

Loose Minutes  
C2(AD) 1/4/1 Moore

Northern Ireland Civil Litigation: Richard Moore v MOD

1. 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 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. Council estimates the value to be about £50,000, although it is not inconceivable that a jury would award up to £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:

(i) A report on the rubber baton round, and the RANC consultant's report, forwarded by the Director CDE to ACCS(CR), and dated 11 June 1970;

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

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

(iv) A notice about the merits of increasing the charge of the baton round from **(MO 1 to DS 6.) ??** **difficult to make out** Dated 23 April 1971;

(v) A note comparing the 45 grain round with the 55 grain round from **(DS/6 to PS/US)?? of S(Army) difficult to make out** dated May 1971;

(vi) A further report from the Deputy Director CDE comparing the PVC round with the 35 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 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 over-riding reasons why one 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 over-rides the interests of justice. If there are over-riding 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, this 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 than 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 about the CDE tests?

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

27<sup>th</sup> January 1977

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