E17

CONFIDENTIAL

LOOSE MINUTE
C2(AD)1/4/1 Moore.

ASST SEC
PRINCIPAL
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FILE 44/4/1
R.S. 26785

Director CDS
Head of EP 2
MO 1
GS(OR)1(Coord)
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Civil Adviser HQNI (by MLFAX)

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27 JAN 1977

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE v MOD

An action has been brought in the Northern Ireland High Court on behalf of Richard Moore, who was blinded in 1972 at the age of 10 when a rubber bullet was fired by a soldier at a crowd of youths, of which he was a member, attacking an Army guard post at the Rosemount Army - RUC station in Londonderry. The case will be heard in two weeks time unless settled out of court. Counsel estimates the value to be about £50,000, although it is not inconceivable that a jury would award up to a £100,000.

2. The MOD's case, however, appears at the moment to be by no means weak, at least as regards the incident itself. The one rubber bullet was fired, after repeated warnings, when a crowd of youths were hurling a barrage of stones at the sangar. The sentry had to duck down to protect himself, and was therefore unable to carry out his duties. Some of the youths were dismantling the wire protecting the sangar. The Rosemount post was in a dangerous area of Londonderry, and 152 shots had hit it in the past 10 days. It was well known that terrorists frequently used a disturbance such as this as cover for them to take up firing positions, or to plant bombs. Orders had been given not to use CS smoke because of the hostile reaction of residents. The only other weapon available to the soldiers was the SLR.

3. If the case goes to court, it will be the MOD's contention that the soldier's action was reasonable and represented the minimum force in the circumstances. There are, however, potentially two weaknesses in our case. Firstly, because the youths were so close to the sangar, the rubber bullet had to be fired at close range - about 15 metres - and because of the terrain, direct fire rather than a bouncing shot had to be used. Secondly, the plaintiff may contend that the MOD had not taken sufficient care in establishing the risk of serious injury, particularly to the eyes, and may seek to call for MOD witnesses and documents to support this argument.

4. On this latter point, arrangements are in hand to provide our Counsel with what would appear to be the most relevant documents for his advice on whether they help our case, and whether a Court would order their disclosure if the plaintiff asks for discovery of documents. The documents are:

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(i) A report on the rubber baton round, and RAMC consultant's report, E5 forwarded by the Director CDE to ACOS(OR), and dated 11 June 1970;

(ii) A note on casualties produced by the baton round from the Deputy E45 Director CDE, and dated 20 October 1971;

(iii) A summary of research on various sizes of rubber bullets from the Scientific Adviser to the GOC, Northern Ireland, dated December 1970; E33/1

(iv) A note about the merits of increasing the charge of the baton round from NO 1 to NO 6, dated 23 April 1971; E35/6

(v) A note comparing the 45 grain round with the 55 grain round from NO 6 to PS/US of S(Army), dated 3 May 1971; E38

(vi) A further report from the Deputy Director CDE comparing the PVC round with the 55 grain rubber bullet, dated 2 June 72. ?

Of these, the first three seem to be the ones that a Court would be most likely to want, particularly the first one. If any are to be produced in Court, a witness, probably Lt Col W G Johnston, RAMC, who carried out the medical tests at CDE in 1970, would be required.

5. The purpose of this minute is to seek your views on whether there are overriding reasons why any of these documents should not be produced to the Court. I might add that, particularly with the first three, there is little chance that a Court would accept that the public interest in non-disclosure overrides the interests of justice. If there are overriding reasons, then the only way of preventing disclosure would be to pay the plaintiff whatever compensation he asks, without argument.

6. You will wish to know that we have successfully fought a number of Rubber Bullet cases in the Northern Ireland Courts, and in none of them has the plaintiff's Counsel turned his attention to the question of Rubber Bullet tests. In this case, the plaintiff has not yet sought discovery of documents and does not have enough time between now and the trial to do this. If, therefore, the plaintiff's Counsel does begin to get interested we would be entitled to have the case put back to a later date. It is therefore possible for us to decide provisionally to run the case in Court, subject to review if the plaintiff decides he wants to examine the CDE tests. It might, of course, be somewhat more costly to settle at that stage rather at an earlier stage in the proceedings.

7. In summary, this is a case which we would definitely have liked to see contested in Court, to decide whether MOD is liable, were it not for the weakness described in this minute. As it is, the matter is less certain, though we may know more after our Counsel has interviewed the witnesses on Friday. At the moment, I would be grateful for your answers to the following questions:

(i) Would disclosure of these documents, and examination of an MOD witness in Court be so damaging to MOD interests that in your view the case should be settled at almost any cost?

(ii) Would you be content for the case to be contested in Court, provided the plaintiff does not seek discovery and does not call any MOD witnesses on the CDE tests?

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8. I would be grateful for your views by Monday 31 January, in view of the closeness of the trial.

M J D FULLER
C2(AD)
Ext 5147 MB

27th January 1977

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Ptn/TP.4020/340/77 E 18

C2(AD)

NORTHERN IRELAND CIVIL LITIGATION - RICHARD MOORE & MOD

In D/CDS's view disclosure of the documents and examination of a MOD witness in Court as specified in your C2(AD)1/4/1 Moore dated 27 Jan 77 would not be so damaging to MOD interests as to justify a settlement at almost any cost. It follows that we would be content for the case to be contested in Court under the more restricted terms of your 7(ii).

If documents are to be discovered the original reports:

CDE Technical Note 77 - 'A study of the wounding potential of the 1.5 inch Rubber Baton Round' (Confidential)

and

CDE Technical Note 78 - 'The Rubber Baton Round Development and Ballistic Information' (Restricted)

give a firm technical basis to the summaries and reports identified in para 4. However these documents are classified and if discovery constitutes publication consideration will need to be given to their declassification.

The reasons for classification are political rather than technical in the sense that a potential enemy would not benefit from the technical information provided but a political enemy might seek to make political capital of this work. It is therefore for the political branches to determine whether declassification is acceptable. D/CDE would not object if they recommended this.

CDE
RUNCORN
28 Jan 77

R. G. H. WATSON

R G H WATSON
Director

Copy to:- Head of ER2
HO1
CS(OR)1 (Coord)
ER6
HO10
Civil Adviser HQ NI
Claims 3c

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Reference D/DS10/44/4/1 E17/1

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C2(AD)

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Claims 3c
CIVAD HQNI

NORTHERN IRELAND CIVIL LITIGATION : RICHARD MOORE V MOD

Reference: C2(AD)1/4/1 Moore
dated 27 Jan 77

1. You asked in Reference A for our views on the approach to be adopted in this case. We agree that it would be sensible to contest the case provided the plaintiff does not seek discovery.

2. I am not convinced, however, that the paucity of research into the effects of rubber bullets is very likely to be pursued by plaintiff's Counsel in the case. Rather I would have thought that he would follow the line of thought which says: the soldier had rules for the use of rubber bullets; he fired it below the minimum engagement distance set down in those rules; he fired it directly at the crowd rather than so that it should bounce first; therefore MOD must be liable. The tests to which rubber bullets were subjected before coming into service then become purely incidental as the results of the tests were only used to establish the rules which in this instance were broken. I recognise that the rules are hedged about with all sorts of exceptions referring to danger to life etc and the legal argument would revolve around 'minimum force', but should this approach be adopted, and should the plaintiff apply for discovery, then the documents which we should have to decide whether or not to release would be such papers as the instructions to soldiers on the use of rubber bullets; the orders which these particular soldiers had not to use CS gas, etc; and the decision as to whether or not we would decide to continue to fight the case even if discovery were sought would be made on quite a different basis.

3. However, given the position that our Counsel considers it essential that we produce documents relating to the testing of rubber bullets, (and here I am not entirely clear whether we get prior knowledge of the plaintiff's line of attack and can therefore decide whether some types of information are or are not relevant, or whether one has to provide documents relevant to every conceivable angle on the case) I'm afraid that I don't agree with your current choice as set out in para 4 of Reference A. These documents are essentially reports on reports, interpretative in nature and containing the subjective and political analysis which one expects in internal inter-Divisional letters, submissions to Ministers etc. I would have thought that what we really need to produce for Counsel as a basis for argument as to whether or not rubber bullets were sufficiently tried and tested before being introduced into service are the actual reports on tests carried out and compiled in CDE, the pure research. These reports should not only be more directly relevant to the testing of rubber bullets

than the documents which you have listed, but should also have the merit, by virtue of the fact that they are factual rather than analytical, of being less damaging to the MOD position. Director CDE will no doubt be able to advise further on this, but I would suggest that we should have a look at these reports and see how useful or damaging to our case they are before deciding whether to settle out of court should the plaintiff seek discovery.

4. As a final point, should you decide to proceed along the line that the documents listed for discovery should be those in Reference A, I must say there are a couple of them which we would not like to see become public property, in particular some of the comments in the document listed at para 4(iii) would provide a field-day for the more malicious sectors of the press, and should there be any possibility of these documents being released we would certainly wish to see a settlement out of court.

B JEFFERS
DS10
MB X 6441 Rm 5334

2 February 1977

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LOOSE MINUTE
C2(AD)1/4/1 Moore

DS 10
MO 4
ER 2
PR 5(Army)
Chief Claims Officer
Civil Adviser HQNI

Copy to:
Director, CDE Porton

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE v MOD

We have now completed our analysis of the Moore case and I attach a draft submission which I propose to put up to DUS(Army).

2. I should be grateful to have any comments about the policy on this case by noon on Monday 21 February after which your agreement will be assumed.

M J D FULLER
C2(AD)
Ext 5147 MB

16 Feb 77

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DRAFT

RICHARD MOORE v MOD

Introduction

1. An action has been brought in the Northern Ireland High Court on behalf of Richard Moore in respect of injuries which he received in 1972 at the age of 10 when he was struck in the face by a rubber bullet fired by a soldier, leaving him totally blind.

2. The case is listed for hearing before a Judge and Jury on 28 February 1977 and the purpose of this submission is to set out the arguments for and against fighting the case in court; and to make recommendations.

Background

3. On 4 May 72 a sangar at the Rosemount Army - RUC post in Londonderry was being stoned by a crowd of about a dozen youths. The Rosemount post is in a particularly dangerous area and had been struck by 152 bullets in the preceding 10 days. On this occasion, the barrage of missiles was so heavy that the single sentry had to duck down to avoid injury and was unable to carry out his duties. He called for assistance and his troop commander came to the sangar. By this time, some of the youths were dismantling the protecting wire. The danger was by now becoming particularly acute. It was well-known that terrorists frequently used a disturbance of this sort as cover to take up sniping positions; moreover, if the wire were removed, a bomb could be planted right up against the sangar.

4. After repeated warnings were ignored, the officer fired one rubber bullet. Because the youths were so close, the rubber bullet had to be fired at close range - about 10 to 15 metres - and, because of the very uneven terrain, direct fire rather than a bouncing shot had to be used. It would have been far too dangerous for the soldiers to go outside the sangar to attempt to disperse the crowd. Several methods of dispersing stone-throwing children had been tried at Rosemount; the use of CS smoke and fire hoses had led to strong protests from the local Tenants' Association. The only weapon available in the sangar other than the baton gun was the SLR.

Normal procedure for handling civil litigation cases

5. Our practice is to fight cases brought against MOD when we believe that the soldier's action was reasonable and where there is a fair prospect of a successful defence. We also take account of the likely costs of contesting a case compared to settling out of court, the effect on Army morale of settling particular cases, any political aspects, any difficulties connected with the production of Army witnesses or evidence, and publicity.

The Moore case

6. These factors when applied to the Moore case give the following picture:

a. Reasonableness. It is our view, and that of Counsel, that a strong case can be argued that in the circumstances described above the use of the rubber bullet represented the minimum force appropriate to a situation in which the lives of the soldiers were being endangered. The Plaintiff's Counsel will no doubt argue that it was disgraceful for the soldier to fire a rubber bullet at such close range at a group of high-spirited lads who were just tossing a few stones about. We would need to convince the Court that the threat to the soldiers was sufficient to justify direct fire at close range, which was not, of course, the way in which it was envisaged that the weapon would be used.

b. Financial costs. Counsel advises that the value of the case is difficult to assess, since it will be heard by a Judge and Jury, but should be about £50,000 on a full liability basis, perhaps with a reduction of 10-20% for contributory negligence. A settlement out of court would probably be cheaper but it is unlikely that it could be settled for much less than £40,000. Taking account of contributory negligence, there is therefore not much difference, if Counsel's assessment is right, between settling out of court and contesting. If Counsel's assessment is not right, however, and the Court takes the view that higher damages are appropriate, the difference could be considerable.

c. Publicity/political implications. The incident was given wide publicity at the time (see attached Press cutting) and is bound to attract publicity again. A settlement out of court would not avoid publicity, since, because Moore is a minor, settlement must be announced and approved by the Court. A settlement would also be interpreted as implying that MOD accepted that the soldiers were in the wrong. Contesting the action in court will also lead to publicity, but there is nothing about the actual incident which has not already been reported in the press.

d. Evidence. The evidence which would be presented about the actual incident is fairly straightforward. There is, however, a broader issue, ~~which has not been gone into in any of the previous rubber bullet cases we have fought in court, but we cannot discount the possibility of it being raised~~. This is the question of whether the rubber bullet was a suitable and safe weapon for riot control purposes. If this line of questionning was pursued, it would have a potential for embarrassment. Because the Army needed a riot control weapon urgently the tests at CDE Porton were carried out in a shorter time than would have been ideal. If the adequacy of the tests was raised in court, we could produce a specialist witness who would argue that the tests that were carried out were as comprehensive as possible in the time available. If the Army had not had such a weapon very quickly they may have had to use more lethal weapons. If necessary the witness could also point to the fact that the rubber bullet is in any case no longer in service, having been replaced by a better weapon which was more extensively tested. However, although the potential for general embarrassment might be contained, there is little doubt that if such evidence was argued over in court it would weaken our case to some extent. Whether this aspect will be gone into in Court is difficult to judge. It is of course a risk in all our rubber bullet cases (and it has not been gone into in any, including ~~and in~~ our most recent one, Vincent Boyle v MOD, which was ~~also~~ heard by a Judge and Jury ~~, it~~ a fortnight ago.

-26B

In that case,
~~was not explored, and~~ the court assessed Boyle's injuries at £10,000, reduced to £7,000 because of Boyle's contributory negligence. There is perhaps a slightly greater risk in the Moore case, however, because of the way in which the rubber bullet was fired. Moore's Counsel has not sought discovery of the documents which would enable him to deploy his arguments on this point effectively, but the point could be brought out in cross-examination of our witnesses in court. Crown Solicitor puts the chances of this happening no higher than a possibility, but it cannot be discounted.

e. Witnesses. All the Army witnesses, including one who has since left the Army, are prepared to give evidence in court, and our Counsel, who has interviewed the principal witnesses, regards them as convincing and articulate. Their evidence should strengthen our case.

f. Precedent. A settlement out of court is unlikely to set a precedent which would constrain our handling of future cases. A court case, even with an adverse finding, would also not necessarily set any precedent, although if the suitability of the rubber bullet was explored in court, with adverse comments, this could inhibit us to some extent from fighting future cases.

g. Legal advice. Counsel is of the opinion that there are strong arguments that could be advanced on both sides and that the outcome of the case is uncertain. However, he considers that, notwithstanding the strength of our case, a Judge and Jury would probably have a strong feeling of sympathy for the boy and would probably be reluctant to award him no damages, though they would be likely to reduce the damages in respect of the boy's contributory negligence. Counsel therefore assesses that there is a marginally greater chance of the Plaintiff succeeding than of MOD succeeding.

7. In favour of fighting the case are the following: in terms of the reasonableness of the action the case is a good one, and the witnesses are available and good; there may not be much difference in the financial cost as between fighting and settling, if Counsel is right; there will be some publicity which ever way the case goes; and Crown Solicitor's conclusion, with which we have no reason to disagree, is that the rubber bullet issues will not be exposed.

8. The case against fighting is a matter of the risks involved. We do not assess these as high as regards publicity, in that although more may come out in court, publicity in all Northern Ireland cases, bar deep interrogation, tends to be a one day's wonder. There is some risk of a higher damages figure, especially bearing in mind the "Irish jury factor". However, the main difficulty is the possibility that the general issue of the use of rubber bullets will be exposed in court, and the implications of that. The damage could go beyond this case, both in making subsequent rubber bullet cases more difficult and perhaps in having some effect on the atmosphere at Strasbourg and even in the SAS trial.

Recommendation

9. The arguments for and against contesting are quite evenly balanced. We like as a general policy to fight cases, especially where we have a reasonable one. In the present case, however, Counsel's judgement is that even so we are more likely to lose than win, and there are some risks attendant upon the process of fighting and the possible outcome. On balance, therefore, the recommendation is reluctantly to seek to settle, provided that this can be done at or near the kind of figure which Counsel has in mind.

E24/1

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LM to Ptn/TP.4020/714/77

C2(AD)
(Attn: M J D Fuller)

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE v MOD

Reference C2(AD)1/4/1/Moore dated 16 Feb 77. It is not clear whether D/CDE is being invited to comment on your draft but in order to avoid any implication that it has his tacit agreement he is joining the debate.

I do not believe enough weight is given in the recommendation to the implication (para 6(c)) that "The settlement would also be interpreted as implying that MOD accepted that the soldiers were in the wrong". I believe that we must give considerable weight to the need to demonstrate a will to support soldiers in these circumstances. This is not, of course, my direct concern but as an important interaction on the staff working here we are motivated by the need to help equip the soldiers to deal with a very difficult situation. If they were to see that when a soldier who had used what had reasonably been developed in a reasonable way was not "defended", then they feel themselves to be sharing some of the implicit criticism.

I am not clear why it is believed (para 6(b)) that the competent argument of the evidence that can be produced of the ballistic and traumatic performance of the rubber bullet round should weaken our case. I am concerned that earlier in this paragraph we should talk of a safe weapon: what we are concerned with here are achieving levels of hazard and clearly the riotous boys involved would have been at greater hazard from the use of a rifle than from the use of the gun discharging a rubber bullet. Ministers based their approval for the use of the latter weapon on the assessment of such hazards and no doubt would wish these judgements to be defended.

There seems some inconsistencies in the draft between para 7 where it is said that "we have no reason to disagree that the rubber bullet issues will not be exposed" and para 8 where we identify as our main concern the possibility that the "general issue of the use of rubber bullets will be exposed in Court".

The arguments for and against contesting seem to be equally difficult of quantification and therefore are evenly balanced. I believe that the need for our Department to be seen to support their servants, particularly those in uniform, should tilt the balance in favour of contesting the case.

R. G. H. WATSON

R G H WATSON
Director

CDE
PORTON
17 Feb 77

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Hd of ER2
PR 5 (Army)
Chief Claims Officer
Civil Adviser HQNI

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Reference E 26/2

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C2(AD)

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Chief Claims Officer
CIVAD HQNI

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE V MOD

Reference:

A. C2(AD)1/4/1 Moore dated 16 Feb 77.

1. It would appear from Reference A that we face the following alternatives:

a. To fight the Case and win. Counsel feels that though the case is very finely balanced a Judge and Jury would be reluctant to award the boy no damages.

b. To fight the Case and lose. In this situation damages would be awarded against MOD but would be reduced by contributory negligence. Reduction would depend on the strength of the MOD case.

c. To Settle. In financial terms little difference from b above. Adverse publicity could still accrue as the settlement would have to be sanctioned in court.

2. Applying the parameters outlined in paragraph 5 I can see no justification in recommending a settlement. We have a good case, and in your own words there is a fair prospect of a successful defence. The cost of settling is likely to be similar to an unsuccessful defence. In terms of morale the Army would see its action being upheld by its authorities (win or lose). Political aspects do not seem to apply. There are some problems about evidence but discovery of documents has not been sought. Witnesses are good and publicity will be attracted in any event.

3. As regards the points in paragraph 8 I do not understand how the issue affects Strasbourg one way or another and I do not believe it has any relevance to the SAS trial.

4. To conclude. If the Army believes it has acted justifiably and reasonably we should fight this case. Other factors do not seem sufficiently strong to override this. There may be an element of doubt, if so let the court decide.

C E W JONES
Col GS MO4
Room 5119 Ext 2011

18 Feb 77

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E26/B

LOOSE MINUTE

Claims 3c/AD/NI/3276

C2(AD)

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RICHARD MOORE v MOD

1. Thank you for your LM C2(AD)1/4/1 Moore of 16 February 1977.

2. I am glad that you have decided to recommend that the MOD should try to settle this case out of court at a reasonable figure.

3. May I suggest that your argument would be strengthened if you were to add the following sentence at the end of para 6g of your draft minute to DUS(Army):

> "It is, perhaps, pertinent to mention that we have frequently been advised by Counsel that Juries, and sometimes Judges, in the Northern Ireland Civil Courts tend to be biassed in favour of the plaintiff, particularly when the defendant is the Ministry of Defence."

4. Would you please put AUS(L) on the distribution list of your minute to DUS(Army)?

(Sgd.) J. R. Morris

Chief Claims Officer
QAC 418 0051 MB

This is the 2nd copy of this we have seen - please file it & destroy the other

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CIVAD, HQNI
Director, CDE Porton

RICHARD MOORE v MOD

Reference: C2(AD) 1/4/1 Moore
dated 16 Feb 77

1. In principle I am in no doubt that, where we are satisfied that the action was reasonable, we should seek to contest the case in court, if only to show publicly that we consider the action to have been justified. Only where there are strong arguments to the contrary should we settle. In the present case the action was clearly reasonable and all the other arguments seem to be fairly evenly balanced. There is little to choose between fighting and settling from the point of view of publicity or cost. There is no more than a marginally greater chance of losing. The main danger is that the rubber bullets issue will be exposed in court; but Crown Solicitor's view is that it will not be, and we have no evidence to the contrary - indeed the fact that discovery of documents has not been sought suggests that the plaintiff will not adopt this line of argument.

2. If discovery had been sought or if we were otherwise certain that the rubber bullets issue would be exposed, I would be inclined to agree with your recommendation to settle. As it is I think the balance of argument is the other way.

N Bevan

N BEVAN
Head of DS10
MB X 2393

21 February 1977

CONFIDENTIAL

FILE ON 44/4/1 E26

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N.B.
I agree with Brian. 'Losing' in a civil liability case is different from losing in a criminal case. Even if the judge/jury have sympathy for the boy (and even I have sympathy for a 10 year old) we will have been seen to argue our case and to have justified the soldiers action. Both sides can 'win' therefore: why not fight?

I have decided, on reflection, that C2's recommendation in the attached submission is wrong. As far as I can see nothing has changed since we last recommended that the case should be fought unless discovery was sought. Essentially:

(1) We have a strong case under 'reasonable force'

(2) Financial costs of fighting & loosing or settling out of court are almost identical

(3) There will be publicity whether or not we fight or settle & the case has in any event already been fully reported. SAS trial & Strasbourg are red herrings

(4) Discovery seems unlikely at this late stage & the threat of a case based on the evil of rubber bullets now seems increasingly unlikely. If Discovery was to be sought we still have time to settle.

(5) The Army witnesses are good

(6) No precedent would necessarily be set either by fighting & loosing or settling

(7) To settle would be bad for Army morale

In summary therefore we have a finely balanced case, a good case on our ~~side~~ side, the Irish jury factor on the other side with everything to play for & nothing to loose. I think we should fight.

18/2

P.S. I have spoken to Col Jones who feels most strongly that we should fight & has already burst into print.

E29

CONFIDENTIAL

LOOSE MINUTE
C2(AD)1/4/1 Moore

PS/DUS(Army)

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Col GS MO 4
Chief Claims Officer
Civil Adviser HQNI
PR 5(Army)
AG Sec

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE v MOD

Introduction

1. An action has been brought in the Northern Ireland High Court on behalf of Richard Moore in respect of injuries which he received in 1972 at the age of 10 when he was struck in the face by a rubber bullet fired by a soldier, leaving him totally blind.

2. The case is listed for hearing before a Judge and Jury on 28 February 1977 and the purpose of this submission is to set out the arguments for and against fighting the case in court; and to make recommendations.

Background

3. On 4 May 72 a sangar at the Rosemount Army - RUC post in Londonderry was being stoned by a crowd of about a dozen youths. The Rosemount post is in a particularly dangerous area and had been struck by 152 bullets in the preceding 10 days. On this occasion, the barrage of missiles was so heavy that the single sentry had to duck down to avoid injury and was unable to carry out his duties. He called for assistance and his troop commander came to the sangar. By this time, some of the youths were dismantling the protecting wire. The danger was by now becoming particularly acute. It was well-known that terrorists frequently used a disturbance of this sort as cover to take up sniping positions; moreover, if the wire were removed, a bomb could be planted right up against the sangar.

4. After repeated warnings were ignored, the officer fired one rubber bullet. Because the youths were so close, the rubber bullet had to be fired at close range - about 10 to 15 metres - and, because of the very uneven terrain, direct fire rather than a bouncing shot had to be used. It would have been far too dangerous for the soldiers to go outside the sangar to attempt to disperse the crowd. Several methods of dispersing stone-throwing children had been tried at Rosemount; the use of CS smoke and fire hoses had led to strong protests from the local Tenants' Association. The only weapon available in the sangar other than the baton gun was the SLR.

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Normal procedure for handling civil litigation cases

5. Our practice is to fight cases brought against MOD when we believe that the soldier's action was reasonable and where there is a fair prospect of a successful defence. We also take account of the likely costs of contesting a case compared to settling out of court, the effect on Army morale of settling particular cases, any political aspects, any difficulties connected with the production of Army witnesses or evidence, and publicity.

The Moore case

6. These factors when applied to the Moore case give the following picture:

a. Reasonableness. It is our view, and that of Counsel, that a strong case can be argued that in the circumstances described above the use of the rubber bullet represented the minimum force appropriate to a situation in which the lives of the soldiers were being endangered. The Plaintiff's Counsel will no doubt argue that it was disgraceful for the soldier to fire a rubber bullet at such close range at a group of high-spirited lads who were just tossing a few stones about. We would need to convince the Court that the threat to the soldiers was sufficient to justify direct fire at close range, which was not, of course, the way in which it was envisaged that the weapon would be used.

b. Financial costs. Counsel advises that the value of the case is difficult to assess, since it will be heard by a Judge and Jury, but should be about £50,000 on a full liability basis, perhaps with a reduction of 10-20% for contributory negligence. A settlement out of court would probably be cheaper but it is unlikely that it could be settled for much less than £40,000. Taking account of contributory negligence, there is therefore not much difference, if Counsel's assessment is right, between settling out of court and contesting. If Counsel's assessment is not right, however, and the Court takes the view that higher damages are appropriate, the difference could be considerable.

c. Witnesses. All the Army witnesses, including one who has since left the Army, are prepared to give evidence in court, and our Counsel, who has interviewed the principal witnesses, regards them as convincing and articulate. Their evidence should strengthen our case.

d. Publicity/political implications. The incident was given wide publicity at the time (see attached Press cutting) and is bound to attract publicity again. A settlement out of court would not avoid publicity, since, because Moore is a minor, settlement must be announced and approved by the Court. A settlement would also be interpreted as implying that MOD accepted that the soldiers were in the wrong. Contesting the action in court will also lead to publicity, but there is nothing about the actual incident which has not already been reported in the press.

e. Evidence. The main difficulty on what would otherwise be a promising case relates not to the incident itself but to the question of whether the rubber bullet was a suitable and safe weapon for riot control purposes at all. Our legal advisers in Northern Ireland had earlier thought that we would not need to disclose to the Plaintiff details of the tests on the weapon done at CDA Porton before it was introduced 6 years ago, or internal Ministry correspondence on the weapon. The Plaintiff's Counsel has now, however, asked for discovery of relevant documents. Having studied some of the papers further, however, our lawyers have now advised after all that these papers may be relevant to the Plaintiff's case and should be disclosed; there are undoubtedly others, such as original test records and other Ministry correspondence which would be at risk. The papers will disclose that the tests were carried out in a shorter time than was ideal because the Army needed a riot-control weapon quickly, that the Ministry was aware that it could be lethal, that it could and did cause serious injuries, but that these penalties were accepted in order to give the Army a riot-control weapon of lower lethality than the SLR in the shortest possible time. Discovery will also disclose that the Ministry, after the rubber bullet had been introduced into service, instituted a new procedure whereby all new weapons would be vetted by a Medical Committee advising the Secretary of State; the implication being that the Ministry recognised some deficiencies in the testing arrangements for the rubber bullet. The documents subject to discovery are by no means entirely damning, but our lawyers are in no doubt that they will damage our case. There is no likelihood of a court upholding a Privilege claim for non-disclosure.

f. Precedent. A settlement out of court is unlikely to set a precedent which would constrain our handling of future cases. A court case, even with an adverse finding, would also not necessarily set any precedent, although if the suitability of the rubber bullet was explored in court, with adverse comments, as we anticipate, this could well inhibit us from fighting future cases.

g. Legal advice. Counsel is of the opinion that there are strong arguments that could be advanced on both sides and that the outcome of the case is uncertain. However, he considers that, notwithstanding the strength of our case, a Judge and Jury would probably have a strong feeling of sympathy for the boy and would probably be reluctant to award him no damages, though they would be likely to reduce the damages in respect of the boy's contributory negligence. Counsel therefore assesses that there is a greater chance of the Plaintiff succeeding than of MOD succeeding. It is pertinent that in some past cases Counsel advising us have observed that Northern Irish juries and sometimes judges tend to have particular sympathy for the plaintiff when the defendant is the MOD.

Summary

7. The view of most interested divisions in MOD, and that of GOCNI, who were consulted before we knew definitely that we should have to disclose all papers on rubber bullets, was that, given the reasonable view that could be taken of the soldier's action, we should let the case go to court and accept as a calculated risk

the possibility that the court might award higher damages than we bargained for and that there might be some exposure of the rubber bullet difficulty. C2(AD) and the Claims Commission, whilst accepting that the arguments in favour of contesting or settling out of court were finely balanced, considered that given the likelihood of MOD being found liable and the various risks involved in contesting, this option was unattractive and favoured settlement.

Recommendation

8. Now that we know that our documents relating to rubber bullets are all subject to discovery, C2(AD) has no hesitation in recommending that we attempt to settle out of court. From earlier soundings, I believe that this view will now be shared by other MOD divisions.

9. If an attempt to settle is to be made, we should instruct our lawyers within 48 hours so that we can avoid if possible the production of documents.

M J D FULLER
C2(AD)
Ext 5147 MB

22 February 1977

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LOOSE MINUTE
C2(AD)1/4/1

PS/DUS(Army)

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Director CDE
Col GS MO 4
Chief Claims Officer
Civil Adviser HQNI
PR 5(Army)
AG Sec

NORTHERN IRELAND CIVIL LITIGATION: RICHARD MOORE v MOD

Reference A: C2(AD)1/4/1 Moore of 22 Feb 77
B: DUS(Army)1/23 of 23 Feb 77

In the course of protracted negotiations with Moore's Counsel on Thursday and Friday of last week it became evident that the potential value of this case was much higher than the £50,000 estimated by Crown Counsel. A precedent was quoted of a boy of about the same age, also blinded, receiving £75,000 in criminal injury compensation. Much was made of the fact that in spite of his blindness, Moore was taking CSE exams next year, was learning audio-typing, and had learnt the guitar, mandolin and piano. His family apparently have a good employment record. Moore's Counsel refused to accept that Moore had taken part in the attack on the Rosemount post and indicated that he had witnesses to prove that he had come out of school late that day and was not an active participant in the attack. Moore's Counsel valued the case at about £90,000.

2. After a long struggle, our two Counsel reported late on Friday that agreement had been reached to recommend a settlement at £68,000. The Chief Claims Officer agreed with me that in spite of the higher figure there was nothing to diminish the clear advantage in settling rather than contesting, and I authorised a settlement at that figure, which was concluded at 11 pm on Friday.

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3. The outcome was reported to the High Court this morning, and approved. The settlement was reported on the local 1 pm radio news today, which simply referred to an agreed settlement at £68,000 in the case of a boy blinded by a rubber bullet whilst walking past an Army post during a riot, without commenting further. This view of the incident, whilst arguable as to Moore's participation, attaches no stigma to the Army. It was of some further comfort that one of our Senior Counsel, not one of those handling the case, commented that £68,000 was "a rock-bottom price" for this case. The money will be invested, at the Court's direction, for Moore's future benefit.

4. Finally, the general disclosure of documents relating to rubber bullets was not necessary.

M J D FULLER
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28 Feb 77