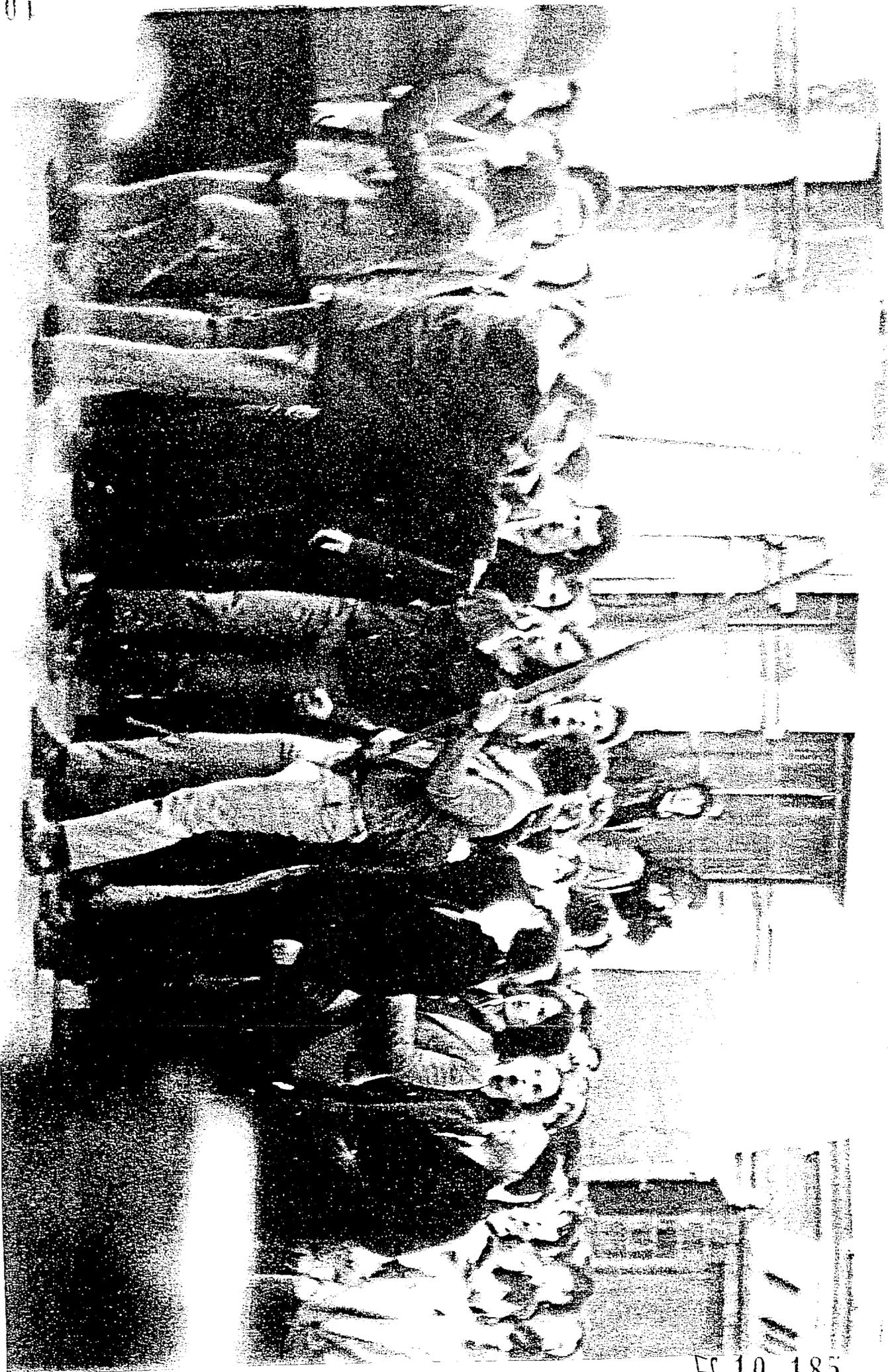
1034



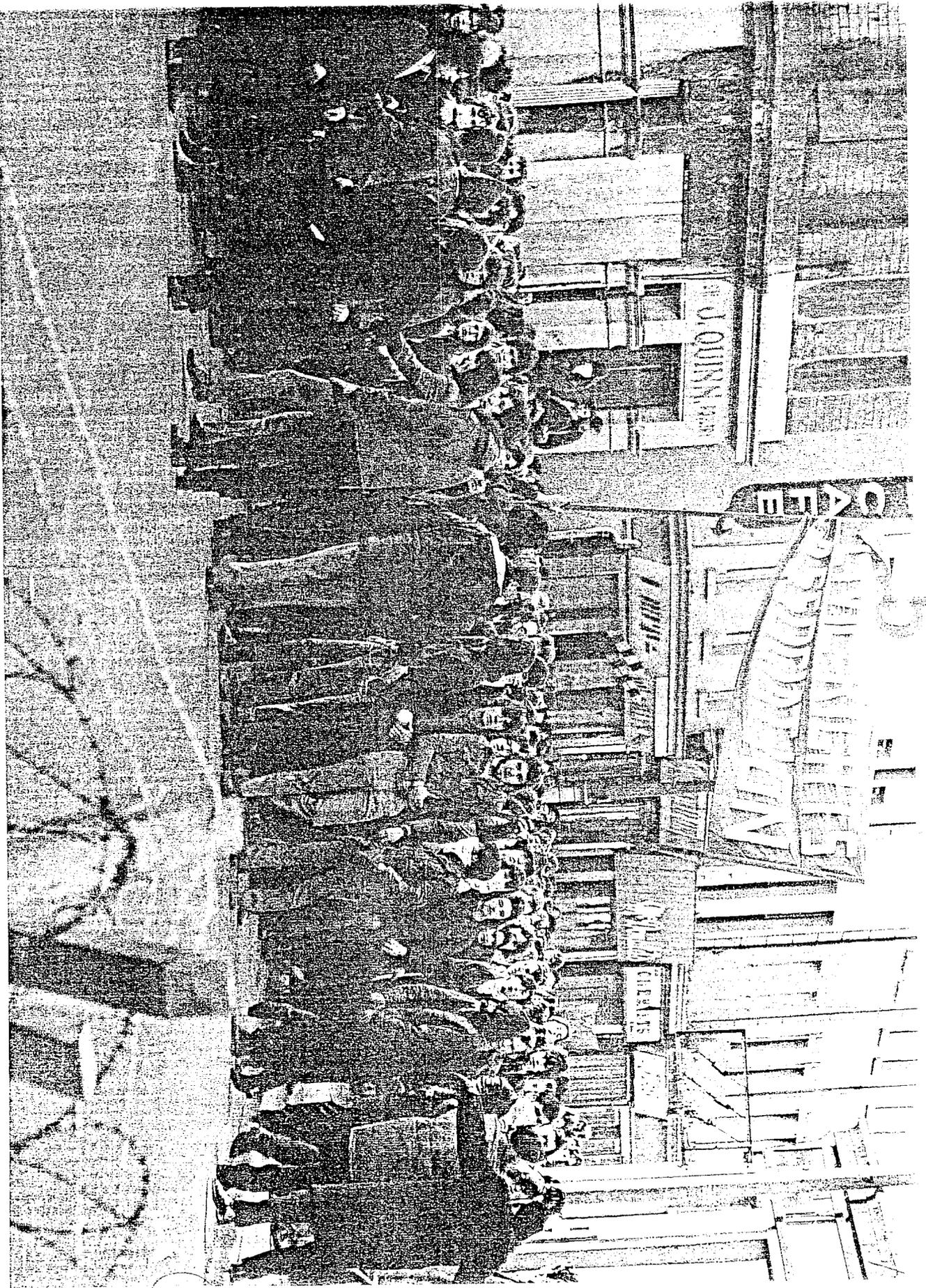
FS 10.184

10

1033



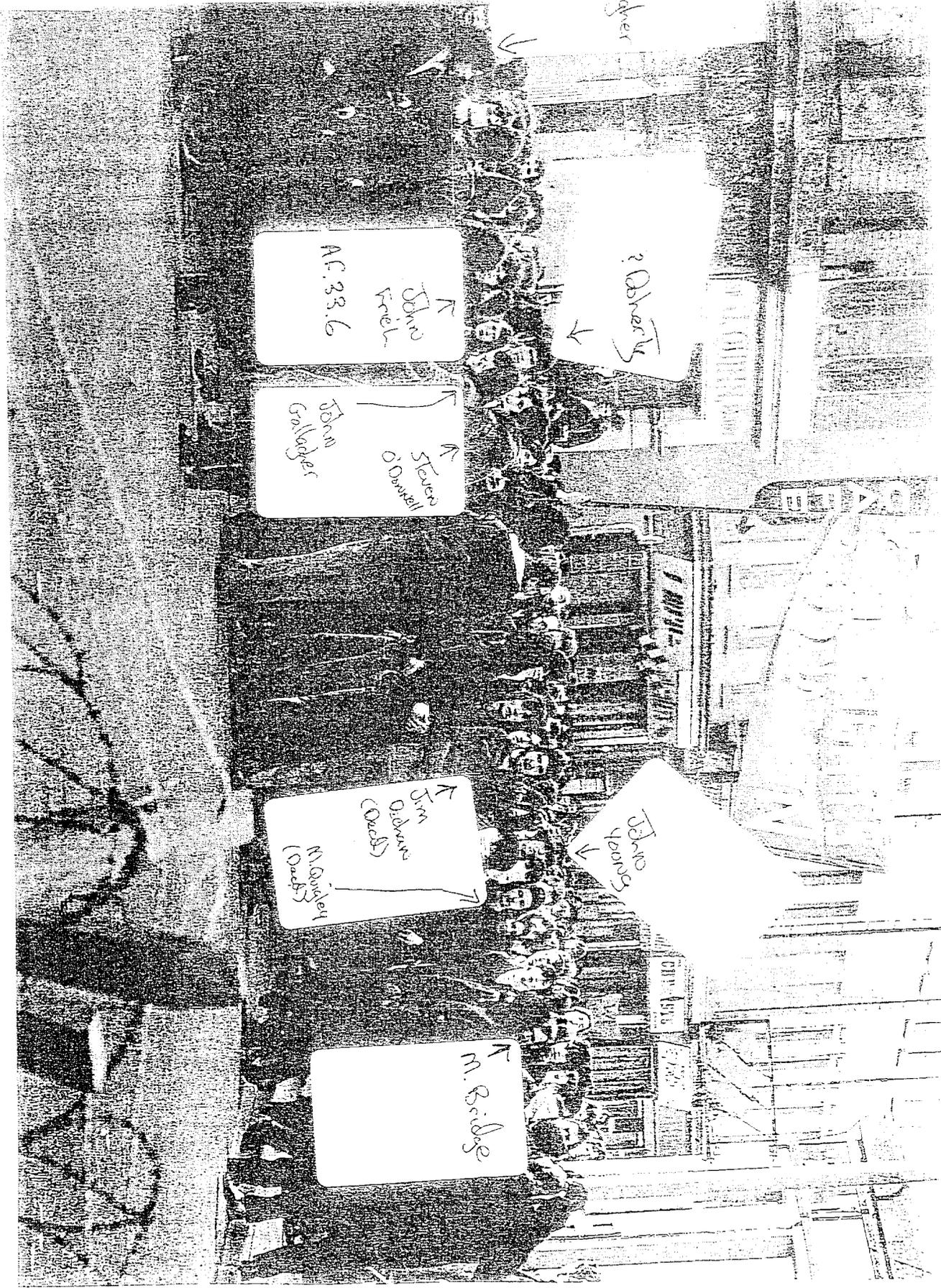
Kevin McCorry arrives. Sweeney takes up position in the line.



Kevin McCorry can be seen in mid picture. A large number of stewards are in evidence.

EP4/16.001

Joe
Gallagher



AC: 33.6
John
Friel

? O'Connell

John
Gallagher
Stacey
O'Donnell

Jim
O'Donnell
O'Donnell
N. O'Connell
(O'Donnell)

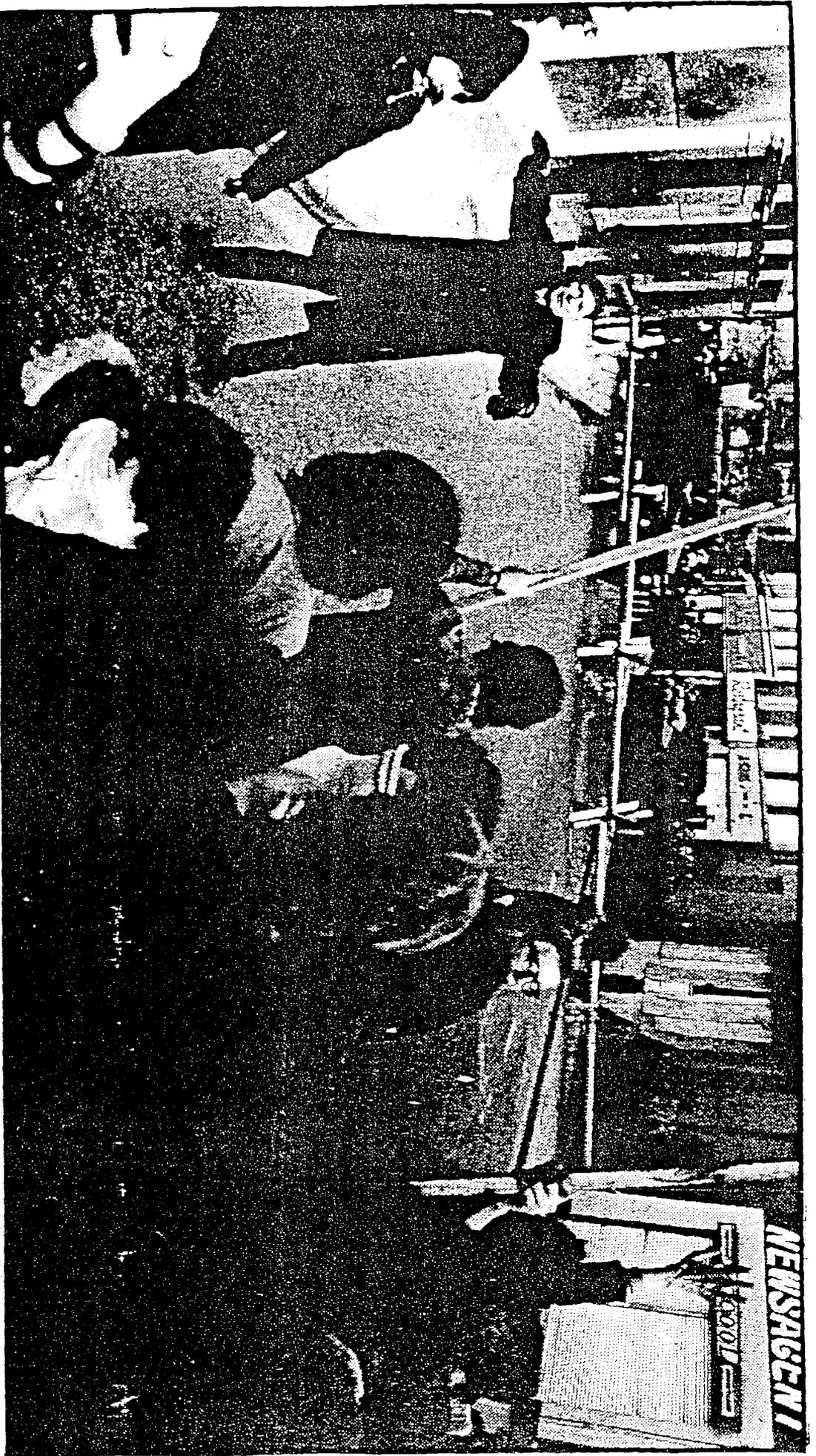
John
Hynes

M. Bridge

22

16

N 10.187



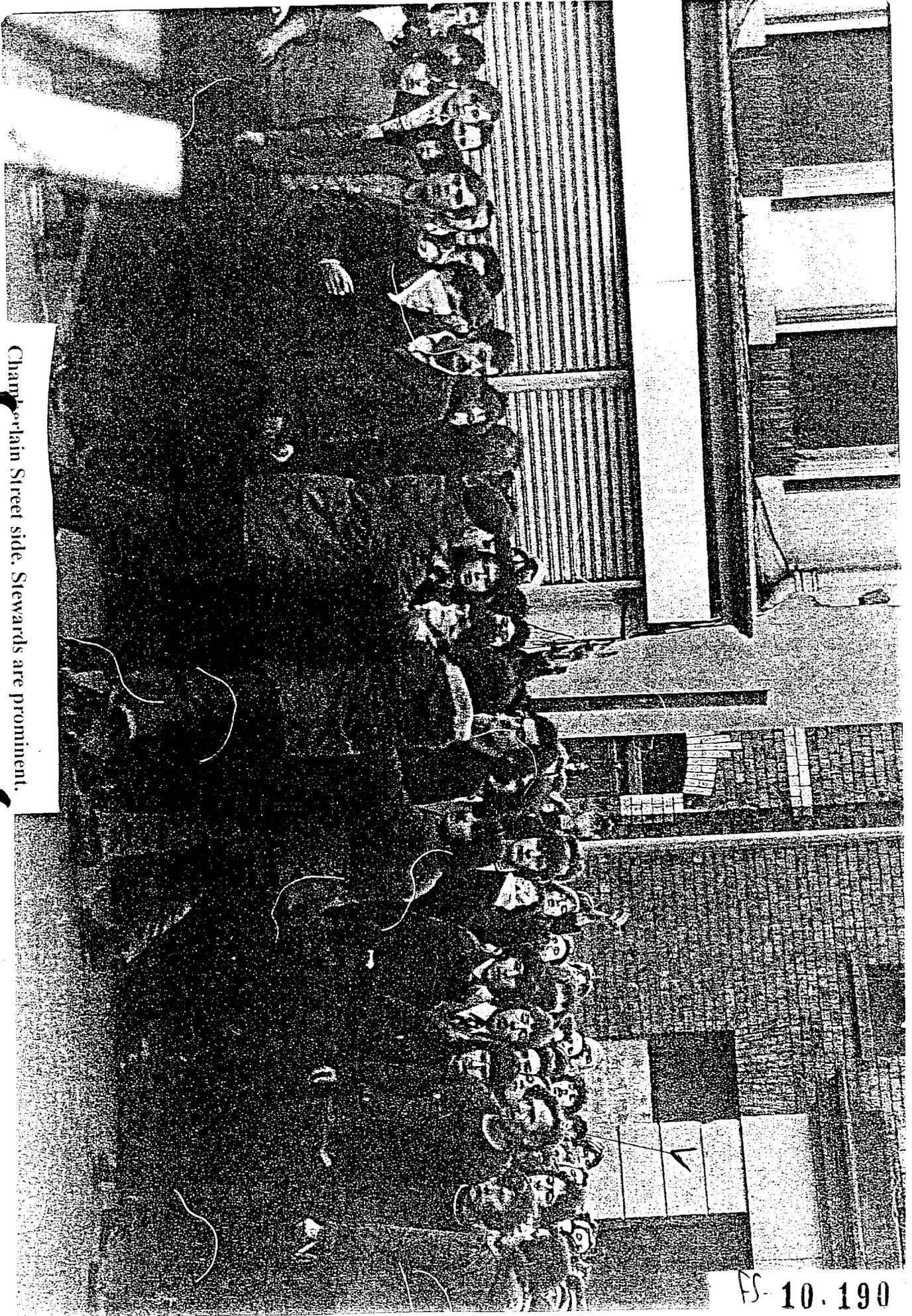
A steward gestures at the crowd near the last barricade

Sweeney/McCorry and the civil rights banner.

Reverse angle photograph. There is a substantial distance between Sweeney and Barrier 14.

Photographs 24-52

This sequence takes the crowd from the lamp post in the direction of Barrier 14. Stewards are to the fore in all photographs. There is no indication of significant crowd disorder, although **a certain number of stones** are thrown during the period when the crowd are short of Barrier 14.



Champlain Street side. Stewards are prominent.

FS-10.190

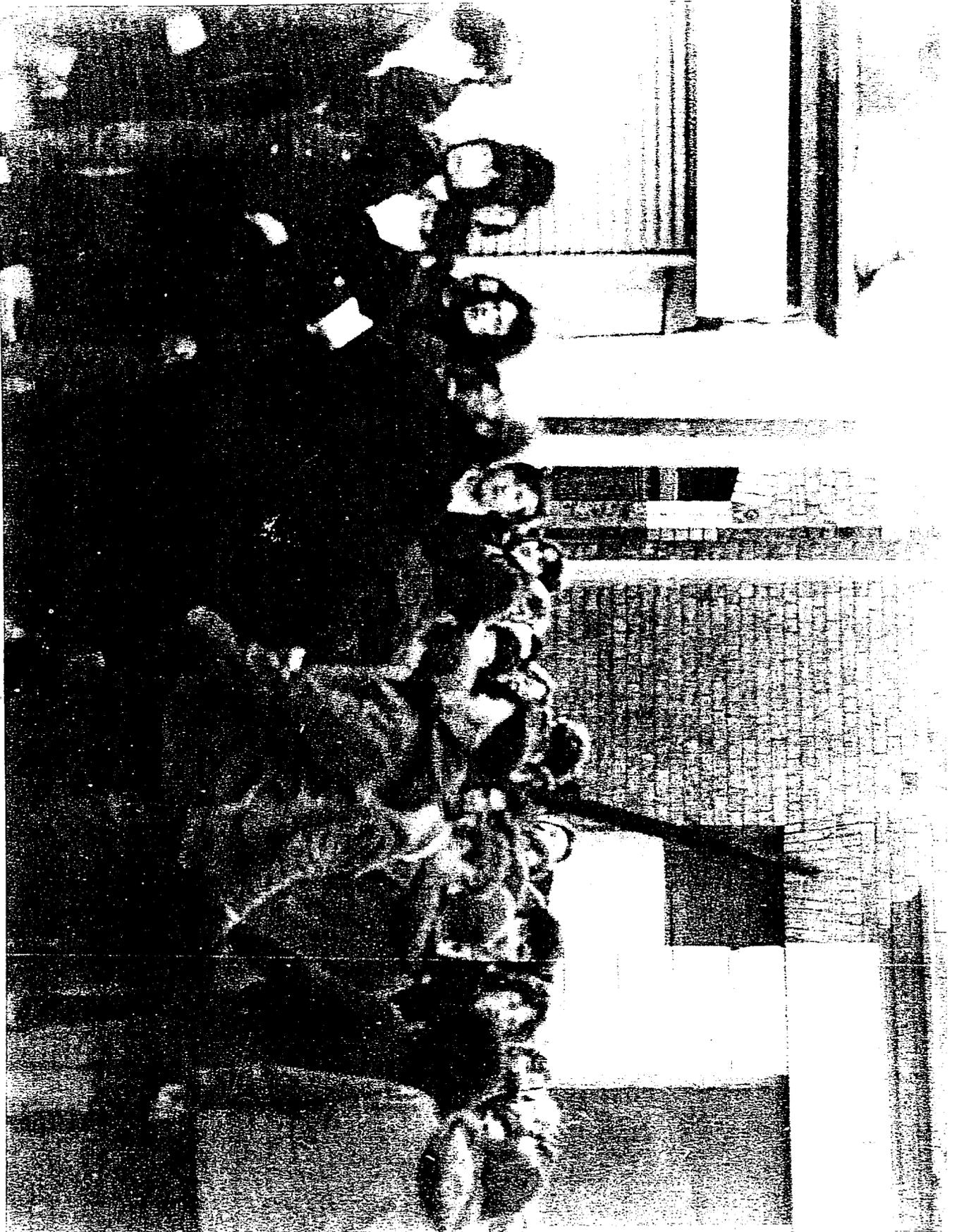
24

EP 5/8.001



FS 10.191

25



4

26 FS-10. 192

EP 5/4.001



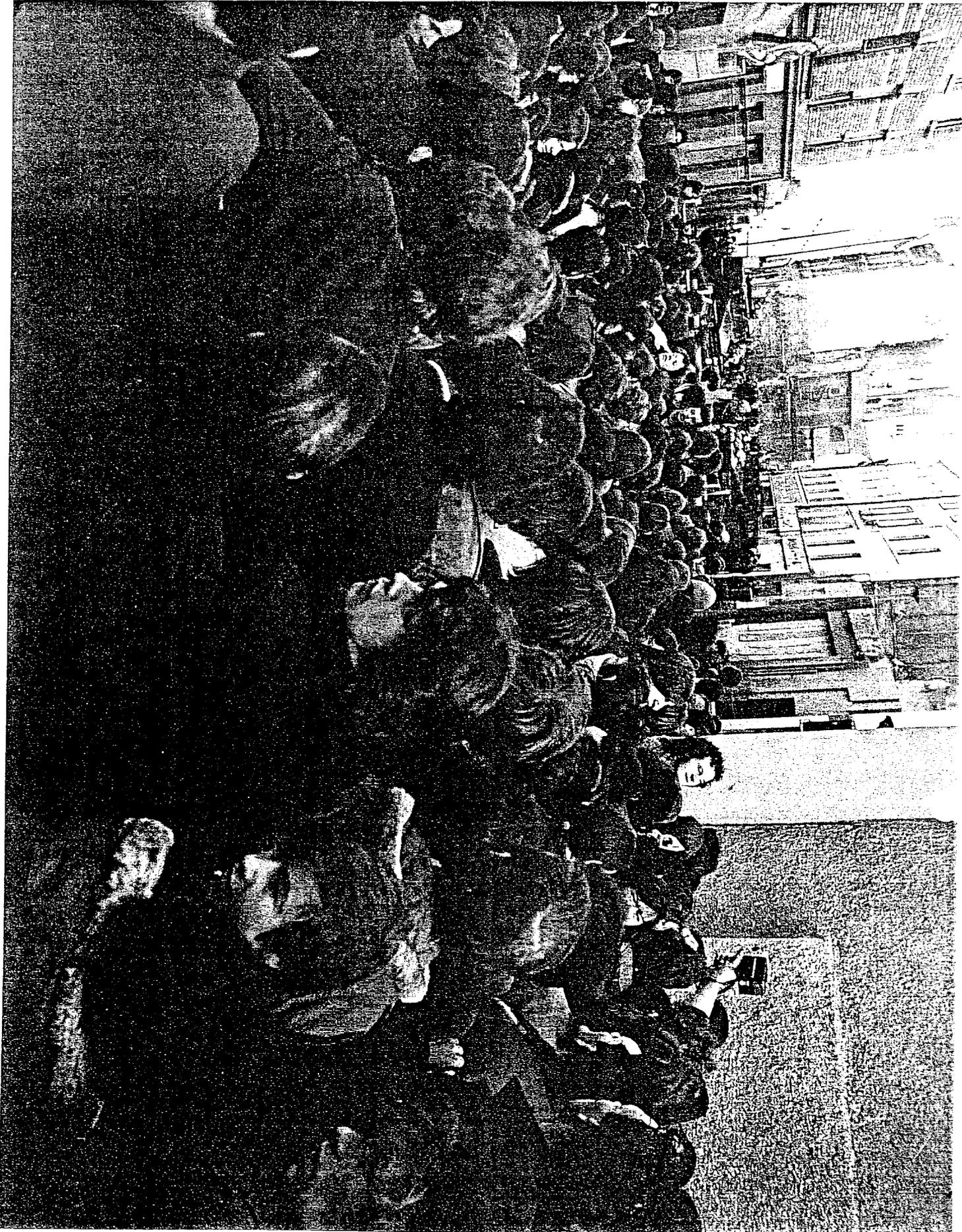
↖
Lawrence
McGlinchey

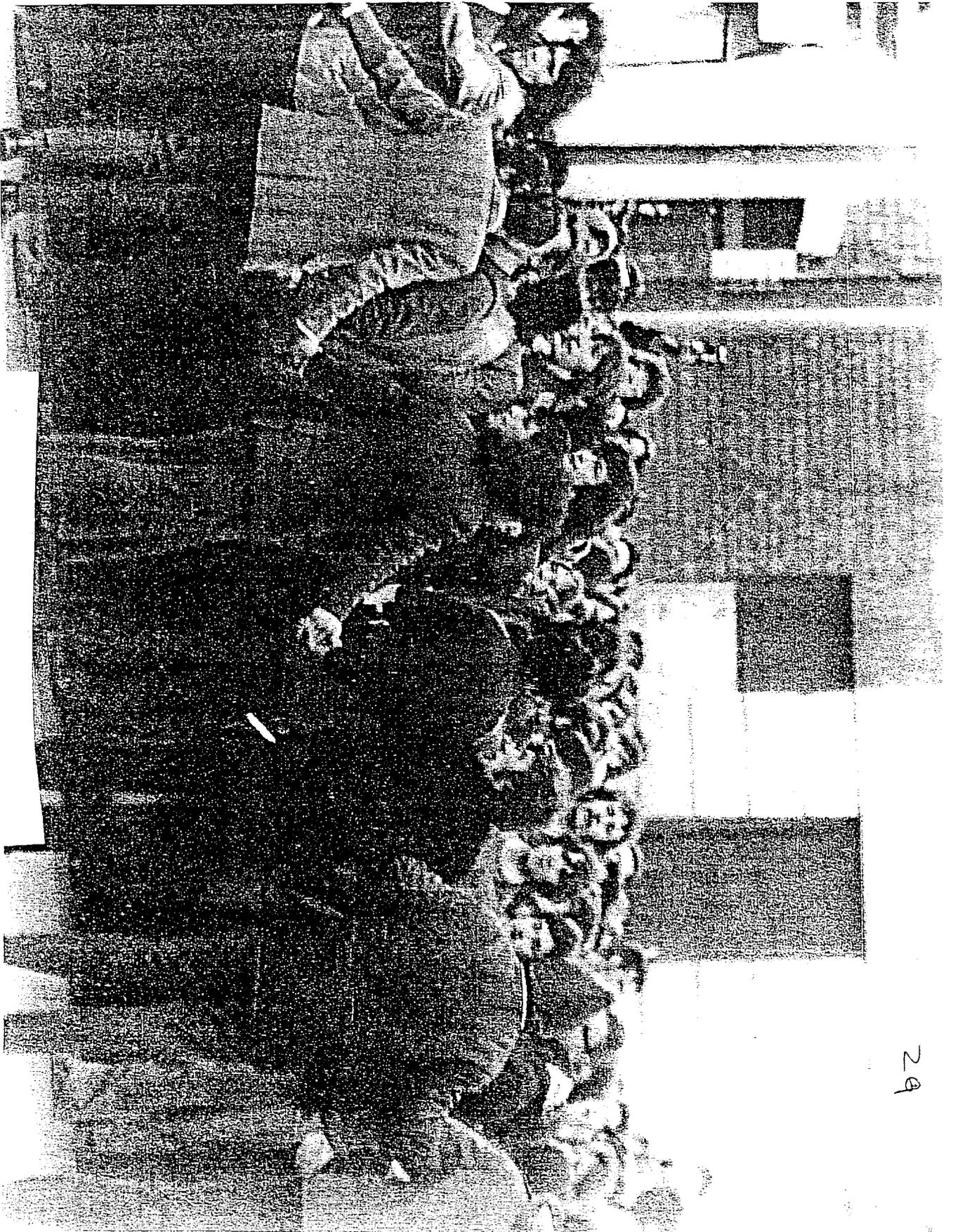
↖
Barney
McEadden

↖
M. McAnis

↖
Joe
Gallagher

10.193
27



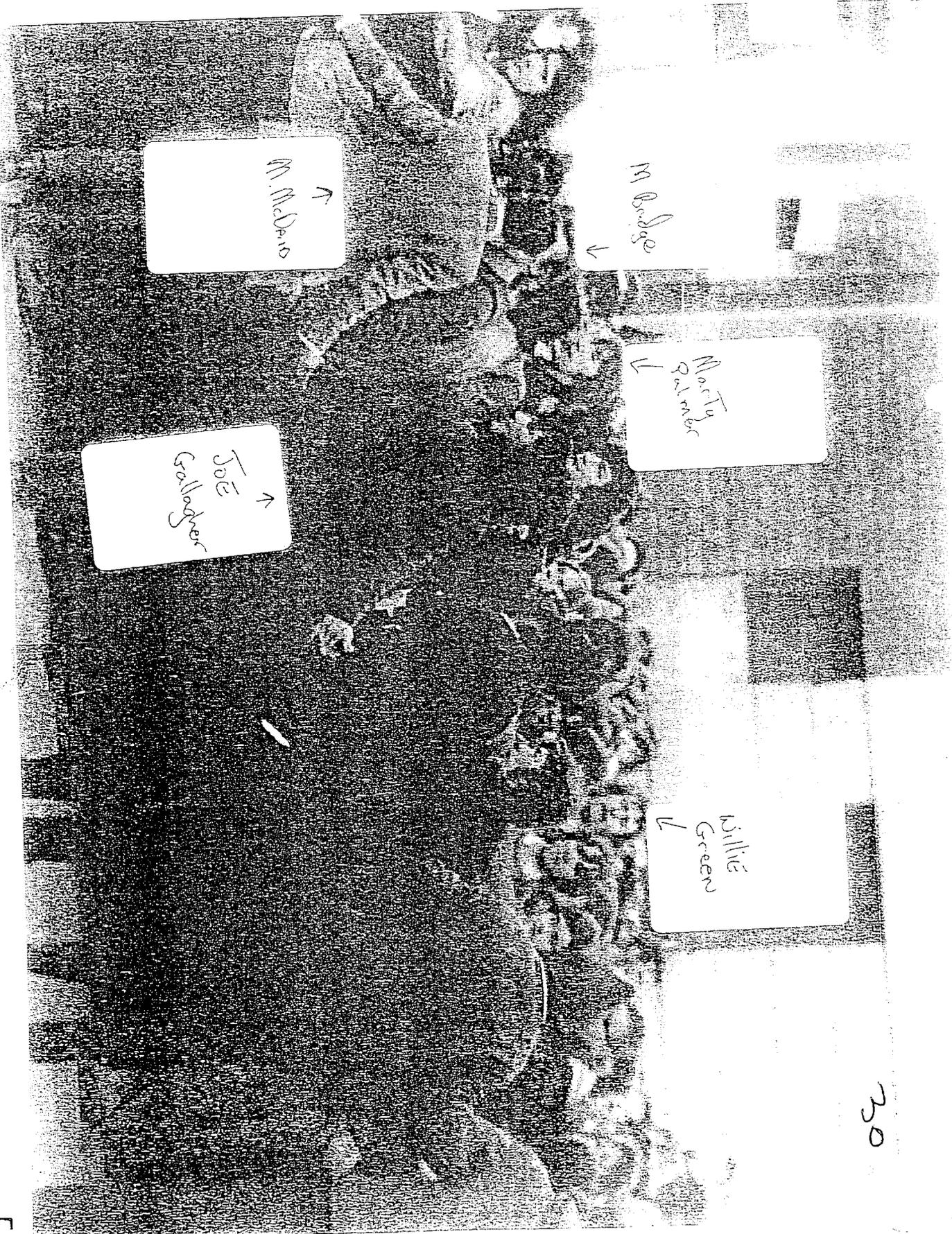


Continuation of the line of stewards to the right.

29

FS 10. 195

EP 5/5 001



M. McDermid
↙

M. Bridges
↙

Nortey
Palmer
↙

Joe
Gallagher
↙

Billie
Green
↙

30

5

AP 10. 196

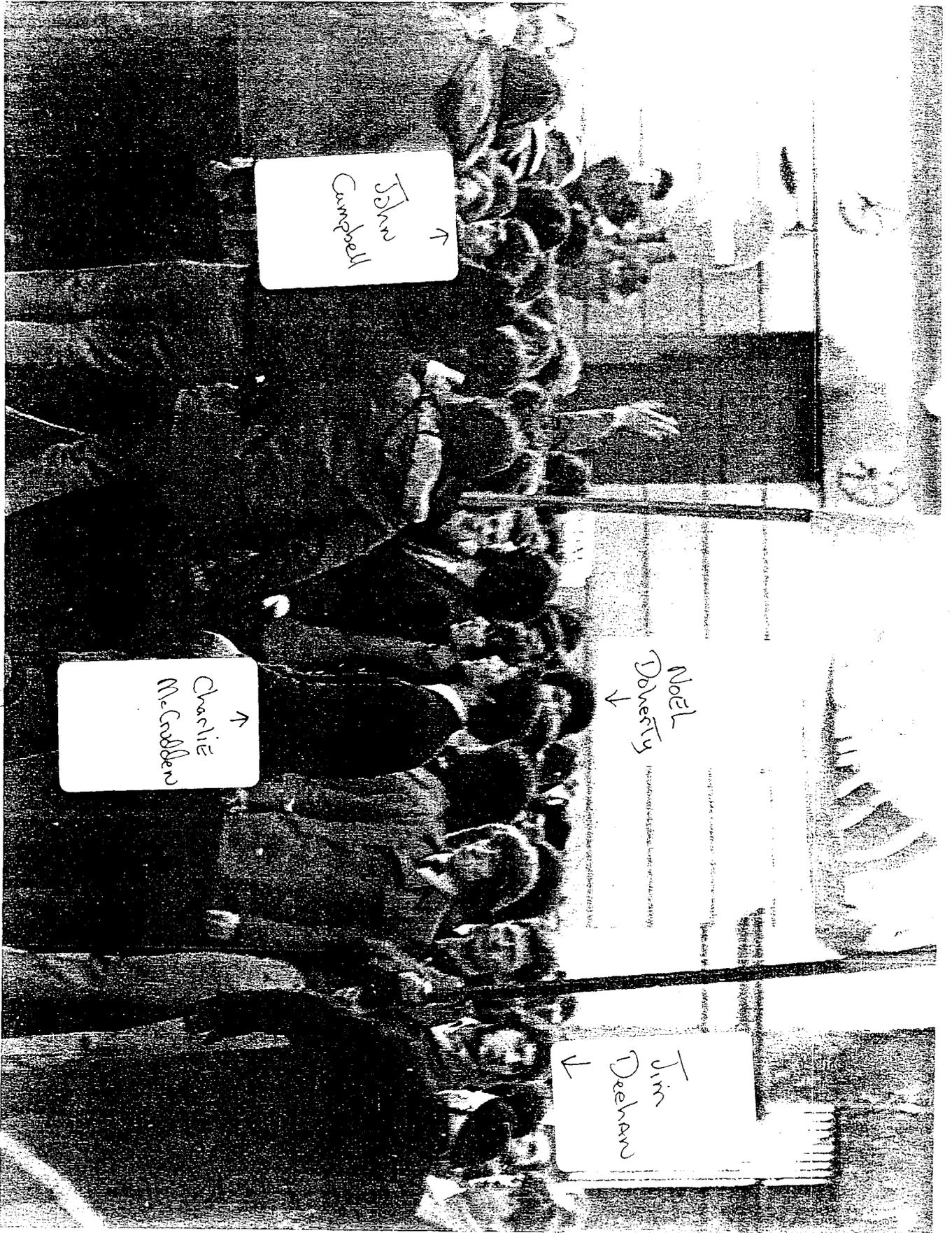


PG 10. 197

12

9

GPS/6.001



Noel
Doherty

Jim
Deehan

Charlie
M. Crobbens

Jim
Campbell

FS 10.198

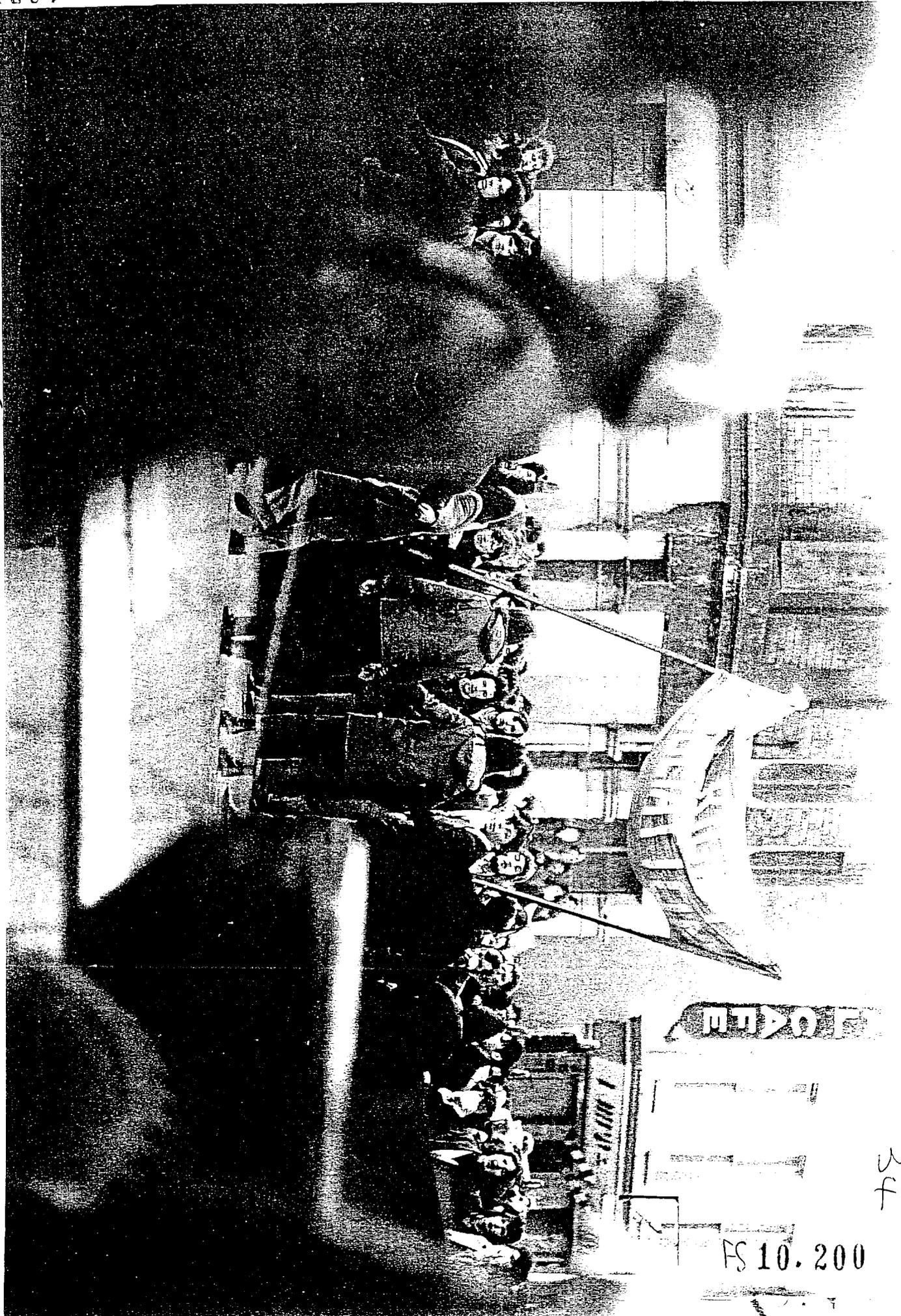


888



33

1035



ΠΑΝΕΛΛΗΝΙΑ

W
F
W

FS 10.200

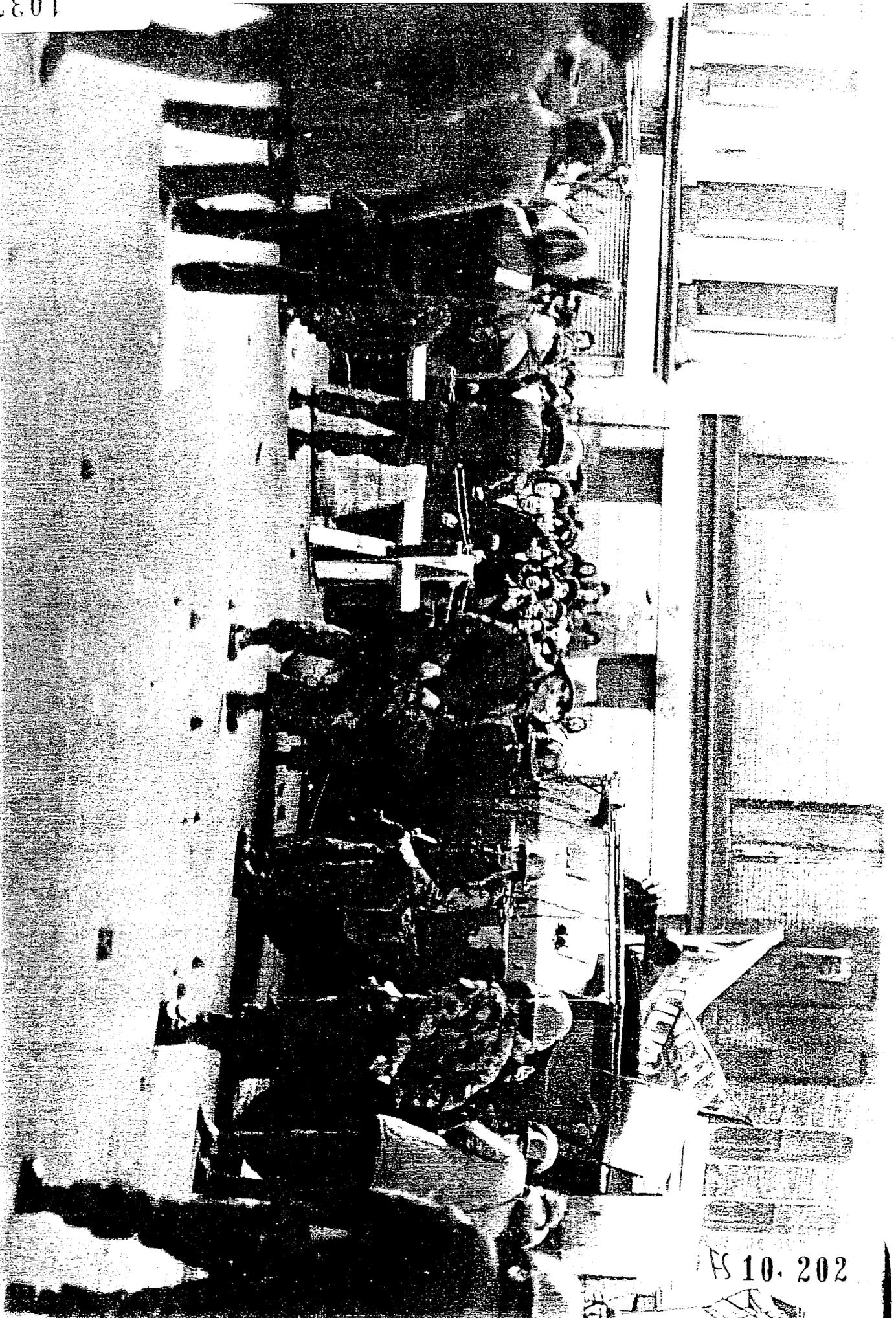


FS10.201

35

Solid line of stewards across William Street.

1037

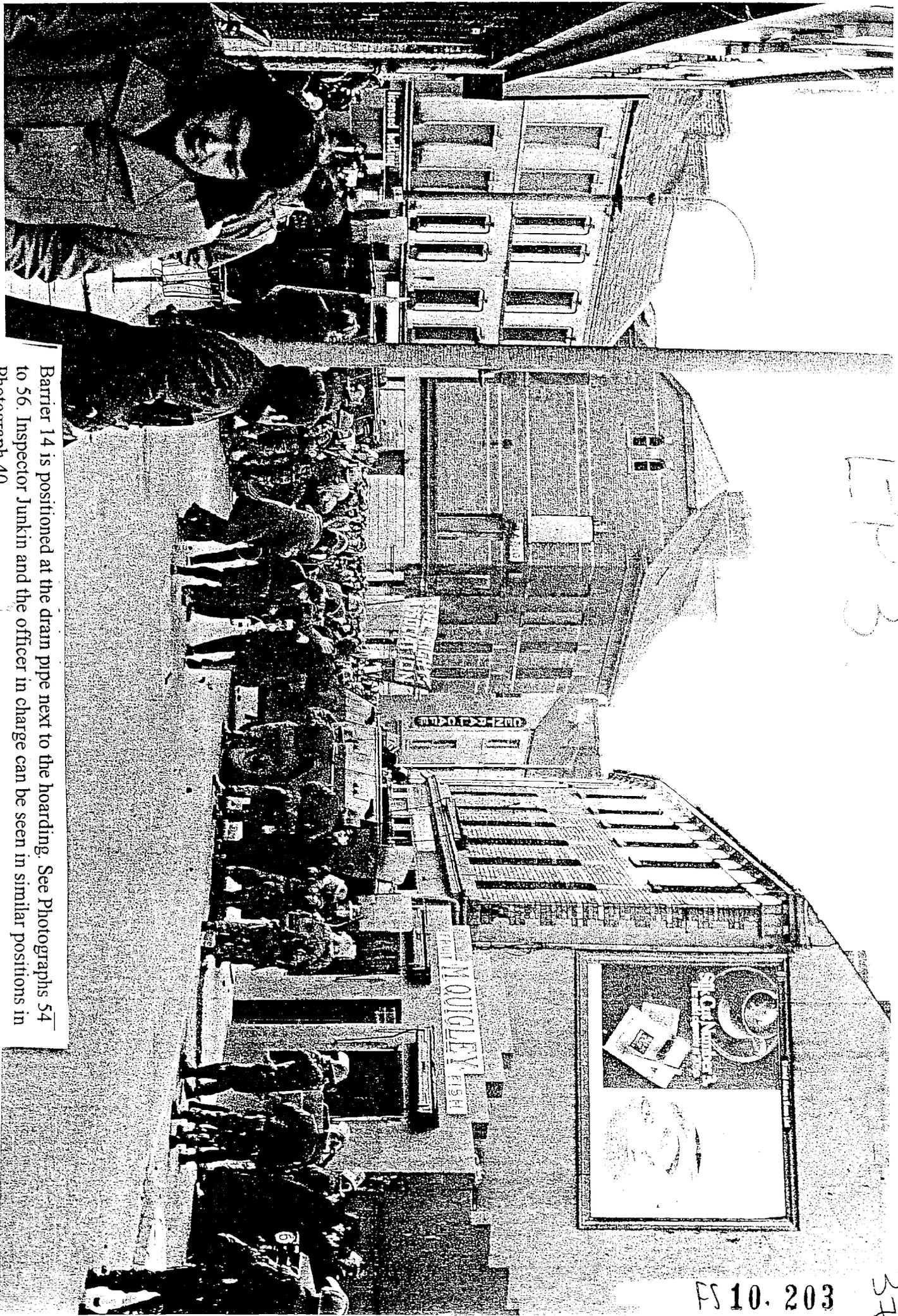


FS 10. 202

36

38/7a

FB3

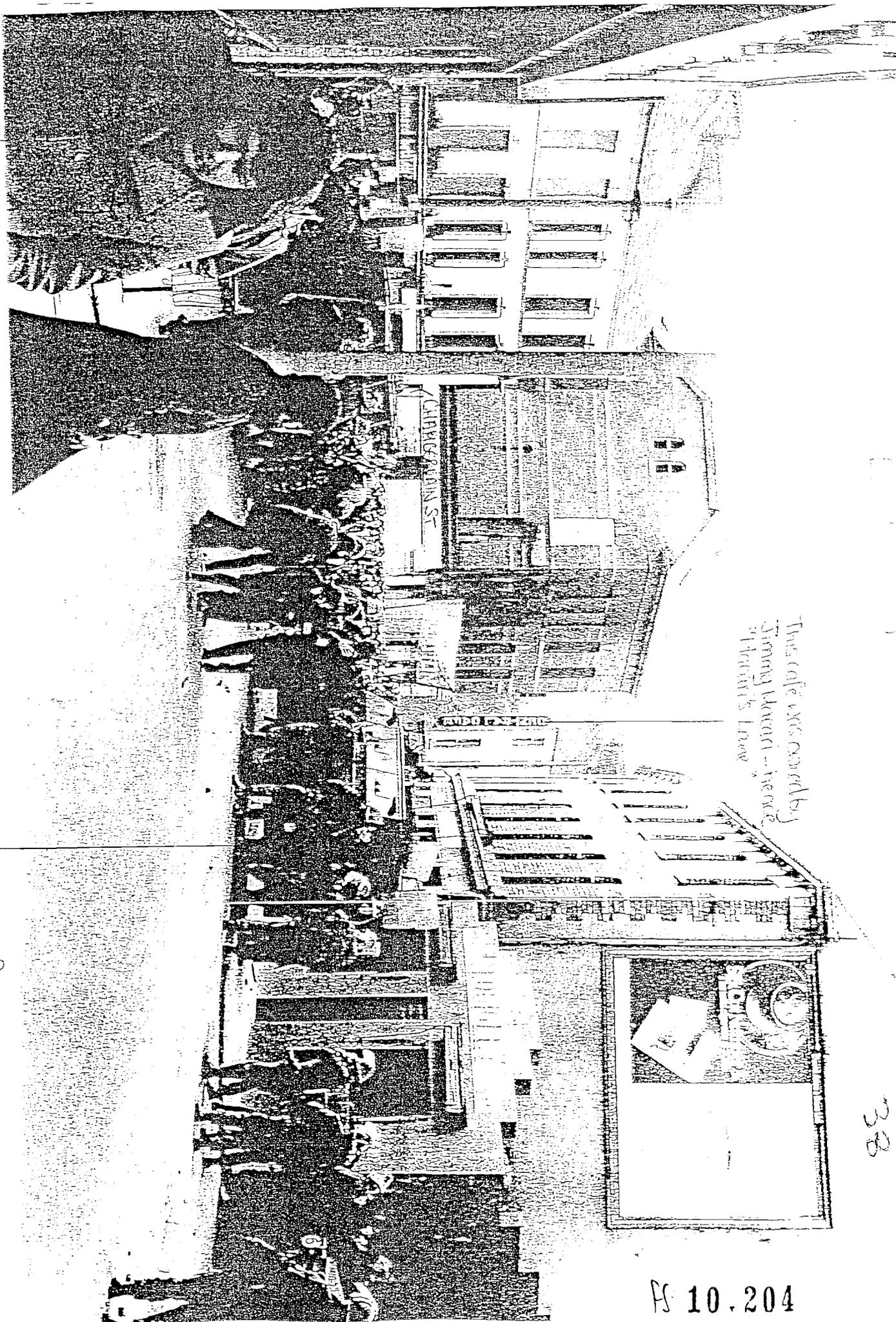


Barrier 14 is positioned at the drain pipe next to the hoarding. See Photographs 54 to 56. Inspector Junkin and the officer in charge can be seen in similar positions in Photograph 40.

FS 10. 203

37

1



This cafe was owned by
Jimmy Mason - hence
of Mason's Law

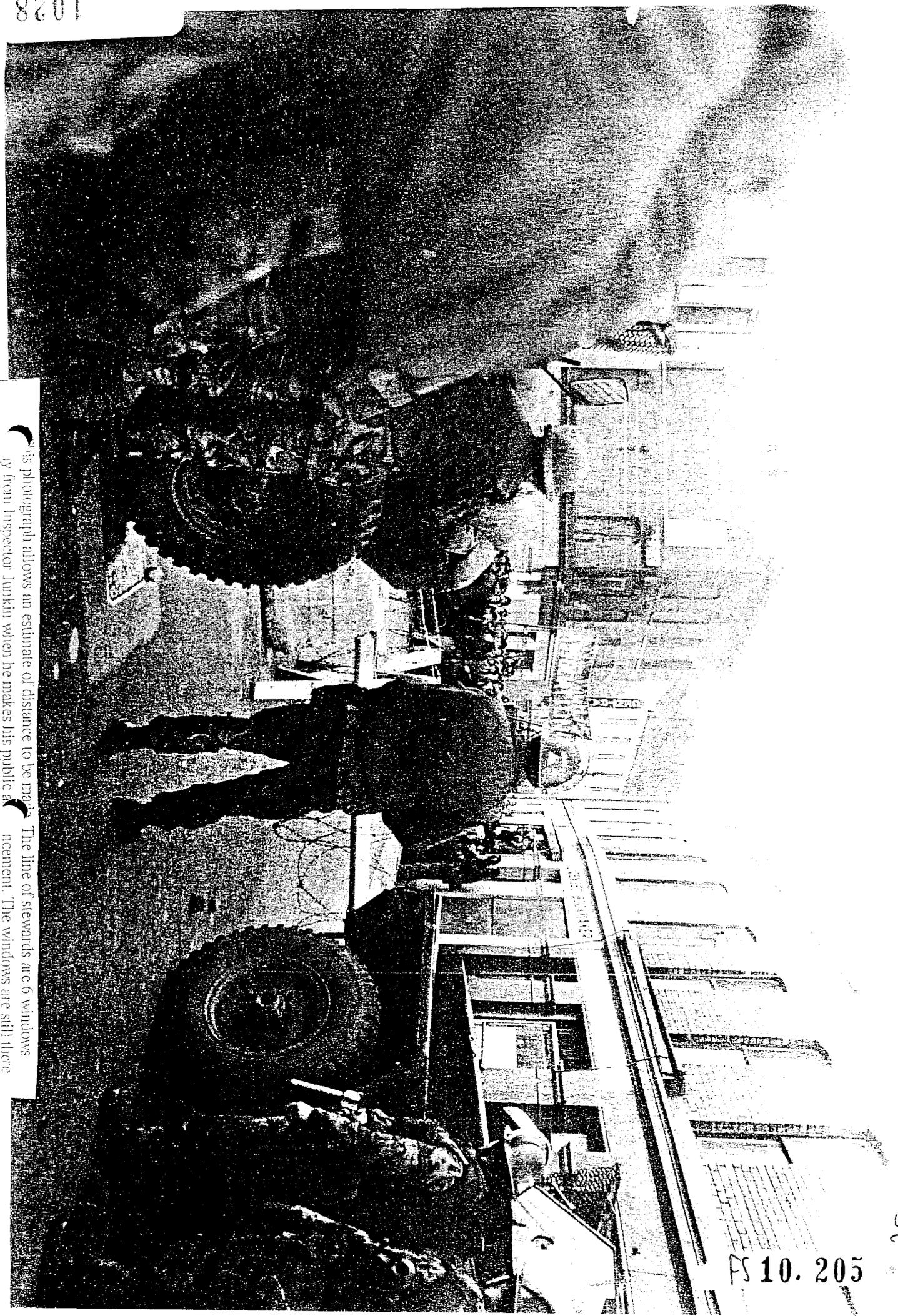
Historical Photo
Keneth Mason Photo

INSPECTOR JUNKAN?
(1778)

33
00

PS 10.204

1028



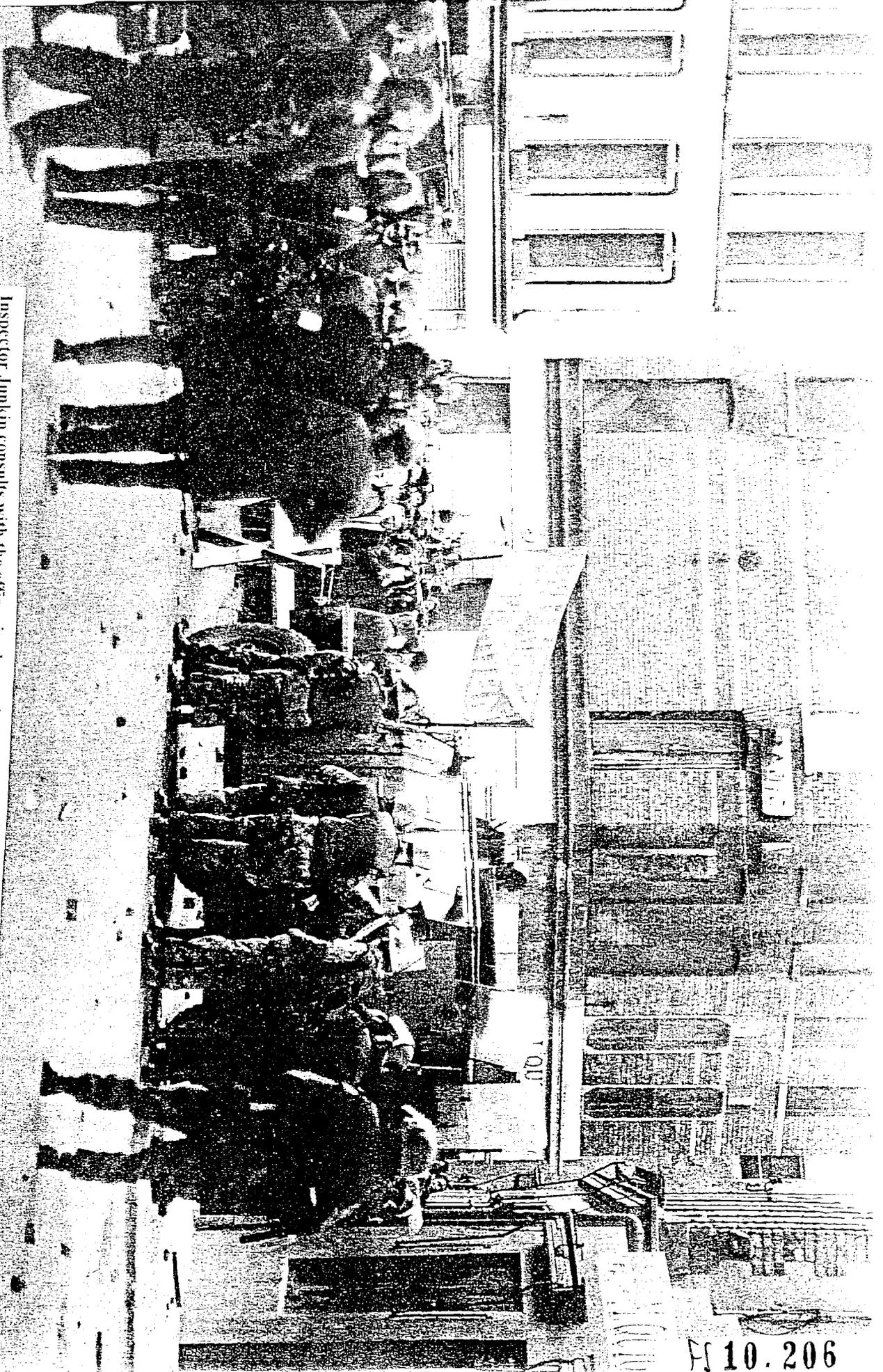
his photograph allows an estimate of distance to be made by from Inspector Junkin when he makes his public a

The line of stewards are 6 windows
 nement. The windows are still there

PS 10. 205

34

Inspector Junkin consults with the officer in charge, just before the public announcement.
Note the small man in the white shirt and dark tie next to Barney McFadden.



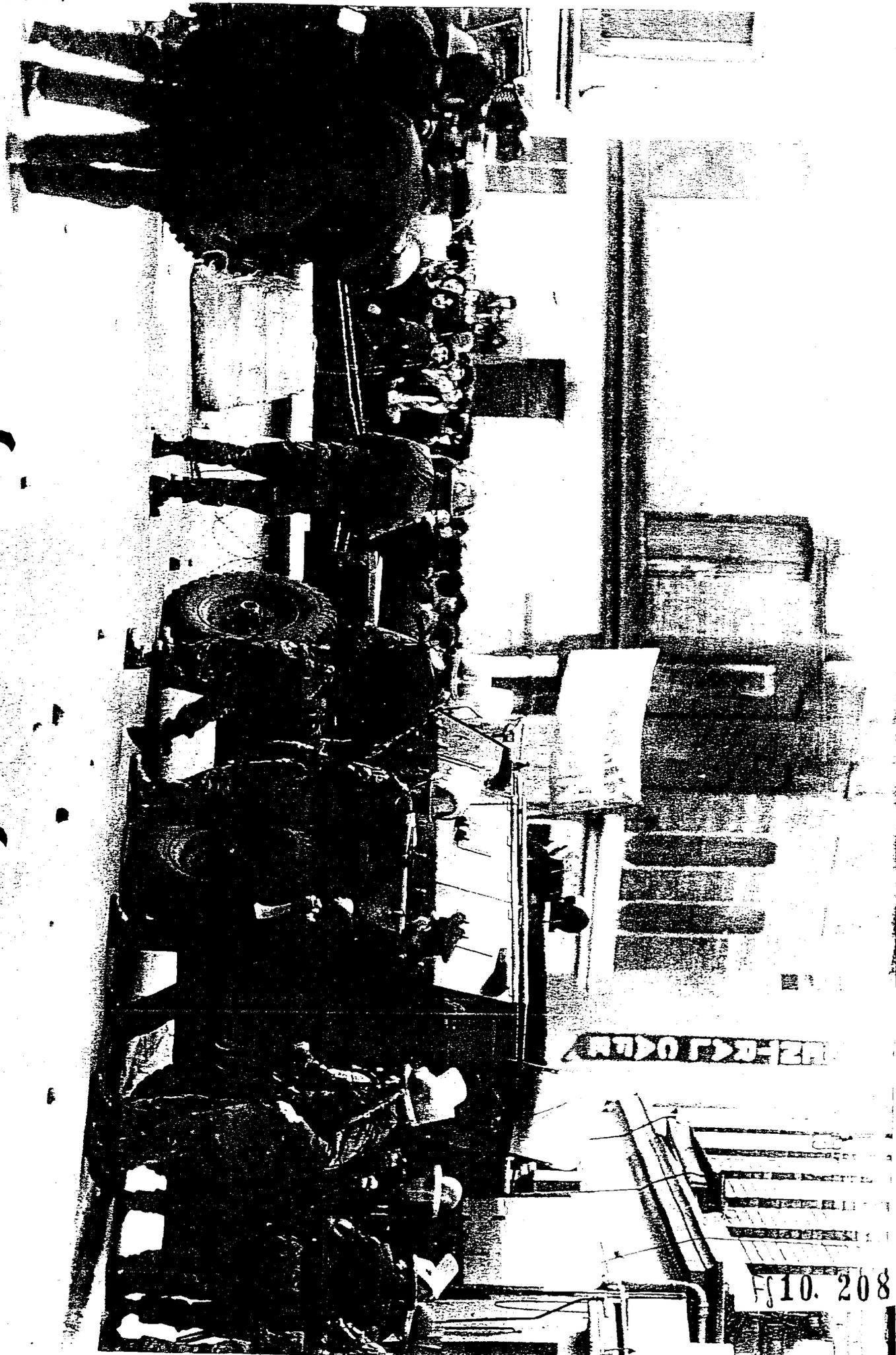
78

FS 10. 207



The fifth window [antel] is the window at the right hand edge of Photograph 41. Barney McFadden and the small man in the white shirt and dark trousers are almost exactly where they were in Photograph 40, but from a different angle. The unknown steward stands before Liam Bradley.

1038

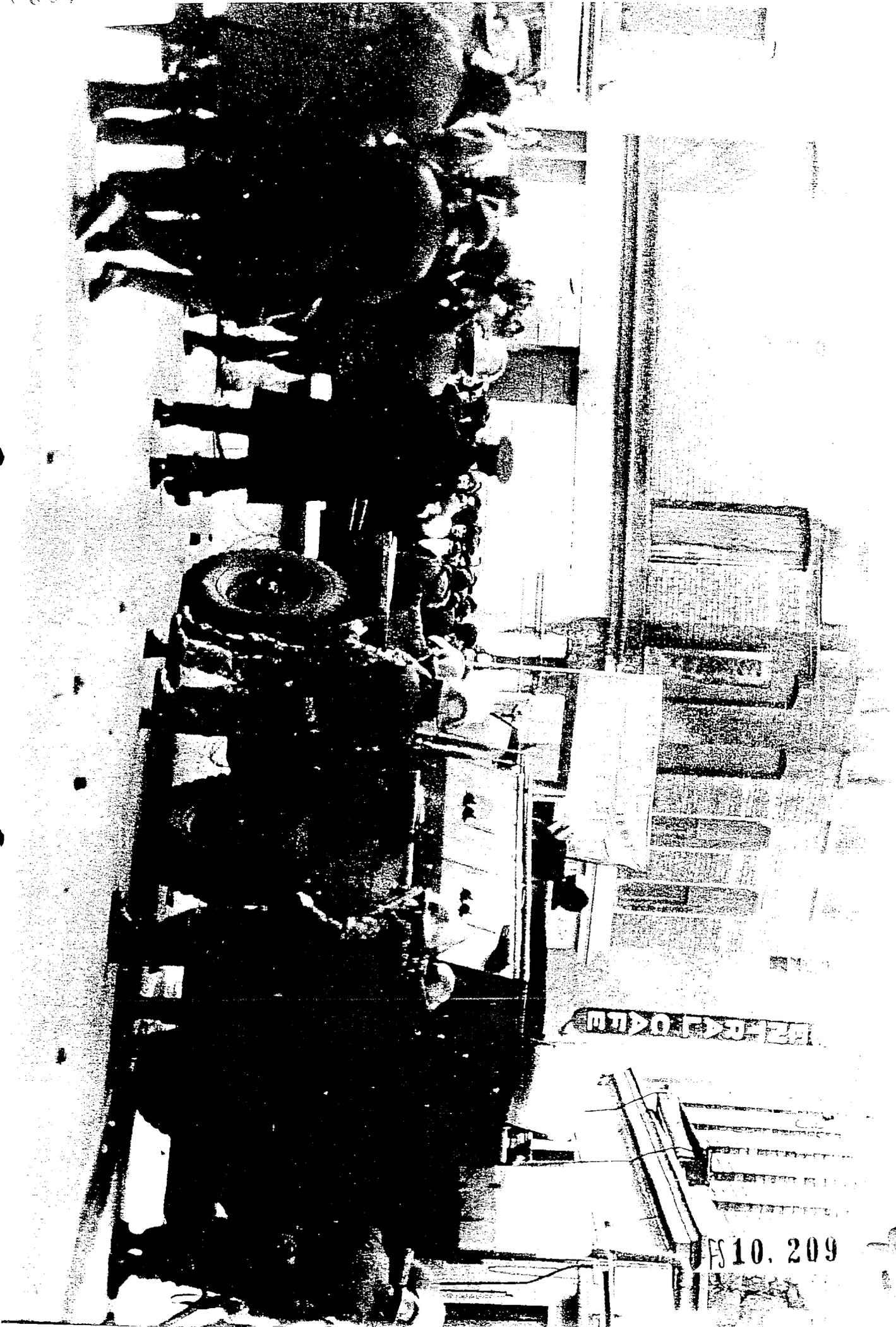


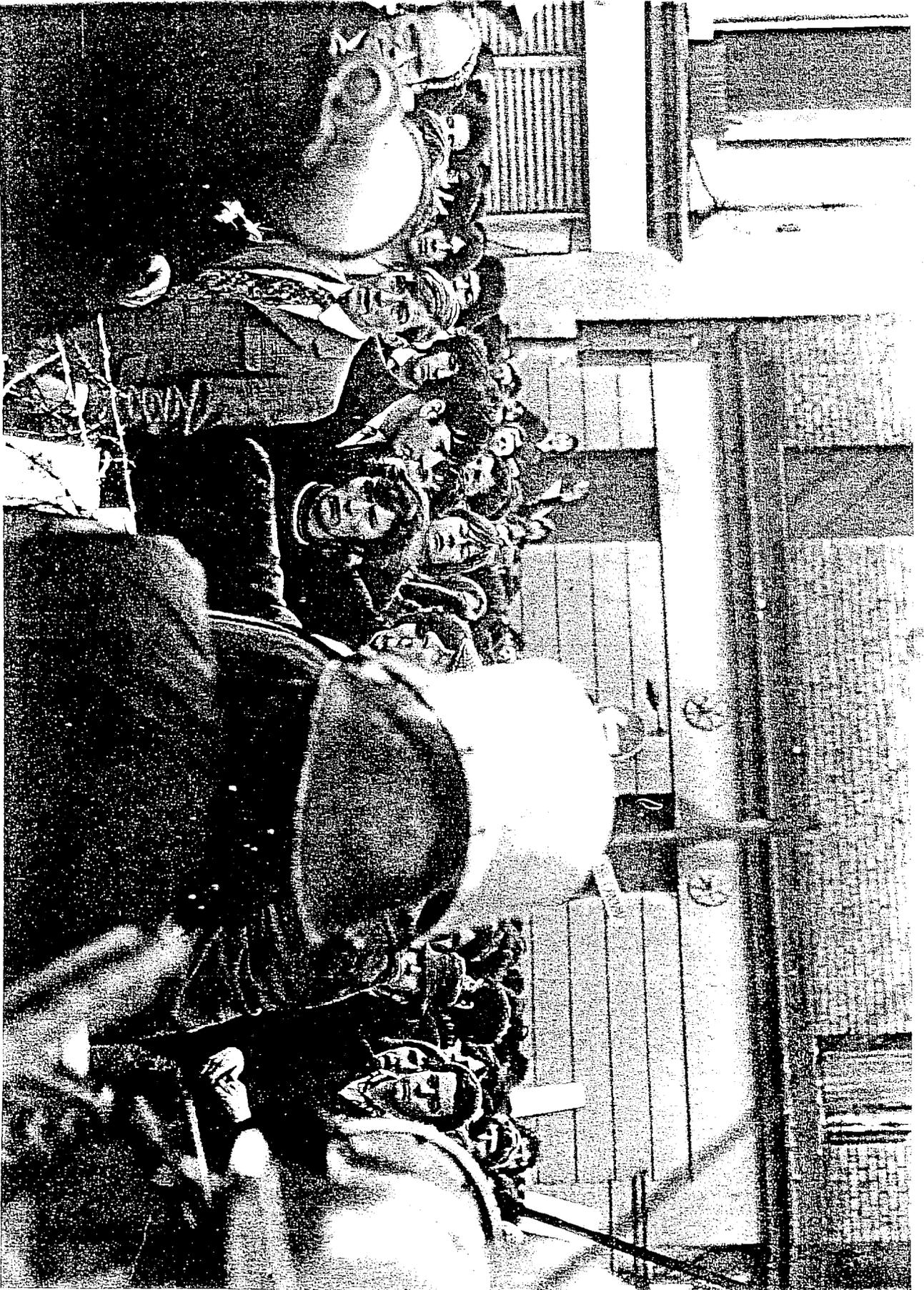
47

10. 208

Inspector Junkin makes

public announcement. Missiles are thrown from the truck to the crowd.





Inspector Junkin is speaking. There is a figure at the rear of the crowd with an arm raised. He may be a stone thrower.

PS 10.210

44

ER 4/21/00



Lorraine
Mr. G. G. G.

M. McShane

Willie
MacGorm

Euse
MacPherson

Danny
Gallagher

D. Deane

C. Deane

245

21

FS 10.211

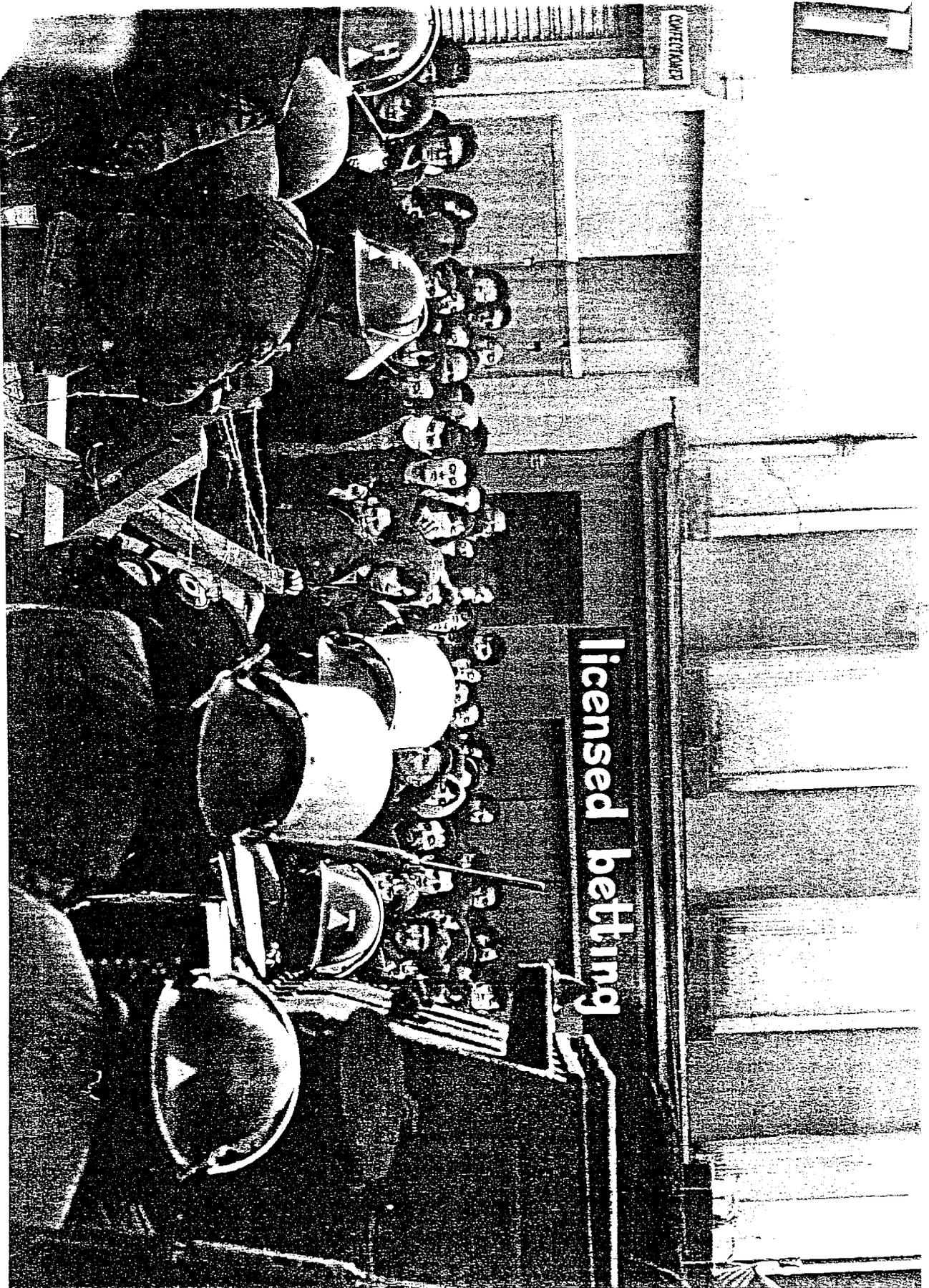
7

683



46

FS 10. 212



O'Donnell and McFadden are clearly visible. McGlinchey may well be the man in the foreground with his back to the camera.

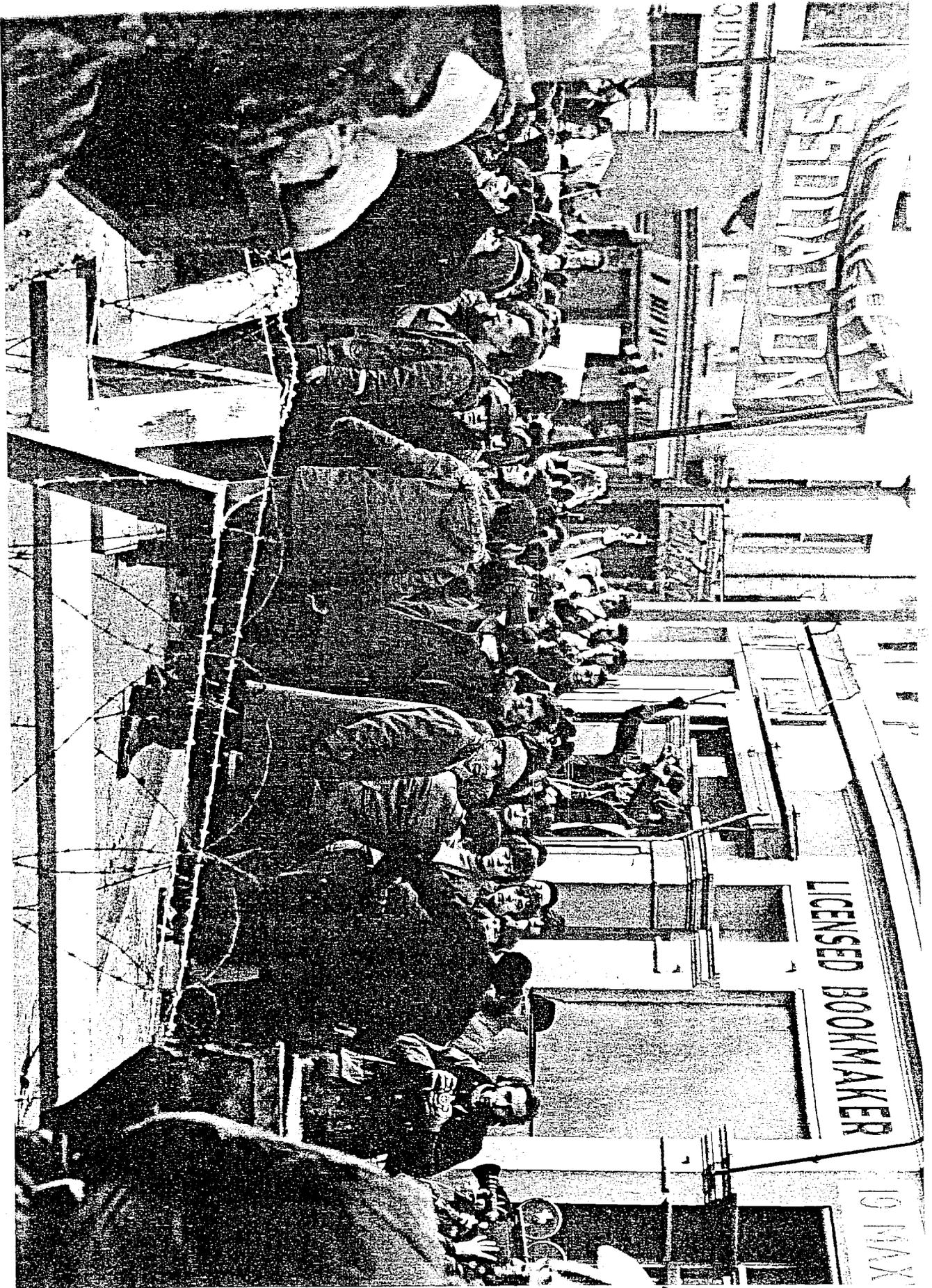
EP4/08.00



42

23

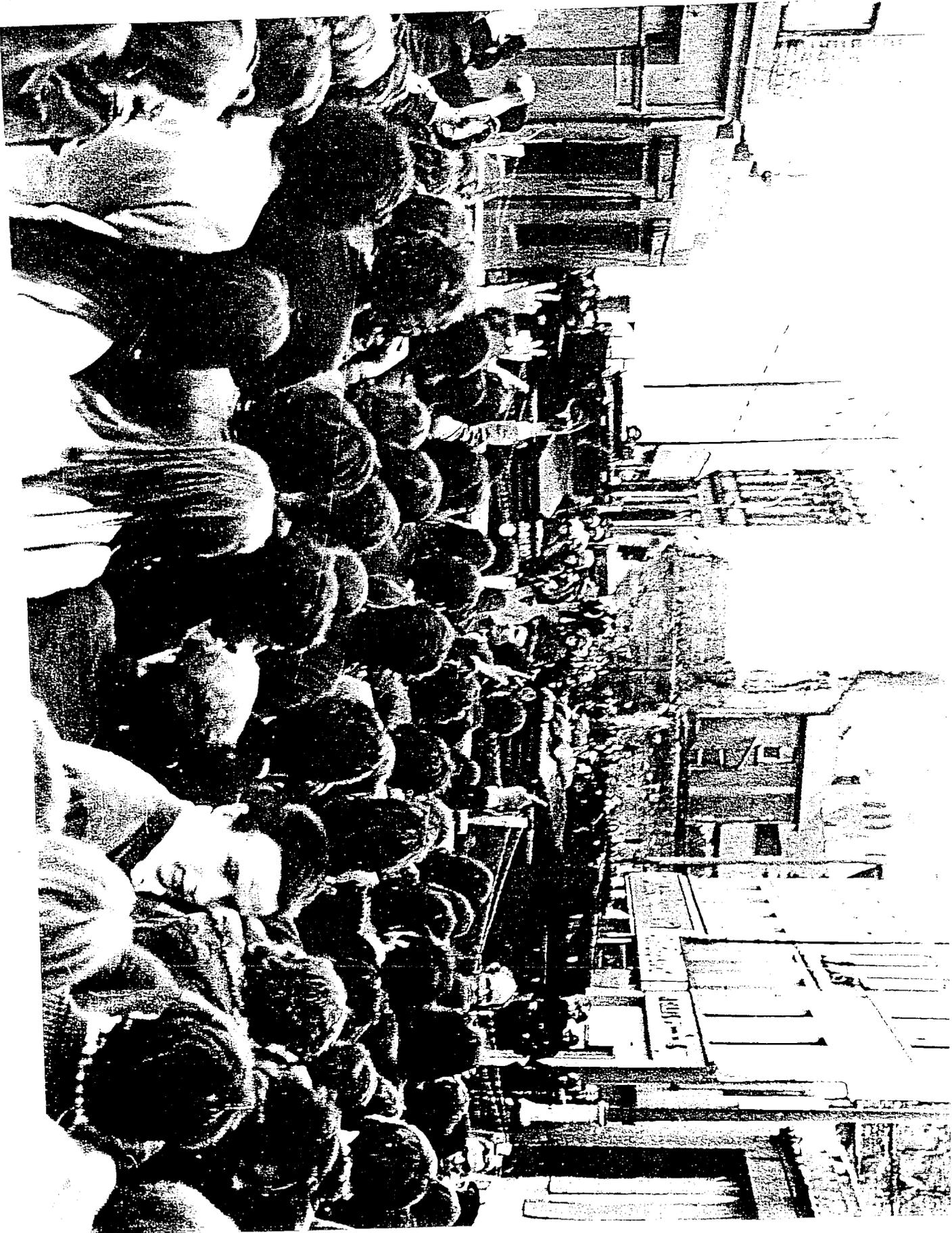
FS 10. 214



AS 10.215

44

278

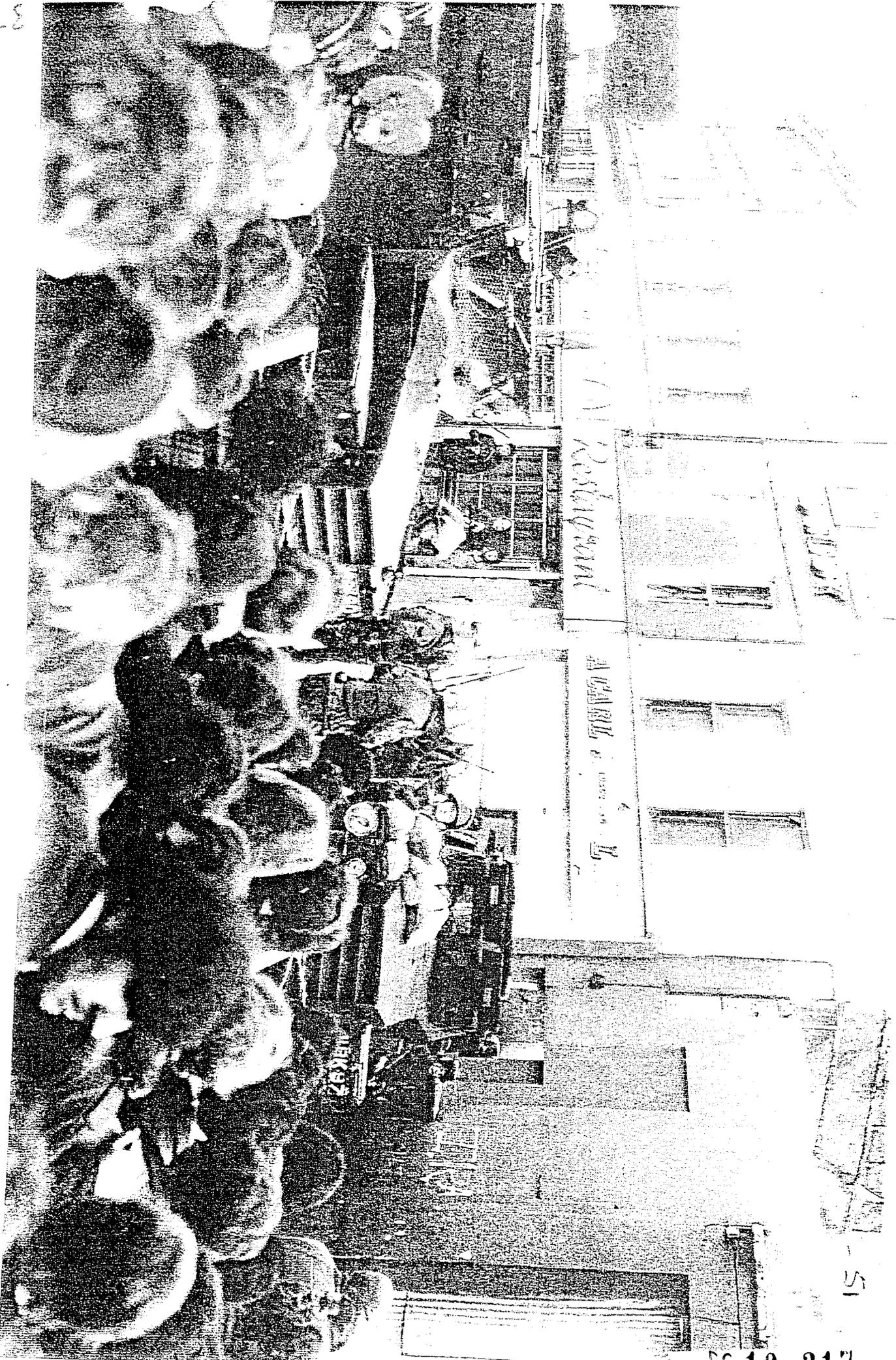


Note the girls in the white coats. A number of stewards face towards the camera.

FC 10. 216

50

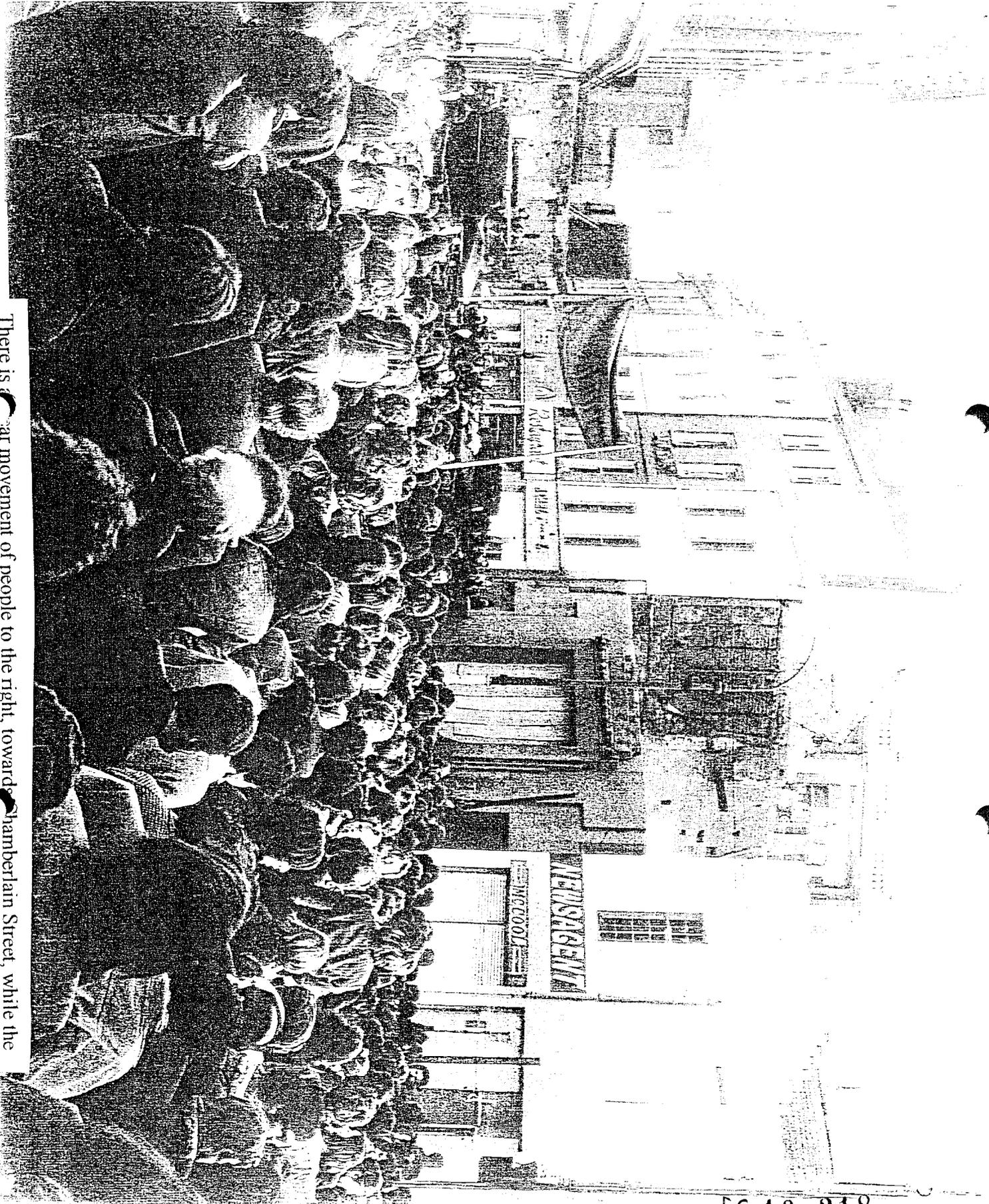
372



McElhinney walk in space to the right. The beret of Sweeney in visible mid picture.

PG 10, 217

375

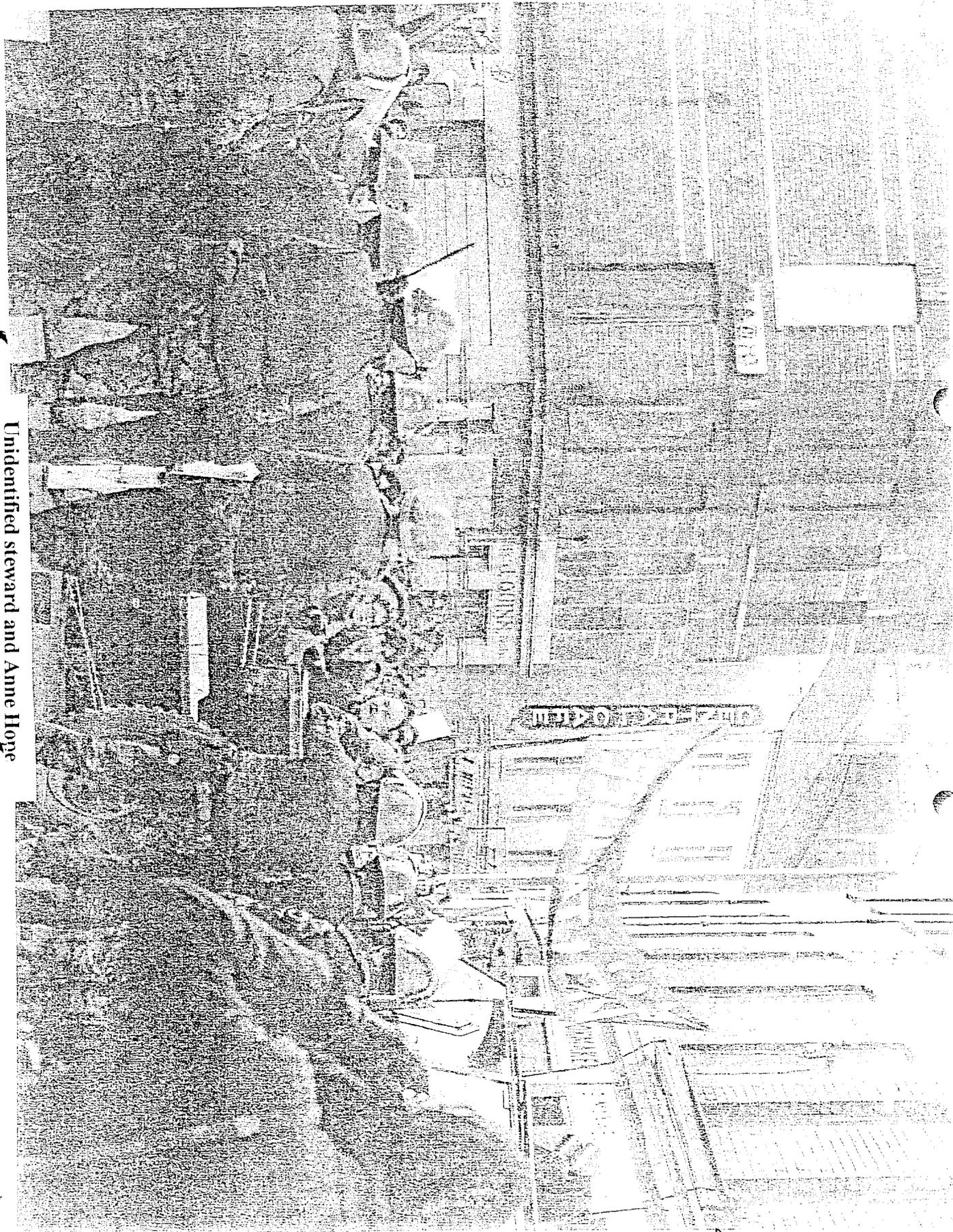


There is a car movement of people to the right, towards Chamberlain Street, while the stewards head the line further up William Street.

FS 10.218
52

Photographs 53-62

These photographs were taken after Inspector Junkin addressed the breakaway group because there is a solid line of soldiers across the interface and the crowd are now at Barrier 14. The photographs do not identify major unrest at the barrier or a loss of control by the stewards. Body language does not suggest that stones are a problem for anybody. There is no serious attempt to breach Barrier 14.

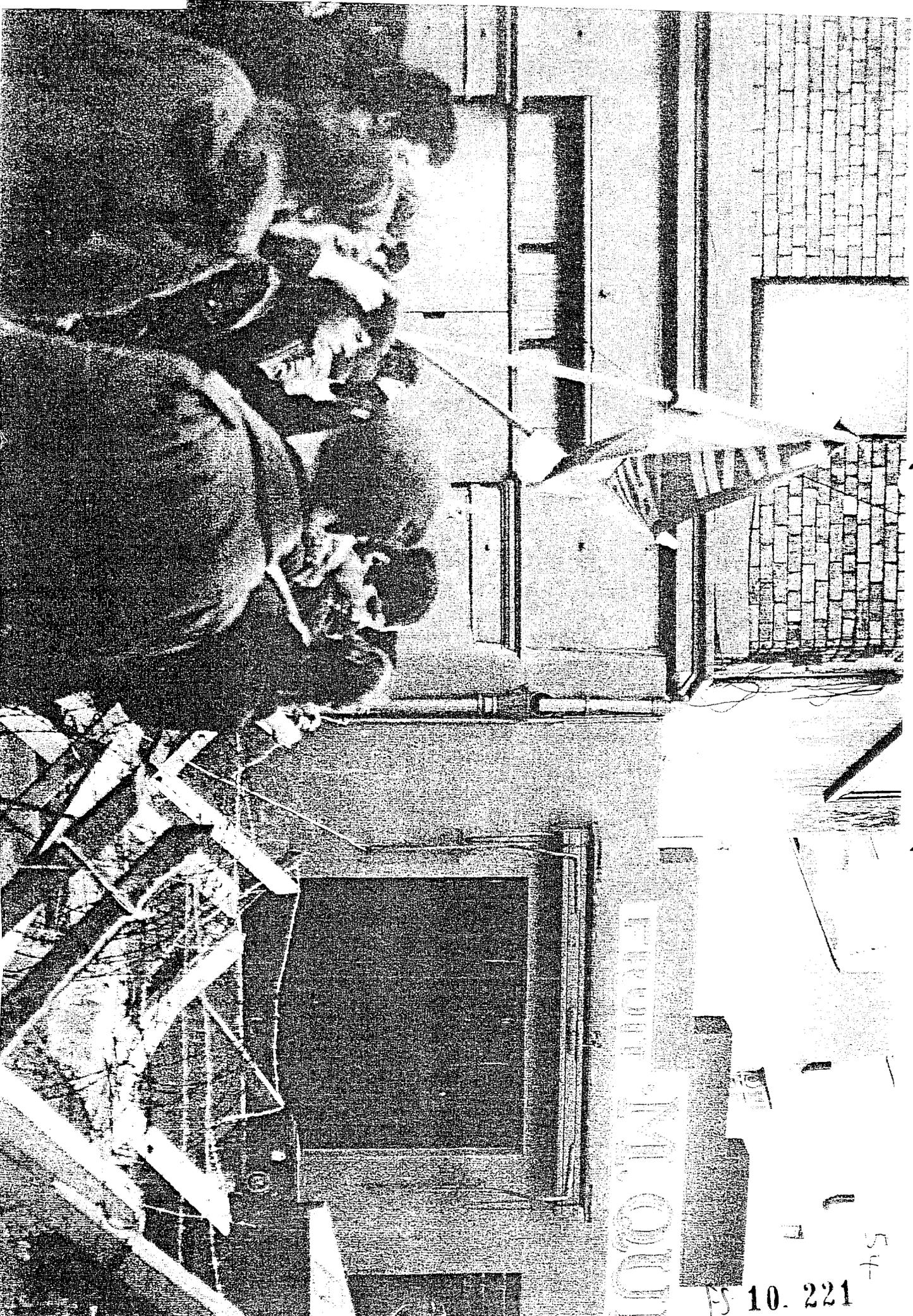


Unidentified steward and Anne Hope

FS 10. 220

53

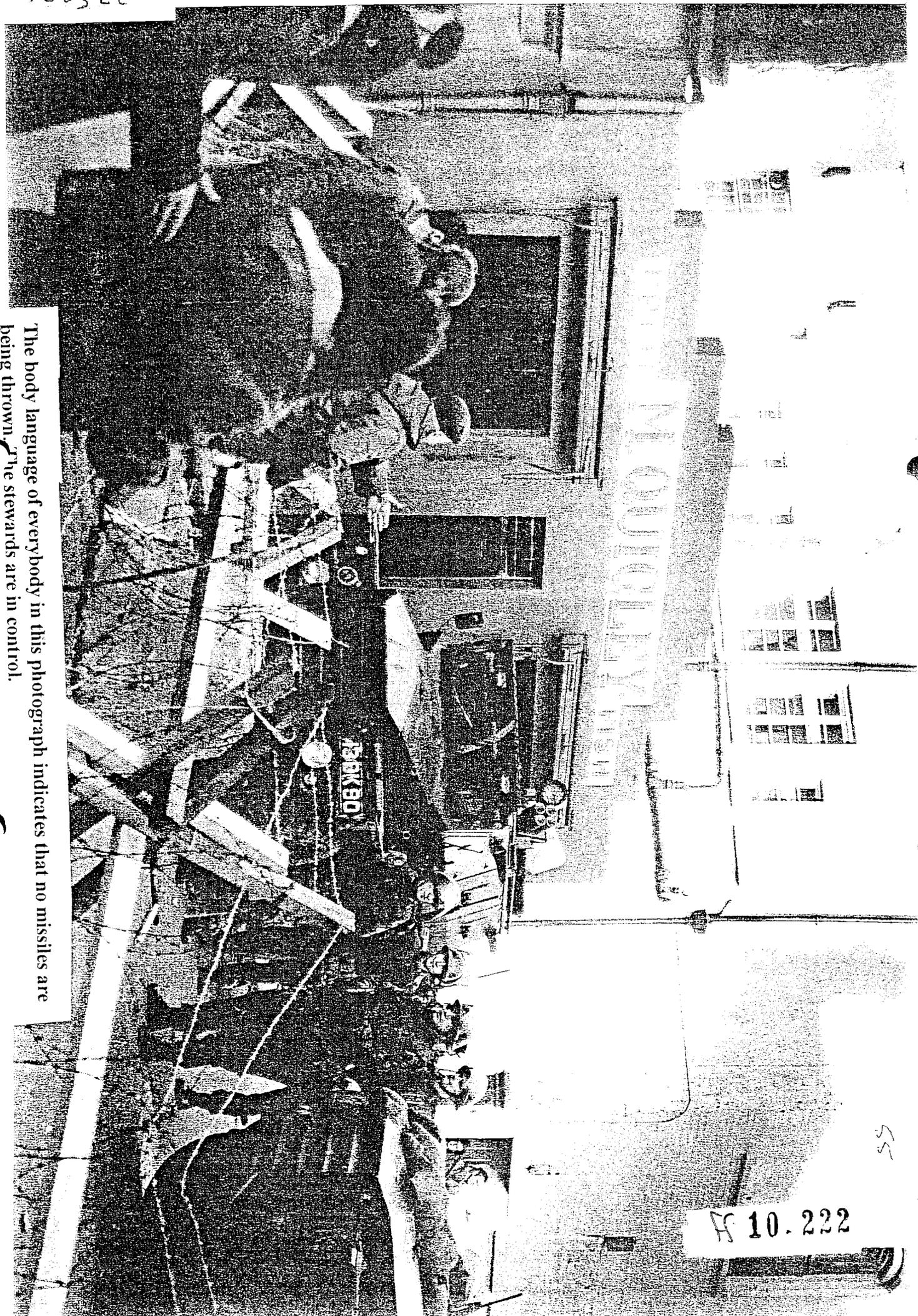
No serious attempt is made to breach Barrier 14. Liam, Bradley in the foreground.



FS 10. 221

54

27522

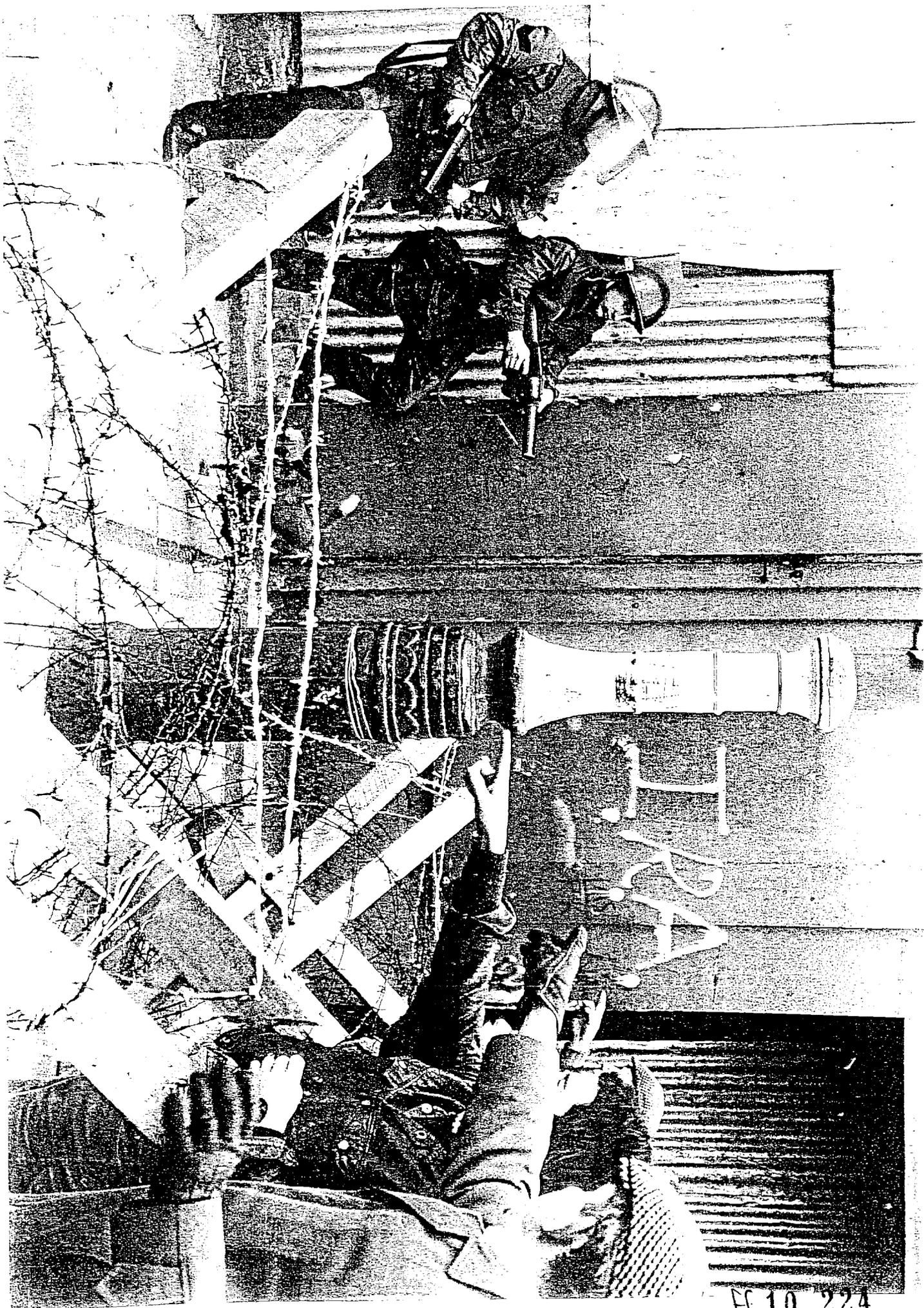


The body language of everybody in this photograph indicates that no missiles are being thrown. The stewards are in control.

55
 H 10.222

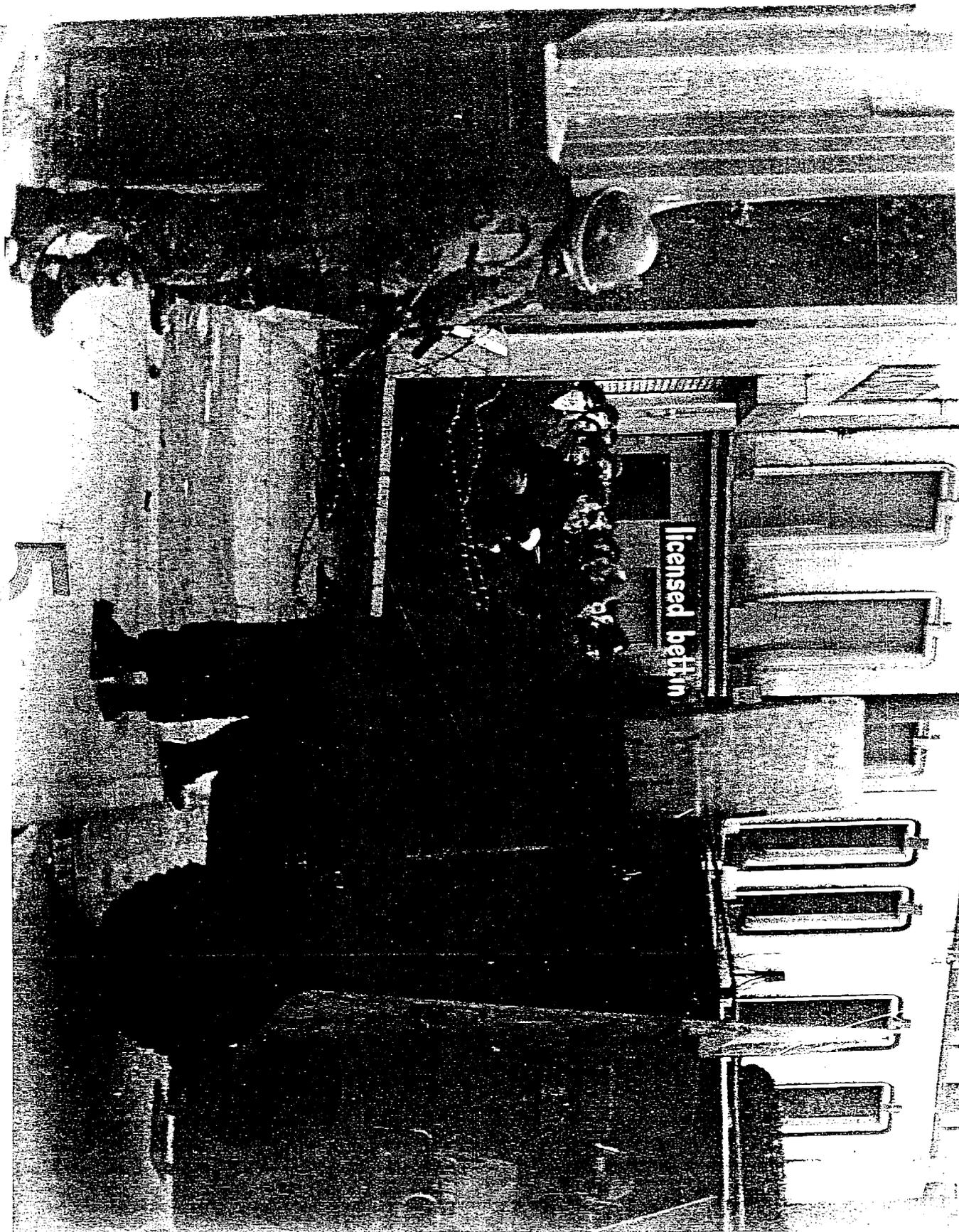


The stewards are not under pressure. They allow individual protests because they are more experienced than the army in 'policing' duties.



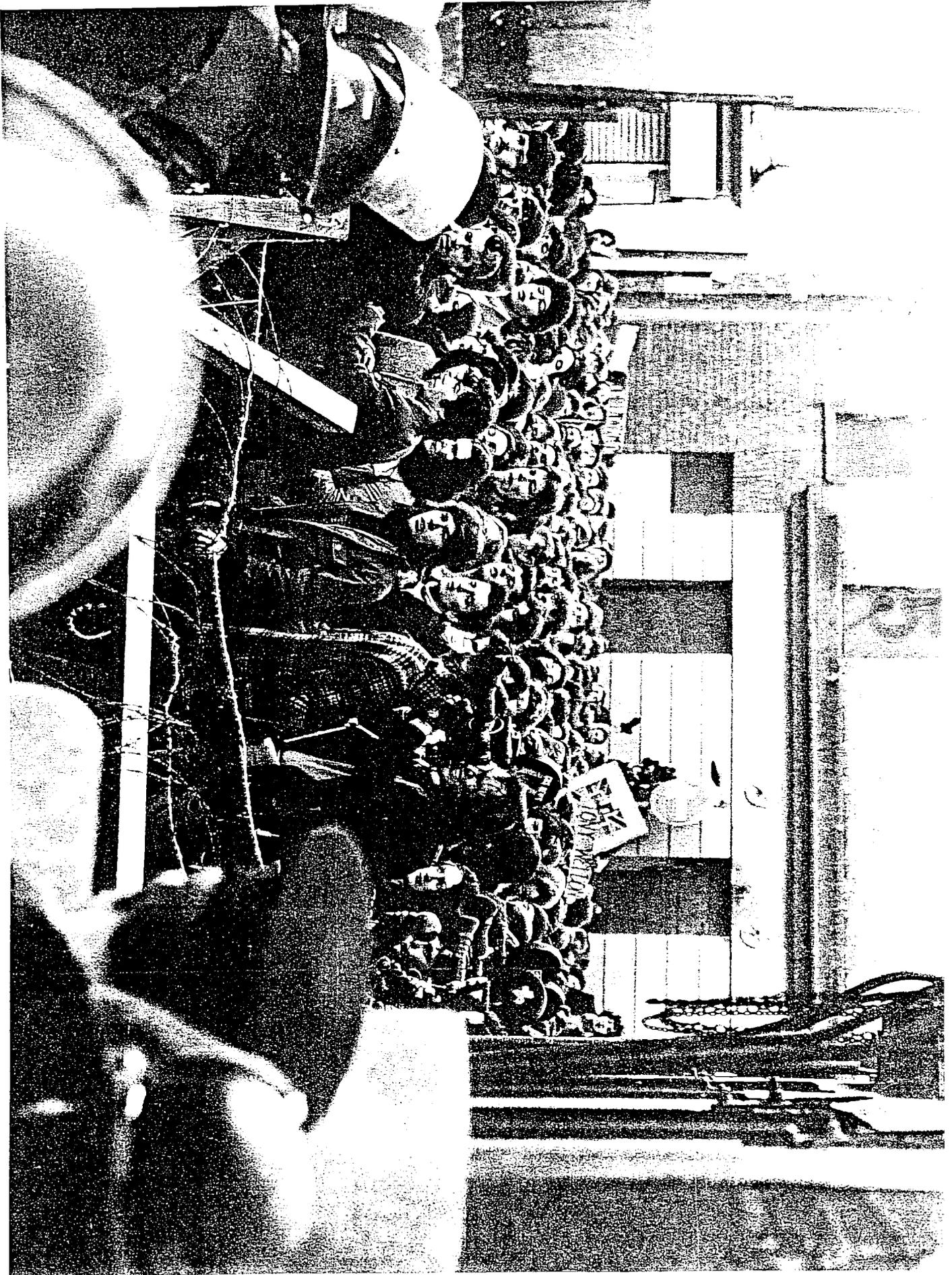
AF 10.224

57



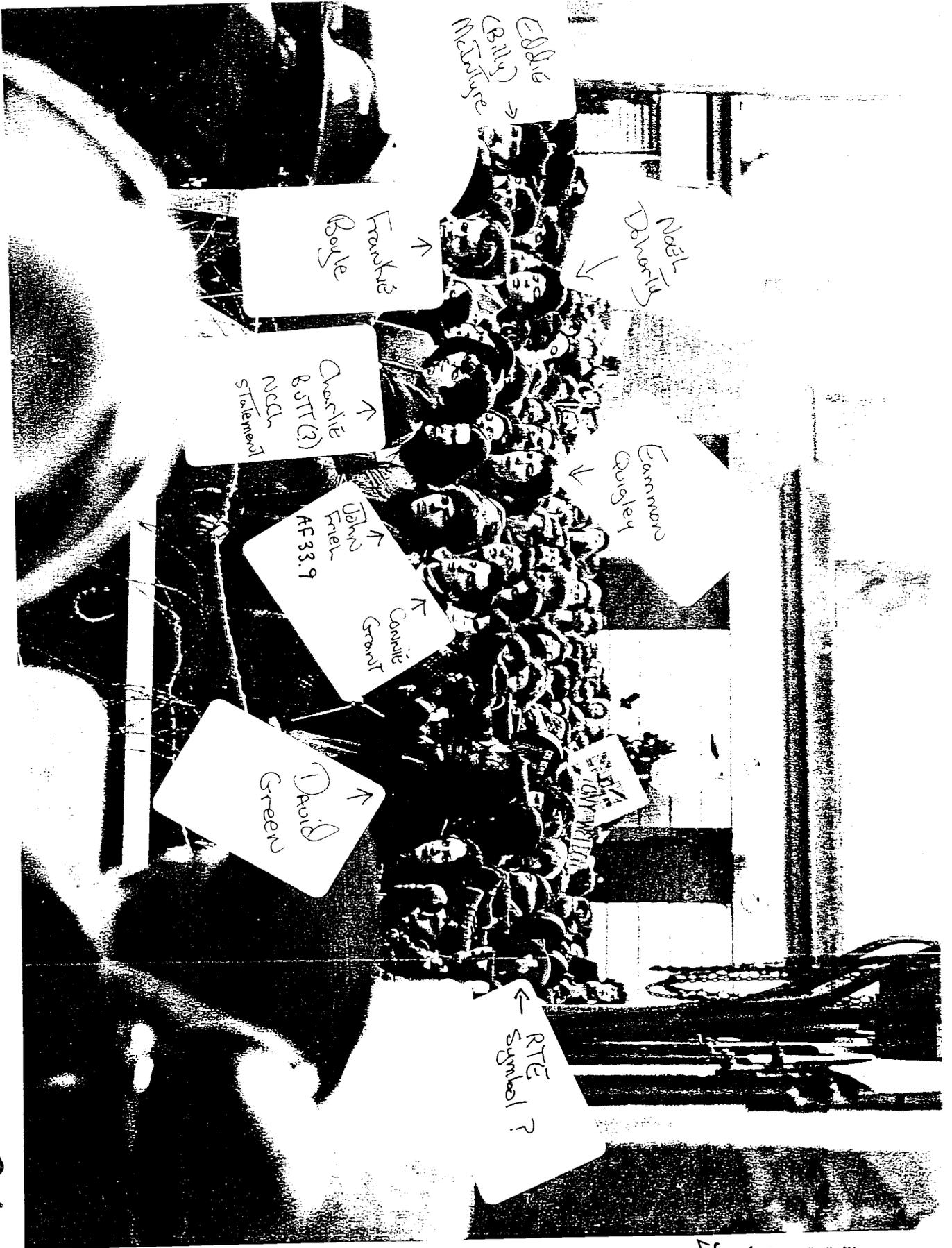
Ff 10.225 21

==



Sweeney can be seen before Frankie Boyle.

EP 4/24.001



24

FS 10.227

6

13

890

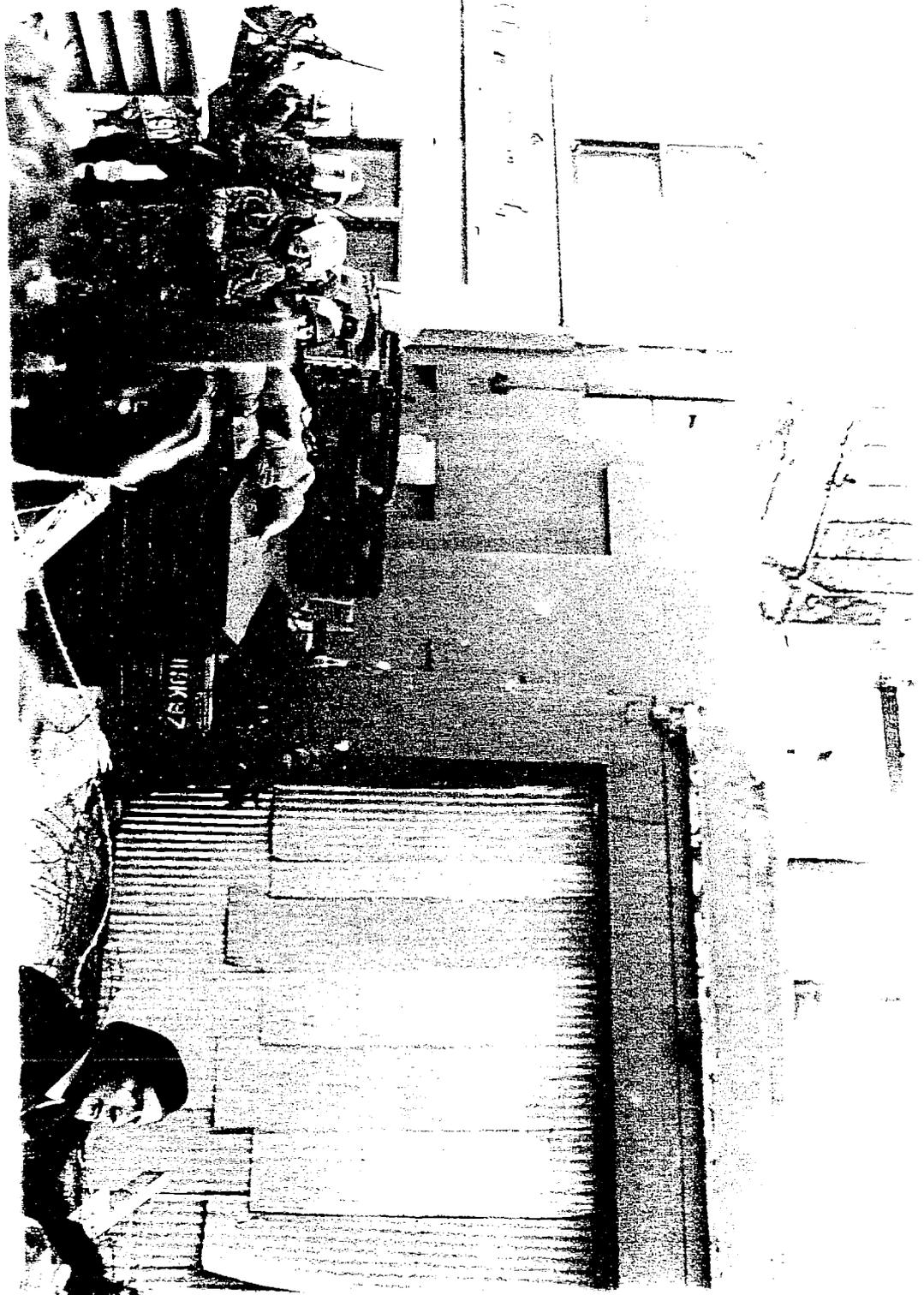


101

FS 10. 228



168

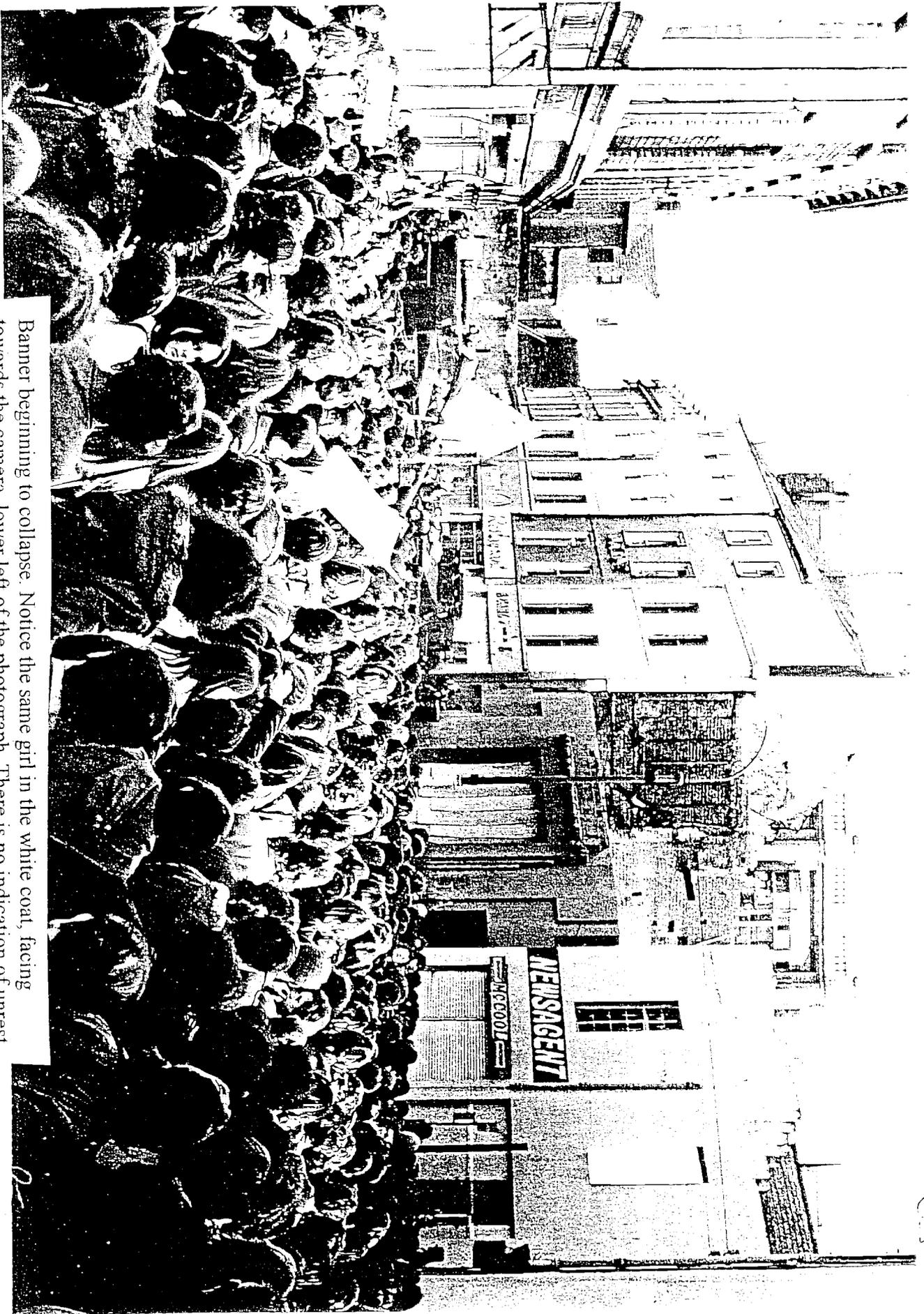


62

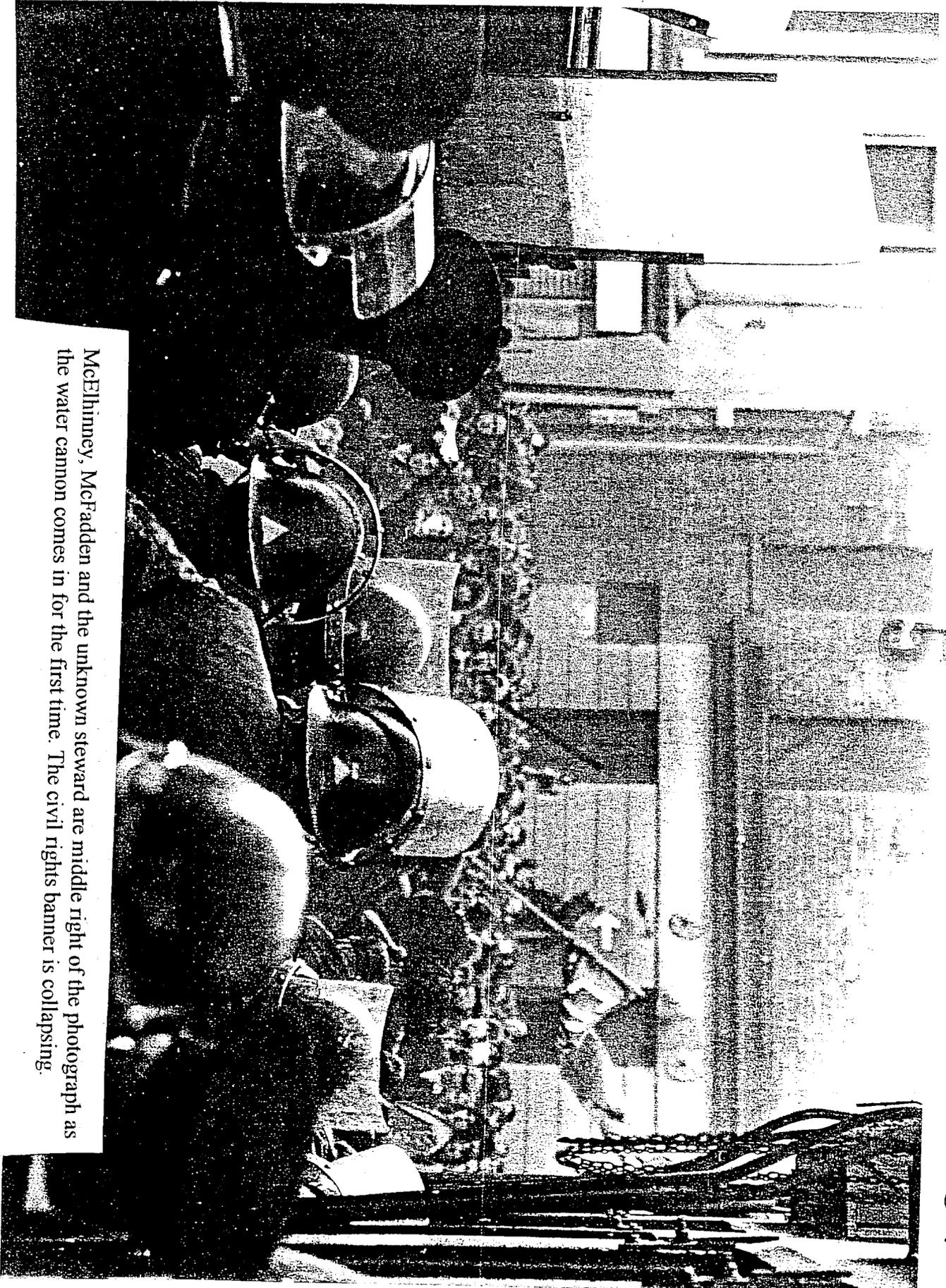
AS 10, 229

Photographs 63-75

) The street is crowded. People are talking to each other when the water cannon is used for the first time. This cleared the streets of stewards and protesters alike. All present are splattered with red dye - easily identifiable in a scoop up operation.



Banner beginning to collapse. Notice the same girl in the white coat, facing towards the camera, lower left of the photograph. There is no indication of unrest or stone throwing. The crowd in the foreground of the photograph seem to be facing towards Chamberlain Street. Many exited in that direction.



McElhinney, McFadden and the unknown steward are middle right of the photograph as the water cannon comes in for the first time. The civil rights banner is collapsing.

64

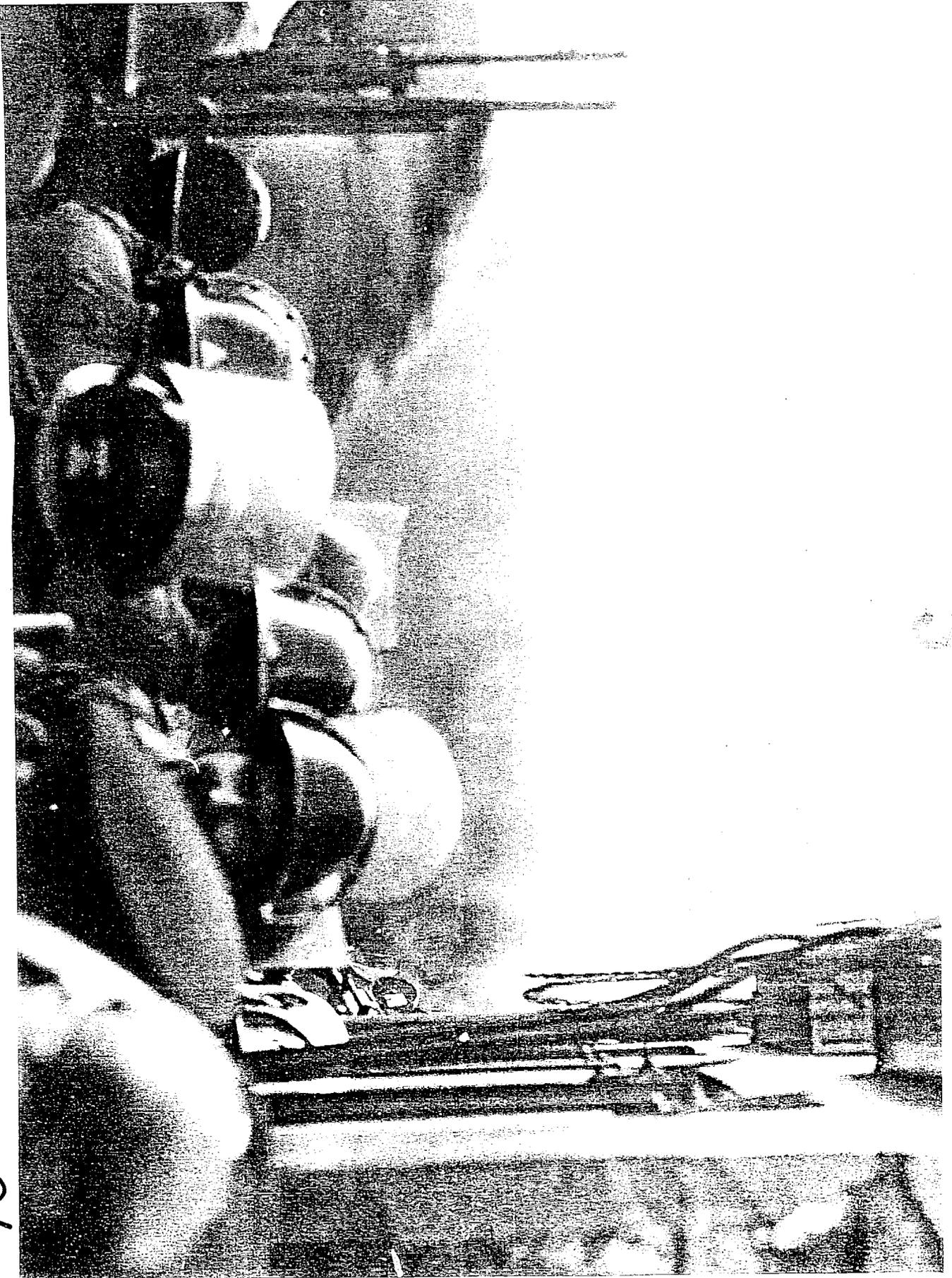
FJ 10.232



The water canon is used for the first time. A number of stones have been thrown. The number can be estimated.

FS-10, 233

5

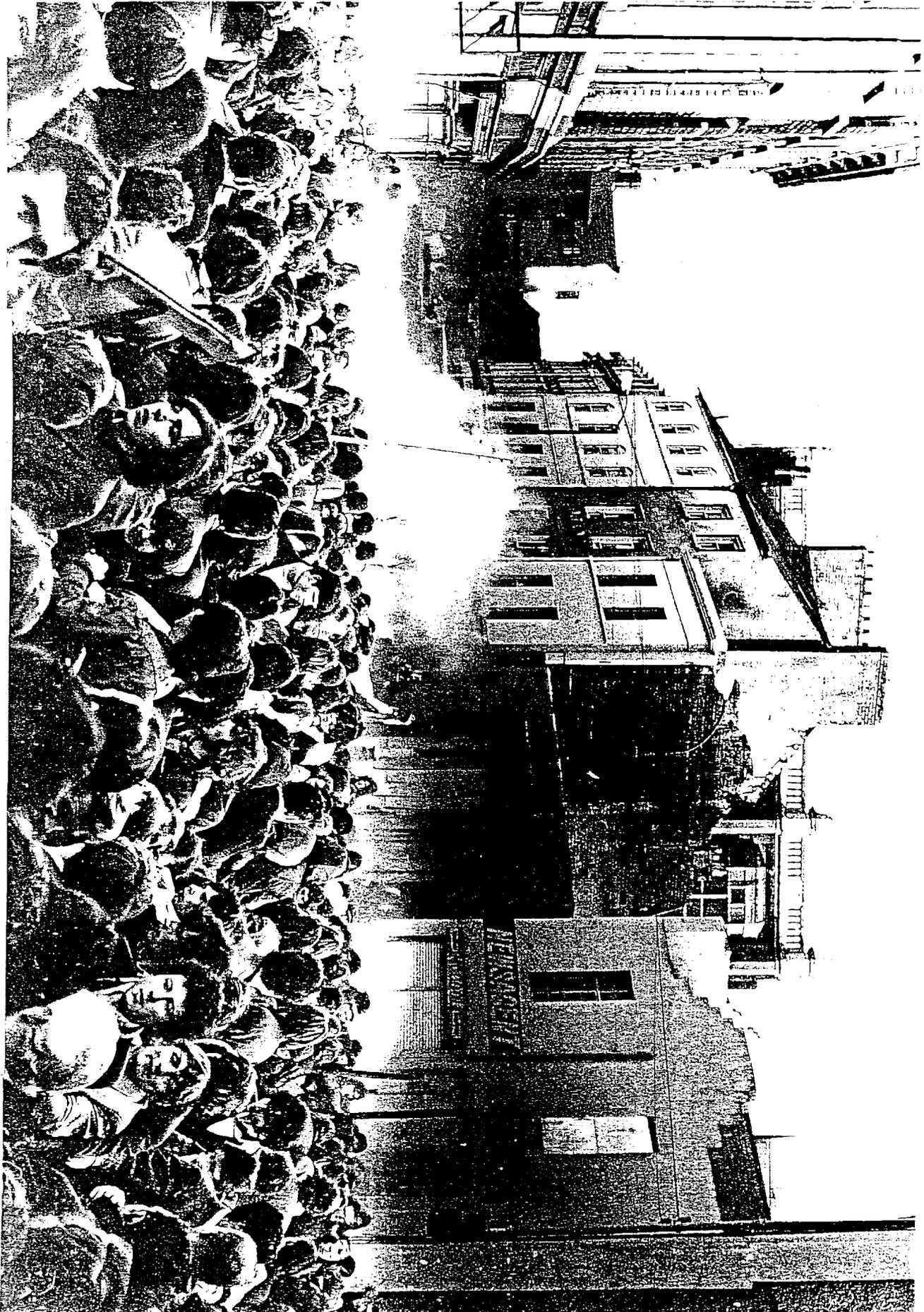


Water cannon moves up for the first time.

26

FS 10.234

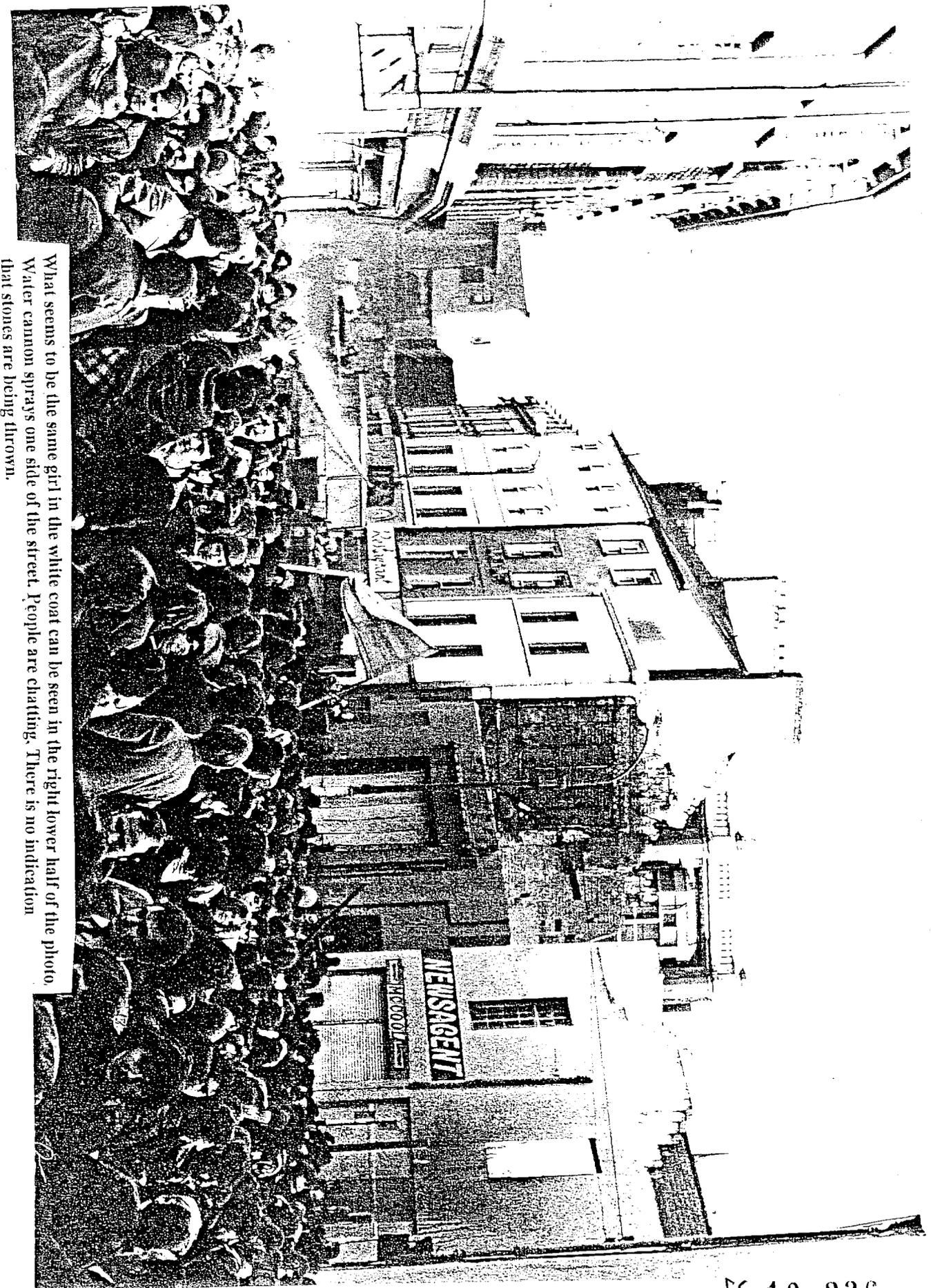
66



Crowded street as the water cannon sprays each side. Michael Bridge is front right.

H10. 235

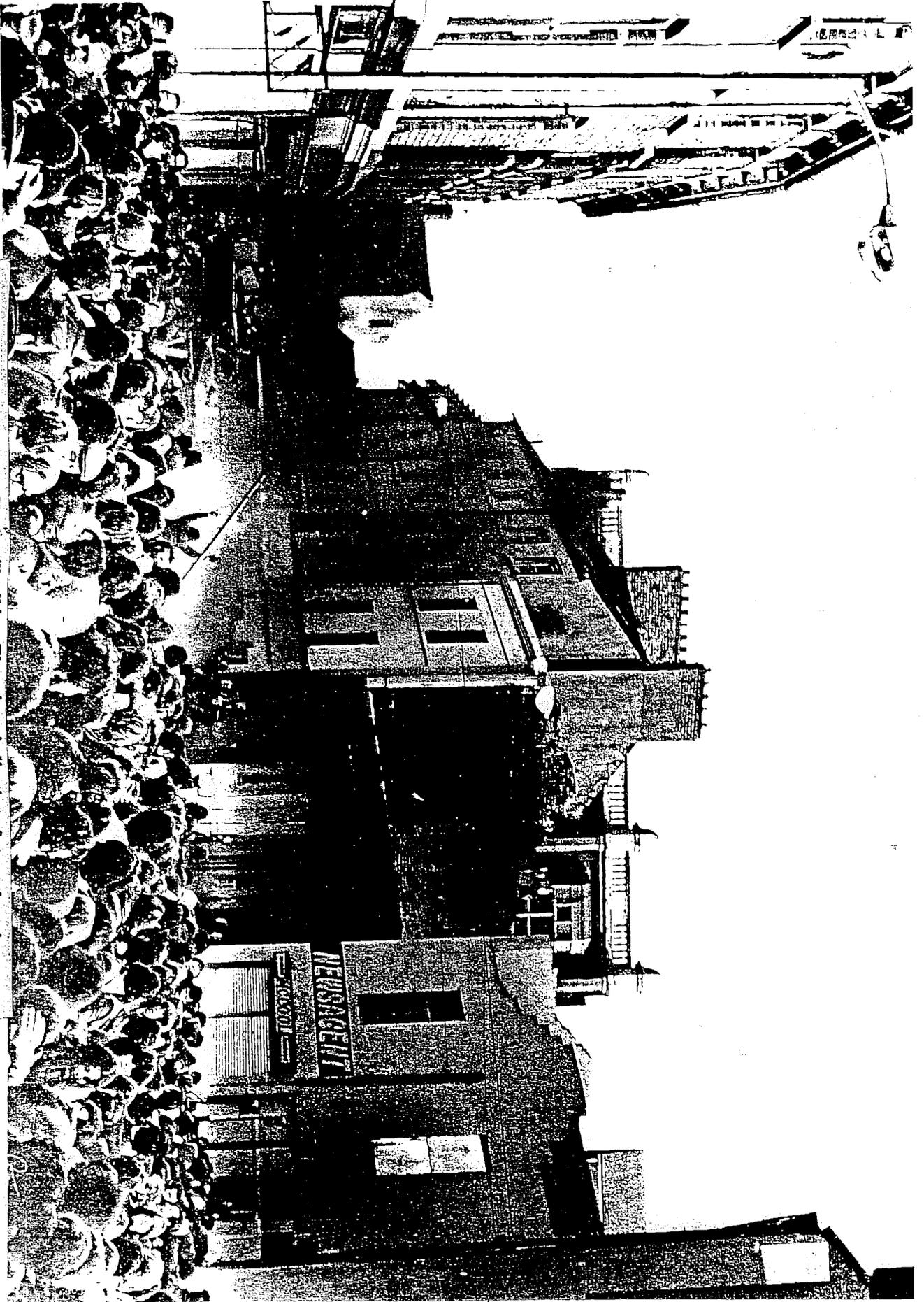
67



What seems to be the same girl in the white coat can be seen in the right lower half of the photo. Water cannon sprays one side of the street. People are chatting. There is no indication that stones are being thrown.

605

PS 10.236



Girl in lower right of photo. She is still talking. There is no indication of stone throwing. Water cannon sprays the other side of the street. There is a man with his hands in the air at the front of the crowd.

68

L8L



FS 10.238

70

100 LSL/L3



M. Bridge
↓

↖
S. Adams

James
O'Connell
↓

FS 10. 239

71

The civil rights banner can be seen in the centre of the photograph.



FS 10.240

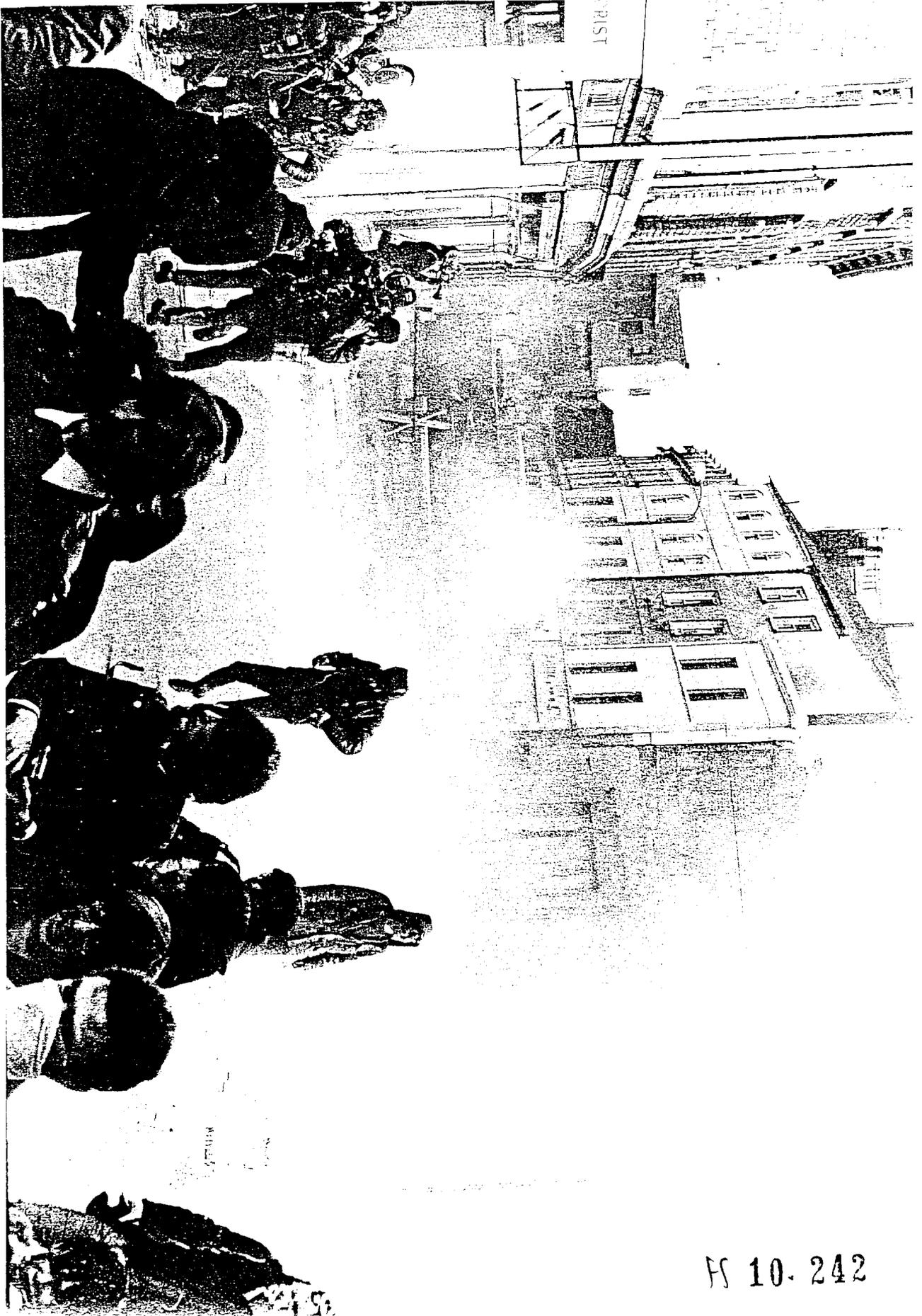
72



The water cannon is used for the first time. McElhinney can be seen in centre picture, under the water jet, walking away. There seems to be a stewards arm band in the hand of Michael Bridge can be seen to the left of the picture.

10. 241

73

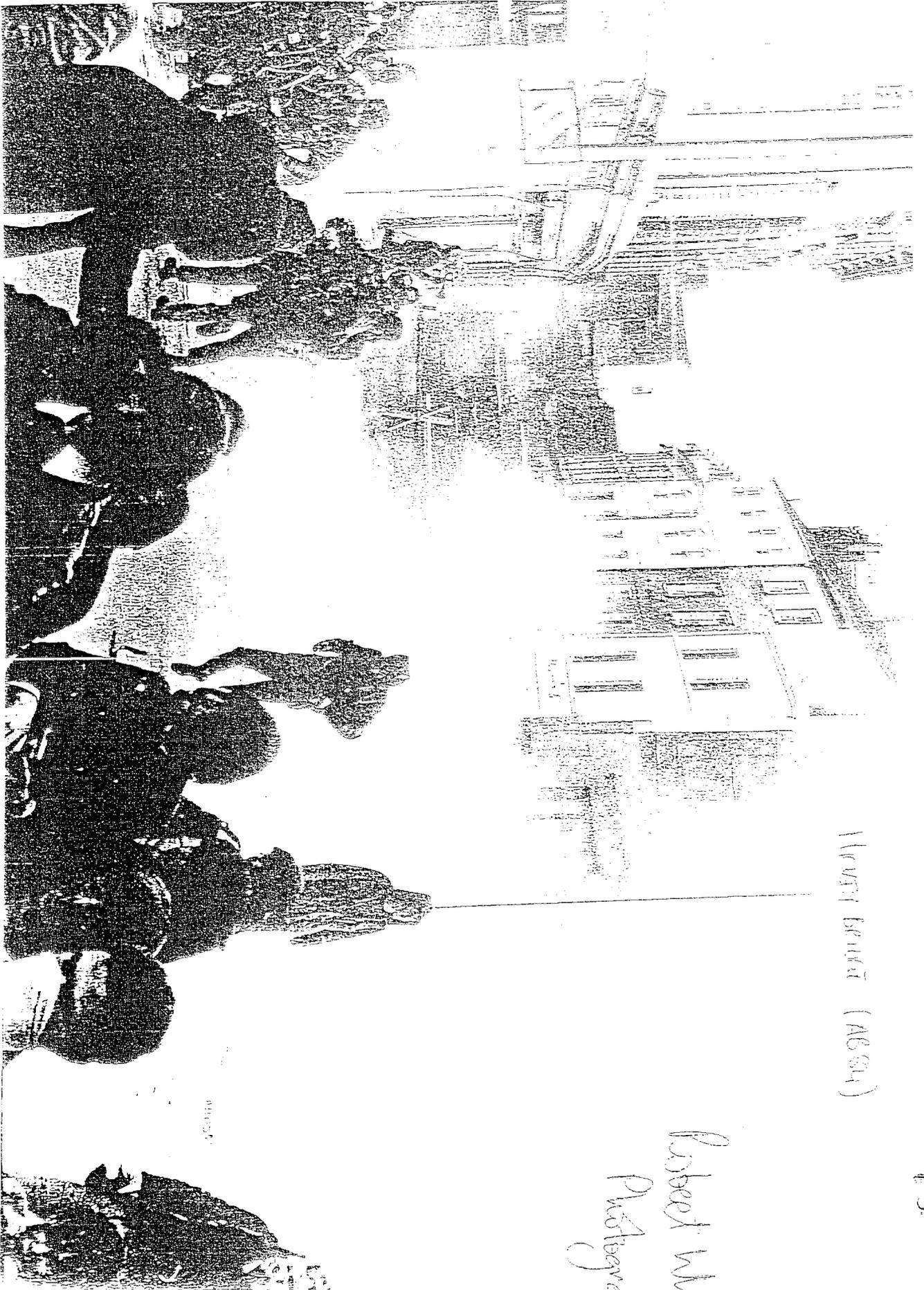


The street is cleared. Michael Bridge is one of the last to leave.

PS 10. 242

7L

3940



WORTH BRIDGE (ABSEN)

Robert White
Photograph

10. 243

75

VIDEO FOOTAGE

The early stages of the march are captured on **V25 at 0.40-2.10**. The progress of the breakaway group is captured on **V25/2.13 to 2.26**. The breakaway group is not homogeneous. The breakaway group undoubtedly contained those bent on rioting. But there were others not committed to, or intent in rioting - irate marchers desirous of going to the Guildhall (many had thought that that was the march's destination), media people, onlookers and civil rights stewards. The NICRA march goes down Rossville Street. The containment of the breakaway group by the stewards is captured on **V48/0.54 to 1.12**. Ivor McElhinney walks to Barrier 14, once containment is achieved. **V48/1.12 to 1.16**. He appears and disappears behind security personnel as he walks forward, so the total number of paces he takes is unknown. NICRA submits that he may well have walked 20 yards because McElhinney disappears behind the officer in charge and Inspector Junkin, who both can be seen on this video clip, [see **Photograph 42**] as he approaches Barrier 14, Missiles are thrown as Inspector Junkin makes his public announcement. **V53/16.40-16.45**. The stewards retain control as the crowd presses forward gradually to

Barrier 14. There are a number of stewards in this footage at Barrier 14. **V53/16.22-17.04**. McFadden, McGlinchey, Bridge and Sweeney are prominent at all times. Nobody resists the stewards when they are moved back from Barrier 14. Body language does not indicate that stones are a problem at this stage for stewards, soldiers or the people packed into William Street. Noise levels and general unrest places the situation at the difficult end of stewarding duties. Sweeney is to the fore in moving the crowd back as the water cannon comes in for the first time. **V25/2.40 to 3.00**. There is a clear edit at 2.43 because the sound is different and there is no sign of Frankie Boyle or the man in **Photograph 53** who grabbed Barrier 14 at some stage. A number of the individuals nearest Sweeney at Barrier 14, when the water cannon is initially used, are cameramen and photographers. It is a tenable proposition, upon viewing this clip of video, to suggest that the stewards had sufficient control to start clearing William Street. This was not a situation that Operation Forecast envisaged.

HISTORICAL REPORTS AND BARRIER 14

G 133.886

This is an extract from the **22 LAD Regiment RA Historical Report**. It covers operations by the Regiment in Northern Ireland from November 1971 to March 1972. It recalls the events at Barrier 14 on January 30 1972. The Introduction states:

At each side of the street was a 1 ton Armoured vehicle nose turned towards the barrier and slightly towards the centre of the road. In front of the vehs [sic] and between them and the walls of the buildings were soldiers with shields and behind them soldiers armed with baton guns. Each barrier was held at platoon strength and there was a minimum of eight baton guns.

Diary of Events

1536 Large lorry near head of marchers turned into Rossville Street Many followed but a considerable number mostly

male, approached Barrier 14. Attempts were made to interfere with barrier, RUC officer addressed crowd but got his hat knocked off by a stone. Stewards did attempt to control the crowd but with no success and eventually left.

1545 Water cannon used against rioters at Barrier 14....hooligans become much more vicious and iron piping, paving stones and sewer gratings were thrown.....volleys of baton rounds fired by troops at **Barriers 12, 13 and 14 held them off.**

1559 Crowd in William Street 150 strong..... about 70 in front of Barriers 12 and 14.

1610 Elements of 1 PARA pass through barrier 14.

Comment

Mention is made of the use of baton rounds. There is no reference in the **Historical Report** to the **persistent use of CS Cartridges and Grenades at Barriers 12 and 13**, which were under the direct command of **11 Battery, Light Air Defence Regiment**.

A Coy 2 RGJG 114a 743.1

This Company was placed under the command of 22 Lt AD Regt RA for Operation Forecast and were deployed, at platoon strength, at Grid 43421690 - William Street.

William Street

1534 Actively hostile crowd approaches barricade throwing stones.

1535 Coy Comd attempts to talk to ringleaders, but is manhandled.

1537 RUC Insp orders crowd to disperse, repeating the warning three times through loudhailer.

1540-

1558 Coy Comd orders the firing of 137 Baton rounds in volleys of 8 and twice uses water cannon to disperse crowd who attempt to break barricade and throw large quantities of stones, bottles and iron bars.

1600 Coy of 1 PARA pass through barricade. (Approx)

Comment

The time of the arrival of the breakaway group is different in each report. The time span between the arrival of the breakaway group and use of the water cannon for the first time is different in each report, as

is the time that C Company pass through Barrier 14. The two reports record the only reason given for use of the water cannon. The reports record that attempts were made to:

(a) interfere with barrier

(b) break the barricade.

There was no serious attempt to break the barricade and rioting occurred after the water cannon was used for the first time.

Transmissions re Barrier 14

277.	0	61Y	Zero, 61 Yankee. The main body of the crowd now seems to be halted on Aggro Corner. Over.
278.	61Y	0	Zero. Roger. Out.
279.	0	61Y	Zero, 61 Yankee. The crowd now definitely moving down William Street towards Waterloo Place. Over.
280.	61Y	0	Zero. Roger. Out.
281.			Zero. Roger.
282.	0	90A	Hello, Zero, this is 90 Alpha. The head of the crowd has now reached serial 14. The Sunray there is speaking to them at the moment. Currently all is peaceful. Over.
283.	90A	0	Zero. Roger. Out.
284.	0	90A	Hello, Zero, this is 90 Alpha. Initial reports of crowd becoming hostile at serial 14 and a certain amount of stoning. Over.
285.	90A	0	Zero. Roger. Out.
286.	90A	65	Hello 90, this is 65. Can you be prepared to lift your barriers 12 and 14 should we require to push through them to disperse these crowds. Over.
287.	65	90A	90 Alpha. Roger. Out.
288.	0	90A	Hello, Zero, this is 90 Alpha. Currently Rucsack is talking to the crowd at serial 14. As far as the crowd is concerned, William Street and Creggan Street are completely blocked at the moment and we get reports of continued movement from Lone Moor Road into the area. Over.
289.	90A	0	Zero, roger. And is there more reports of violence in the area of 14, and is it now in fact spreading towards 12 and 13? Over.
290.	0	90A	90 Alpha. No. We only had an initial indication of a limited amount of stoning. Latest reports show that Rucsack are talking to the crowd there. Over.
291.	90A	0	Zero. Roger. Out.
292.	90A	65	Hello, 90, hello 90, this is 65. Over.
293.	65	90A	90 Alpha. Send. Over.
294.	90A	65	65, from our Sunray. Be prepared for movement through

F 10.254

295.	65	90A	serials 12, 14 and 16. Over.
296.	0	76	90A. Roger. Out. Hello, Zero, this is 76. The tail of the crowd has just reached the junction Westland Street/Lone Moor Road. We believe the estimate of the size of this crowd to be considerably in excess of the 3,000 which was reported earlier. Over.
297.	76	0	Zero. Roger. Out.
298.	0	90A	Hello, Zero, this is 90 Alpha. The crowd has split across to serial 15 and are being stoned by about 50 in that area at this time. Over.
299.	90A	0	Zero, roger. Say again numbers. Over.
300.	0	90A	90 Alpha. I say again, five zero. Over.
301.	90A	0	Zero. Roger. Out.
302.	0	76	Zero, this is 76. Ruc sack estimates the size of the crowd at about 10,000 now. Over.
303.	76	0	Zero. Roger. Out.
304.	0	61Y	Zero, this is 61 Yankee. There's a general drift of, I suppose, about 100 cm ... people from Aggro Corner into the waste ground by the Flats in Chamberlain Street. Over.
305.	61Y	0	Zero, roger. Would you care to comment on the latest report received from Ruc sack, which is that the overall size of the crowd is now 10,000. Over.
306.	0	61Y	61 Yankee, We still maintain that it is more in the region of 2,000. The crowd is very spread out and this gives the appearance that there are very many more people taking part than are actually there. Over.
307.	61Y	0	Zero. Roger. Out.
308.	0	76	Zero, this is 76. The tail of the column is now Lone Moor Road/Creggan Terrace. Over.
309.	76	0	Zero. Roger. Out.
310.			Zero Alpha. Roger. Out.
311.	0	61Y	Zero, this is 61 Yankee. Your large water pistol seems to have removed all the crowd now onto Aggro Corner. There seems to be a general move down, er, down Rossville street.

AP 9 . 90

FS 10.255

312.	61Y	0	Over.
313.	0	90A	Zero, Roger, Out. Hello, Zero, this is 90 Alpha. A certain amount of stoning at serials 14 and 15. Neptune has been used at serial 14 with considerable effect. Over.
314.	90A	0	Zero, Roger, Out.
315.	0	61Y	Zero, this is 61Y. Reference the state of the crowd, apart from the hooligan fringe, the vast majority of people now in the area of the waste ground by the Flats and on the ... on Aggro Corner look as though they're not quite sure what they're going to do next. Over.
316.	61Y	0	Zero, Roger. Can you estimate the numbers of this group now? Over.
317.	0	61Y	61 Yankee. We still reckon that it's about ... it's in the region of 2,000 people. Over.
318.	61Y	0	Zero, Roger, Out.
319.	61Y	90A	90 Alpha, Roger, Out to you.
320.	0	90A	Hello, Zero, this is 90 Alpha. Our call signs confirm that general movement of crowd, although there is a hooligan fringe at serials 14 and 15. Some CS has been used, but this was used by them. I repeat: used by them. Over.
321.	90A	0	Zero, Roger, Out.
322.	0	90A	Hello, Zero, this is 90 Alpha. Serials 12 and 13 also under heavy bombardment from normal hooligans. Over.
323.	90A	0	Zero, Roger, Out.
324.	0	54A	Hello, Zero, this is 54 Alpha. We've just had two shots fired at call sign Hotel 3 from the area of Kildrum Gardens. Strikes seen on the ground in front of their location. No casualties and no fire returned. Over.
325.	54A	0	Zero, Roger, Out.
326.	0	90A	Hello, Zero, this is 90 Alpha. Our sub units at call ... serials 12 and 13 have had to disperse the hooligans with rubber bullets and gas. They have been dispersed now into the general area of waste ground Rossville Street/William Street. Little James Street is completely clear. They report that

AP 9 . 91

FS 10, 256

7

77.	November	Delta 2	Delta 2. I think you'd be as well to get at least 1, 2 and 24 as a mobile in the station ready to move at a moment's notice. Over.
78.	Delta 2	November	Roger, Delta 2. November, out.
79.	November	Delta 2	Delta 2, just for information, this is to control crowd that are in Waterloo Place area at the moment. Over.
80.	Delta 2	November	Roger, Delta 2. November, out.
81.	November	Delta 7	Delta 7 to November. Over.
82.	Delta 7	November	November to 7, Go ahead. Over.
83.	November	Delta 7	Delta 7 to November. Main crowd now turned right into William Street that is they went via Craggan Street into William Street. Some slight aggro at William Street/Rossville Street. Over.
84.	Delta 7	November	Roger, Delta 7. Out.
85.	November	Delta 7	Delta 7 to November. The tail of this procession is now at Meenan Square, repeat, Meenan Square. Over.
86.	Delta 7	November	November to Delta 7. Roger. November, out.
87.	November	Delta 7	Delta 7 to November. Head of procession now William Street/Rossville Street. Over.
88.	Delta 7	November	Roger, Delta 7. November, out. Time now 1535 hours. November, out.
89.	November	Delta 2	2 to November. Over.
90.	Delta 2	November	November to Delta 2. Go ahead. Over.
91.	November	Delta 2	Delta 2 to November. There seems to be quite a bit of stoning in William Street from Chamberlain Street direction at the barricade here. Over.
92.	Delta 2	November	Roger, Delta 2. Out.
93.	November	Delta 2	A number of stewards are now trying to control the stone-throwers. Over.
94.	Delta 2	November	Roger, Delta 2. Out.
95.	November	Delta 7	Delta 7 to November. Over.

96.	November	Delta 2	Delta 2 to November. Over.
97.	Delta 7	November	November to Delta 7. Walk.
98.	Delta 2	November	Go ahead. Delta 2. Over.
99.	November	Delta 2	Delta 2 to November. The parade has now stopped at Chamberlain Street. The hooligan crowd are in the front. Paving? stones are being thrown etc. but they're being held by the stewards at the moment. Over.
100.	Delta 2	November	Roger. Delta 2. Out to you. 2.
101.	Delta 7	November	Delta 7. go ahead now. Over.
102.	November	Delta 7	Delta 7 to November. Mine's a repeat of that message. Over.
103.	Delta 7	November	Roger. Time now 1538 hours. I say again. 1538 hours. Out. November. out.
104.	November	Delta 2	2 to November. Still carrying on stoning. Over.
105.	Delta 2	November	November to Delta 2. Roger. Out.
106.	November	???	???. November.
107.	November	Delta 7	Delta 7 to November. Over.
108.	Delta 7	November	November to Delta 7. Go ahead. Over.
109.	November	Delta 7	7 to November. They're right up against the barricade now. A lot of stoning. The stewards are trying to push them back. Over.
110.	November	Delta 7	Roger. Delta 2 (sic). Out.
111.	India 21	November	November to India 21. Over.
112.	India 21	November	November to India 21. Over.
113.	India 21	November	November to India 21. Over.
114.	November	Delta 7	Delta 7 to November. Over.
115.	Delta 7	November	November to Delta 7. Go ahead. Over.
116.	November	Delta 7	Delta 7 to November. Estimate of this crowd is in excess of 3,000. William Street, Creggan Street are clobber-a-block and the tail of the parade is now at Westland Street/ Lone Moor Road. Over.

AP 9. 137

FC 10. 258

117.		November	November	Roger, Delta 7. Out.
118.	November	Delta 2	Delta 2	??? to November. Over.
119.	Delta 2	November	November	November to station calling. Go ahead. Over.
120.	November	Delta 2	Delta 2	Delta 2 to November. The waterwagon now in action, firing red dye into the crowd. Crowd has moved safely back with it. Over.
121.	1544	Delta 2	November	Roger, Delta 2. Out. Time now figures 1544 hours. Out.
122.	November	November	Serial 3	Serial 3 to November. Contact. Over. Waterwagons in use by the military at the moment. Over.
123.	Serial 3	November	November	Roger. Out to you.
124.	Serial 3	November	November	Go ahead to other station calling. Over.
125.	November	November	Serial 3	Serial 3 to November. A lot of stone-throwing here at the Castle Street junction. Over.
126.	Serial 3	November	November	Roger, Serial 3. Out.
127.	November	November	Delta 2	2 to November. William Street is now cleared immediately in front of the barricade. Over.
128.	Delta 2	November	November	Roger, Delta 2. November. out.
129.	India 17	November	November	To India 17. Over.
130.	November	November	Delta 7	Delta 7 to November. Were you calling? Over.
131.	Delta 7	November	November	November to Delta 7. No. Out to you.
132.	India 17	November	November	November to India 17. Over.
133.	November	November	Delta 2	Delta 2 to November. Over.
134.	Delta 2	November	November	November to Delta 2. Go ahead. Over.
135.	November	November	Delta 2	Delta 2 to November. The usual hoodigan element is back now at Chamberlain Street stoning the military. Gas has been used Waterloo Street. There has been some stoning there. Over.
136.	Delta 2	November	November	Roger, Delta 2. November. out.
137.	November	November	India 17	India 17 to November. Over.

AS 10. 259

AP 9. 138

The Porter Tapes Transcript of Army Radio Transmissions on January 30 1972 - Item 277 at AP 9.89 to Item 315 at AP 9.91 record that **a certain amount of stoning** did occur.

The Porter Tapes Transcript of RUC Radio Transmissions on January 30 1972 - Item 87 at AP 9.136 to Item 121 at AP 9.138 - indicate that 9/10 minutes elapsed between the arrival of the march and use of the water cannon for the first time. The transmissions give a flavour of the matter. At all times the stewards are there.

On the basis of Army Log entries and the Porter Tape Transcripts, **a minimum of six and a maximum of ten minutes** pass between the arrival of the march at the general location and the initial use of the water cannon.

CS GAS

G95.572 at 4(a) > Use of Force indicated that:

CS Gas is not to be used throughout this event, except as a last resort only if troops are about to be over - run and the rioters can no longer be held off with baton rounds and water cannon.

The scenario outlined in 4(a) did not pertain in Little James Street at any time during the day. INQ 1326> Day 301/105 to Day 301/107. was a Major in command of 11 Battery, 22 Light Air Defence Regiment at Barrier 12 and Barrier 13. He was unaware of the detail of 4(a).

At G 98.593>Alfa Ammo Expenditure CLN - it is reported that

- (i) 65 x CS Cartridges and
- (ii) 15 x CS Grenades were used.

The army used **CS Gas**, recklessly and precipitately, in Little James Street, at approximately the same time as the water cannon operated for the first time at Barrier 14, **CS Gas** was laid down in huge volumes by army units cloaking a huge public gathering in a blanket of toxic smoke.

The use of **CS Gas** at Barrier 12 was **contrary to the terms of Operation Forecast** and orders of the day.

After the Water Cannon is used for the First time

The initial use of the water cannon removed the responsibility of the stewards. Until then they had **exercised a policing function in relation to persons who were not on the march.** . Once the street was cleared, there was no longer a need for stewarding.

After the water cannon was initially used a limited number of young men return to the vicinity of Barrier 14. A total of **137 baton rounds** were fired at Barrier 14 - **G114a.743.1** - more than the number of people still in the vicinity. The rioters threw the vast bulk of the stones thrown on the day after the water cannon is used for the first time and confronted the army behind shields. No army injuries were recorded at Barrier 14 during the day > **Sitrep No 735 - G 98.594.**

Conclusion

The version of the events on Bloody Sunday relating to the disturbances at Barrier 14, initially came from the military authorities and was readily accepted by the British Government. It contended that a crowd of young hooligans on the fringes of the Civil Rights march approached Barrier 14 and attacked it immediately with paving stones, bottles and iron bars. **NICRA submits that this account lacks any coherent foundation.**

After the emergence of the breakaway group at William Street/Rossville Street, the stewards quickly remedied the situation, short of the junction of Chamberlain Street and William Street. The stewards carried out their duties at all times with calmness and efficiency, **in the midst of crowd noise levels that made it difficult to communicate and flying missiles that endangered their safety.**

On the basis of the photographic and video evidence to hand, missile throwing seems to have abated when the street before Barrier 14 became bunged with people. The barrier itself became a focal point for protesters, and attempts were made by a number of people to grasp or manhandle it. Barrier 14 was however, never breached at any stage. The stewards linked arms and began to move people back from the Barrier. There was clear ground between the crowd and Barrier 14, and the situation was under control when the water cannon was deployed. Separate Army Log Entries [**Ante**] indicate that the water cannon was used a minimum of six and a maximum of nine minutes after the crowd arrived at William Street/Rossville Street. The two logs do not match in terms of time sequence or incident sequence at Barrier 14, and they differ by ten minutes in relation to the time that C Company passed through Barrier 14.

The impact of the initial use of the water cannon on the packed crowd gathered before Barrier 14 was described by **Malachy Coyle > Day**

156/79 to Day 156/78. The jet of dyed water cleared the street of stewards, pressmen and protesters alike.

NICRA submits that the use of the water cannon was precipitate and unwarranted. There was no breach of Barrier 14 or serious threat of a breach and no loss of control by the stewards warranting the **Use of Force section of Operation Forecast**. Barrier 14 was not in danger of being over-run and a riot was not in progress. **V2.58 to 3.18**.

An alternative explanation - Day 129/177/24 to Day 129/181/14 - is based on the premise that, even though the stewards were still there, stone throwing was continuing when the water cannon was used for the first time. The key point is self-evident. The stewards showed amazing fortitude and discipline by remaining on duty when the risk of serious injury was apparent. **The stewards were still there in numbers and in control when the water cannon was initially used**, some six to nine minutes after the breakaway group left the NICRA march and moved down William Street.

A clearance of the street by the stewards was not envisaged by the Army and would have obviated the arrest operation. Use of the water cannon upon a peaceful crowd was a viable alternative to lifting Barrier 14 to allow 1 Para to disperse the crowd. Day 267/36-41. The army was committed to implementation of the "arrest operation".

Those charged with implementing Operation Forecast:

- (a) failed to recognise that the stewards were in control of the situation in William Street;
- (b) opened up on the stewards and the crowd in William Street with the water cannon when it was improper and dangerous to do so;
- (c) failed to give adequate, or any, time to the stewards to clear Barrier 14 and shepherd the crowd in William Street back to the march;

- (d) ordered the improper use of CS canisters and grenades in a public place, contrary to the specific terms of Operation Forecast.

Stewarding

- (a) The vast majority of the NICRA marchers obeyed the direction of the stewards to go down Rossville Street, accompanied by the majority of the stewards.
- (b) A number of stewards reacted immediately by leaving the march and containing the breakaway group at William Street/Chamberlain Street.
- (c) The stewards ensured that Barrier 14 was not breached; they diverted large numbers of the breakaway group away from Barrier 14; they were in control of the situation when the water cannon was used for the first time and; they were

the last people to leave the area when the water cannon was used for the first time.

(d) The stewards were still ushering people down Rossville Street as the 1 PARA went in. **Bishop Daly Day 75/7/1-8**.

(e) Stewards provided substantive policing function on the day. **Eamon McCann Day 87/103-104**. They were present at all times, as the march proceeded from Bishops Field to Free Derry Corner.

NICRA submits that there is no proper foundation for any criticism of the stewards in performing their task on the day. If anything, stewards acted beyond the call of duty in dealing with the activities of the breakaway group which assembled at the lower end of William Street.

VII

MARCHES : THE VALIDITY OF THE 1971 BAN

On 9 August 1971 Mr Brian Faulkner, who was currently Prime Minister and Home Affairs Minister of the Northern Ireland Government, with the agreement of Her Majesty's Government (HMG) and the assistance of the British armed forces, re-introduced internment in the Province. Simultaneously, Mr Faulkner, in his capacity of Home Affairs Minister banned all processions and parades in the Province.

Throughout the documentation and the evidential material in the Inquiry, the NICRA march, organised for 30 January 1972 as a demonstration against internment, has been consistently described as illegal. And no one at the time thought otherwise, although the executive committee members of NICRA, and no doubt NICRA supporters who went on the march, were openly defiant of the ban,

simply because they considered that there was no other way in which they could protest democratically and peacefully against the deprivation by Government of some basic human rights. Lord Balniel, in the House of Commons on 1 February 1972, described the march, as a “deliberate defiance of the legal order which banned it” (Hansard, HC, Vol 830, Col 270).

Strictly speaking, the ban on marches, as at 30 January 1972, was based upon an order made on 12 November 1971 expressly under section 2(2) of the Public Order Act (Northern Ireland) 1951, revoking and replacing (with only a minor and irrelevant modification) the Order of 9 August 1971. Both Orders were, in fact, made pursuant to section 2(2)(b) of the Public Order Act 1951 (as amended in 1971 (see attached)) - namely, that in consequence of information furnished to him [the Minister of Home Affairs] by the Chief Constable that the holding of any march “is likely to cause serious public disorder or to cause undue demands to be made upon the police or military forces”, the Minister of Home Affairs could,

and did make an order banning marches in the whole of the Province for six months, from 9 August 1971 to 8 February 1972. (See Annex 1 and 2 herewith: It is submitted that, if the Order of 9 August 1971 was made illegally, such illegality infected the successor Order of 12 November 1971 which was similarly timed to end on 8 February 1972.)

While, on the face of it, Mr Brian Faulkner, *qua* Minister of Home Affairs, purported to act upon information from Mr Graham Shillington, the Chief Constable (and the tribunal has heard no evidence of any information supplied to Mr Faulkner), the reality was that the ban was inextricably and politically linked to the introduction of internment on 9 August 1971. The twin-track approach was prompted by political events which immediately preceded the introduction of internment, (including attempted persuasion by HMG on the Republic of Ireland to take constructive action to intern IRA suspects in the Republic), on condition that marches were prohibited (G5.54. At the meeting of the Stormont Cabinet at 10.30am on 9 August 1971, Mr Faulkner announced both the introduction of

internment in the early hours of that morning and simultaneously the ban on marches “so that the security forces might be released of any commitments in connection with parades at such a time.....” (G6.56).

The discussions between Stormont and Whitehall in the days immediately preceding 9 August 1971 disclose the interplay between the decision to re-introduce internment and the control of marches.

Internment/Marches

The re-introduction of internment - it had been used ever since Partition in 1921 and, more specifically during the 1956-1962 IRA campaign - was always an option to the Stormont Government responsible for law and order. By the end of July 1971 it was envisaged as a potential weapon against mounting unrest and activity from the recently emerged Provisional IRA. While Mr Brian Faulkner had been contemplating such a move, the British Government was well aware of the political implications. In a debate in the House of Lords on Northern Ireland on 23 September 1971 (**Hansard, HL. Vol. 324, Col. 186-187**) the Lord Chancellor, Lord Hailsham, indicated that he and his colleagues in the Heath Cabinet had viewed the introduction of internment in August 1971 "with intense repugnance" but thought that it was the lesser of two evils, the alternative being Direct Rule. In a memorandum of July 27 1971 (**G3bb 48.13.4**) to the Ministerial Committee on Northern Ireland in preparation for a meeting in the autumn between the UK Prime Minister and the Taoiseach, the Home Secretary was preparing for

such an eventuality, with the possibility that it should extend on both sides of the Irish border. The same document noted the pending march of the Apprentice Boys of Derry on August 12 and stated that “legally the decision [to ban marches] is for the Northern Ireland Government, and if we [HMG] think that an outright ban be necessary this might be particularly difficult for Mr Faulkner”. (Lord Carrington, in evidence to the Inquiry, said that in January 1972 when the ban was extended beyond 8 February 1972, Brian Faulkner was “still reluctant” to ban marches Day 280/36/21 to Day 280/38/4 While Whitehall was preparing for the response from Dublin to internment and a ban on marches*, it was simultaneously indicating to Stormont the views of the British Government. In preparation for the projected meeting with Mr Brian Faulkner, in advance of the Apprentice Boys’ march on 12 August 1971, the Cabinet’s Defence and Overseas Policy Committee met on 3 August 1971 to discuss the likelihood of internment being introduced (G.3D.48. 18-20). While reluctant to accept internment, the Cabinet Committee considered that

*See Sir Edward Heath’s autobiography, *The Course of my life*, p.435;

if the decision to intern was taken, it “would be as much a political step as a military one” (see also Sir Edward Heath in his oral evidence: Day 289/115/7 to Day 289/118/1 where he added that “marching was diverting resources”. The Prime Minister is recorded by Sir Burke Trend, in his hand-written note (G3E.48.21), as saying that “any deal would have to ban all marches so long as internment lasted”. A message from the Home Secretary was despatched to Mr Brian Faulkner on 4 August 1971, preparatory to a meeting of the GEN 47 Committee the following day. The Home Secretary, Mr Reginald Maudling MP, made it clear that internment required the consent of the British Government (G4.49):

“The decision whether to proceed to internment is yours to make under the Constitution but it is our mutual understanding, particularly in view of the involvement of UK forces, that such a decision would be agreed beforehand with us”.

Expressing the view that the “GOC is not in present circumstances recommending internment on military grounds” but that “pressure for internment is considerable”, the Home Secretary concluded that if internment were to be introduced before the Apprentice Boys march on August 12 “it would in our view be essential to proceed

simultaneously with the indefinite banning of all political processions". Since the GOC was not advising the ban of the Apprentice Boys' march on 12 August, the suggestion was to postpone the decision about internment.

At that time Mr Brian Faulkner had several options available to him. There was the possibility of deferring the decision to exercise his powers under the Public Order Act until after August 12, a course preferred by HMG: see G4A.49.2. There was the alternative of limiting any ban geographically, i.e. "to Belfast, Londonderry and 'flash-point' areas" (G5.53). But UK Ministers were insistent that the ban on parades had to be total (G5.54) and that it should be without limit of time, as long as internment lasted (G5.52). Mr Faulkner was apprehensive about blanket banning. Past experience of that, from 23 July 1970 until 31 January 1971, was not encouraging (G82.513 et seq.). Alternatively, the ban could be restricted to traditional processions - unlike non-sectarian Civil Rights marches - which were frequently confrontational between the communities. There were the

additional options in section 2(2)(i) of the Public Order Act of banning "open-air public meetings or of such classes of public procession or open-air public meetings as may be so specified". Permutations on the classes of processions were available to the Minister.

At the meeting of the GEN 47 Committee on the morning of 5 August 1971 (G4A.49.1-4) preparatory to meeting with Mr Brian Faulkner in the afternoon, the Secretary of State for Defence, Lord Carrington, concluded (G4A.49.3) that it would be better to let the Northern Ireland Government bring in internment earlier rather than later; "these were arguments for agreeing it at once to the use of internment, coupled with a prohibition of all processions before 12 August". At the afternoon meeting (G5.50-54) UK Ministers said that internment could not be contemplated without "balancing" action against parades, and the Prime Minister made it clear (G5.5052) that "as a matter of decided Cabinet policy, it [internment] must be accompanied by a ban on all parades throughout Northern Ireland

'without limit of time' while internment lasted". Ministers repeated **(G5.54)** that the ban on parades had to be total. Accordingly, agreement was reached; a public statement "would be cleared between the Prime Minister (NI) and the Home Secretary". **(G5.54)**.

Later that evening **(G5A.55.1)** the Prime Minister said:

".....that, after discussing with his colleagues the representations which Mr Faulkner had made at their meeting earlier in the afternoon, he had reached the conclusion that, if the position could be correctly described by saying that Mr Faulkner now wished to adopt a policy of internment and to invoke the statutory powers available to him for this purpose, the British Government would regard themselves as having been consulted by the Government of Northern Ireland and would be ready to acquiesce in this decision and to give the security forces the necessary instructions. This, however, must be on the basis that all marches would be banned indefinitely; even if the Government of Northern Ireland's powers in this respect were of only limited duration, they would have to be periodically renewed".

In response to Mr Faulkner's plea that an indefinite ban was impracticable, Sir Edward Heath said:

".....that the Northern Ireland Government must clearly understand that the British Cabinet, who had considered the situation with great care, would not be prepared to acquiesce in internment unless there was a ban on marches without specific limit of time. They would not be prepared to have this card played against them again when the Northern Ireland Government next found themselves under pressure. Internment was a major decision, which could not be said - as the GOC had earlier made

clear - to be justified by any military necessity. It must therefore be regarded as a political act, which would be thought to be directed against one faction and must accordingly be matched by some political action, in the form of a ban on marches, which would represent its counterpart in relation to the other faction”.

In conclusion, the Prime Minister emphasised that “the British Cabinet would not acquiesce in internment unless marches were banned, to which Mr Faulkner agreed to proceed accordingly (G5A.55.4). When Mr Faulkner indicated, on 19 January 1972, that the ban was to be extended for a year beyond 8 February 1972 (the terminal date for the August 1971 ban) he was merely fulfilling HMG’s insistence that the ban on marches ran in tandem with internment. (Sir Edward Heath stated in his oral evidence that the British Government was neither consulted nor told in advance that Mr Faulkner was proposing to extend the ban for another year, as from 8 February 1972 Day 282/123/24 to Day 282/125/3. Sir Edward added later in the questioning by counsel that the six-months ban was automatically carried on as a result of the Order of 18 January 1972 Day 291/37/4-23. Lord Armstrong of Ilminster, who was at the time Private Secretary to the Prime Minister, said in evidence that “it was

the British Government who, in the first instance, had stipulated for the ban as a condition of agreeing to internment.....” Day 294/54/17 to Day 294/55/1. At the meeting on 5 August 1971 UK Ministers had “made it clear the ban on parades must be total, but they accepted that it should *initially* be for a period of six months”, i.e. banning by instalments: (G. 5.54). On 16 August 1971 the Prime Minister told a Cabinet meeting that, “on the footing that the arrests should be accompanied by an announcement of a prohibition of all marches for a period”, the British Government had agreed with the Prime Minister of Northern Ireland to internment: “Effect had been given to these decisions on Monday 9 August”. (G8A.63.3).

In his oral evidence to the Inquiry, Sir Edward Heath was asked by counsel for the Tribunal: “As a *quid pro quo* for the introduction of internment you wanted Mr Faulkner to introduce a complete ban on marches and in the event he did so. Are you in a position to say whether or not Mr Faulkner only agreed to a complete ban on marches because you made it clear that Her Majesty’s Government would not

agree to internment unless he did so?”, to which Sir Edward replied “Yes” Day 282/95/17-24. And again, in questioning by Mr Michael Lavery QC Day 294/54/23 to Day 294/55/1 Lord Armstrong re-affirmed that “it was the British Government who in the first instance had stipulated for the ban as a condition of agreeing to internment and they [HMG] were well content when Mr Faulkner decided to extend the ban”. Those were unequivocal confirmations that Mr Faulkner had no option but to order a blanket ban on all marches, so long as internment was in force.

On 9 August 1971, Mr Faulkner publicly declared his decision both to introduce internment and the ban on marches; he did so without alluding to the fact that HMG had agreed to internment on condition that a ban on all marches throughout the Province would be imposed (G6.56-57). In an introduction to the Compton report on Allegations of Ill-treatment of Interned Detainees, published in November 1971 (Cmnd. 4823), the Home Secretary (Mr Reginald Maudling MP) referred to the agreement of Her Majesty’s Government to internment.

“Introduction of Internment

7. The preservation of law and order in Northern Ireland is primarily the responsibility of the Northern Ireland Government. By July and early August the deterioration in the situation in Northern Ireland had reached the point where they felt it necessary, with the *agreement* of Her Majesty’s Government, to resort to their powers of internment (italics supplied).

8. In announcing the decision to introduce internment on the 9th August 1971, the Prime Minister of Northern Ireland, Mr Brian Faulkner, said: “If Northern Ireland is to survive and prosper, two things are essential. We must sustain a continuing programme of economic and social development, and we must find the means to create a more united society here - one in which all men of goodwill, however divergent their legitimate political views, may participate to the full. There things are, and will continue to be, the aims of our policy.

“Neither will be possible in a climate of terrorism and violence. The outrages to which we have been subjected now threaten our economic life and create every day deeper divisions and antagonism within our community. These, indeed, are the clear objects of those who carry them out.

“Every means has been tried to make terrorists amenable to the law. Nor have such methods been without success, because a substantial number of the most prominent leaders of the IRA are now serving ordinary prison sentences. But the terrorist campaign continues at an unacceptable level, and I have had to conclude that the ordinary law cannot deal comprehensively or quickly enough with such ruthless viciousness.

“I have therefore decided, after weighing all the relevant considerations, including the views of the security authorities and after consultation with Her Majesty’s Government in the United Kingdom last Thursday, to exercise where necessary the powers of detention and internment vested in me as Minister of Home Affairs”.

It is not without significance that Mr Faulkner refers only to “consultation” with Her Majesty’s Government about his exercise of the power to detain terrorist suspects without trial.

No mention is made of the consequential lodging by Her Majesty's Government of a notice of derogation from the UK's obligations under Article 5 of the European Convention on Human Rights. An essential ingredient of the agreement between Her Majesty's Government and the Stormont Government was the requirement of the former to give the Secretary General of the Council of Europe notice, under Article 15(3) of the European Convention on Human Rights, of the existence of a public emergency within the meaning of Article 15(1) in a part of the United Kingdom, namely Northern Ireland. In his oral evidence to the Inquiry Sir Edward Heath re-affirmed what he has indicated in his autobiography, *The Course of My Life* (at pages 427-429:0SI:771 2-4)* that he attached importance to ensuring that HMG's negotiations for entry to the European Economic Community were not jeopardised by lack of commitment to the European concept of human rights. Sir Edward, at the meeting of 5 August 1971, gave

*At p.435 of his autobiography Sir Edward wrote that the Taoiseach, Mr Jack Lynch had telephoned on the evening of 30 January 1972 in an emotional state, to which Sir Edward said that he reminded Mr Lynch that the march had been illegal "precisely because he had requested that all such marches should be banned.....".

instructions to the representative from the Foreign & Commonwealth Office to send a notice of derogation from the objectives of Article 5 of the Convention (detention without trial). Mr Kevin White, an official at the Foreign & Commonwealth Office, recalled in his evidence to the Inquiry that he had received instructions from the Cabinet to take the necessary steps for lodging the requisite notice with the Council of Europe (KW 3.2, para 6(b) and Day 269/196 to Day 269/198). The notice was duly given by letter of 20 August 1971 (see Annex 3). (It is noted that the derogation did not cover any violation of Article 11 (freedom of assembly) since any qualification on the right to march would be amply covered by the provisions of Article 11(2). The derogation related solely to internment as a breach of Article 5, to which we make submissions below.

Whatever may have been the information which Mr Brian Faulkner received from the Chief Constable about the likelihood of serious public disorder or the demands being made upon the RUC - the Chief Constable would not have been in a position to speak of the demands

on the armed forces which had opposed internment on military grounds - HMG was likewise concerned about the demands made upon the military which, with RUC assistance as an auxiliary, might be policing civil rights marches. In short, the reasons for the blanket ban on marches was ostensibly imposed not merely on security grounds (public disorder and manpower resources) but also on political grounds stemming from the constitutional position of limited devolved powers and the requirement of the consent of HMG and observance of the European Convention on Human Rights. Even if it could be said that both Governments (as well as the Republic of Ireland) had in mind exclusively the demands of security, devoid of any political considerations, the personal power both to order internment and the ban on marches was exclusively for the Minister of Home Affairs in the Stormont Government under the Public Order Act.

Given this factual background, did the Minister of Home Affairs exercise his powers lawfully under section 2 of the Public Order Act

1951 (as amended in 1971)? For the following reasons, NICRA submits, he did not.

Any exercise of ministerial power must be exercised lawfully. Any irregularity, whether procedural or substantive, would render *ultra vires* the statutory power in the Public Order Acts 1951-1971: In **R v. Hull University Visitor, ex p. Page** [1993] 2AC 682, 701 C-E, Lord Browne-Wilkinson said:

“Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, *in accordance with fair procedures* (italics supplied) and, in a *Wednesbury* sense (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223), reasonably. If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is *Wednesbury* unreasonable, he is acting *ultra vires* his powers and therefore unlawfully: see *Wade, Administrative Law*, 6th ed. (1988), pp. 39 et seq.”

It is a well established principle of public law that a Minister who is invested with a statutory power must not, in the purported exercise of

his or her discretion, act under the direction of another body or person: see de Smith, Woolf & Jowell's *Principles of Judicial Review* (1999) para 5.117, p.241-2. That proposition was exemplified by the decision of Willis J in Lavender(H) & Son Ltd v. Minister of Housing and Local Government [1970] 1WLR. 1231. In that case the Minister, in exercise of his duty to decide whether planning permission should be granted to a firm of gravel extractors, applied the policy of his ministerial colleague, the Minister of Agriculture, not to allow such development on rich agricultural land. Willis J. held that the Minister had failed to exercise a proper, or indeed any discretion by reason of the fetter by which he imposed upon its exercise in acting solely to enforce his ministerial colleague's agricultural policy. The fact that there was an interplay of departmental policies within a unitary system of government did not lessen the UK Parliament's insistence on the independent judgment of the Minister of Housing in planning decisions; even the sharing with a ministerial colleague of the invested power was not permissible. In the case of Northern Ireland, the Stormont Parliament entrusted the

power to control marches to the Minister of Home Affairs and could not, constitutionally, legislate to include UK Ministers.

The decision in the Lavender case has never been doubted: see Stringer v. Minister of Housing and Local Government [1971] 1W:LR 1281, 1283F, 1298E-F). It appears, from an Irish case, that it is enough to show that a decision, which ought to have been based on the exercise of independent judgment, was dictated by those not entrusted with the power to decide: McLoughlin v. Minister for Social Welfare [1958] IR, 1, 27.

Here, the Minister exercised his power as a direct result of his collateral agreement with HMG to impose a ban on all marches in the province as a condition of HMG's consent to the introduction of internment in Northern Ireland. Even if it could be shown that Mr Faulkner would have exercised the twin powers of internment and a ban on marches (either generally or specifically) without any intervention from the British Government, nevertheless the

irregularity of a fettered discretion would invalidate the exercise of the power to ban all marches.

No challenge to the order banning marches could have been successfully mounted in 1971/72, simply because the evidence to establish a misuse of ministerial power was unavailable (the documents were marked **Top Secret**). Only with the disclosure to the Inquiry of the minutes of the Cabinet Committee meetings of 5 August 1971 would it have been possible to assert Brian Faulkner's fettering of his discretion under the Public Order Act. Without that documentary material it would not have been possible to obtain the court's leave for some prerogative order remedy. The Inquiry is now in a position to conclude that the orders of 9 August 1971 and 12 November 1971 were unlawful.

Alternatively, to the irregularity of a fettered discretion, there is a powerful case for asserting that the Stormont Administration, assisted by the British Government's imposition of a condition for bringing in

internment, constituted a *détournement de pouvoir*, an abuse of power, and hence an illegality in public law.

Article 18 of the ECHR, which is in Schedule 1, Part I of the Human Rights Act 1998, provides:

“the restrictions which are permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed”.

This provision has no independent existence. There can be no violation of Article 18 by itself, but there can be a violation in conjunction with another provision of the Convention, but then only one which expressly authorises a member-State to impose restrictions on Convention rights. Thus, it is possible to invoke the provisions of Article 18 where the Government has justified the pleaded interference with a Convention right to one of the authorised restrictions. A plea that the interference with the right of assembly under the Public Order Act 1951 to 1971, could be properly pleaded by reference to the authorised qualifications under Article 11(2). The right of peaceful assembly is considered to be one of the foundations

of a democratic society.* It covers static meetings as well as public processions.#

The Strasbourg institutions have sometimes referred to Article 18 as supporting the proposition that the concept of “lawfulness” presupposes conformity with the purposes of the authorised restrictions - see Ashingdane v. UK (1985) 7 EHRR 528, para 44. Its jurisprudence has so far indicated that it has been unnecessary to consider Article 18 whenever there has been found to be a violation of a substantive provision of the Convention. A breach of Article 11(2), for example, sufficed in the adjudication. This exercise in judicial economy may not have relevance in the context of a violation by a devolved power, such as the Stormont Government. Where, as in relation to the events of 5 August 1971, leading up to the twin introduction of internment in violation of Article 5 (for which HMG considered that it should enter a notice of derogation) and the blanket

*App No. 819/78 Rassemblement Jurassien and Unite Jurassienne v. Switzerland (1978) 17 D&R 93.

#Ibid., and Christians against Racism and Fascism v. UK, (1980) 21 D&R 138.

ban throughout the Province on all processions and parades, there was a *détournement de pouvoir* by both HMG and the devolved government, for which the former alone was internationally accountable.

The agreement between the Prime Ministers of the United Kingdom and of Northern Ireland, concluded on 5 August 1971, whereby the latter was contractually and/or politically bound to ban all marches in the Province as a condition for bringing in internment, was a clear misuse of power (*détournement de pouvoir*) under Article 18.

It might be argued that Mr Faulkner was bound to take account of policy considerations, including the views of the UK Government which was supplying military personnel in aid of the civil power. It might reasonably be inferred, in the absence of evidence from Mr Faulkner and supporting documentary material, that all the relevant considerations under the Public Order Act were considered and that the conclusion was reached that the ban on marches was necessary. It

was necessary because there had been strong and emphatic representations as to public disorder and protests which would accompany the political consequences of internment, hence an appreciation of the impossibility of having enough personnel to cope with the marches and processions. Even assuming all that to be evidentially established, the simple fact remained that Mr Faulkner could not have been exercising any discretionary power. He was bound in any event to ban all marches, however much he might have made that decision irrespective of the directive from the UK Government. In short, there was abdication of the discretionary power by Mr Faulkner and dictative by the UK Government to impose the ban although there is a hint that Mr Faulkner, wrongly, considered that he was only consulting and not complying with the requirement of the UK Government.

The validity of Internment

There is another dimension to the illegality of the proposed exercise of the twin powers (internment and ban on marches). There is a serious question whether there was in fact in 1972 a public emergency threatening the life of the nation “under Article 15 of the European Convention on Human Rights”, to justify by way of derogation the infringement of the right to liberty under Article 5. First of all, the act of re-internment was clearly a political decision; the military thought that there was no necessity for such a draconian provision and it was a political decision made by the Stormont administration and only acquitted in by the British Government (“the Government of Northern Ireland has therefore found it necessary” Annex 3, para 2). Thus, it appears that the British Government, which had the international responsibility for compliance with the Convention, allowed the local administration in the province to determine the emergency situation. In the classic case of Lawless v Ireland (1961) IE.HR.R.15 para 28, the European Court declared that a public

emergency threatening the life of the nation is an “exceptional situation of crisis or emergency which effects the whole population and constitutes a threat of the organised life of the community of which the state is composed.” Even if the preferable view is that it was the Province of Northern Ireland, rather than the UK as whole, which constituted “the relevant community”, the declaration under Article 15 was still a matter for the responsible Government, i.e. the UK Government.

The European Court accorded to the member a broad margin of appreciation. In Ireland v United Kingdom 1978 2 EHRR 25 Paragraph 207, the Court deferred to the agreement of the parties as to the existence of an emergency in Northern Ireland. In doing so the Court appears to have overlooked or disregarded the requirement that the emergency must be one threatening the life of the whole nation. In Brannigan and McBride v The United Kingdom (1994) 17 EHRR 539, the Court accepted at face value the UK Government’s assertion that a public emergency existed in Northern Ireland and elsewhere in

the UK but that was after the UK legislation of 1974 when “the whole nation” was affected by the terrorist threat from the IRA. At the time of Bloody Sunday, “the emergency” was localised.

NICRA submits that the legality of interment (and the subsequent derogation from the UK’s obligations under Article 5) was questionable. That factor is relevant to the legitimacy of the dual action of 9 August 1971 to re-introduce internment and ban all marches.

THE BELFAST GAZETTE, 13th AUGUST, 1971

MINISTRY OF HOME AFFAIRS

PUBLIC ORDER ACTS (NORTHERN IRELAND) 1951 TO 1971

Whereas I, the Right Honourable Brian Faulkner, Minister of Home Affairs, am of the opinion in consequence of information furnished to me by the Chief Constable of the Royal Ulster Constabulary that by reason of the unrest and tension at present existing in Northern Ireland the holding of any public procession in any public highway, road, or street is likely to cause serious public disorder or to cause undue demands to be made upon the police or military forces.

Now, therefore, I, the Right Honourable Brian Faulkner, Minister of Home Affairs, in exercise of the powers conferred upon me by Section 2(2) of the Public Order Act (Northern Ireland) 1951 do hereby order that the holding of all public processions in any public highway, road or street in Northern Ireland is prohibited for the period commencing on 9th August, 1971 and ending on 8th February, 1972.

This Order shall not apply to the holding of customary processions organised by ex-Servicemen's organisations to and from Churches or War Memorials on Remembrance Day, Sunday 14th November, 1971.

Brian Faulkner, Minister of Home Affairs for Northern Ireland.

9th August, 1971.

THE BELFAST GAZETTE, 19th NOVEMBER, 1971

MINISTRY OF HOME AFFAIRS

PUBLIC ORDER ACTS (NORTHERN IRELAND) 1951 TO 1971

Whereas I, the Right Honourable Brian Faulkner, Minister of Home Affairs, am of the opinion in consequence of information furnished to me by the Chief Constable of the Royal Ulster Constabulary that by reason of the unrest and tension at present existing in Northern Ireland the holding of any public procession in any public highway, road, or street is likely to cause serious public disorder or to cause undue demands to be made upon the police or military forces.

Now, therefore, I, the Right Honourable Brian Faulkner, Minister of Home Affairs, in exercise of the powers conferred upon me by Section 2(2) of the Public Order Act (Northern Ireland) 1951 do hereby order that the holding of all public processions in any public highway, road or street in Northern Ireland is prohibited for the period commencing on 12th November, 1971, and ending on 8th February, 1972

This Order revokes the Order made by me on 9th August, 1971.

Brian Faulkner, Minister of Home Affairs for Northern Ireland.

12th November 1971.

**PUBLIC ORDER (AMENDMENT) ACT
(NORTHERN IRELAND) 1971**

1971. CHAPTER 12

An Act to amend the Public Order Act (Northern Ireland) 1951 with respect to public processions and meetings, and for purposes connected therewith.

[1st April 1971]

Be it enacted by the Queen's most Excellent Majesty, and the Senate and the House of Commons of Northern Ireland in this present Parliament assembled, and by the authority of the same, as follows:-

1. The notice required by subsection (1) of section 1 of the Public Order Act (Northern Ireland) 1951 (in this Act referred to as "the Act of 1951") to be given by persons intending to organise or form certain public processions shall be given not less than one hundred and twenty hours before the proposed time of commencement of the procession and, accordingly, in that subsection for the words "seventy two" there shall be substituted the words "one hundred and twenty".

2. (1) For subsection (2) of section 2 of the Act of 1951 there shall be substituted the following subsection:-

“(2) If at any time the Minister of Home Affairs is of opinion in consequence of information furnished to him by a member of the Royal Ulster Constabulary not below the rank of superintendent or for any other reason that -

(a) the exercise of the powers conferred by the preceding subsection will not be sufficient to prevent serious public disorder being occasioned by the holding of any public procession in any area; or

(b) the holding in any area or place of any public procession or any open-air public meeting is likely to cause serious public disorder

or to cause undue demands to be made upon the police or military forces; or

(c) the holding in any area or place of any public procession or any open-air public meeting is likely to cause undue hardship to persons working or carrying on business in that area or place;

the Minister may make an order -

(i) prohibiting, for such period not exceeding twelve months as maybe specified in the order, the holding in that area or place of all public processions or open-air public meetings or of such classes of public procession or open-air public meeting as may be so specified;

(ii) permitting the holding in an area or place of a public procession or open-air public meeting specified in the order and prohibiting, for such period not exceeding one month as may be specified in the order, the holding in that area or place of any other public procession or public meeting or of any class of public procession or public meeting specified in the order.”

(2) At the end of section 2 of the Act of 1951 there shall be added the following subsections:-

“(5) In this section -

“area” means the whole of Northern Ireland or any part thereof;

“building” means a covered and enclosed structure of an immovable nature;

“business” includes any trade or profession;

“open-air public meeting” means a public meeting held otherwise than inside a building.

(6) This section shall not apply to a public meeting organised by or on behalf of, and in furtherance of the lawful industrial objects of, a trade union.”

(3) In paragraph 1(a) of the Schedule to the Criminal Justice (Temporary Provisions (Amendment) Act (Northern Ireland) 1970 for the words "rout, unlawful assembly or procession or meeting prohibited by law" there shall be substituted the words "or rout or in an unlawful assembly in the course of which injury was caused to any person or damage was caused to any property."

**LETTER OF 20 AUGUST 1971 FROM THE PERMANENT
REPRESENTATIVE OF THE UNITED KINGDOM TO THE COUNCIL
OF EUROPE TO THE SECRETARY GENERAL OF THE COUNCIL OF
EUROPE**

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council and has the honour to refer to the communication of the 27th June 1957, giving notice on behalf of the Government of the United Kingdom, for the purpose of Article 15 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of a public emergency within the meaning of Article 15 (1) in a part of the United Kingdom, namely Northern Ireland, and of the bringing into operation therein of certain emergency powers, and also to the further communication of 25th September, 1969, in respect of serious civil disturbances which had recently occurred in various parts of Northern Ireland.

Over recent months in Northern Ireland there has been a series of acts of terrorism, including murders, attempted murders, maimings, bombings, fire-raising and acts of intimidation, and more recently violent civil disturbances. The Government of Northern Ireland has therefore found it necessary since 9th August for the protection of life and the security of property and to prevent outbreaks of public disorder, to exercise, to the extent strictly required by the exigencies of the situation, powers of detention and internment.

Copies of the relevant Regulations under the Civil Authorities (Special Powers Act (Northern Ireland) 1922 are being sent to you separately. Particular attention is drawn to those provisions of Regulation 12 which provide for the establishment of an Advisory Committee in respect of persons who are the subject of an internment order.

The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurances of his highest consideration.

VIII

IN AID OF THE CIVIL POWER

Absent Martial Law*, which Government - Her Majesty's Government or the Stormont Government - was constitutionally responsible for the military's security operation on Bloody Sunday? This question of fundamental importance towards an understanding of the circumstances leading up to and surrounding the day's tragic events is not instantly susceptible to a straightforward or glib answer. It may take time to unravel the constitutional quiddities. But once the issue has been fully explored, the answer is clear**.

Sir Edward Heath in his oral evidence to the tribunal Day 289/96/4 to Day 289/98/6 was unequivocal in saying that "we

*The question whether martial law is, or is not part of English law, was hotly debated in the middle of 19th Century: see Hopwood, *Martial Law; what, if any is allowed by the Law of England; and what is the responsibility of those who execute it*, paper read before the Juridical Society, Vol 3, p.219. Martial law which is effective only in a state of war, armed rebellion or insurrection is in reality neither more nor less than the will of the General who commands the army, what the Duke of Wellington once described as meaning "no law at all". R O'Brien v. Military Governor, NDU Internment Camp [1924] IR 32, 42.

** Adapted from the words of Lord Greene MR in Cow v. Casey [1949] 1 KB 474, 481

[HMG] had no responsibility for the military on that day". He did suggest that the Northern Ireland Government was responsible, but later (Day 289/124/24 to Day 289/125/12) said that Mr Faulkner had "nothing to do with the troops", implying, correctly, that the Stormont Government was not responsible for the armed forces of the Crown*. Sir Edward stated emphatically that he, as Prime Minister of the United Kingdom, had had no responsibility for the death of the thirteen unarmed civilians.

Lord Armstrong of Ilminster, who was the Prime Minister's Principal Private Secretary at the time, when questioned by Mr Michael Lavery QC, on behalf of most of the families of the victims, stated that "security was within the formal responsibility of the Northern Ireland Government", and that the way in which the Army conducted the operations was governed by the instructions which Ministers in Stormont gave it.

*In evidence to the Inquiry, Sir Kenneth Bloomfield stated that the Government of Northern Ireland "could not have any control whatever over an armed force" Day 216/34 to Day 216/35.

Day 294/30/8 to Day 294/31/11, although he did not deal specifically with the situation where the Army was called in by the RUC to aid the civil power, thus handing over security operations from the RUC to the Army.

The apparent ambiguity of the constitutional position did not emerge until military assistance was called for by the security forces in Northern Ireland, first in 1966 and more acutely in August 1969. The Government of Ireland Act 1920 had set up a devolutionary system of government, with Northern Ireland remaining a part of the United Kingdom, and subject in all respects to the UK Parliament at Westminster. But at the same time a local Parliament at Stormont was created. The system was not federal. All power could concurrently be exercised by the Westminster and Stormont Parliaments: but the latter had no field of exclusive competence. Powers conferred on the legislature and executive of Northern Ireland were at all times removable by an Act of the UK Parliament at Westminster.

There was a tendency to treat the status of Northern Ireland as if it were a Dominion before that status became recognised by the Statute of Westminster in 1931. Some early decisions of the Courts - for example, Attorney-General v. Jaffé [1935] NI 97 at 120-129 per Megaw J - exhibited a tendency to interpret the constitutional grant of powers to Northern Ireland expansively, such as to infer that Northern Ireland would be mistress in her own house. That approval was not adopted by Black J in same Obiter dicta in Morton Bros v The Air Ministry [1946] N.I. 137,141. and in Hume v. Londonderry Justices [1972] NI 91 Lord Lowry CJ scotched any such notion. He made it clear that that was an improper approach to the interpretation of the Government of Ireland Act 1920. Lord Lowry held that the 1920 Act conferred power in limited terms and had to be literally interpreted, since the adoption of a liberal approach would "tend to disregard the limitations expressly imposed on the subordinate Parliament". (At p113-Law 11.24) The retention of the UK Parliament's responsibility in large areas of government which were excepted or reserved from the Stormont

Government and Parliament (as were the powers and duties of the armed forces) undermined any notion of a Dominion status. It is true that constitutional conventions developed as to the exercise of Westminster's concurrent powers. It became convention that Westminster would not legislate in respect of devolved powers without the consent of the Stormont Government. Additionally, questions in the House of Commons on topics for which no UK Minister was responsible could not be asked, and could only be asked at Stormont (see the exchange of letters in early 1971 between Mr David West and Sir Arthur Hockaday (KW5, 9-12)).

This divided responsibility (an early example of devolution) was workable and indeed appeared to work well enough for the first 50 years of Partition.* The change wrought by the civil disturbances in 1969, however, propelled Ministers in London

*It was the existence of the constitutional conventions which permitted grievances from the minority community to go unaddressed at Westminster. NICRA sought to break down the conventions by an insistence on Section 75 of the Government of Ireland Act 1920 (Law 1.66).

into direct and active involvement in Northern Ireland matters, in particular the whole question of internal security in Northern Ireland for which Stormont was responsible constitutionally, devolved and not a reserved power.

The background to the arrangements in 1969 are described shortly in Chapter 20 of the Scarman report on *Violence and Civil Disturbances in Northern Ireland 1969* (Cmd 566)*.

The Scarman report recorded the dilemma facing the UK Government. While HMG was willing to provide military assistance to the civil power in Northern Ireland - namely the Royal Ulster Constabulary - it did not welcome the prospect of the British Army being under the control of anyone other than the Government of the United Kingdom. An extract in the Scarman report from an article in the Financial Times of 6

*The chapter, pages 130-132 is annexed herewith (Annex 1). The report of the Inquiry, which was appointed on 27 August 1969 by both Houses of Parliament in Northern Ireland, was signed on 4 February 1972 and presented to Parliament in April 1972, very shortly after Lord Widgery had reported to the two Parliaments on Bloody Sunday on 11 April 1972.

August 1969 pithily expressed the British Government's view that "it would be the height of folly to allow its troops (or police) to be under the political control of another Government which, rightly or wrongly, is regarded as essentially Protestant in outlook.....Ministers believe that it would be equally unacceptable for troops to be used.....if they were to maintain law and order for the existing Northern Ireland Government".

The ensuing agreement of August 1969 reflected the fact that, willy-nilly, the British Government was being sucked into the security aspect of Stormont administration, as and when military intervention was sought by the authorities in Northern Ireland.* Sir Kenneth Bloomfield described the position in reverse: "the centre of gravity.....has shifted at that stage from Belfast to London" Day 216/32/8-24. While Lord Scarman's report observed that both Governments "were well aware" in August 1969 that there was the possibility of "constitutional

* Michael Kennedy in Division and Consensus: the politics of cross-border relations in Ireland - 1925-1969, IRA, 2000 at p 356 referred to the Downing Street Declaration of 19 August 1969 as being "carried out through committees rather than directed by the British Government who were trying their best to avoid becoming ensnared further in the Northern Ireland Crisis"

implications," whenever the RUC asked Westminster for military assistance in maintaining law and order, it strangely did not consider how, if at all, the agreement of 19 August 1969 and the arrangements of October 1969, changed the constitutional position.

Thus the dubiety about the constitutional relationship between the civil power in Northern Ireland and the forces of the British Crown under the control of the HMG remained undisputed until Direct Rule in March 1972. Mr Anthony Stephens, Assistant Secretary in the Ministry of Defence at the relevant time, described in his written statement to the Tribunal how the introduction of Direct Rule in March 1972 helped resolve the serious public relations problem of explaining and justifying the role and activities of the Army in pursuance of security policy for which the British Government had no direct constitutional responsibility (KS3. 112/113, para 70).

Counsel for the various families of the victims of Bloody Sunday persistently questioned Sir Edward Heath on the footing that the British Government was responsible for the military operation on the day. Sir Edward Heath consistently and adamantly refuted the allegation. NICRA submits that Sir Edward was legally incorrect in denial of his Government's responsibility. While the Northern Ireland Government was responsible for law and order, the British Army had been since August 1969 acting "in aid of the civil power". As such it was acting, through the military hierarchy of the United Kingdom, under the authority of the Secretary of State for Defence who in turn was responsible to the British Government and UK Parliament.*

*Whatever was the view of legal advisers to the UK Government, academic legal writers at the time of Bloody Sunday clearly favoured the view that the UK Government was responsible: see Claire Palley, *The Evolution, Disintegration and Possible Reconstruction of the Northern Ireland Constitution* (1972) *Anglo-American Law Review*, pages 368-477, in particular 411-412. See Professor Palley's written statement to the Tribunal [EP2.3 paragraph 7]

The Agreement of 19 August 1969

On 19 August 1969, following a meeting of Ministers from the two Governments, a text of a Communiqué and Declaration was issued and presented to the UK Parliament (Cmnd 4154). It was agreed that: “the GOC Northern Ireland will with immediate effect assume overall authority for security operations. He will continue to be responsible directly to the Ministry of Defence but will work in the closest co-operation with the Northern Ireland Government and the Inspector General of the Royal Ulster Constabulary. For all security operations the GOC will have full control of the deployment and tasks of the Royal Ulster Constabulary. For normal police duties outside the field of security, the Royal Ulster Constabulary will remain answerable to the Inspector General who will be responsible to the Northern Ireland Government”. Paragraph 3 of the Declaration, appended to the Communiqué, states that the “United Kingdom Government have ultimate responsibility for

the protection of those who live in Northern Ireland when, as in the past week, a breakdown in law and order has occurred”.

Paragraph 4 stated that the Northern Ireland Government has been informed that troops have been provided on a temporary basis “in accordance with the United Kingdom’s ultimate responsibility”.

The agreement categorically affirmed that the Army was responsible to the Secretary of State. The RUC was to be “under full control” of the GOC and therefore answerable to Westminster on security matters. It is questionable whether the RUC could lawfully be put under full control of the Army, even if only for security matters, since under the Government of Ireland Act 1920 law and order was enforceable by the civil power (the RUC) of Northern Ireland. There was no issue whatsoever with regard to anything about responsibility to Government(s). The British Army was still firmly and unequivocally responsible to Westminster. The only question

was whether the RUC could put itself under “full control” of the GOC. Some commentators argued that the “Declaration” was unconstitutional, because, without a specific Act of the UK Parliament, the Government had no power to place the police under the control of the GOC or anyone else for any purpose, security or otherwise*. During the period of delegation by the RUC the overall control was of dubious legality, although it might be saved on the basis that the doctrine of prohibiting inter-delegation of powers (as would be the case under the Canadian Constitution where there is the rigid division of power) was not applicable. NICRA submits that, despite section 4 of the Government of Ireland Act 1920, there remained an overall UK responsibility for Northern Ireland, especially as section 75 of the 1920 Act, with the UK’s undiminished legislative power, envisaged - at least in spirit - overall direction in major matters. NICRA submits, however, that it would have been preferable if the delegation had been legislatively effected.

*See Baxter, *Constitutionally, can police officers be replaced by soldiers in times of crisis*, *The Police Journal*, April 1969, p.119, 123.

A further Communiqué was issued following discussions in Belfast on 9/10 October 1969 between the two Governments. (Cmnd. 4168). This Communiqué noted (para 2) that Ministers expressed their appreciation of the work of the Army “it has had to undertake in support of the civil power”, but it contained no reference to the RUC being under full control of GOC. Indeed, in paragraph 3 (e) (ii) it was agreed to set up “a locally recruited military force to protect installations”, to guard against threats of armed guerrilla-like attacks. This force “will be commanded by the General Officer Commanding, Northern Ireland, who will work in close consultation with the Government of Northern Ireland, through a security committee presided over the by the Minister of Home Affairs”; this was the genesis of the Joint Security Committee.

The nagging question about the RUC being placed under “full control” of the GOC was resolved in February 1971. A Directive for the GOC (Northern Ireland) Director of Operations, issued in August 1969, was superseded by a

Directive of 4 February 1971 (INQ 1.660-662). This modified the "full control" provision in the circumstances described by Sir Philip Allen, Chairman of the Official Committee, in his memorandum of 10 December 1971 on *Responsibilities for Law and Order in Northern Ireland* (INQ 1.388). The modification was that the GOC in the context of overall responsibility for security operations was required to "co-ordinate the tasking of the Royal Ulster Constabulary for security operations with other security forces". The new GOC Directive affirmed: "You are responsible to the Chief of the Defence Staff as Chairman of the Chief of Staff Committee, but will work in the closest co-operation with the Northern Ireland Government Joint Security Committee. In the event of any disagreements with the Northern Ireland Government you are at once to refer to the Ministry of Defence" (para 4, INQ 1.660). There was confirmation (para 6 INQ 1.660) that dealings with the Northern Ireland Government would be through the machinery of the Joint Security Committee. The memorandum of 10 December

1971 was presented to the GEN 47 Committee meeting on 13 December 1971.

On the next day (14 December 1971) the Home Secretary, on his visit to Northern Ireland, met with the GOC and Senior Officers (including the Commander Land Forces, General Ford), at Lisburn (G 40.260). The note of those discussions, dated 17 December 1971, records: "It was then suggested that reversion of the position which existed between August and October 1969, in which the GOC had operational control of the RUC rather than mere responsibility for co-ordination, might go some way to meeting the need" for working through the RUC, "whatever its deficiencies". (Sir Philip Allen's note was sent for information to the Cabinet's Official Committee on Northern Ireland on 21 December 1971: see INQ 1.528).

Relationships of the Royal Ulster Constabulary

The GOC Directive repeated the overall responsibility of the GOC as the Director of Operations, including the duty to coordinate the tasking of the RUC (para 14, INO 1.662). The constitutional position of the armed forces acting in aid of the civil powers in Northern Ireland was amply stated by Sir Arthur Hockaday (AUS (GS)) at the Ministry of Defence, in his letter of 12 May 1971 to Mr David West, who was the civil adviser to the GOC (Northern Ireland). Mr West was seeking a clarification of the constitutional "dichotomy" of the Government of Ireland Act 1920 (KW5). Sir Arthur in his delayed reply - a number of branches of Government, including the Treasury Solicitor's Department had to be consulted - set out the constitutional position with conspicuous clarity (KW5, 9-12). He pointed out at the outset of his letter that the Northern Ireland Parliament was empowered to make laws for the peace, order and good Government of the Province, but that the 1920 Act "specifically excluded the power to legislate about armed forces and defence matters generally. These remained the responsibility of Westminster", a matter of prescience in the

light of the Hume v. Londonderry Justices case a few months later (see para 9, KW5.11).

Under the heading of *Executive Responsibility*, Sir Arthur wrote:

“The soldier acts under higher military authority up the chain of command as far as the Defence Council and ultimately Her Majesty. The Secretary of State is the Minister Responsible to Her Majesty for everything connected with the performance of their military duties by the armed forces of the Crown” (para 3 (b) KW5.9). He reports that (para 4 KW5.10): “.....for everything connected with the performance of their military duties the soldier is responsible to Her Majesty and to Westminster”. An interesting observation appears at para 7 (KW5.11): “.....[in] going to the aid of the civil power [the forces] should liaise with the civil authorities as closely as possible and give their views all due weight, particularly on such matters as and when the intervention has achieved its objective; *but the wishes of the Civil Authority can in no way bind the Commander on the spot to a particular course of*

action or relieve him of legal responsibility". Nothing in Sir Arthur's letter of 12 May 1971 gives the slightest credence to the assertion that Her Majesty's Government in the United Kingdom had not the exclusive responsibility for the armed forces of the Crown, no less so when they were acting in aid of the civil power of another Government.

Joint Security Committee

The establishment of the Joint Security Committee would appear to be as a consultative body only, although no terms of reference have been produced. Paragraph 3(e)(ii) of the October 1969 Communiqué envisaged that the GOC would be working "in the closest consultation with the Northern Ireland Government, through a Security Committee presided over by the Minister of Home Affairs". In the absence of any lawfully constituted decision-making body over security matters, the deliberations of the Joint Security Committee could not in any way disturb the responsibility of the GOC (NI) for the armed

forces of the Crown. If there was disagreement, the GOC was obliged to report the matter to the Ministry of Defence (INQ 1.660). The composition of the Joint Security Committee was thus a matter for those involved with the security situation in Northern Ireland - NI politicians (backed by local Civil Servants), the Chief Constable of the RUC and the GOC himself, with two officials from the United Kingdom Government who had observer status on the Joint Security Committee. Crucially, the voice of the minority community in Northern Ireland was not represented on the Joint Security Committee. The political influences upon the Committee were thus unidimensional. The JSC was the main conduit for information to the GEN 47 Committee of the UK Cabinet and the British Government. It operated exclusively the terms of the August and October 1969 arrangements.

Annexes

1. Chapter 20 of the Scarman Report.
2. Communiqué & Declaration of 19 August 1969.
3. Communiqué of 9/10 October 1969.
4. GOC Directive of 4 February 1971.

PHOTOCOPIED

ANNEXES

PART OF

CHAPTER

VIII

"IN AID OF
THE CIVIL POWER"



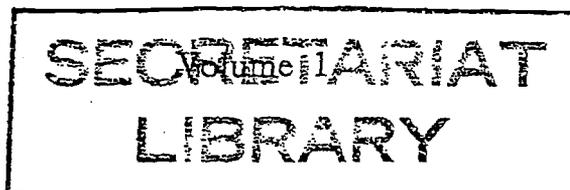
Violence and Civil Disturbances in Northern Ireland in 1969

Report of Tribunal of Inquiry

THE HON. MR. JUSTICE SCARMAN (*Chairman*)

MR. G. K. G. LAVERY

MR. W. MARSHALL



*Presented to Parliament by Command of
His Excellency the Governor of Northern Ireland*

April 1972

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CHAPTER 20—CONSTITUTIONAL IMPLICATIONS OF CALLING IN ARMY

20.1 Discussion between the UK and NI Governments about the calling in of troops in aid of the civil power had taken place in 1966 and again in April 1969. The Minister of Home Affairs told the Tribunal that after the 1966 discussion

“It was understood that while the Inspector-General should feel free to make the request* if the situation demanded his doing so immediately; it was understood also that where possible a consultation should take place at government level through the Minister of Home Affairs in the first instance and in the normal way that would be taken up through the cabinet office.”

When the matter was raised again in 1969

“... it was made clear that the GOC should only consider this question after consultation with London and again it was understood that there would be consultation at government level. I think at the time my Lord, it was also indicated that in that eventuality the government in Westminster would have to consider the implications of such intervention”.

20.2 The possible constitutional consequences of the use of the army in Northern Ireland were, as we have seen, very much to the fore of the minds of the Minister of Home Affairs and the Inspector-General on Sunday, 3 August. During the following week consultations took place between officials at Stormont and Westminster; on Tuesday, 5 August, the Secretary to the NI Cabinet visited the Permanent Secretary to the Home Office in London.

20.3 On the next day Wednesday, 6 August, a report appeared in the *Financial Times* by the Lobby Editor, John Bourne. It was in the following terms:—

“British troops would be used to restore law and order in Ulster only if the Northern Ireland Government first agreed to surrender its political authority to Westminster. This, it is understood, is the position as explained by Mr Wilson and Mr Callaghan first to Captain O'Neill when he was Prime Minister of Northern Ireland, and then to his successor, Major Chichester-Clark, the present Premier. The proposition was probably not spelt out quite so bluntly. The formula used by Mr Wilson was more likely to have been to the effect that if Northern Ireland wanted troops to restore order this would involve a fresh examination of the constitutional relationship between the two countries. The underlying meaning, however, is said to have been clear.

“The British Government's view is that it would be the height of folly to allow its troops (or police) to be under the political direction of another Government which, rightly or wrongly, is regarded as essentially Protestant in outlook and which would use the troops to deal with disorders which were religious in origin. Ministers believe that it would be equally unacceptable for troops to be used—no matter whose direction they came under—if they were there to maintain law and order for the existing Northern Ireland Government.”

*i.e. for military intervention.

"The only solution acceptable to Whitehall, if troops were asked for, would presumably be for the Ulster constitution to be suspended and for an interim Government to be appointed. But merely to pose the problem in this way demonstrates how reluctant the British Government would be to assume political authority in Northern Ireland. Ministers fear the consequences of Westminster becoming once more responsible for governing Ulster. At the very least, every action of Whitehall would in such circumstances raise the passions of either Roman Catholics or Protestants or both. At worst, it is felt, there could be a recurrence of the troubles of the 'twenties.

"Neither Government would want Westminster to reassume direct control of Northern Ireland, and each is hoping that the Royal Ulster Constabulary and the 'specials' will be able to contain the present disturbances".

20.4 Mr Porter was very concerned on reading this report. He went immediately to the Prime Minister who had already read it and who was equally concerned. On 8 August the Prime Minister and the Minister of Home Affairs went to London where they saw the Home Secretary. Asked what was the view expressed by the Home Secretary in relation to the use of troops in Northern Ireland to quell civil disturbances, Mr Porter replied

"Without indicating what necessarily would in fact happen it was indicated that the extended use of troops would involve a consideration of Northern Ireland's constitutional position by the United Kingdom Government in Westminster".

20.5 During this period leading up to mid-August the Minister was also conscious of the fact that the right to call in military aid depended in the first instance upon using such forces as the NI Government had at its disposal. In discussion with the Army Chief of Staff it was made clear that the USC was regarded by the army as a reserve force which would normally be deployed before requesting military assistance. Brigadier Hudson told the Tribunal that it was his understanding that the army "would not be committed until the Westminster Government were pretty certain that all the resources which the Stormont Government had had been deployed".

20.6 In Northern Ireland the civil authority for the purpose of making a request for military aid was the Inspector-General or other specified officer of the RUC. In common with the Minister, Mr Peacocke also assumed that the calling out of the USC was a precondition to military intervention. Soon after his appointment on 1 February 1969 the Inspector-General had given a press conference at which he stated that troops would not be called in "until there was armed intervention followed by the loss of control by the police in certain areas". In his evidence to the Tribunal, however, Mr Peacocke appeared not to take such a rigid view and to concede that army assistance should be sought either where control had been lost by the police or where there was imminent danger of this happening. Thus when troops were deployed in Londonderry on 14 August control had not been lost although this "was a matter of minutes". The army view, as expressed to the Tribunal by Brigadier Hudson, was that the military would come to the aid of the civil power "when the circumstances

are such that the civil power, whatever its resources, reckons that if they get any worse they are going to lose control. In other words, not after they have lost control but when they are about to . . .”

20.7 On 11 August an NI Cabinet meeting was held at which it was agreed that the Minister of Home Affairs was to feel free to take the initiative in calling for Army assistance if he thought this necessary. Mr Porter told the Tribunal that this last decision was taken not in anticipation of trouble occurring in mid-August but to simplify the procedure in the light of the difficulties which had been experienced on 3 August.

20.8 The Tribunal is satisfied that the NI Government and senior police officers were well aware in August 1969—

- (1) that they must call out the USC before seeking the aid of the Army;
and
- (2) that there was the possibility of “constitutional implications” if and when they asked Westminster for military assistance in maintaining law and order.



Northern Ireland
~~Text~~ of a Communiqué and Declaration
issued after a meeting held at
10 Downing Street on
19 August 1969

*Presented to Parliament by the Prime Minister
by Command of Her Majesty
August 1969*

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COMMUNIQUE

A meeting was held at No. 10 Downing Street this evening between Prime Minister Mr. Harold Wilson, the Foreign and Commonwealth Secretary Mr. Michael Stewart, the Home Secretary Mr. James Callaghan, the Secretary of State for Defence, Mr. Denis Healey, and the Secretary of State at the Home Office, Lord Stonham, and the Prime Minister of Northern Ireland, Major Chichester-Clark, the Deputy Prime Minister, Mr. Denis Faulkner, the Minister of Home Affairs, Mr. E. W. Porter, and the Minister of Development, Mr. Brian Faulkner.

In a six-hour discussion the whole situation in Northern Ireland was reviewed. It was agreed that the GOC Northern Ireland will with immediate effect assume overall responsibility for security operations. He will continue to be responsible directly to the Ministry of Defence. He will work in the closest co-operation with the Northern Ireland Government and the Inspector-General of the Royal Ulster Constabulary. For all security operations the GOC will have full control of the deployment and tasks of the Royal Ulster Constabulary. For normal police duties outside the field of security the Royal Ulster Constabulary will remain answerable to the Inspector-General who will be responsible to the Northern Ireland Government.

The GOC will assume full command and control of the Ulster Special Constabulary for all purposes including their organisation, deployment, tasks and arms. Their employment by the Northern Ireland Government in riot and crowd control was always envisaged as a purely temporary measure. With the increased deployment of the Army and the assumption by the GOC of operational control of all the security forces, it will be possible for the Special Constabulary to be progressively and rapidly relieved of these temporary duties at his discretion, starting in the cities. The question of the custody of Special Constabulary arms will similarly be within his discretion. Consideration will be given to the problem of country areas and the defence of vital public service installations.

The Northern Ireland Ministers agreed that an appeal should be made to all members of the public to hand in unauthorised weapons under an amnesty.

In order that British troops can be withdrawn from the internal security role at the earliest possible moment the two Governments will discuss as a matter of urgency the future of the civilian security services of Northern Ireland which will take over when the troops withdraw.

Major Chichester-Clark said that it was the intention of the Northern Ireland Government to set up forthwith an impartial investigation into the recent grave public disorders. Further details will be announced very shortly by the Northern Ireland Minister of Home Affairs.

The United Kingdom Ministers proposed and the Northern Ireland Ministers readily agreed that two senior civil servants from London should be temporarily stationed with the Northern Ireland Government in Belfast.

to represent the increased concern which the United Kingdom Government had necessarily acquired in Northern Ireland affairs through the commitment of the Armed Forces in the present conditions.

The question of detainees was discussed.

The two Governments agreed to a joint Declaration on the principles which should govern their future actions.

The Ministers agreed to meet again early in September.

10 Downing Street, S.W.1,
19th August, 1969.

DECLARATION

1. The United Kingdom Government reaffirm that nothing which has happened in recent weeks in Northern Ireland derogates from the clear pledges made by successive United Kingdom Governments that Northern Ireland should not cease to be a part of the United Kingdom without the consent of the people of Northern Ireland or from the provision in Section 1 of the Ireland Act, 1949, that in no event will Northern Ireland or any part thereof cease to be part of the United Kingdom without the consent of the Parliament of Northern Ireland. The border is not an issue.

2. The United Kingdom Government again affirm that responsibility for ~~affairs~~ in Northern Ireland is entirely a matter of domestic jurisdiction. The United Kingdom Government will take full responsibility for asserting this principle in all international relationships.

3. ~~The United Kingdom Government~~ have ultimate responsibility for the protection of those who live in Northern Ireland when, as in the past week a breakdown of law and order has occurred. In this spirit the United Kingdom Government responded to the requests of the Northern Ireland Government for military assistance in Londonderry and Belfast in order to restore law and order. They emphasise again that troops will be withdrawn when law and order has been restored.

4. The Northern Ireland Government have been informed that troops ~~have been provided on a temporary basis in accordance with the United Kingdom's ultimate responsibility.~~ In the context of the commitment of ~~the~~ troops, the Northern Ireland Government have reaffirmed their intention to take into the fullest account at all times the views of Her Majesty's Government in the United Kingdom, especially in relation to matters affecting the status of citizens of that part of the United Kingdom and their equal rights and protection under the law.

~~The United Kingdom Government have welcomed the decisions of the Northern Ireland Government relating to local government franchise. The creation of local government areas, the allocation of houses, the creation of a Civil Service Commissioner for Administration in Northern Ireland to consider citizens' grievances against other public bodies. The Prime Minister reported to the House of Commons following his meeting with Northern Ireland Ministers on 18th August, 1969, emphasizing the determination of the Northern Ireland~~

THIS TEXT IS
IN COMPLETE



Northern Ireland

Text of a Communiqué issued
following discussions between the
Secretary of State for the Home Department
and the Northern Ireland Government
in Belfast
on 9th and 10th October 1969_____

*Presented to Parliament by the Secretary of State for the Home Department
by Command of Her Majesty
October 1969*

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COMMUNIQUE

During his second visit to Belfast the Home Secretary, Mr. James Callaghan, accompanied by the Minister of State, Home Office, Lord Stonham, attended a series of meetings with the Northern Ireland Cabinet on 9th and 10th October.

2. The Ministers of both Governments expressed their appreciation of the work of the Army in the very arduous tasks it has had to undertake in support of the civil power.

3. The Ministers discussed the report on the recruitment, organisation, structure and composition of the Royal Ulster Constabulary (RUC) and the Ulster Special Constabulary (USC) submitted to the Northern Ireland Minister of Home Affairs by the Advisory Committee under the Chairmanship of Lord Hunt. Northern Ireland Ministers informed the Home Secretary that:

- (a) They accepted the principle of a civilianised and normally unarmed Royal Ulster Constabulary.
- (b) They agreed that, subject to further consideration of its composition, a Police Authority should be constituted, representative of the community as a whole, to which the Inspector-General of the RUC should be accountable.
- (c) They agreed to a closer association of the RUC with British police forces. Further discussions will take place with the United Kingdom Government as to how this may be achieved. In this context the Home Secretary is anxious to devise arrangements for mutual assistance between the RUC and British police forces in such matters as training facilities, the secondment of personnel and the temporary reinforcement of the RUC in emergencies.
- (d) They accepted in principle that the police should be relieved of all responsibility for prosecutions, and that a system of independent public prosecutors should be adopted.
- (e) They agreed that the USC should be replaced by two new forces:
 - (i) a volunteer reserve for routine police duties such as traffic control; and
 - (ii) a locally recruited military force to protect key installations and to undertake such other tasks as might be necessary to guard against the threat of armed guerilla-type attacks. This force will be commanded by the General Officer Commanding, Northern Ireland, who will work in the closest consultation with the Government of Northern Ireland, through a Security Committee presided over by the Minister of Home Affairs.

4. In conveying these decisions, Northern Ireland Ministers stated that they considered it essential that:

- (a) The adoption of the principle of an unarmed police force should in practice depend upon assessment of the security situation as it exists throughout Northern Ireland and in particular areas.

- (b) The arrangements for the raising of a new security force should be set on foot without delay and once constituted there should be no change in that force without the fullest consultation with the Government of Northern Ireland.
- (c) The USC, as at present organised, should remain in being until a fully effective security force was available to replace it.
- (d) The vital interests of the Northern Ireland Government in the defence of the province should be recognised by continuing arrangements for the fullest consultation as to the policy for use of the new force.
- (e) A fully adequate military garrison should be maintained in Northern Ireland and there should be effective machinery for the swift deployment of army units in Northern Ireland including units of the new locally recruited force, in the event of any threat to security.
5. The Home Secretary, on behalf of the United Kingdom Government, gave assurances that these requirements would be fully met within those fields for which the United Kingdom Government were responsible.
6. Northern Ireland Ministers informed the Home Secretary that Mr. J. A. Peacocke had submitted his resignation as Inspector-General of the RUC and that to succeed him the Minister of Home Affairs had recommended to the Governor the appointment of Sir Arthur Young, Commissioner of the City of London Police. The Home Secretary expressed his complete confidence in this appointment and shared the Northern Ireland Government's appreciation of the generous action of the Corporation of London in agreeing to release Sir Arthur Young.
7. The Ministers reviewed the present economic and industrial prospects of Northern Ireland in the light of an appraisal by a mission of representatives of Whitehall departments undertaken at the invitation of the Northern Ireland Government.
8. They noted that the direct effects of recent disturbances on trade and industry had proved to be limited in extent and of short duration. They reaffirmed that the achievement of an acceptable rate of industrial expansion remained an essential element in the future economic development of the province.
9. The Northern Ireland Government welcomed the full and generous support of the United Kingdom Government in making possible the decisions that they had taken, following the report of the United Kingdom mission, to maintain the momentum of industrial investment. The Ministers noted that, while the rate of promotion of new jobs in 1969 had been in line with present targets, a source of concern to potential investors was the availability of a satisfactory assurance against loss in the event of further disturbance. To provide an immediate assurance to new manufacturing projects, it has been decided to introduce for a limited period a scheme of free compensation against damage arising from riot or civil commotion, including consequential losses, which would form a supplement to new agreements for assistance under the Industries Development Acts.
10. To encourage a still higher rate of expansion, it has been decided, for a period of three years, to increase by 5 per cent the rates both of investment grants and of grants payable under the Industries Development

Acts. This means that the standard rate of investment grants payable without employment test will become 45 per cent, with a rate of grant of up to 50 per cent for projects offering worthwhile additional employment. These measures are estimated to cost some £3 million in a full year. The Ministers agreed that the Northern Ireland Government should indicate their intention, at a further cost of some £1.5 million, to retain for a further year until April 1971 the additional selective employment payment of 7s. 6d. a man per week, which is to be discontinued in Development Areas in Great Britain from April 1970.

11. These measures have particular relevance to the longer term economic prospect. The Ministers agreed that meanwhile the prospects for employment in the coming winter, particularly in certain localities, remained a matter of great concern. It has accordingly been decided to initiate a programme of works costing up to £2 million for the relief of unemployment this winter. The works will be mainly concerned with roads, forestry and land reclamation, as well as amenity schemes and tourist development work in outlying areas. This will provide some 2,500 new jobs.

12. The Home Secretary reiterated the close and continuing interest of the United Kingdom Government in the economic well-being of Northern Ireland which could be promoted only by the fullest co-operation between the two Governments. The present decisions fell within the existing framework of financial arrangements between the two Governments. He affirmed the intention of the United Kingdom Government to cover the agreed capital requirements of Northern Ireland on a continuing basis.

13. The Ministers discussed the reports received by the Northern Ireland Government from the joint working parties which had reviewed the adequacy of present practice or pledged commitment to ensure:

- (a) The promotion of good community relations by methods including the prohibition of incitement to religious hatred.
- (b) The avoidance of any discrimination in any form of public employment.
- (c) The fair allocation of houses by public authorities.

14. A Minister of Community Relations has been appointed and a bill to set up a Community Relations Commission has already received a second reading in the House of Commons. The duties of the Commission will include encouraging the establishment of harmonious community relations and advising Northern Ireland Ministers on questions relating to community relations. The Commission will be authorised to assist local bodies concerned with community relations, to provide training courses, to promote conferences and to undertake research.

15. A bill has been introduced to establish a Commissioner for Complaints to deal with complaints of maladministration (which will include religious discrimination) by local authorities or public bodies. It will be the duty of the Commissioner to investigate complaints, to attempt to conciliate the two parties and, if that proves impracticable, to indicate what remedy is required to provide a fair settlement to cure the effects of the maladministration. He will have power to compel the attendance of witnesses and the production of papers. Not only may an aggrieved person

seek remedies in the courts as an ultimate sanction but an injunction may be sought in the High Court to restrain a local authority or public body from continuing course of maladministration.

16. The Government of Northern Ireland have decided to introduce an anti-discrimination clause in all Government contracts.

17. Northern Ireland Ministers indicated their intention of keeping under review the adequacy of the existing law against incitement.

18. The Minister of Community Relations will be considering what further action to prevent discrimination in other fields might be desirable. Northern Ireland Ministers have approved a series of detailed recommendations designed to reinforce the safeguards against discrimination in public employment and agreed that consultations should be set on foot at once with various employing authorities and staff associations. The main points considered were:

(a) The joint working party found that the Civil Service of Northern Ireland deservedly enjoys a high reputation for fairness and impartiality in its employment practices and is open to criticism in only a few minor aspects. Action will be taken in respect of these. The powers of the Northern Ireland Parliamentary Commissioner for Administration will be extended to personnel matters in the Civil Service.

(b) In those parts of public employment where the Government are not the direct employer, each employing body will be required to make a declaration that its aim is to have equality of employment opportunity without regard to religious or political considerations.

(c) Every public body should have an approved code of employment procedure. Discussions will take place immediately with the local authority associations and with statutory bodies.

(d) A permanent statutory Local Government Staff Commission will be established with strong advisory powers to assist local authorities in the selection of candidates for senior and designated appointments, and a continuing duty of reviewing appointment procedures. While the structure of local government is being reviewed these functions will be assumed by an interim commission acting on a non-statutory basis.

(e) The idea of a Public Service Commission, concerned with certain aspects of staffing throughout the public sector, including both local government service and the Civil Service, raises far-reaching questions but will be further studied with a view to a report being put before the Northern Ireland Government as soon as possible.

19. The joint working party on housing allocations, as well as dealing with methods of allocation, also brought to notice the much wider problem of the housing programme: the waiting lists, the age of much of the existing stock, and thus the great need for urgent schemes of redevelopment.

20. In their work on the Development Programme for the next five years the Government of Northern Ireland have concluded that an expanded housing programme is essential on social and economic grounds for the future welfare of Northern Ireland.

21. The working party has found that despite excellent recent progress by the housing authorities which compared very favourably with that in Great Britain there are still substantial shortages in many areas. Moreover, on present evidence the proportion of outworn houses needing replacement, which is believed to number some 100,000, is substantially higher than that in England and Wales. No more than 3,500 were dealt with last year in Northern Ireland. The Government have concluded that this is an emergency situation requiring emergency measures. They have therefore decided reluctantly that local authorities are not geared—and cannot be geared—to handle such a task and that the best hope of success lies in the creation of a single-purpose, efficient and streamlined central housing authority (helped by the Development Commissions in their own areas) to tackle this most urgent problem.

22. This difficult decision was taken by the Government only after much anxious thought and advice from various bodies. The Government are convinced that the disadvantages are clearly outweighed by the advantages to the whole community to be derived from a much larger housing programme. It was recognised by the Home Secretary that this decision to set up a central housing authority would have financial consequences which will be urgently discussed between the two Governments.

23. Both Governments recognise that private enterprise has a major role to play and the Northern Ireland Government will consider what further measures might be taken to stimulate private house-building. The financial cost of such measures will be examined by the Ministry of Finance and the Treasury in the normal way.

24. The Northern Ireland Government declared their intention that there should be a phased transfer of housing to the central authority and they would immediately enter into discussions with the local authority associations, the staff associations and the Housing Trust on the many complex problems which will arise, so as to ensure that there is a smooth transfer and no disruption of current housing programmes. Among the many advantages not previously referred to which will be gained from this new initiative the Government foresee a common public authority rent structure throughout Northern Ireland; improved mobility, which is the key to regional development; an end to allegations about sectarian discrimination in housing allocations; the attraction of more high-quality professional and administrative staff to housing work and the opportunity to use modern, efficient management techniques; economies of scale; organisation of contracts to ensure a steady demand on housing contractors and thus more efficient building; elimination of unnecessary variety coupled with greater opportunities for research and experiment; the introduction of advanced estate management throughout the province which will be in the hands of qualified housing managers; but above all a new opportunity to solve Northern Ireland's housing problems in the foreseeable future.

25. The Home Secretary endorsed the finding of the joint working party that the Ministry of Development's model points scheme was soundly based and supported the measures being taken by the Northern Ireland Government to have it adopted by all authorities during the interim period.

26. The Northern Ireland Government propose to mount a survey of the condition of the housing stock in Northern Ireland in order to establish objectively the extent to which housing conditions vary in different parts of Northern Ireland and to enable objective comparisons to be made with those in England and Wales.

27. It was recognised that the decision to set up a central housing authority had important consequences. Firstly, a concerted housing drive will require the assured provision of water and sewerage and their organisation on a scale and in step with house-building; road programmes in suit; and above all the prompt release of land for housing estates, development and attendant social and recreational services. Secondly, the consequent shape and size, and especially the staffing, of local councils without housing functions will have to be re-assessed, together with the implications for the social services at present discharged by local government—health, welfare, child care, education and libraries—whose future administrative structure is also under review.

28. To those ends, the Government of Northern Ireland propose to set up a review body which will be broadly based and include representatives of the two main religious denominations as well as of business, professional and trade union interests to review in conjunction with the Ministries in Northern Ireland and local authorities current proposals for reshaping local administration and to advise on the most efficient distribution of the relevant functions under the Parliament and Government of Northern Ireland.

29. The United Kingdom Government recognise the validity of those consequences of the major decision on the housing drive and fully support the proposal to set up a review body on local administration.

30. The Ministers of both Governments agreed that the decisions made following the report of the Police Advisory Committee, together with the measures designed to stimulate the economy of the province, and the steps taken by the Northern Ireland Government to ensure a common standard of citizenship, constituted a comprehensive programme of reform which gave all citizens of Northern Ireland the opportunity to live in harmony and prosperity and deserved the full support of everyone.

P. 14 October 1969.

DIRECTIVE FOR THE GENERAL OFFICER COMMANDING
NORTHERN IRELAND AS DIRECTOR OF OPERATIONS

INTRODUCTION

1. The following directive is issued to you in your capacity as Director of Operations in Northern Ireland. This directive will take effect on 4 February 1971 and supersedes the present directive (1)(2) on that date. It will remain in force until further notice.

COMMAND ARRANGEMENTS

2. In your capacity as Director of Operations in Northern Ireland you have overall responsibility for security operations. In this context you will:
- Exercise operational command of all land forces including disembarked Royal Marine commando units and the Ulster Defence Regiment.
 - Exercise operational control of naval forces stationed in or employed ashore in Northern Ireland.
 - Exercise operational control of RAF helicopters and personnel stationed in Northern Ireland.
 - Co-ordinate the tasking of the Royal Ulster Constabulary for security operations with other security forces.

Security Operations

3. Security operations are defined as relating to internal and external security and cover:
- The execution of operations necessary to counter action, whether covert or overt, aimed at subverting the security of the State.
 - The action necessary for the protection of life and property in case of actual or apprehended civil commotion.

Responsibilities

4. You are responsible to the Chief of the Defence Staff as Chairman of the Chiefs of Staff Committee, but will work in the closest co-operation with the Northern Ireland Government. You will be a member of the Northern Ireland Government Joint Security Committee. In the event of any disagreement with the Northern Ireland Government you are at once to refer the matter to the Ministry of Defence.

Notes:

- COSNIR 19/221755Z Aug 69
- COSNIR 24/291815Z Aug 69

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5. You are to keep the Chief of the General Staff, on behalf of the Chief of the Defence Staff, informed on all major issues. You will also, unless urgent operational considerations make this impossible, obtain guidance from the Ministry of Defence on any matters which, in your opinion or that of Her Majesty's Government's representatives in Northern Ireland, have political implications of concern to HMG or which concern any major redeployment of your forces.

Intelligence

6. Your dealings with the Northern Ireland Government on intelligence matters will be through the machinery of the Joint Security Committee.

7. Your Director of Intelligence is responsible to you for the co-ordination, but not control, of all sources of intelligence in Northern Ireland, including the Royal Ulster Constabulary Special Branch.

SECURITY OPERATIONS

8. Under this heading and in amplification of paragraph 2 above, you are responsible for:

a. Co-ordinating all military arrangements in Northern Ireland and arranging mutual assistance between the Royal Navy, the Army, the Royal Air Force and the Royal Ulster Constabulary.

b. Representing the Royal Navy and the Royal Air Force in discussions of military arrangements which may be held with the Government of Northern Ireland and the Royal Ulster Constabulary.

c. Ensuring that information and intelligence on relevant matters are passed to all Royal Navy and Royal Air Force stations and installations.

9. You will undertake these tasks in full consultation with the Flag Officer Scotland and Northern Ireland (FOSNI), who is the authority for ordering HM Ships under his operational control to conduct any naval operations that may be initiated in support of security operations, and the Air Officer Scotland and Northern Ireland.

10. In exercising operational control delegated in sub-paragraphs 2b and 2c you are to take into account any operational requirements the Royal Navy or Royal Air Force may have which are not directly connected with security operations in Northern Ireland.

11. You are empowered to deal direct with the commanders of Royal Navy and Royal Air Force installations in Northern Ireland on matters relating to security operations, keeping FOSNI, the Air Officer Scotland and Northern Ireland, the Naval Liaison Officer Northern Ireland (NLONI) and the Senior Air Staff Officer Northern Ireland (SASONI) informed.

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ANNEX A TO
COS 14/71
(Concluded)

12. Commanding Officers of Service installations and stations will be responsible to their single-Service authorities for the normal security arrangements of their establishments. Commanding Officers will however comply with any overall policy instructions which you may issue. Co-ordination within each Service will be the responsibility of NLONI or SASONI. Should the security situation require it, the temporary reinforcement of Royal Navy and Royal Air Force stations or establishments will be requested by NLONI or SASONI as appropriate.

13. Should you require additional Royal Navy and/or Royal Air Force forces for security tasks, you are to ask the Ministry of Defence for reinforcement.

CO-ORDINATION AND LEGAL MATTERS

Relationships with the Royal Ulster Constabulary

14. In accordance with your overall responsibility as Director of Operations, you are to co-ordinate the tasking of the Royal Ulster Constabulary in relation to security operations. Outside the security field you will have no responsibility for normal police duties, for which the Chief Constable will remain responsible to the Northern Ireland Government.

Organisation

15. You are empowered to set up, in consultation with the Northern Ireland Government and HMG's representatives in Northern Ireland, security committees and such other machinery as you consider necessary.

Detailed Instructions

16. Your attention is drawn to the relevant parts of Instructions on Internal Security in the United Kingdom in Peace, issued under cover of Ministry of Defence letter A/79/HD/2454/MO3(b) dated 29 March 1969.

17. The instructions in this Directive cancel:

a. COSNIR 19/221755Z Aug 69.

b. COSNIR 24/291815Z Aug 69.

c. Ministry of Defence letter A/79/HD/2454/MO3 of 11 Feb. 69.

Legal Aspects

18. Alleged offences by civilians arising from subversion or civil commotion remain offences against criminal law and are to be investigated and prosecuted by the police in the ordinary way.

19. Your attention is drawn to COSNIR 20 of 251900Z Aug 69, as amended by SECNIR 14 of 031810Z Sep 69 concerning the status of troops in Northern Ireland.

PS 10.342

Acting Chief of the Defence Staff

NO 1 669

IX

SOLDIERS AS POLICEMEN

When the armed forces of the Crown are requested by the police authority to act “in aid of the civil power”, do they take on the role and function of the police, and are thereby liable to perform their military duties in the capacity of policemen enforcing law and order? Or, do they continue to act solely as a military force, distinct from the precepts and practices of a police force, as if the Army was facing the outcrop of a state of insurrection? NICRA’s submissions focus on the propriety of the arrest operation, as laid down in the Operational Order No. 2 of 28 January 1972, and on the validity of the Brigade Commander’s Order at 16.07 pm of 30 January 1972, for 1 PARA to enter the Bogside and effect the arrest of rioters *after* the rioting had ceased and the rioters had dispersed. The most striking evidence that the rioting had ceased well before 1 PARA was sent in to effect arrests came from Soldier 128 (B1802. 001) which is described in Chapter V above.

NICRA's submissions in this respect relate solely to the state of affairs prior to the shootings in Rossville Street and Glenfada Park. Whatever view is taken of the shootings by 1 PARA, such action would be judged by the use of reasonable force, whether taken by a policeman or a soldier. The Criminal Law Act (NI) 1967 was (and is) just as binding on the Army as it was (and is) on the police. The only justification for serving the 1967 Act alongside Article 2 of the European Convention in Human Rights for the use of lethal force can be that the sources believed that their own lives or the lives of others were at immediate risk.

There is a paucity of authority on the question posed, whether soldiers should act like policemen where the former is acting in aid of the police. As Professor de Smith stated in his *Constitutional & Administrative Law* 2nd ed. 1973 Penguin: "the [army] officer's predicament is made more acute by the obscurity of the legal principles governing the scope of his duties. it is possible to analyse the duties of soldiers to quell local riots as being the duties of the ordinary citizen writ large" (p.514).

There exists one judicial pronouncement in recent times directly relevant to the rights and duties of the armed forces in Northern Ireland. In the House of Lords in *Reference under section 48A of the Criminal Appeal (Northern Ireland) Act 1968 (No 1 of 1975)* [1977]

AC 105 at 136E-137B Lord Diplock stated:

“There is little authority in English law concerning the rights and duties of a member of the armed forces of the Crown when acting in aid of the civil power; and what little authority there is relates almost entirely to the duties of soldiers when troops are called on to assist in controlling a riotous assembly. Where used for such temporary purposes it may not be inaccurate to describe the legal rights and duties of a soldier as being no more than those of an ordinary citizen in uniform. But such a description is in my view misleading in the circumstances in which the army is currently employed in aid of the civil power in Northern Ireland. In some parts of the province there has existed for some years now a state of armed and clandestinely organised insurrection against the lawful government of Her Majesty by persons seeking to gain political ends by violent means, that is by committing murder and other crimes of violence against persons and property. Due to the efforts of the army and police to suppress it the insurrection has been sporadic in its manifestations but, as events have repeatedly shown, if vigilance is relaxed the violence erupts again. In theory it may be the duty of every citizen when an arrestable offence is about to be committed in his presence to take whatever reasonable measures are available to him to prevent the commission of the crime; but the duty is one of imperfect obligation and does not place him under any obligation to do anything by which he would expose himself to risk of personal injury, nor is he under any duty to search for criminals or seek out crime. In contrast to this a soldier who is employed in aid of the civil power in Northern Ireland is under a duty, enforceable under military law, to search for criminals if so ordered by his superior officer and to risk his own life should this be necessary in

preventing terrorist acts. For the performance of this duty he is armed with a firearm, a self-loading rifle, from which a bullet, if it hits the human body, is almost certain to cause serious injury if not death”.

Lord Diplock's assessment of the security situation in Northern Ireland was made, not against the background of the constitutional arrangements of 1969 (which persisted until direct rule in March 1972), but in the context of heightened violence in the Province and in England and Wales* in 1975 when the reference was made to the House of Lords. Indeed, Lord Diplock refers to “armed and clandestinely organised insurrection against the lawful government of Her Majesty”. A similar view was expressed by Mr Enoch Powell, then MP for South Down in an undelivered speech in 1977. He was reported to have said:

*Lord Diplock's direct involvement with Northern Ireland came at the end of 1972 when the UK Government asked him to review the intimidation of witnesses in scheduled offences before the Northern Irish Courts, which led to the establishment of the Diplock Courts. In his book, *Pig in the Middle*, Methuen, 1985, Mr Desmond Hamill wrote (p. 130):

“[He Lord Diplock] came across, travelled around, saw a great deal, and spoke to many people. At one stage he even insisted on watching a riot. He wanted to find out exactly what sort of difficulties the soldiers were facing as they tried to control the violence, and during it, to arrest people. Soldiers were not trained as policemen.....”

“The true role of the Army in aid of the civil power was to act as a killing machine at the moment when the authority in the state judged that order could no longer be maintained or restored by any other means. The Army was then brought in, if necessary, to perform the act of killing albeit minimal, controlled and selective. Having performed this role, it is instantly withdrawn and the police and the civil powers resume their functions.

Any departure from that proven role in aid of the civil power meant that the Army became, what it is not and ought never to be, an armed police force whose very inappropriateness to the task signalled and emphasised still further the breakdown of authority. There were many circumstances, however, in which the police must have available arms, at least as efficient as those used against them.”

(The Times, Wednesday 5th October 1977, cited by John Alderson, Policing Freedom, MacDonald and Evans 1979, page 81).

This highly restrictive role of the Army relates to a state of insurrection where order can "no longer be maintained by any other means". A state of public unrest does not call for such an extreme coercive power. As Sir Frank Kitson observed in his Low Intensity Objectives, Subversion, Insurgency, Peace-keeping, Faber & Faber, London, p2 (OS1.638) that in writing about such matters the most difficult problems is that of terminology: "The British Army gives separate definitions of Civil Disturbance, Insurgency, Guerilla Warfare, Subversion, Terrorism, Civil Disturbance, Communist Revolutionary Warfare".

At G5A.55.1, the Prime Minister, Mr Edward Heath, comments upon the situation in August 1971.

"Internment was a major decision, which could not be said - as the GOC had earlier made clear - to be justified by any military necessity. It must therefore be regarded as a political act, which would be thought to be directed against one faction and must accordingly be matched by some political action, in the form of a ban on marches, which would represent its counterpart in relation to the other faction".

Quite clearly, the introduction of internment was viewed by the Prime Minister to be a political act. It was not viewed by the Prime Minister – or by the GOC – to be a military necessity. NICRA submits that this status had not changed by 8 February 1972 when the ban on marches was renewed.

NICRA submits that whatever else might be said about the state of affairs in Northern Ireland at the time, the Army on 30 January 1972 was facing a civil rights march that could properly be described only as “civil disobedience”, with a potential outcrop of rioting. The occasion posed no conceivable feature of “civil disturbance”, let alone “insurgency” or “insurrection”.

Even if the situation facing the Army in January 1972 of a civil rights march in the control of terrorism, anti-terrorist policing methods had properly to be governed by the same principles and ethics as all policing methods. (See Matassa and Newburn, Policing and

Terrorism pp 481 and 485.6 in Handbook of Policing. Ed by Tim Newburn, William Publishing 2003. The English tradition of the police force possessing the monopoly over the control of public order, with the military acting as a lethal longstop, was after August 1969 reversed without abandoning the precepts of civilianised policing.

Civil disobedience

The role of troops in suppressing riots is set out in Section V of *The Manual of Military Law* (Part II) headed "Employment of Troops in Aid of the Civil Power". Paragraph 4 and 5 of Section V provides that the primary duty for the preservation of public order and for the suppression of disturbance rests with the civil authority. The Manual does not specifically indicate how the military should approach its task, but in paragraph 11 it states that "undoubtedly the decision as to the use of force is a difficult one but any circumstances suggest themselves which may serve as a guide". The military commander is directed, in paragraph 22 to ask questions about the use of force in relation to rioting mobs; the question posed is "For what purpose has

the mob come together? In relation to meetings or processions, the paragraph states:

“..... a meeting or procession assembled for, say, the furtherance of parliamentary reform, the abolition of an obnoxious tax, or some other political object *not involving rebellion against established authority*, or any intention to enforce by violence the object which they have in view. It is, of course quite possible that excitement may prompt them to outrage, but such meeting, so long as it commits no act of violence, should be interfered with as little as possible and no exhibition of force should take place until some violent crime has been or is about to be committed”. (Italics supplied.)

Paragraph 25 summarises the Manual's conclusions:

“(a) The law which demands the suppression of unlawful assemblies, riots and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

In the case of unlawful assembly

(b) Beginning with an unlawful assembly, the civil authority has power to command those present to go away, to arrest them if they do not go, and to stop others whom they see joining them. If the parties interfered with resist, such force may be used as will compel obedience; but it

would be extremely inadvisable to use any such force as would maim or injure the person resisting unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In the case of riot

(c) Proceeding to the case of a riot the same observations regarding the degree of force to be used apply as in the case of an unlawful assembly. Considerable force may, if necessary, be used for the purpose of dispersing the mob, particularly if the mob is committing or evidently about to commit some outrage calculated to endanger life or property. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some violent outrage, which can only be stopped by armed force”.

These provisions in the Manual of Military Law, to which the armed forces are subject as well as to the ordinary law of the land, smack, not unnaturally, more of the soldier as a policeman rather than as a soldier *qua* soldier. But that was not the view of Sir Robert Mark, the Metropolitan Police Commissioner, writing in 1977 in a book entitled *Policing in a Perplexed Society* (Allen & Unwin, p.25). His analysis of the Northern Ireland situation post-1969 was:

“The Army’s task in Ulster is the suppression or containment of force or threat of force, even though the degree of force is that minimum sufficient for the purpose. **It does not act, as a police force does, on behalf of the community as a whole**, but on the orders of its political masters, to whom it is, through its command structure, accountable”.

With respect to Sir Robert, while it is true that the policeman is accountable to the law, the soldier (no doubt, quite differently, accountable to the military hierarchy) when he is acting in aid of the civil power takes on a policing role, as evidenced by the Manual of Military Law.

Sullivan CJ in the Irish case of Lynch v. Fitzgerald [1938] IR 382, 411 cited the opinion of Viscount Haldane (then Secretary of State for War and later Lord Chancellor) in the report of the Proceedings of the Select Committee on the Employment of Military in the case of Disturbances, contained in the Parliamentary Papers for 1908 (HC 236) as follows:

“Broadly stated, there are two principles which form part of the common law of this country. The one is that every citizen is bound to come to the assistance of the civil authority when the civil authority requires his assistance to enforce law and order. That applies to the soldier, who is in no different position from anybody else. But there is a second principle which does bear upon the duty of the soldier, and that is that when you do come to the assistance of the civil authority which has requisitioned you, neither you, nor for that matter the civil authority, are entitled to use more force than is necessary **in order to assert the cause of law and order**. Now, the soldier is a person who is different from an ordinary citizen in this, that he is armed with a deadly weapon, and moreover, he comes out in a military formation. The result is that if he appears unnecessarily he is apt to create an impression in the minds of those who are about of a hostile character. His very menacing appearance may lead to the very thing which it is his purpose to prevent - disturbance”. (Italics supplied.)

De Smith in his Constitutional and Administrative Law (2nd ed. 1973) stated that: “even with times of disorder within the nation, the forces must normally act under direction of the civil authorities”. It is only when riot passes into rebellion or guerilla warfare that there may be a shift and principles beyond policing intrude. By no stretch of the imagination had the NICRA march transcended the dividing line, even if rioting was reasonably to be expected. This approach seems to accord with the contemporary view of Lord Carver (at the relevant time the Chief of the General Staff). In his Newsam Memorial lecture in 1982 (see Police Journal, 1983, p.30) where he said that he always

understood the legal position to be that if a chief officer of police considers that, with the police available to him, he cannot fulfil his responsibilities he can request help from the nearest military commander. He adds: "The military commander is then bound to go to the help of the police, but if he is prudent, he will inform his superiors, who will tell the Ministry of Defence..... But in law none of the military commander's superiors has any right to prevent him going to the help of the police.....the military commander is himself entirely responsible to nobody but the law as to what he does and how he does it" (at p.37). In short, there is no more governmental control over the army commander exercising his duties in aid of the civil power than there is over the Chief Constable as head of the civil authorities in the maintenance of law and order. Lord Carver mentioned the occasion in November 1910, when General Nevil Macready commanded a force sent to help police to stop looting and window-breaking in Tonypandy during a miners' dispute in the Rhondda Valley. Winston Churchill as Home Secretary intervened to order the withdrawal of the troops. It is generally thought that he acted unlawfully, although Lord Jenkins in his biography of Churchill (Pan Books 2001, at p. 198-9) wrote:

“The Chief Constable of Glamorgan had, according to a report of Churchill’s to the King, no fewer than 1,400 constables at his disposal, a cornucopia compared with that of his poor cousin of Newport, he decided to apply direct to the GOC southern Command for troop reinforcement. The infantry advancing from Salisbury Plain, were at first halted by Churchill at Swindon, and the cavalry allowed no nearer the scene of potential battle than Cardiff. A little later Churchill agreed to the cavalry advancing to Pontypridd, at the junction of the Aberdare and Rhondda valleys. However, as the rioting persisted over several days and nights....Churchill did eventually allow a detachment of the Lancashire Fusiliers into the valley, where indeed they remained for nearly a year. They never engaged with the strikers”.

Roy Jenkins commented:

“On any objective analysis it is difficult to fault Churchill on the Rhondda for any sin of aggression or vindictiveness towards labour”. Indeed at the time he was more criticised from the opposite direction.... there was always sufficient of the ‘galloping major’ about Churchill to make it easy to assume that he was with over-boisterous irresponsibility, power having gone to his head and, in referring to the affair of the infamous battle of Sidney Street in Stepney”.

Roy Jenkins summed up Churchill’s behaviour as “being far from a calm and judicious Home Secretary”, and added: “Both the organisation of the police and the legal responsibility for avoiding civil commotion were very boldly diffused at the time. Troops could be sent only at the request of the civil authority on the ground”

Ordinarily, the military hands back responsibility to the police once the aid to the civil power ceases to be required. The military will be the judge when the situation has been brought sufficiently under control for the police to resume their role. But in Northern Ireland the situation, post-1969, was not normal. Yet the August 1969 arrangements conformed to the general law relating to aid to the civil power, although many soldiers involved in the events of Bloody Sunday found their role as policemen difficult if not impossible.* The precepts of policing on behalf of the whole community nevertheless prevailed.

The Communiqué & Declaration of 19 August 1969 (see Annex 2 to Ch III) confused the question of the relative role and function of the police and the Army by effectively putting the civil power (the RUC) under full military control. Senior military commanders were unhappy to be cast in the role of a police force and the police officers

*See, for example, a quote from a soldier in the interview of 7 December 1991, annexed to statement of Mr Neil Davis (M.19.529).

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questioned their loss of police primacy. Lord Carver in the Newsam Memorial lecture at Bramshill in 1982, *The Army and the Police*, published in the Police Journal, Vol LVI, p.30, quoted a comment by Lord Scarman in a House of Lords debate, saying:

“I think the greatest disaster in the Northern Irish situation was not when the Army went into the Bogside in the late summer of 1969, but when the police, the RUC, came out and stayed out for years”.

But the ousting of the RUC from its functioning in relation to security operations could not, and did not alter the Army's role in aid of the civil power. Indeed, any such “ousting” was rectified, at least partially by the ending of “full control” by the Army of security operations through the GOC Directive of 4 February 1971 (see Annex 4 of Ch. III). The true position was best stated by Sir Kenneth Newman, the Chief Constable of the RUC, in 1976 when, in promoting the primacy of the police”, he stated:

“The full weight of the Army is therefore being deployed in a detailed way which best serves police *purposes and is governed by police objectives*”.*

*Cited by Ian Oliver, *Police Government and Accountability*, at p. 160.

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The primacy of policing over military action, post-1969, is best reflected in the instructions issued jointly by the Chief Constable and the D Ops Committee on 19 January 1972 (G.140.935). NICRA submits that the validity of the *Operation Forecast* is to be tested against the duty of the Commander of Land Forces to apply police objectives in performance of the function to aid the civil power.

There were three discrete aspects to *Operation Forecast*. One was the control of the movements of the marchers on a route prescribed by the erection of barriers; the culmination of the march in a public meeting (which was perfectly lawful) and the arrest of rioters, should rioting (as expected) break out. There was nothing in the provision of *Operation Forecast* that involved directly an anti-terrorist activity. There was no expectation of encounter with terrorist activity, save for a general alertness for some possible IRA presence at the march and then only as an adjunct to rioting: see Soldier 2225 (Day 384). All these three situations would ordinarily confront the police with the task of law enforcement. They were not primarily the problems facing the armed forces of the State. There was no state of insurrection, rebellion or guerilla warfare, only a civil rights march as

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a political demonstration. There was, therefore, no reason whatsoever for the Army to employ troops other than in a policing role. That was clearly the view of Mr Patrick McCullagh, the Deputy Chief Superintendent in Derry at the relevant time, who attended with his senior, Mr Lagan, at the meeting with Brigadier MacClellan on 24 January 1972.

Mr McCullagh in his written statement (JM 17.3, para 12) said that “it should be noted that we [the RUC] never directed the Army; we merely advised them **as in effect they were acting as a police force**” In his oral evidence **Day 292/66/6-14** Mr McCullagh was emphatic about the philosophy of policing and the practice of policemen as a force committed to serving the community in contrast to soldiering, which he recognised operated for the purpose of defending the realm. By implication, Mr McCullagh was adopting the orthodox view of the police that the Army, while the latter was in control of security operations, acted upon the advice of the police force when “in aid of the civil power”.

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By contrast, General Ford was adamant in asserting that *Operation Forecast* was exclusively a military operation, so much so that he was unwilling even to concede that the degree of control by the Army over security operations had been lessened by the GOC Directive of 4 February 1971, which required any collaboration with RUC as to its deployment of tasks. The 19 January 1972 Instructions regarding Government ban on processions underlined the primary role of the police. It said (G140.936): "Prior liaison between the Police and the Army authorities is extremely important in order that the latter can be fully briefed on the danger potential of any threatened procession and made aware of the Divisional Commander's opinion on the question of any Army presence". To the extent that the constitutional issue was at all considered by General Ford, he would probably have regarded the Army as bringing soldierly precepts to bear directly upon civil disobedience situations which the police had failed to supervise. If so, General Ford's approach should be adjudged faulty. Those soldiers who participated in Operation Forecast similarly did not conceive of their role in the events of Bloody Sunday as anything other than the performance of soldierly duties. Thus Captain SA8

(2002. 001) told the tribunal in his written statement on 11 September 2003 with reference to service as a paratrooper in Northern Ireland that “although an experienced soldier.....I was relatively inexperienced in the tactics of modern urban warfare”. (CSM Lewis regarded himself and his colleagues as “soldiers, not policemen” Day 373/14/15.

The arrest operation envisaged that, if and when rioting took place, 1 PARA would be sent into the Bogside to arrest the rioters. But should the operational order have envisaged an automatic triggering of the move to arrest rioters, if in fact the rioting (such as at Barrier 14) had been contained without further risk to life and limb and the rioters had dispersed? Brigadier McClellan had delayed the go-ahead to 1 PARA until he was satisfied that the rioters had been clearly separated from the marchers who had been demonstrating peacefully. That was no doubt prudent, if indeed separation were ever feasible. If, however, the military response should have been that which policing precepts would dictate, Brigadier McClellan (who was the ultimate

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Commander on the day) should have decided not to implement the arrest operation, simply on the basis that service to the community by a policing authority did not require, in the circumstances that pertained at 16.07 pm on 30 January 1972, the entry of soldiers, acting as policemen, for the purpose of arresting those who had ceased to engage in any riotous behaviour. Just as there was no attempt to arrest the march's organisers [although there was a suggestion of identifying them and later prosecuting them] for defying the ban on marches, so too a senior police officer would not have ordered the arrest of those who had ceased to riot.

General Ford's approach before and after Bloody Sunday

General Ford displayed overweening confidence that *Operation Forecast* was the right, if indeed the only sensible response by the military authorities to the NICRA march planned for 30 January 1972. He made no concession in his evidence other than that his troops were being asked to engage in a military operation, conducted exclusively by military standards. More significantly, General Ford's earlier

attitude persisted *after* the event, without qualification, in the light of the tragic consequences of the arrest operation by 1 PARA.

At a meeting on 2 February 1972 of the Northern Ireland Tribunal Team, held at HQNI (the team set up in the wake of the announcement of the Widgery tribunal) Major General 2144, the Director of Personnel (Army) in addressing the team and reflecting General Ford's view, said that he assumed "that this had been a thoroughly well conducted military operation and that we had nothing whatsoever to hide or be ashamed of" (para 4, Loose Minute, BR/114/1/2/PS2 (Army) of 4 February 1972: G114b, 743. 3-5).

Major General 2144 noted that after the meeting he had a discussion with General Ford "who had been present in Londonderry on 30 January". General Ford is recorded (para 11, G114b, 743.5) as saying that "1 PARA had moved with amazing speed and had shot with great accuracy as the result of intensive practice in snap shooting. These were the reasons why they had been so successful and had sustained no casualties from IRA fire. He thought that most

other units would have sustained quite severe casualties in conducting this operation. The Loose Minute further records (para 13) that General Ford told Major General 2144 that "he had visited 1 PARA that afternoon and that they were in good form but undoubtedly very upset at the repercussions to what they had regarded at the time as an outstandingly successful operation".

The fact that, while 13 civilians were killed on Bloody Sunday, no soldier was killed or seriously wounded inevitably aroused concern in Government circles. As a result of a private conversation, probably on 3 February 1972, at the weekly meeting of the Civil Service heads of Government departments) between Sir Philip Allen, Permanent Under Secretary of State at the Home Office and Sir James Dunnett, Permanent Under Secretary of State at the Ministry of Defence, when the former indicated that Home Office Ministers were expressing worries about the disparity in casualties between civilians and Army personnel, the latter responded in a letter of 8 February 1972 (G118A 787.1). Sir James wrote to Sir Philip, saying that he had "had a prolonged talk with Major-General Ford". The letter went on to say

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that General Ford told Sir James “that never had he seen an Army unit deploy itself with greater speed and general professional competence than the 1 PARAs, and never had he seen a unit whose shooting was more controlled or more accurate. In short, what he was saying was that the fact that they had suffered no casualties was very largely due to the speed and professional competence with which they operated”.

This report was remarkably close in time and similar in content to that noted in the discussion between General Ford and the Director of Personnel (Army) on 2 February 1972. NICRA submits that what Sir James was reporting indicated General Ford’s uncompromising reaction to the shootings on Bloody Sunday. Soldier U, a private in the Mortar Platoon of 1 PARA on the day, for example, in his written statement to the tribunal (787.009) said that it was pure luck that no soldier was shot (para 48). General Ford would not, uncompromisingly, have contemplated the only other possibility that no soldier in the Bogside on that day did fire a shot in anger. NICRA submits that that possibility should be actively considered by the tribunal as a plausible explanation for the surprising absence of any

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injury inflicted on any soldier, if indeed there was a “firefight with IRA gunmen”. Alternatively, there was in reality no concerted action from the IRA, or even from stray gunman; hence no injuries to the soldiers of 1 PARA.

The Dunnett letter

NICRA submits that there is no reason to doubt the content of Sir James Dunnett’s letter, which on the face of it records General Ford as concluding that the performance of 1 PARA on Bloody Sunday was that the absence of injuries to soldiers was “very largely due to the speed and professional competence with which they operated” - “very largely due” might incorporate an element of good luck.

General Ford, however, in his evidence denies having had a conversation with Sir James at any time in the week immediately after Bloody Sunday, for reasons that emerge from General Ford’s answers to questioning by counsel for the tribunal Day 260/122/8 to Day 260/127/9. In the absence of evidence as to the timing and place of

the “prolonged talk”, NICRA submits that the reasonable inference is that it took place over the telephone either some little time before, or on 8 February 1972. It is unlikely that Sir James would have travelled to Northern Ireland simply to converse with General Ford, and the latter denies having travelled from his Headquarters in Lisburn to London. Indeed, General Ford’s evidence is that he had no conversation with Sir James at that time, and that the substance of what Sir James was reporting to Sir Philip Allen could only have been gleaned from a meeting which General Ford states took place around Christmas-time 1971. In effect, according to General Ford, the Dunnett letter did not accurately reflect General Ford’s reaction, directly or indirectly related to the events on Bloody Sunday, but was a conflation by Sir James of two events - Bloody Sunday and a 1971 Christmas meeting - thus leading to a misreading of what is purported by Sir James to have been said by General Ford about the military operation on 30 January 1972. NICRA submits that General Ford is not to be believed on this piece of his evidence. NICRA seeks to explain why General Ford should be disbelieved; and speculates on

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General Ford's motive for denial of what Sir James appeared to be reporting so clearly to Sir Philip Allen.

General Ford denied that he ever had a telephone conversation with Sir James. He said that he would have remembered any conversation with such a high-ranking civil servant, particularly since he knew Sir James well from the time when he, General Ford, had been Staff Officer to the Chief of the Defence Staff. And he had no such memory.

Faced, in further questioning, with the document minuting the meeting of 2 February, which restates the similarity in language General Ford is said to have been used in conversation with the Director of Personnel (Army) Major-General 2124, General Ford was unfazed. The Director of Personnel (Army) had, too, got it "slightly wrong" Day 260/126/18 to Day 260/127/9. General Ford sought to explain the verisimilitude of the two separately reported statements by pointing out that a copy of the Loose Minute of the Director of Personnel (Army) dated 4 February 1972 went to the Chief of Press

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Relations at the Ministry of Defence, and would have been seen by, or come to the immediate attention of Sir James Dunnett in his capacity of overseeing all public relations matters Day 260/126/2-7. Even if one assumes that the Loose Minute, or indeed the one item at paragraph 11, came to the notice of Sir James within 3 or 4 days of its circulation, there is no reason to suppose that it was that item which informed Sir James instead of, or even supplementary to the “prolonged conversation” with General Ford. If it had informed Sir James, he would undoubtedly have referred to its source. General Ford’s explanation, is to say the least, disingenuous.

Why, then, does General Ford, in his evidence to the tribunal on 12 November 2002, seek to distance himself from the palpable *actualité* of his two reported statements in February 1972? The answer to that question must take full account of the effect of a lapse of 30 years, during which protracted time the opportunity, not to say, the constant mulling-over and reflections of an event that has never disappeared from either the political agenda, military history or persistent media attention and was ultimately prompted afresh by a re-run of the

Widgery tribunal. While one would have supposed that reflective thought might have softened the angularity of General Ford's support for the action taken by 1 PARA on Bloody Sunday, his adherence to an absolutist position (ie, a thoroughly well-conducted military operation) would appear publicly unattractive, even untenable in the face of a very thorough public investigation in the 21st century. While not accepting his manifest utterances on the two occasions, of 2 and 8 February 1972, General Ford adhered to his main contention that Operation Forecast was an exclusively military exercise which unfortunately, and without blame on the part of those responsible for its planning and execution, had tragic consequences. At no stage in his evidence did General Ford deviate from his contention that the Army was conducting a military operation on Bloody Sunday. NICRA has submitted, and repeats its submission, that General Ford misconceived the Army's role as acting in aid of the civil power. He and others in command treated the situation in Northern Ireland at that time as if it was a case of insurrection by one part of the divided community, for which martial law would be the appropriate response from the constitutional authorities. But there was no insurrection, no

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rebellion, no guerilla warfare, not even a civil disturbance. The fundamental flaw in his whole approach led General Ford to engage his troops in a foolish, and tragic enterprise of arresting erstwhile rioters in the course of a peaceful, non-violent civil rights march attended by thousands of unarmed civilians, and when the expected rioting had been successfully repelled. The "arrest operation" was a "pointless exercise".

FS-10-372

1. Loose Minute of meeting of 2 February 1972: G114B 743, 3-5.
2. Sir James Dunnett's letter of 8 February 1972: G118A 787.1).

FS-10.373

24

PHOTOCOPIED ANNEXES
PART OF CHAPTER IX
SOLDIERS AS POLICEMEN

(1)

Reference #607

4

CONFIDENTIAL

LOOSE MINUTE

HR/114/1/2/PS2(Army)

AG
DUS(Army)
MO4
ALS2
Head of C2(AD)
Treasury Solicitor (Mr Bailey)

21/72

PROVIDED BY
MINISTRY OF DEFENCE
FOR BLOODY SUNDAY
INQUIRY 1998

Copies to: PS/S of S
PS/Minister of State
PS/US of S(Army)
MA/CGS
PS/PUS
DMO
AUS(GS)
Head of DS 10
DPR(A)

TO SEE

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THE LONDONDERRY ENQUIRY

1. At 1600 hours Wednesday 2 February I attended the opening meeting of the Northern Ireland Tribunal Team at Headquarters Northern Ireland Command. This Team consists of:-

COS	IC
Col AQ	Deputy Liaison with MOD Administration
Col GS (IP)	The opposition case
Mr Wallace	Asst. Takes over on 11 Feb)
GSO 1 Plans	The Army case
	Liaison with 8 Bde and units
APM	Provision of evidence
DAPM (Complaints)	Full-time Asst)
(Maj 1)	
Lt Col	Legal Adviser
Maj	Secretary
GSO 3 Plans	Asst Secretary (when required)

Also in attendance at this meeting were:-

CIVAD
Brigade Major 8 Infantry Brigade
ZIC 1 Para
Police Adviser



2. I was invited to open the proceedings by addressing the team. I said that my aim in coming was first and foremost to show that not only had they the solid support of the Ministry of Defence, which they already knew, but that we were determined to do everything we could to help them in connection with the Tribunal

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MINISTRY OF DEFENCE

MAIN BUILDING, WHITEHALL, LONDON, S.W.1

TELEPHONE 01-930 7022

PERMANENT UNDER SECRETARY OF STATE

PERSONAL AND
CONFIDENTIAL

8 February 1972

PUS/72/221
55/20/7

Sir Philip Allen GCB
Home Office
Whitehall
SW1A 2AP

PROVIDED BY
MINISTRY OF DEFENCE
FOR BLOODY SUNDAY
INQUIRY 1998

In the course of conversation a few days ago I think you mentioned to me privately that one point that was slightly bothering your Ministers in connection with the Londonderry episode was the fact that 13 civilians had been killed but no members of the Armed Forces had been either killed or seriously wounded.

2. I thought I ought to let you know in this connection that I had a prolonged talk with Major-General Ford who, as you know, is the Commander of the Land Forces in Northern Ireland and who was present throughout the Londonderry proceedings. He told me that never had he seen an Army unit deploy itself with greater speed and general professional competence than the 1st Paras, and never had he seen a unit whose shooting was more controlled or more accurate. In short what he was saying was that the fact that they had suffered no casualties was very largely due to the speed and professional competence with which they operated.

L. J. DUNNETT

PERSONAL AND
CONFIDENTIAL

FS-10.375

G118A 787.1

X

THE ARMY'S POWERS OF ARREST AND THE NORTHERN IRELAND ACT 1972

A fortnight before Bloody Sunday, instructions (emanating from the Chief Constable of the RUC with the approval of the Director of Operations (DOps) Committee: see G 116. 750, 753 were issued to senior police officers of the RUC and all brigades concerning the enforcement of the ban on processions made by the Minister of Home Affairs in the Stormont Administration, prohibiting the holding of all public processions on any public highway. The instructions, dated 19 January 1972, told the police and the army what action was to be taken whenever the ministerial prohibition was being defied, and indicated what powers the Army (if called upon by the civilian authorities) would exercise. By that time, or shortly thereafter, Chief Superintendent Lagan, Head of N Division of the RUC (which covered the city of Derry) was told informally that NICRA was organising an anti-internment march on 30 January 1972 in blatant defiance of the ban on marches. And the military were aware of the

impending march, if only through the meetings of the Joint Security Committee.

Para (6) of the instructions provided:

“The powers of arrest under the Public Order Act [1951 to 1970] should be exercised at the time [of the defiance of the ban] if practicable, by the RUC. Uniformed and plain-clothed police must in any case identify as many persons as possible taking part in the procession and note their degree of involvement. *Arrests under the Public Order Act will not be carried out by the Army but should it be necessary for the Army to make any arrests they will do so under Regulation 11 of the Special Powers Act* on suspicion of committing acts prejudicial to the peace or of having committed an offence against the Regulations”.

The author of the instructions no doubt relied upon section 7 of the Civil Authorities (Special Powers) Act 1922, as amended by the Civil Authorities (Special Powers) Act 1933 which provided that “any person authorised by the civil authority, or any police constable or **member of any of His Majesty’s forces on duty**” had the power to arrest people for criminal offences or breaches of regulations made under the 1922 Act. (The Schedule to the Act conferred further powers upon members of the Armed Forces.)

A week earlier, on 11 and 12 January 1972, the High Court of Northern Ireland (Lord Lowry CJ, Gibson and O'Donnell JJ) had reserved judgment in a challenge by five persons against their conviction on 8 September 1971 by the Londonderry Justices of unlawful assembly; the challenge, by way of certiorari, was that regulations conferring powers *inter alia*, of arrest on the British armed forces were *ultra vires* the Government of Ireland Act 1920. That Imperial Act, the Constitution of Northern Ireland, established the Northern Ireland Parliament at Stormont, giving it authority to make "laws for the peace, order and good government of" the Province, but, by section 4(1) of the 1920 Act, provided that it should not have "power to make laws in respect of the following matters in particular, namely -.....(3) the Navy, the Army, the Air Force, the Territorial Army, or any other naval, military, or air force, or the defence of the realm, or any other naval, military, or air force matter.....". Judgment was given on 23 February 1972, in favour of the applicants, that the Special Powers Act was *ultra vires* the Government of Ireland Act 1920: **R (Hume) v. Londonderry Justices** [1972] NI 91. (Law 11. 1-35) On the basis that the law was always as stated by the High

Court, the Army possessed no power of arrest on 30 January 1972, either under the Public Order Act or the Special Powers Act. The purported arrests of civilian marchers on that day were thus unlawful - until the passing of the Northern Ireland Act 1972 on 24 February 1972 retrospectively validated the supposed powers exercised by the military under the legislation of the Stormont administration.

The Crown immediately obtained leave to appeal from the High Court in Belfast to the House of Lords, but the British Government thought that an appeal was not a practical possibility; the Lord Chancellor, Lord Hailsham, said that "we could not leave these powers unused for as long as would be necessary to hear the Appeal", Hansard, HL Vol 328, Cr 624 (23 February 1972). The decision to challenge the High Court's ruling in the final court of appeal was thus rejected in favour of a Bill rushed through all its parliamentary stages in one day - to be precise, seven hours and eleven minutes - not merely negating the court ruling but legislating retrospectively. The Bill provided:

“The limitations imposed by paragraph (3) of section 4(1) of the Government of Ireland Act 1920 on the powers of the Parliament of Northern Ireland to make laws shall not have effect, **and shall be deemed never to have had effect** to preclude the inclusion in laws made by that Parliament for the peace, order or good government of Northern Ireland of all provision done by them, **and shall be deemed never to have precluded** the conferment on them by, or under or in pursuance of any such law of powers, authorities, privileges or immunities in relation to the preservation of the peace or the maintenance of order in Northern Ireland”.

The Government’s view was that the Bill had a limited purpose. The Lord Chancellor described the Bill as “the extremely narrow as well as extremely technical nature of the legislation we are now passing”. He pointed to three things illustrating that description:

“We are not validating anything which was not invalidated this morning. If any acts were done illegally outside the powers conferred upon them by the Minister, they are still illegal and they would still give rise to an action in the courts: they would still give rise to an action for civil damages, where civil damages are proper, and they would still give rise to criminal proceedings if a criminal offence is committed. Nothing of that kind is validated. Secondly, the particular convictions which were quashed by the High Court will remain quashed if this legislation is passed. This is because, although leave to appeal was obtained, we shall abandon our appeal if this Bill is given legislative force. Therefore those who gained the advantage of the judgment this morning will be allowed to keep it for all time without interference”. (Hansard HL, Vol, 328, Col 624).

Pressed to answer the question whether an individual's right of action was being taken away under the Bill, the Lord Chancellor admitted affirmatively (HL Hansard, Vol 328, Col 656).

This was not merely an Act of Indemnity relieving from liability those who had acted illegally on Bloody Sunday. It was an Act of Validation, blatantly retrospective so as to render the arrests made by the Army, purportedly under the Special Powers Act, valid as if the law had never made them invalid. Those unlawfully arrested and detained for some hours at Fort George on 30 January 1972 were subject to investigation with a view to criminal proceedings, but ultimately none was prosecuted.

The Northern Ireland Act 1972 was a piece of retroactive penal legislation and hence constitutionally impermissible. In **R v. Kirk** [1985] 1 All ER 453 at 462 the European Court of Justice stated*:

*Lord Mackenzie Stuart was the President of the Court which delivered the judgment.

“The principle that penal provisions may not have retroactive effect is one which is common to all the legal orders of the member States and is enshrined in Article 7 of the European Convention on Human Rights as a fundamental right; it takes its place among the general principles of law whose observance is ensured by the Court of Justice”.

It cannot be said that the ruling of the High Court on 23 February 1972 was entirely unexpected, since the legal powers of the Army were known to be questionable for many years, most recently in 1969 when British troops were sent to Northern Ireland. As long ago as 1936 a commission of inquiry set up by the National Council of Civil Liberties (now called Liberty) had commented on the provisions. It said (at p.15-16):

“It is curious that parts of the Special Powers Act purport to confer powers upon members of the *armed forces*. The title of the legislation ‘Civil Authorities Act’ appears to exclude the exercise of ‘Special Powers’ by other than civil authorities, an assumption which is borne out by the limits of the Home Minister’s powers of delegation ie to any officer of police. But in this *respect the Schedule travels far beyond the Act to which it is appended* by specifically empowering the military authorities to exercise rights and perform duties which from the purport of the Act itself should be strictly confined to civilians.”

The 1936 NCCL commission of Inquiry, which was composed of Mr Edward Aylmer Digby QC, Miss Margery Fry, Mr William McKeag,

and Mr Edward Lancelot Mallalieu (the last two had been Liberal MPs from 1931-1935), with Mr Neil (later Mr Justice) Lawson as secretary, was reviewed in October 1972 in the light of subsequent events. It noted that the 1936 report had been reprinted many times, "most recently in 1972", and proceeded to comment on the subsequent legislative changes that had affected the situation. It stated (para 4, p.3:

".....the Northern Ireland Act 1972 has dealt with an objection raised by the 1936 NCCL Commission and since upheld by the Northern Ireland High Court in **R v. Hume and others**, that the Regulations were *ultra vires* the Stormont Government in so far they purport to confer powers and immunities upon the armed forces. The Northern Ireland Act 1972 retrospectively amended the Government of Ireland Act 1920 to legitimise regulations which, as legal academics had for many years in Ireland taught their students were invalid".

When the British Government in 1969 committed armed forces to Northern Ireland in aid of the civil power, and later took over the primary, civilian role of maintaining law and order, some attention must have been paid to the powers of armed forces under the Special Powers Act. The constitutional implications of calling in the Army in

aid of the civil power was discussed in 1966 and again in April 1969. As Lord Scarman's tribunal of inquiry into violence and civil disturbances in Northern Ireland in 1969 wrote (para 20.2, Cmd 566): "The possible constitutional consequences of the use of the Army in Northern Ireland were.....very much to the fore of the minds of the Minister of Home Affairs and the Inspector General [of Constabulary] on Sunday 3 August [1969]. During the following week consultations took place between officials at Stormont and Westminster; on Tuesday 5 August the Secretary to the NI Cabinet visited the Permanent Secretary to the Home Office in London". The Scarman Commission, whose report was signed on 4 February 1972 and presented to the Stormont Parliament in April 1972, concluded that it was satisfied that the NI Government and senior police officers were well aware in August 1969:

- (1) that they must call out the USC before seeking the aid of the Army; and
- (2) that there was the possibility of "constitutional implications" if and when they asked Westminster for military assistance in maintaining law and order.

If the relevant authorities were alive to the constitutional implications of the Army taking control of law and order on the streets of the main towns of Northern Ireland, what steps (if any) were taken from August 1969 onwards, and in particular on the advent of interment on 9 August 1971? According to the leader of the opposition, Mr Harold Wilson,* government lawyers had been advising to the effect that the powers under the Special Powers Act were *intra vires* the Government of Ireland Act 1920.

“Both Governments - I emphasise, both Governments - which have been responsible for the use of British troops to preserve peace in Northern Ireland had assumed on the best legal advice available, to us and to the recent Government, that our action in putting troops in and with the powers which they were given - for example, to deal with search of vehicles suspected of carrying gelignite or action to deal with snipers - was legal. This was the view of the then Government - and of the present Government - when we put in the troops in 1969, and, indeed, when we gave them supreme control of security in Northern Ireland. The view of both Governments seemed to have been confirmed by the decision of the British High Court in the Judgment of Mr Justice Ackner last September”.

The only supporting evidence for the Government's view that it had always been lawful for the Northern Ireland authorities to confer powers on the Army was Ackner J's judgment of September 1971

* Reference to Hansard 23 February 1972

which was considered fully, and rejected in February 1972 by the High Court in Belfast. Ackner J's judgment was appealed against in England, but the Court of Appeal, in dismissing the appeal, held that since 1782 the English Courts had no jurisdiction to issue writs of habeas corpus in respect of persons detained in Northern Ireland. (**Re Keenan** [1972] 1 QB 533).

Whatever may have been the legal advice to Government in 1969, it is submitted that that legal opinion could not have been regarded as decisive; indeed it had been problematical ever since 1936.

At the very least, the statement in paragraph (6) of the police instructions, asserting boldly that the Army's powers to arrest under the Special Powers Act, was questionable, in the light of the hearings a week before in the High Court in Belfast. Even if the conclusion is that Government was entitled to rely on advice from its own lawyers, the doubt about the continuing constitutionality of the military operation to deal with marches should have given pause for thought

by the military authorities and the Joint Security Committee in the days leading up to Bloody Sunday.

At the very least, the relevant governmental departments should have re-considered carefully the constitutionality of the powers of the armed forces in the light of the prosecution of John Hume and his four colleagues in August 1971 and the certiorari proceedings begun in late 1971.

The reason for the Government rushing the Northern Ireland Bill through all its stages within hours of the judgment of Lord Lowry CJ in the Divisional Court in Belfast on 23 February 1972 was stated to be that until that day everyone thought that, at least since 1969, the Army had been operating under the Regulations made under the Special Powers Act, and that that understanding was fortified by the judgment of Ackner J in 1971, (Hansard, HC, Vol 832, Cols 1419, 1420, 1423, 1432-1433). The Home Secretary, no doubt having in mind the NCCL Commission of Inquiry report of 1936 said that "a

majority of the legal profession has believed that Stormont had these powers” (Hansard, HC, Vol 831, Col 1423).

Those advising Government on the constitutional issue, raised by the challenge to the conviction of Mr John Hume MP and his colleagues by the Derry Justices, must have been actively pondering, ever since 29 November 1971 when the High Court in Belfast granted the applicants leave to apply for an order of certiorari: (Hansard, HC, Vol 831, Col 1416) the likely outcome of the legal challenge. At the conclusion of the full hearing of the application in Belfast on 11/12 January 1972, the parties are likely to have received some indication, from the course of the oral arguments by counsel and the judicial interventions from the Bench, what was the likely outcome of the application. Whatever the respective counsel for the parties may have been communicating to their clients about the likely outcome of the application, it must be assumed that Government, both at Whitehall and Stormont, were actively considering what steps might be needed to be taken to respond to a judgment adverse to the Crown’s contention that the powers conferred on the Army by section 7 of the

Special Powers Act were *intra vires* the Government of Ireland Act 1920. Apart from discussions between the two Governments, the legal advisers to the Chief Constable and to the Army Command, respectively, will surely have been consulted in the drafting of the Police Instructions of 19 January 1972.

Assuming that the Northern Ireland Act 1972 was, and is a valid piece of legislation, two questions arise. What action, if any, should have been taken by the military authorities in conjunction with the RUC in the days before Bloody Sunday to satisfy themselves that para (6) of the police instructions of 19 January 1972 accurately stated the constitutional position about the Army's arrest powers, having regard to the hearing on 11 and 12 January in the High Court in Belfast and the clear indication of the Court's likely decision? A second question, that might reasonably have not occurred to legal authorities in 1971/2, but is relevant to a historical view of the position, is whether the Northern Ireland Act 1972 was compatible with Article 7 of the European Convention on Human Rights. (One MP in the debate on the 1972 Bill, Mr Leslie Huckfield, thought that retrospective

legislation “on matters like this goes against the very grain” of the Convention (Hansard HC Vol 831, CR 1414) and the issue came before the European Commission on Human Rights on 3 March 1972 (see below).

It was fully recognised, both in Whitehall and at Stormont, that it was primarily for the Joint Security Committee in Northern Ireland to decide on the tactics which the security forces should adopt for dealing with NICRA’s anti-internment march scheduled for 30 January 1972 (see KH 11.14, para 2). The Joint Security Committee, with the Prime Minister, Mr Brian Faulkner in the chair, met on 13 January 1972, the day after the High Court of Northern Ireland had reserved its judgment in the case of R (Hume) v. Derry Justices which involved a constitutional challenge to the powers of the Army under the Special Powers Act and the Regulations made thereunder. Present at the meeting were Lord Kilclooney (then Mr John Taylor) as Minister of State for the Ministry of Home Affairs, the General Officer Commanding (General Tuzo), the Chief Constable (Sir Graham Shillington) and the UK Representative (Mr Howard Smith).

The purpose of the meeting was to agree to a renewal for a further year of the ban on marches beyond the expiry date of 8 February 1972, yet there appears to have been no reference made to the potentially adverse result to the Crown's assertion that the Army possessed ample powers to enforce the provisions of the Special Powers Act. A modification of existing procedures, in a memorandum of 5 January 1972, which was before the Committee on 13 January 1972, contained a suggestion that 'on-the-spot' arrests of ring leaders, including perhaps well-known citizens, and other marchers may be made; this would normally be done by the RUC under the Public Order Act, "but the Army would participate if any violence were offered" G53.318 (para 4(b)). If the impact of the High Court hearing on 11/12 January 1972 could not reasonably have been assimilated by 13 January, the issue could hardly have escaped notice, and serious discussion, a fortnight later when the Joint Security Committee, chaired by Lord Kilclooney (then John Taylor MP) in the absence of the Prime Minister, met to consider Operational Order 2/72 (the "scoop-up" operation) for dealing with the Derry march on 30 January 1972. The minutes of the meeting disclose a discussion about

“serious difficulties and security action [which] will be primarily an Army operation” (KH 11.9, para 4) without any reference being made to the constitutional powers of the Army to effect arrests under the Special Powers Act. Lord Kilclooney, in his evidence to the tribunal on 14 March 2002, said that he had no knowledge of the case involving John Hume and his colleagues. Nor indeed was there even a presence of any legal adviser, if only for the purpose of informing the Committee of the possible outcome of the High Court proceedings. No reference appears to have been made on that occasion to the instructions, dated 19 January 1972, from the Chief Constable to Divisional Commanders G140 935/6.

The absence of any legal advice to the relevant authorities in the days immediately preceding Bloody Sunday constituted a failure to act administratively in an appropriate manner. In terms of ombudsmanry, this was, classically, an act of maladministration.

The Northern Ireland Act 1972 in domestic law and under

Article 7 of ECHR

Domestic law

It is often said that “an Act of Indemnity is no defence where the conduct sought to be justified was not bona fide directed to the suppression of the insurrection”, but that is almost certainly a proposition that misses the mark. Parliament can pass, and has passed Indemnity Acts as would grant complete immunity for all acts done in the course of a civil commotion. The Privy Council case of Phillips v Eyre (1869) LR 4QB.225 from Jamaica is a classic example. As Professor O’Higgins noted in an article in the *Modern Law Review* for 1962 (Vol.25, p.413) the sentiment of jurists is to deplore the parliamentary device. He quotes the feeling, voiced by Professor Dicey*, in criticising the Irish Home Rule Bill of 1893 for giving the

*A V Dicey, *A leap in the dark or Other New Constitution*, London 1893.

Irish Parliament to be established under it the power to pass an Act of Indemnity. He wrote (at pp 87-88):

“..... of all laws which a legislature can pass an Act of Indemnity is the most likely to produce injustice. It is on the face of it the legalisation of illegality; the hope of it encourages acts of vigour, but it also encourages violations of law and of humanity. The tale of Flogging Fitzgerald in Ireland, or the history of Governor Eyre in Jamaica, is sufficient to remind us of the deeds of lawlessness and cruelty which in a period of civil conflict may be inspired by recklessness or passion; and may be pardoned by the retrospective sympathy or partisanship of a terror-stricken or vindictive legislative”.

Parliamentary sovereignty still serves to provide immunity for acts done which at the time were unlawful. But such legislation is at risk of challenge by the application of the doctrine of incompatibility inherent in the Human Rights Act 1998. Does the Northern Ireland Act 1972 survive the rigorous test of compatibility?

Convention - compatibility

The compatibility of the Northern Ireland Act 1972 with the European Convention of Human Rights was challenged in the course of an inter-State case brought before the European Commission on Human Rights by the Republic of Ireland against the United Kingdom Government; the application, No 5451/72, being made in the form of a Supplementary Memorial to application No 5310/72 (in which the Commission declared admissible allegations that the treatment of persons in custody breached Article 3 of the Convention). The application was treated as a fresh application, but on 1 October 1972 the Commission struck the case out of its list of cases as a result of the Irish government's acceptance at the end of the oral hearings of an undertaking given by the UK Attorney-General that the 1972 Act would not be applied retrospectively so as to charge demonstrators who had been arrested, on Bloody Sunday or any other occasion, for failing to comply with orders from members of the UK armed forces. Thus there was no adjudication on the compatibility of the 1972 Act with the Convention, although the Commission had heard submissions by both parties on 3 March 1972: see Volume 15, Yearbook of the

European Commission on Human Rights, pages 228-240 and 254-256.

The application raised two allegations. First, it was alleged that the 1972 Act constituted a failure by the UK Government to comply with its obligations under Articles 1 and 7 of the Convention. The 1972 Act constituted a positive denial to persons resident in Northern Ireland of the rights defined in Article 7. Second, it was alleged that the 1972 Act was *per se* a breach of Article 7 in that it provided that persons were held guilty of offences for acts and omissions which did not constitute criminal offences, under national or international law, at the time they were committed.

The Irish Government submitted that the effect of the judgment of the Northern Ireland High Court in **R v. Londonderry Justices, ex parte Hume and others** was that failure by a marcher to comply with the order of a member of the security forces, given in pursuance of the relevant Regulation to the Civil Authorities (Special Powers) Act

(Northern Ireland) 1922, was not an offence under that Act. It was further submitted that by the Northern Ireland Act 1972 the UK Government had, by law, enacted that such failures by demonstrators to comply with orders of the security forces were, after 24 February 1972, to be criminal offences although they did not constitute criminal offences at the time that they took place, eg on 30 January 1972. It was therefore argued that the 1972 Act was a breach of Article 7 of the Convention. Finally, it was submitted that no domestic remedies were available for any person who might be found guilty of a criminal offence by reason of the provisions of the 1972 Act.

The UK denied that the 1972 Act constituted a contravention of Article 7 of the Convention. It did not seek in any way to refute the correctness of the decision of the Northern Ireland High Court, but contended that the terms of the Irish Government's application were not such as to raise an issue under Article 7, "particularly with regard to the undertaking of the Attorney-General", since the undertaking ensured a withdrawal of any proceedings which might have been pending for any relevant offence in respect of acts or omissions prior

to 24 February 1972. Even if the Commission were to conclude that the application did raise an issue falling for investigation by the Commission, the terms of the undertaking demonstrated that any enforcement of the provisions of the 1972 Act would be such as to avoid any action which could conceivably give rise to a breach of Article 7 by reasons of the enactment of the 1972 Act. Although the Irish Government pointed out that the Attorney-General's undertaking did not become part of UK law (and that no court could give effect to it) and in order to circumvent Article 7 it would be necessary to amend the law, pre-23 February 1972, to decriminalise criminal offences, the Irish Government maintained that the mere existence of the 1972 Act and the potential exercise of the powers in it constituted a clear and sufficient breach of Article 7 of the Convention. Nevertheless, at the end of the oral hearings, the Irish Attorney-General withdrew the application, since "the matters that concerned my Government in relation to the Act are satisfied". The withdrawal of the application had the effect of the application being removed from the Commission's list of cases.

NICRA submits that, while the compatibility of the Northern Ireland Act 1972 with Article 7 of the Convention has never been adjudicated upon at Strasbourg, the question remains to be determined. It is submitted that the two allegations made by the Irish Government in 1972 are sound. Even though, by virtue of the undertaking given by the Attorney-General that no criminal proceedings would ensue - in fact none of the 43 demonstrators who were arrested unlawfully on 30 January 1972 was in fact prosecuted - the fact of an unlawful detention and criminal charge, with the consequential threat of criminal proceedings at the time of the arrest and charge, there was a breach of Article 7 in the retrospective validity of the purported arrest powers of the Army by the Northern Ireland Act 1972.

Neither the legality of the ministerial ban on marches, nor the lawfulness of the army's arrest powers was ever considered by the officers of NICRA, although one of its leading members was a human rights lawyer of emerging distinction. Professor Kevin Boyle, in his oral testimony to the tribunal, readily conceded that there had been no legal discussion within NICRA circles at the time about the

consequences of their projected march in Derry, but that there should have been some attention paid to such matters. His explanation for that failure is instructive. He and his colleagues “were living in a culture..... in which Special Powers Act and the extraordinary powers were used on a widespread basis andhad become capitulated to them” Day 123/170/6-17. The candid confession of capitulation is disarmingly attractive, even for an organisation quintessentially devoted to the propagation and promotion of human rights. But these were the early days of public awareness of the European Convention on Human Rights. Professor Boyle, in an article in 1979 entitled *Human Rights and the Northern Ireland Emergency*, alluded to the failure of the legal profession generally to challenge the decisions of Government through the courts. He wrote:

“The Failure of Law and Lawyers

The ‘White Negroes’ of Derry was a striking protest theme used at the outset of the Civil Rights campaign in Northern Ireland. The parallel with the Black population of the Southern United States was consciously

drawn and much of the style of street protest was borrowed from the American Civil Rights movement of the early 1960s. There was, however, one equally striking difference between the two situations. Whereas, the American movement sought through litigation and constitutional challenge to advance its cause, use of the courts was almost entirely absent from the Ulster movement. The explanation derived in part from a traditional distrust of the judicial system and law by the minority community, but even more crucially, and what accounted in part for the mistrust, the absence of effective remedies in the courts for their complaints.

In 1965, following the introduction of legal aid and advice in Northern Ireland, (some 16 years after its introduction in England), an application for legal aid to challenge discrimination in housing by a local council was made on behalf of the Campaign for Social Justice to the Legal Aid Committee. That Committee in a decision confirmed by the Appeal Aid Committee refused legal aid because the application did not disclose a cause of action with the necessary reasonable chance of success to justify expenditure of public funds. This attitude was repeated in legal advice given by solicitors and counsel over the next few years to groups wishing to use the law for remedying grievances. It has been argued that the

position as to legal remedies was not as bad as advised; that under Government of Ireland Act 1920, successful challenges to discriminatory practices might have been pursued. Whether by a combination of legal conservatism on the part of the Bar and reluctance by minority groups to persist in their attempts, the facts were that little was achieved by law to challenge abuse of power in Northern Ireland prior to the onset of street demonstrations.

Although Northern Ireland had operated as an entity within the United Kingdom under devolved power limited by the Government of Ireland Act 1920, that legislation made little provision for the protection of fundamental rights of the citizen. With hindsight it can be seen that Northern Ireland was the wrong place in which to apply the traditional English approach which assumed that such issues could be left to common law and commonsense. According to British practice, Parliament and not the courts is the first avenue to remedy grievances. The theory of parliamentary sovereignty cannot be strictly reconciled with the conception of fundamental or inalienable rights. But in practice the need for the government of the day to obtain the support and consent of Parliament for its actions, and the citizens' capacity where unpopular measures are passed or grievances go unredressed to remove the

government from office in free elections, ensures considerable protections.

Circumstances in Northern Ireland were different and the crucial difference lay in the impregnable position of the government. The Unionist Party had always enjoyed a majority in the local parliament and had in consequence formed the government without a break throughout the history of the Province. The minority community representatives had no hope of ever obtaining power given the political and religious divisions. Inevitably a government which believes itself impregnable becomes insensitive to the complaints of powerless groups, not least where the policies complained of, such as gerrymandering, were a condition of its power monopoly. Complaints about injustices were repeated with regularity by the Nationalist representatives without effect, down the years. It is true that the effectiveness of such representatives was limited because of self-imposed bouts of abstention from the local parliament. Nevertheless, the demands of the later Civil Rights campaigners, subsequently endorsed by official inquiry, can be found set out in the speeches of local opposition Members of Parliament in virtually any volume of the Hansard selected at random from the 1920s onwards.

It was in these circumstances that the judicial system might have played a vital role. Given the ineffectiveness of the political channels, at least one advantage that pursuit of such grievances through the courts would have achieved was their clear separation from those channels. The perennial problem of those who complained of discrimination, about police powers and emergency laws, was that in the eyes of the majority and uninvolved community their claims were believed spurious, subversive and intended for propaganda effect. These illusions, as they proved to be, were officially fostered by the majority party, and the role of the Courts, had there been effective means to involve them, could have been to ensure that claim and counterclaim were impartially assessed in terms of individual rights and legal justice. The role of the legal system then might have born some comparison with that of the United States courts in the Black Civil Rights Movement. There, the electoral monopoly of the Southern White majority was counterbalanced by access to legal remedies in the courts by the Black population, where all claims ranked as equal despite the inequality of power in the political system”.

The failure by the UK Government to address, by way of a constitutional amendment to the Government of Ireland Act 1920, the problem of the arrest powers of the armed forces is an example of that Government not wanting to be drawn into the political events of the Province. Although alerted to the vulnerability of the arrest powers, it assumed, perhaps too readily, that the Courts would uphold the firmly held view that Mr John Hume and his colleagues would not succeed in this legal challenge.

Professor Palley has made the suggestion that the UK Government was negligent in not having acted to clarify the constitutional position. If that is an arguable conclusion, it proceeds upon a false premise. The duty of care, which is implicit in the need to ensure that law enforcement against illegal civil rights marchers is valid, rests on factors other than on a proper appreciation of the law. Once the authorities decided to mount an "arrest operation" the duty of care required an assurance that the projected arrests will be lawful. That duty was clearly breached by General Ford, no doubt under legal advice. If, which NICRA does not assert, there was any knowledge of

the "arrest operation" by the UK Government, that too would give rise to a claim of negligence. There is no duty of care on a Minister or a Civil Servant to take steps to remedy or clarify the law. At most, it might constitute an act of maladministration. At worst it might provide evidence of misfeasance in office.

LEGAL CHALLENGE TO ARMY POWERS IN 1971/1972

Hume and others v Londonderry Justices [1972] NI 91 and allied cases on the constitutional issue

TIMETABLE

18 August 1971

Mr John Hume MP and four colleagues were arrested for committing the offence of Unlawful Assembly in Derry, by a Commissioned Officer of Her Majesty's Forces on duty (presumably from 8 Brigade) under Regulation 38 (i) of the Regulations under the Civil Authorities (Special Powers Act) (Northern Ireland) 1922 – 1943 (KH 4.57).

8 September 1971

John Hume and others were convicted before the Londonderry Justices (comprising of G J McCanny RM and J F McClenaghan RM) and each fined £25.

9 September 1971

Sean Keenan and James McElduff bring habeas corpus proceedings in England, alleging that their internment was constitutionally invalid. Ackner J, while holding that the English Courts had jurisdiction to hear the application, dismissed it on the grounds that the legislation was valid.

13-15 September 1971

English Court of Appeal held that there was no jurisdiction to entertain the applications; accordingly, the Court did not express any view as to the merits of the application [1972] 1 Q.B. 533. James McElduff brought.

25/26 November 1971

Leave to apply for order of certiorari applied for.

29 November 1971

Leave to apply for certiorari granted by Mr Justice Jones in chambers KH4.53: Home Office officials are aware of the legal challenge to the army's powers of arrest: KH4.73.

12 December 1971

Notice of Motion 1971 No 129 lodged in the High Court in Belfast for hearing on 11 January 1972: KH4.53. Service on the Crown Solicitor.

11/12 January 1972

Case of **Hume v. Londonderry Justices** heard in the Divisional Court before Sir Robert Lowry CJ, Gibson and O'Donnell JJ. Judgment reserved.

10 February 1972

Mr John MacDermott QC writes to Mr Tony Hetherington, legal secretary to the UK Attorney-General, advising him of impending judgment. Mr MacDermott fears an adverse ruling, as a result of which "the army becomes impotent as an aid to the civil authority": KH4.36.

23 February 1972

Judgment handed down, quashing convictions of Hume and others
[1972] NI 91.

23/24 February 1972

Northern Ireland Act 1972 passed through all stages of the
Parliamentary process, retrospectively validating the acts of army
officers arresting persons under the Special Powers Act.

CHAPTER XI

Summary of Submission

PART A: NICRA

1. NICRA was an open, democratic, non party-political organisation with a written constitution that reflected proper procedures in relation to membership, structure, organisation and meetings. NICRA adopted as a model, the constitution of the NCCL, and it affiliated to that body at inception. NICRA was totally dedicated to constitutional and non-violent means in pursuit of social and political change. (Chapter I) Some of the core principles of NICRA are contained in, a press statement **Gen 5.38** issued in the days after Bloody Sunday and prior to the Newry March. Kevin Boyle **Day 123/156 – 158.**

2. The decision to take to the streets in the aftermath of internment was fully justified. NICRA was morally and politically right to challenge the ministerial ban on marches. It was the only democratic outlet available to protest against the attack on civil liberties in the light of Articles 5 and 11 of the ECHR [Chapter II].

3. The plan to hold a march in Derry arose from a request by Derry CRA, who organised the march with the open, active support of the central NICRA Executive. There were regular contacts between Bridget Bond and Chief Superintendent Lagan in relation to the destination of the march. There was a duty on the security forces to consult with the organisers of the march. **G.52.315**. There was no contact with the military authorities in the days leading up to Bloody Sunday. [Chapter II].

4. Had NICRA been made aware in the week before 30 January 1972 of the “arrest operation” in *Operation*

Forecast (which was kept secret by the military authorities at Brigade HQ) (see Chapter III), it might have been possible for NICRA to make representation, at least in its contact with the local police, to the effect that the “arrest operation” would be a pointless exercise.

5. The lateness in deciding that the marchers should not go to the Guildhall but to Free Derry Corner for the lawful public meeting was entirely in order.

6. The march throughout was entirely peaceful and non-violent, in conformity with NICRA policy and practices. The provision of stewards was adequate to deal with the crowd on the march. Events, as they developed in William Street, and at Barrier 14, were well contained by the stewards, prior to the arrival of the water cannon for the first time.

7. The disturbances almost exclusively confined to the events at Barrier 14, were in no way connived in or condoned by NICRA; such behaviour formed no part of the plans of NICRA.

8. The allegation that NICRA had been infiltrated, or even influenced by the Official IRA, is without foundation.

Part B: General Issues

9. Judged by the legal standards required of the military acting in aid of the Civil power, the "arrest operation" element in *Operation Forecast* of 27 January 1972 was misconceived and ought never to have been included in the Army's plans for the policing of the NICRA march on 30 January 1972, for the following reasons:

- (a) The idea of arresting potential rioters associated with the march (either during or after the march) was contrary to the advice of the chief officer of police in Derry; the decision of the Chief Constable to overrule the advice of the Chief Superintendent of N Division ought not to have prevailed, since the latter's advice was not at any time debated within the Joint Security Committee. The fact that the Brigade Major of 8 Brigade, who drew up the plans of the

'arrest operation', agreed with the police officers in Derry, was not properly taken account of.

- (b) The author(s) of the 'arrest operation' failed fully, or at all to appreciate the difficulties, if not the impossibility of separating out any rioters from among 15,000 peaceful marchers, "who were not to be interfered with". The notion of separating out the rioters from non-rioting marchers was never in practice attainable.
- (c) The 'arrest operation' was planned in contradiction to the provisions of the GOC Directive of 4 February 1971, which modified the earlier Directive of 19 August 1969 giving "full control" to the GOC and the CLF in security operations.
- (d) The Joint Security Committee never functioned as an Executive, only supervising the policy and practices of the Security Forces.

- (e) General Ford's insistence that he was engaged in an exclusively military operation was a clear breach of the Directive of 4 February 1971.
- (f) Given the ambit of the Army's powers when "acting in aid of the civil power", it was an additional flaw in the 'arrest operation' that it should be carried out by 1 PARA, knowing full well, that unlike the resident battalions in Derry, there would be less inclination to adopt a 'low profile' approach to the day's events.
10. Even if the 'arrest operation' was not misconceived, and could reasonably have been included in Operation Forecast, nevertheless the disturbance at Barrier 14 did not warrant the implementation of the "arrest operation", since the disturbance had been contained.
11. No recognition was given by the military authorities who were responsible for Operation Forecast to the legal challenge in Hume v Londonderry Justices. Even if

the author(s) of the 'arrest operation' did not know of the impending ruling of the High Court of Justice in the Hume case (as appears, surprisingly to have been the case), it was negligence not to have been aware of this case as it impinged upon the planned arrests by soldiers on Bloody Sunday.

12. *Operation Forecast* was not in any way conceived of or planned as a counter-terrorist activity, it was designed mainly, and wrongly, to deal with the problems of potential rioting during or after a large, peaceful demonstration against internment.

13. The British Government was exclusively responsible in law for all the activities of the British Army in Northern Ireland from August 1969 onwards; and the devolved administration at Stormont was not liable for any military operation within the Province (see Chapter VIII and IX).

14. Given the proposition 12 above, the GOC (NI) was responsible for the 'arrest operation'. Ultimate responsibility for the Army's conduct on Bloody Sunday lay with the Secretary of State for Defence, Her Majesty's Government and the UK Parliament.