Neutral Citation Number: [2007] EWCA Crim 243

Case No: 2007/00579/B5

**IN THE SUPREME COURT OF JUDICATURE**
**COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM WOOLWICH CROWN COURT**
**THE HON MR JUSTICE MACKAY**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2007

**Before :**

**THE PRESIDENT OF THE QUEEN'S BENCH DIVISION**
**MR JUSTICE FORBES**
and
**MR JUSTICE IRWIN**

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**Between :**

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| | **R** | **Appellant** |
| | **- v -** | |
| | **F** | **Respondent** |

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Mr Geoffrey Robertson QC and Mr A Suterwalla for the Appellant
Mr David Perry QC, Mr Nicholas Hilliard and Miss R Franton for the Prosecution

Hearing dates : 5th and 6th February 2007

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# Approved Judgment

**President of the Queen's Bench Division :**

1. This is an appeal with leave of Mackay J from his decision on 25th January this year at Woolwich Crown Court following a preparatory hearing held under s29 of the Criminal Procedure and Investigations Act 1996. It raises important questions about the construction of the Terrorism Act 2000 (the 2000 Act). We have received helpful written and oral submissions from Mr Geoffrey Robertson QC on behalf of the appellant and Mr David Perry QC on behalf of the Crown, and with their agreement, we admitted written submissions prepared by Mr Keir Starmer QC on behalf of Justice.

**The Facts**

2. A very brief summary will be sufficient.

3. The appellant is a native of Libya. We are told that members of his family as well as his friends were murdered in Libya by or on behalf of the present regime. He fled to the United Kingdom in 2002, where, in 2003 he was granted asylum. This decision demonstrated that he had a well justified fear of persecution if he were returned to his native country.

4. In October 2005 his accommodation in England was raided. After the material taken from it was analysed, on 27th March 2006 he was arrested and charged with offences under the 2000 Act. The indictment contains two counts. Each alleges a contravention of s58 (1)(b) of the Act. The appellant is alleged to have been in possession of a document or record containing information of a kind "likely to be useful to a person committing or preparing an act of terrorism". In view of some of the submissions by Mr Robertson, it is perhaps worth emphasising that the documents in question appear, if the Crown's case is right, to go very much further than the passionate expression of implacable opposition to the present regime in Libya or abhorrence of a tyrannical dictatorship.

5. The first count relates to part of one of twenty one files contained on a CD downloaded from a Jihadist website, entitled "a special training course on the manufacture of explosives for the righteous fighting group until God's will is established". The Crown suggests that this document provides detailed instructions on how explosive devices may be made, and that s58(1)(b) applies to the information contained in it. The second count refers to a handwritten document which, according to the Crown's case, describes in detail how a terrorist cell may be set up. It is said to be a "blueprint" for such a cell. It points a route to Jihad, the removal of Colonel Gaddafi from power in Libya and establishing the rule of Allah. It recommends the acquisition of firearms suitable for action within cities and the need "to try to learn to use explosives and mining". Accordingly this material, too, falls within s58(1)(b).

6. The appellant denies possession of the document identified in the first count. In summary, his defence is that he did not have it, alternatively if it was in his possession, he was ignorant of its contents. It is also suggested that the information would be unlikely to be of assistance to a would-be terrorist. The appellant accepts that he was in possession of the handwritten document which is the subject of the second count. The defence is that this document was passed to him by a leader of a resistance movement in Libya, as part of an intended plan to establish a movement in

Libya opposed to the present regime headed by Colonel Gaddafi. The defence draw attention to its condemnation of the injustice and oppression of the Gaddafi regime, and an asserted insistence that the activities of the proposed opposition movement should not harm civilians or foreigners. Its targets are Colonel Gaddafi himself, his secret police and his army. The document anticipates that the Gaddafi regime will be replaced by a popular movement of devout Muslims.

## General

7. Terrorism is an international modern scourge. In recent years, New York, Bali, Madrid, London and Sharm el-Sheikh have all suffered the dreadful experience of indiscriminate slaughter resulting from terrorist activity. Sadly, it would be wrong to conclude that a line can now be drawn underneath that list, or that the names already on it will never reappear. The protection of the community as a whole is one of the first great responsibilities of government, and in this country it is Parliament which provides the legislation appropriate to address the threat posed by terrorism.

8. We shall not attempt to discuss the history of political thought, or the principles of political theory and obligation, as developed in this country and abroad, or indeed to refer to the many important texts included in our papers and referred to in argument. However as the argument advanced it became increasingly clear that, despite the commonality of view that terrorism was detestable, subtle refinements and differences about its true meaning could legitimately arise for discussion. Much thought was given to the right to rebel against a tyrannous or unrepresentative regime. We were shown that John Locke observed in his Second Treatise of Government that the "people" were entitled to resume "their original liberty" when the legislators sought to "reduce them to slavery under arbitrary power". The United States Declaration of Independence (1776) having identified the famous "self evident" truths, added that "whenever any Form of Government becomes destructive of these ends, it is the Right of People to alter or to abolish it, and institute new Government". The preamble to the Universal Declaration of Human Rights 1948 acknowledges the possibility of citizens having recourse "as a last resort to rebellion against tyranny and oppression". Article 1 of the International Covenant on Civil and Political Rights 1966 underlines that "all peoples have the right to self determination". By virtue of that right they freely determine their political status. We rather doubt whether the authors of these texts would have supported terrorism in its modern form. That said, we were also told that protection is provided in international law for a number of categories of "freedom fighters", by making it clear that if they avoid "war crimes", they may be treated as legitimate combatants. If so, violence in a justified cause cannot be said to be the exclusive prerogative of governments.

9. The call of resistance to tyranny and invasion evokes an echoing response down the ages. We note, as a matter of historical knowledge, that many of those whose violent activities in support of national independence or freedom from oppression, who were once described as terrorists, are now honoured as "freedom fighters". Others, who continued to use violence to maintain resistance to national enslavement by invading forces, after the official surrender by their own governments, are regarded as heroes and heroines. Those who died in these causes were "martyrs" for them. Indeed we can look about the world today and identify former "terrorists" who are treated as respected, and in one case at least, an internationally revered statesmen. In many countries statues have been erected to celebrate the memory of those who have died in

the course of, or have been executed as a result of, their violent activities, but who in time have come to be identified as men and women who died for the freedom and liberty of their countries or their consciences.

10. Violence, of course, is not the only way. In “Non-Violence in Peace and War” (1942) Mahatma Ghandi posed the question which demands an answer every time violence is used, even in a just cause. “What difference does it make to the dead, the orphans and homeless, whether the mad destruction is wrought under the name of totalitarianism or the holy name of liberty or democracy?”

11. The next general matter which requires attention, in view of the arguments, is rather different. This feature relates not to the activities of terrorists, but to the impact on law-abiding citizens of legislation, intended to protect them from the terrorist threat, which nevertheless interferes with their ordinary freedoms and liberties. Mr Robertson suggested that the current terrorism legislation has had this effect. In due course, we shall address the argument that legislation of this kind should be construed so as to ensure that so far as possible the ordinary rights enjoyed by citizens are maintained, and that they should not be lost through oversight or ambiguity. That said, Parliament has been and will no doubt continue to be aware of the dangers of over-zealous, unnecessary interference with them. For example, we note that in December 2005 the Joint Committee on Human Rights spoke of the problems arising from the fact that “counter-terrorism measures were capable of application to speech or actions concerning resistance to an oppressive regime overseas…”

12. These are some of the considerations which give rise to uncertainties about the true definition of terrorism, and the difficulties of resolving them. The debate can be lengthy. For present purposes, however, the only definition which requires our attention is found in section 1 of the 2000 Act.

**The 2000 Act**

13. Section 1 of the Act is central to the current anti-terrorism legislation. It does not create any offence, but rather defines the word which permeates the entire legislative structure. This includes not only the Act, with insertions made by the Crime (International Co-operation) Act 2003, but also the Anti-Terrorism Crime and Security Act 2001, the Prevention of Terrorism Act 2005, and the Terrorism Act 2006. The definition has also been incorporated into a number of different recent Acts of Parliament, of which one example is s31(1) of the Civil Contingencies Act 2004.

14. We immediately accept Mr Robertson’s submission that when construing this section, we should bear in mind that the legislation as a whole creates serious inroads into and restrictions on what we in this country have for many years regarded as inalienable freedoms, now cemented and amplified in the European Convention of Human Rights (ECHR).

15. Section 1 of the 2000 Act provides:

“(1) In this Act “terrorism” means the use or threat of action where

(a) the action falls within sub-section (2),

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this sub-section if it

(a) involves serious violence against a person

(b) involves serious damage to property

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within sub-section (2) which involves the use of firearms or explosives is terrorism whether or not sub-section (1)(b) is satisfied.

(4) In this section

(a) "action" includes action outside the United Kingdom

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom

(d) "the government" means the government of the United Kingdom, or a Part of the United Kingdom or of a country other than the United Kingdom."

16. Terrorism therefore extends to terrorist activities here and abroad, and terrorist actions against foreign governments fall within its ambit. The extension of terrorism offences to include terrorist activities abroad is a constant theme of the legislation, no doubt reflective of the international nature of terrorism, and perhaps also, of the need to avoid the United Kingdom becoming or appearing to be a safe haven for terrorists of any nationality, whether ultimately intent on pursuing their objectives in this country, or abroad, or in their own native countries. On the face of it, governments of countries other than the United Kingdom are to be protected from terrorist activities organised and planned here. This aspect of the legislation was reinforced by the insertion of s63 A-E into the 2000 Act by the Crime (International Co-operation) Act 2003, which makes clear that a resident in the United Kingdom would be guilty of an offence here if his actions abroad would have constituted an offence under s54 or ss56-61 of the 2000 Act if perpetrated in the United Kingdom.

17. Section 58 provides:

(1) A person commits an offence if

(a) he collects or makes a record of information likely to be useful to a person committing or preparing an act of terrorism, or

(b) he possesses a document or record containing information of that kind…

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession…"

Section 118 deals expressly with a number of provisions providing expressly for defences of the kind identified in s58 (3). S118 (2) provides that where a defendant

"adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not".

18. These sections of the Act only arise for consideration if the first ground of appeal fails.

**The First Ground of Appeal**

19. The first issue in the appeal is whether the phrase "the government" in s1(1)(b), as explained in s1(4)(d) in relation to foreign governments, indicates and is limited to those countries which are governed by what may broadly be described as democratic or representative principles. The submission on behalf of the appellant is that governments which constitute, for example, a dictatorship, or a military junta, or a usurping or invading power, are not included within the protective structure of the Act. Mackay J rejected this submission, which we must now address.

20. On this issue the submission for the appellant is based on two linked strands of argument. It is suggested that Mackay J's conclusion was wrong on the basis of ordinary techniques of statutory construction. Alternatively, if this argument is not self-sustaining, his conclusion fails when the statutory framework is put into the context of ordinary principles of construction, our own political and legal traditions, the ECHR itself, and our international commitments.

21. What we may describe as the construction argument proceeds by way of emphasising the penal nature of the legislative structure and the well known principle that any ambiguities in such legislation should be resolved in favour of the defendant. Attention is drawn to s1(4)(d) in which the language which would apply to Libya in the present context – "the government…of a country other than the United Kingdom" – should take its meaning from the previous phrases "the government of the United Kingdom, or a Part of the United Kingdom". It is said that the application of the *eiusdem generis* rule makes clear that as the governments of the United Kingdom and its parts, Scotland and Wales, are representative, the same quality must infuse the governments of countries other than the United Kingdom before they fall within the protective ambit of the legislation.

22. More complex issues arise from the second strand to the argument. The interpretation for which Mr Robertson contends is said to be "mandated" by s3 of the Human Rights Act 1998, which requires domestic legislation to be interpreted "so far as possible" to conform with Article 3 of Protocol 1 of the European Convention of Human Rights ("ECHR"), adopted in 1952, and expressly incorporated into United Kingdom law by s1 (1) (b) of the Human Rights Act. The countries which have incorporated Protocol 1 are committed to representative or democratic rule. The fundamental rights and freedoms enjoyed by countries which are parties to the Convention are best preserved by "an effective political democracy". In effect, no

other system of government in countries which are party to the Convention is permissible. (See, for example, United Communist Party of Turkey and others 26 EHRR 121; Kjeldsen, Busk Madsen and Peddersen v Denmark 1EHRR 711)

23. No authority is needed for the proposition that democratic government based on the consent of the people, and subject to the rule of law, is the lodestar for modern civilised communities. We agree that it is an essential qualifying characteristic of the governments of countries which adhere to the European Convention that they should be democratic representative governments. That however is far from saying that the only governments which can be included in legislation which provides for protection against terrorism are to be found in countries which adhere to the Convention or governed in accordance with its principles. Mr Robertson reminded us of Lord Steyn's observation in Ghaidan v Godin-Mendoza 2(2004) 2 AC 557, at paragraph 50, that there is "a strong rebuttable presumption in favour of an interpretation consistent with Convention rights". From this foundation he suggested that, even if the inevitable infringement of the freedoms provided at common law and under the ECHR were proportionate and justified in relation to countries governed by representative governments, as a matter of construction, these rights, and in particular the right to freedom of expression, should not be restricted in order to protect governments which were unrepresentative. A distinction should be drawn between tyrannous government, for whose benefit the infringement on the liberties enjoyed by citizens here would be wholly inappropriate, and the innocent citizens of countries subject to such governments. Their protection would justify some at any rate of the restrictions created by the terrorist legislation, but did not extend to the tyrants under whose yoke they were forced to live.

24. The argument does not stop with the Convention. The interpretation of "terrorism", as defined in s1, is subject to the presumption that "Parliament does not intend to act in breach of "public" international law, including their unspecific treaty obligations; and if one of the meanings that can reasonably be attributed to the legislation is so consonant, it is to be preferred". (Per Diplock LJ in Salomon v Customs and Excise Commissioners [1967] 2 QB 116 of 143.) We have already noted the preamble to the Universal Declaration of Human Rights. The United Kingdom has ratified the International Convenant on Civil and Political Rights, which underlines the right of every citizen to vote and "to be elected" and to be granted an "effective opportunity to enjoy the rights" protected by the Convention. For present purposes, no further citation is necessary. The links established between the principles enshrined in the law of England and Wales and the international obligations of the United Kingdom were deployed to reinforce Mr Robertson's basic submission.

25. In summary, Mackay J's interpretation of section 1 of the 2000 Act has produced a result which means that Parliament deviated from its obligations under the Convention, and international law, by treating as terrorists individuals who oppose regimes in countries subject to dictators, and invaders, and indeed to regimes which are denied recognition in the United Kingdom, or are involved in war or warlike confrontation with the forces of the United Nations, NATO or indeed the United Kingdom itself. The measures included in the legislation extend to significant interference with the normal principles of liberal democracy. They may be an appropriate response to protect such communities from the threat of terrorism. It is not acceptable for, and the legislation is not intended to provide, the same restriction

to hinder or prevent the activities of those seeking to establish the freedoms which we enjoy here. In these circumstances, Mackay J's construction of s1 was wrong.

26. We have examined these arguments with the deference that their importance deserves. We must return to the legislation. We have no difficulty with the principles of construction. However, we are unable to see how they apply to assist the appellant. We cannot identify any ambiguity or absurdity in section 1(4)(d). In our judgment the meaning of the phrase – "a country other than the United Kingdom" – is plain enough. It follows entirely logically from the references to actions outside the United Kingdom (s1(4)(a)) and "public of a country other than the United Kingdom" (s1(4)(c)), and serves to reinforce the international dimension of the protection against terrorism provided in domestic legislation. We can see no reason why, given the random impact of terrorist activities, the citizens of Libya should not be protected from such activities by those resident in this country in the same way as the inhabitants of Belgium or the Netherlands or the Republic of Ireland. More important, we can see nothing in the legislation which might support this distinction.

27. What is striking about the language of s1, read as a whole, is its breadth. It does not specify that the ambit of its protection is limited to countries abroad with governments of any particular type or possessed of what we, with our fortunate traditions, would regard as the desirable characteristics of representative government. There is no list or schedule or statutory instrument which identifies the countries whose governments are included within s1(4)(d) or excluded from the application of the Act. Finally, the legislation does not exempt, nor make an exception, nor create a defence for, nor exculpate what some would describe as terrorism in a just cause. Such a concept is foreign to the Act. Terrorism is terrorism, whatever the motives of the perpetrators.

28. The forensic focus in argument on s1 (4) (d) may have distracted attention from s1 as a whole, and in particular the provisions of s1 (3), which refers to activity involving the use or threat of firearms or explosives. Terrorist action outside the United Kingdom which involves the use of firearms or explosives, resulting in danger to life or creating a serious risk to the health or safety of the public in that country, or involving (not producing) serious personal violence or damage to property, or designed seriously to interfere with an electronic system, "is terrorism", whether or not its use is "designed to influence the Government or an international governmental organisation or to intimidate the public or a section of the public". The offences alleged in the two counts in the present indictment contemplate the use of firearms or explosives.

29. In the context of the ECHR, we draw attention to Article 2, and the right to life, and the obligation on the state to take appropriate steps to safeguard life and, for that purpose, to ensure an effective system of criminal law. By its nature terrorism is indiscriminate. An assassin may target an individual national leader. If Mr Robertson is right it may then be argued that his fatal stroke would not amount to terrorism for the purposes of the Act. It was however open to Parliament to decide that because of the evils of terrorism and the manifold dangers that terrorist activities create, it should impose a prohibition on the residents of this country from participating or seeking to participate in terrorist activities, which may have a devastating impact wherever in the world they occur. The same potential for criminal sanctions has been applied to British citizens who commit or solicit murder abroad. It would be strange if a British citizen could involve himself in terrorist activities which ended in the assassination of

Colonel Gaddafi in Libya, and be liable to conviction for his murder, but immune from prosecution under the terrorist legislation if his activities came within the definition of terrorism, but his plan to kill Colonel Gaddafi was prevented by the security services, or by his own incompetence.

30. The other feature of the debate which lends support to Mackay J's conclusion, is that the construction for which the appellant is contending would require the jury to assess whether or not the particular government against which terrorist activity was planned or carried out, fell within the description of a representative or democratic government. Some governments are undeniably representative, although even our own constitutional arrangements are sometimes chided as an elected dictatorship. Other countries are subject to governments which are definitely not representative. Where such countries are identified it is assumed that the inhabitants would immediately welcome the substitution of the government which they have for one answerable to democratic principles, but even under the yoke of tyranny, not all the inhabitants would welcome terrorist violence. There are yet other countries where the issue – democratic or not - is subject to serious debate. Mr Perry added a further consideration, to the effect that if it were ever permissible to visit terrorist activities on a tyrannical government, would that immunity extend to a group seeking by violent means to foist its own different but equally undemocratic principles on the country whose tyrant was overthrown?

31. We note that the membership of the United Nations includes countries run by governments not all of which share our commitment to or exemplify the operation of the democratic process. We do not abandon our membership of the United Nations because of the doubtful democratic credentials of some of the other members. And on occasions recent history shows that elected governments here have decided, in the national interest, to make common cause with the governments of countries whose representative credentials were open to profound reservations. It would be unrealistic to approach the terrorist legislation on the basis that Parliament envisaged that it should not apply to countries allied to us or to other members of the United Nations. That is not what this legislation provides.

32. In our judgment, in agreement with Mackay J, the terrorist legislation applies to countries which are governed by tyrants and dictators. There is no exemption from criminal liability for terrorist activities which are motivated or said to be morally justified by the alleged nobility of the terrorist cause.

### The second ground of appeal

33. This ground arises from our conclusion about the construction and ambit of s1 of the Act. It is contended that Mackay J was wrong to conclude that as a matter of law the appellant was not entitled to argue that s58 (3) of the Act permitted him to advance as a "reasonable excuse" for the possession of the documents which form the basis of the allegations in the indictment that they "originated as part of an effort to change an illegal or undemocratic regime". Consideration of this ground requires us to assume that the prosecution will demonstrate that the activities and behaviour of the appellant did indeed constitute the terrorist offences alleged against him. Only then would the "reasonable excuse" issue arise.

34. Mackay J was anxious for it to be understood that his ruling was limited to this single specific "just cause" question. He was not considering, and in particular not ruling out in advance any alternative "reasonable excuse" which the appellant might seek to advance on the facts. He was also prepared to approach the argument by assuming that the appellant would be able, by evidence or admission, to demonstrate that the current regime in Libya is indeed unrepresentative and tyrannical.

35. As the argument developed we detected a suggestion that the documents identified in the two counts amounted to no more than an attempt to impart information and ideas which merited protection under ordinary principles relating to established rights to freedom of expression at common law and under the ECHR. We have already explained, however, that if the jury were to conclude as a realistic possibility that the documents were addressing argument and exhortation against and expressing disapproval and opposition in the strongest terms of the current regime in Libya, and no more, the appellant would be entitled to be acquitted. The right to freedom of expression is not in issue in these proceedings.

36. Various arguments were advanced before us. We shall deal with them briefly. It was suggested that the decision represented a judicial usurpation of the function of the jury. This was impermissible (R v Wang [2005] 1WLR 661). The statutory defence in s58 (3) required a decision of fact which should be left to the jury. It was also suggested that Mackay J was wrong to rely, the extent that he did, on R v Jones [2006] 2CAR 9. In Jones the House of Lords considered the question whether criminal damage committed at military installations in the United Kingdom was excused by s 3 of the Criminal Law Act 1967, which provides that an individual may use "such force as is reasonable" to prevent crime. It was argued in Jones that the government in the United Kingdom was acting contrary to customary international law. Mackay J drew attention to the speech of Lord Hoffmann, that a defendant could not act "as if he was a sheriff in a Western, the only lawman in town". This graphic observation underlined the essential reasoning that the use of force must be tightly controlled if society is not to slide into anarchy. In a modern, properly functioning state, the remedy of "self help" was limited, and save in exceptional circumstances, it is inappropriate for an individual to use violence in order to champion his own, or a third party's, or even a perceived view of the public interest.

37. Mackay J acknowledged that Jones was directed to entirely domestic issues. Mr Robertson suggested that the decision, and the basis for it, was distinguishable because Jones related to events within England and Wales, a developed liberal democracy, rather than activity focussed, as it is in this case, on a foreign undemocratic country, where resort to self help might be more compelling. We recognise the distinction, but even if the long term target for the appellant was the present government in Libya, the prohibited activities alleged against him took place here.

38. The fundamental flaw with Mr Robertson's submissions is that, on analysis, they are circular. They depend on the proposition that a reasonable excuse for conduct which constituted a crime may be found in the commission of the very crime prohibited by the statute. If correct, this would introduce an impossible incoherence into the statutory provisions. And for such an excuse to be "reasonable", the carefully constructed definition of terrorism in s 1 of the Act would become inoperative. Given the overall context, if Parliament had intended that this defence should apply in such

circumstances, it is inconceivable that the statute would not expressly have addressed the problem either by an express restriction on the application of the Act to countries with a representative, democratic government, or by providing that an individual with a genuine grievance about a tyrannical regime should fall outside the statutory provisions which create terrorist offences. In reality, our conclusion on this second ground of appeal follows inexorably from our rejection of the first ground.

39. Mackay J was required to address a question of law. Unless the purported excuse was capable of being "reasonable" as a matter of law, it was not relevant to any issue at trial and evidence in support of it would be inadmissible. In our judgment his ruling did not usurp the function of the jury, nor interfere with its normal fact-finding responsibilities. We agree with, and respectfully adopt his conclusion that, as a matter of law, the defence under s58 (3) is not available "to achieve in effect a construction of the statute which is contrary…to the intention of Parliament which passed it". Moreover we should add that for case management purposes he made this ruling at an entirely appropriate point in the proceedings.

40. Two subsidiary points need brief mention. Reference to Parliamentary material as an aide to the construction issues was unnecessary. Pepper v Hart [1999] AC 593 did not apply. Second, our decision about the proper construction of terrorism for the purposes of the Act was wholly uninfluenced by the statutory arrangements in s117 of the Act, requiring the consent of the Attorney General, or Director of Public Prosecutions (as the case may be) to a prosecution. Such consents no doubt contribute to sensible decision making by the prosecution, but the process which requires them does not bear on the proper construction of statutory language affecting the administration of criminal justice.

41. This appeal is dismissed.