PRIME MINISTER

FOOTBALL HOOLIGANISM

I have pursued the points raised at the Ministerial meeting on 21 March and I attach a paper by my officials with which I concur.

The following package of measures would amount to a substantial response to the problem and seems to me to provide the basis for further discussion:

(i) The enactment in England and Wales of provisions similar to those in the Criminal Justice (Scotland) Act relating to alcohol if a suitable legislative vehicle can be found.

(ii) Discussion with the relevant organisations with a view to extension of designation under the Safety of Sportsgrounds Act 1975, to all Third and Fourth Division grounds and, if possible, the sharpening of the guidelines; my Department is not aware of any disregard of the existing guidelines and I therefore do not consider that introducing sanctions against local authorities is likely to have any substantial effect.

(iii) The introduction of the proposed controls on public assemblies which we already have in mind as a result of the review of the law relating to public order; they would be available for application to football crowds. The White Paper on this is expected to be issued in early May.

(iv) A review by the Association of Chief Police Officers of the arrangements for collecting and disseminating information about behaviour at matches, to ensure

that Chief Constables have comprehensive information about the likelihood of disorder.

(v) Discussion with ACPO and the Magistrates' Association about the greater use of section 188 of the Licensing Act 1964 to close licensed premises in areas where the presence of football supporters is likely to result in scenes of disorder and unruly behaviour.

(vi) Steps to encourage (e.g. through Ministerial speeches) the use of attendance centres as a sentence for football hooligans and the imposition of bail conditions requiring the accused not to attend matches and to report to a police station on Saturday afternoons.

(vii) Examination with ACPO of how to provide effective communication links with British Transport Police contingents escorting trains carrying football supporters; I accept absolutely the need to ensure communications are effective.

(viii) Steps to encourage the police to obtain sufficient evidence to justify bringing serious charges whenever possible. As I said in my note of 20 March, I have already approached ACPO about this and I am examining how best to publicise this initiative.

I have also concluded that the existing law already covers conduct of the kind considered in our discussion of a possible new offence of tumultuous behaviour, so that there is no need for a change in the law. Nor do I think that section 15(1) of the Police Act 1964 needs amendment.

So far as the legislative elements are concerned, the Public Order Bill will provide a vehicle for (iii). The proposals about alcohol in (i) could not be fitted so easily into that Bill because of the risk that its scope might be extended, attracting amendments on other licensing proposals.

The proposals which I put forward in respect of the police and the courts should be complemented by firm measures on the part of the football authorities and football clubs to carry out their responsibility to minimise the likelihood of disorder. We should not rely on them discharging their responsibilities adequately, but we should apply the maximum pressure on them, and not let them get off the hook by being too ready to assume total responsibility ourselves.

I am sending a copy of this minute to Nigel Lawson, George Younger, Patrick Jenkin, Nicholas Ridley, Neil Macfarlane and Sir Robert Armstrong.

L.B.

27 March 1985

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FOOTBALL SPECTATOR VIOLENCE: HOME OFFICE MEASURES

Note by Home Office officials

This note reports the results of further consideration of the proposals identified at the Prime Minister's meeting on 21 March, under two headings: changes which could be introduced without main legislation and those which would need a Bill.

(1) Measures for introduction without main legislation

(a) The criminal law

Where football supporters charge down a street and cause people to scatter and take shelter for their own safety, they can already be charged with the offence of threatening behaviour contrary to section 5 of the Public Order Act 1936, as was shown by the important case ... of Allen v Ireland only last year (copy attached). It is clear that there does not even have to be evidence against any individual of threatening behaviour: it suffices to prove that he was an active participant in a group which collectively was guilty of threatening behaviour, as the case of Parrish v Garfitt in 1975 ... showed (also attached).

Section 5 creates the following offence:

> "Any person who, in any public place ... uses threatening, abusive or insulting words or behaviour ... with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence ..."

The maximum penalty is six months and/or £2,000. The test of what constitutes a breach of the peace was laid down by the Court of Appeal in Reg v Howell [1982] QB 416 as "an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which

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puts someone in fear of such harm being done". That case concerned the common law power of arrest; but the test has subsequently been applied to the meaning of breach of the peace in section 5 by the Divisional Court in Parkin v Norman [1983] QB 92.

As the Annexes to the Home Secretary's minute of 20 March showed, serious charges carrying substantial custodial and monetary penalties are already available for offences such as grievous or actual bodily harm or criminal damage. Taken with what is said above, it is clear that the necessary powers are there for the police and courts to use, and the Association of Chief Police Officers (ACPO) have already been asked to emphasise to the police service the importance of obtaining sufficient evidence when violent behaviour takes place to lay as serious charges as the evidence justifies. The Magistrates' Association will also be approached to encourage wider use of the imposition of conditions of non-attendance at matches for bail.

As was noted at the meeting on 21 March, 109 out of 127 of the attendance centres are for juveniles (aged 10 to 16), but senior centres (for those aged 17 to 20) are available in most of the main centres of population. There is, however, room for further growth, and there are plans to open five new senior centres in the next year.

Finally on this point, following our discussion on 21 March the Home Secretary will be taking the opportunity of a speech to an audience of magistrates in Plymouth this Friday to encourage the use of attendance centres as a particularly appropriate sentence for football hooligans and to remind them that they can in appropriate cases impose conditions of bail requiring the accused not to attend matches and to report to a police station on Saturday afternoons.

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(b) Designation of football grounds under the Safety of Sports Ground Act 1975

The effect of designation is to require the club (as occupier of the ground) to obtain a safety certificate from the local authority; and the latter have a discretion to impose such conditions as may be necessary in the interests of spectator safety. Home Office guidelines (published in 1976) not only cover such basic matters as gradients of gangways, crush barriers and crowd flow hazards, but also a range of recommendations more specifically related to crowd behaviour, such as pitch perimeter fences, segregation of supporters and all-ticket matches. There is no evidence that authorities do not follow these guidelines or that clubs do not comply with the conditions imposed. Indeed, on the former, the complaint from clubs is that authorities follow the Green Guide too rigidly. As for enforcement, ensuring compliance with the terms of a safety certificate is primarily a matter for the local authority which issues it.

The impact of these recommendations is being considered to see whether any parts of the Green Guide might usefully be sharpened. The Home Secretary also proposes to discuss with other interested parties the extension of designation to Third and Fourth Division clubs.

There are two main options on designation: to the grounds of selected clubs with a history of violence or to those of all clubs in the lower Divisions. There is nothing in the Act to prevent selective designation, and a particular club's history of violence could well be a relevant factor in considering designation under the 1975 Act, since that is concerned with safety. The disadvantage of selective designation, however, is that one could not act until violence had occurred (perhaps on more than one occasion) and people might have been hurt. It would be a classic case of shutting the stable door every time

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after we could prove that the horse had bolted. Designation orders would also no doubt be contested strenuously by each club as its case arose, with promises that effective action had been taken to avoid a repetition. The orders are subject to the negative resolution procedure, so the occasion for Parliamentary pressure would always be available.

The 1972 Wheatley Report into Crowd Safety at Sports Grounds (Cmnd.4952), which led to the 1975 Act, specifically envisaged that the grounds of all four Divisions of the Football League would eventually be covered. What happened at Luton showed how near to serious disaster even a designated ground could be brought by hooliganism and a peak attendance. It does not seem defensible to run the risk any longer if these factors came together at an undesignated ground which might lack even the basic protection facilities for the public or proper crash barriers, pitch perimeter fences and a sufficient police presence. Thus it is proposed to discuss designation and the guidelines on the basis that all Third and Fourth Division club grounds will in future be designated.

Some of the clubs may complain about the cost of bringing their facilities up to the minimum safety standards required. They will be able, however, to obtain help with the cost of safety work from the Football Grounds Improvements Trust, and they can also follow the example of other clubs in the past of settling for a lower spectator ceiling and taking out of use potentially unsafe areas until they can afford to make them safe.

(c) Alcohol

Closing of licensed premises

Section 188 of the Licensing Act 1964, which contains equivalent provisions to those in the Licensing (Scotland) Act 1976, gives justices of the peace power to require licensed premises to close in certain

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circumstances. Where a riot or tumult happens or is expected to happen in any county, any two justices of the peace for the county may order all licensed premises (public houses, restaurants, wine bars, off-licences, hotels and licensed clubs) in the area to close for such time as they determine. A Licensee who disregards the order is liable to a fine of up to £400.

This power was used on occasions to close licensed premises in mining areas during the recent strike. Where there was reason to believe that incidents of serious public disorder were likely to occur, the police successfully applied to the justices for closing orders to be made for the day in question. It would therefore be open to the police to seek closing orders in those areas where the presence of football supporters is likely to result in scenes of disorder and unruly behaviour. The police could make more extensive use of these powers in relation to football violence, and this is to be discussed with ACPO and with the Magistrates' Association.

The Licensing Act 1964 also prescribes permitted opening hours for licensed premises. There is no obligation on licensees to open throughout those permitted hours and in areas surrounding football grounds a number will choose to close before, during and after a football match.

Football clubs can, of course, forbid the sale of alcohol on their premises and are already entitled to refuse admission to drunken fans. Some are reluctant to do so because of loss of revenue, but should be encouraged to take a more resolute line. If they did so, fans who nonetheless insisted in seeking admission would be guilty of breach of the peace, and if they resisted police efforts to restrain them would also be guilty of obstructing the police in the exercise of their duty.

(a) Away matches

ACPO have already shown that they would not hesitate to use powers to prevent people travelling where there is likely to be a breach of the peace. They have also

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said that they are already looking at arrangements for collecting and disseminating information about behaviour at matches, so that Chief Constables will build up a comprehensive picture from reports by each Chief Constable on his home games. They aim to have these arrangements in effect for the start of next season.

It has been confimed that the British Transport police, as a "private" force, do not operate in the radio frequency band used by the public emergency services such as the police. It is ACPO policy on operational grounds to allow access to police radio channels only in very special circumstances and under the operational control of the local Chief Constable (eg for Royal trains). It is clearly essential that the British Transport police are able to communicate rapidly with the police wherever violence occurs on trains. This will be pursued urgently with ACPO.

(e) Crowd photography

In order to assist the police in monitoring crowd behaviour and in obtaining evidence of individual criminal offences, the Scientific Research and Development Branch of the Home Office has developed an experimental public order surveillance vehicle with sophisticated video and photographic equipment. This vehicle has been deployed at two football matches to date, and it is proposed to deploy it at 5 Chelsea home matches in April. The vehicle is intended to be used inside the ground during matches and outside before and afterwards. It is capable of taking good quality pictures (both still and video) at a range of up to 150 yards. First reports are favourable, and the vehicle will be further evaluated during April. A second improved prototype is nearing completion.

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(2) Measures requiring main legislation

(1) The criminal law

In the Public Order White Paper we are proposing to amend section 5 of the Public Order Act so that it will read as follows:

> "Any person who, whether in a public or private place, uses threatening, abuse or insulting words or behaviour which is intended or likely:
>
> (a) to cause another person to fear unlawful violence, or
>
> (b) to provoke the use of unlawful violence by another
>
> shall be guilty of an offence."

As compared with the present law, unlawful violence will include violent conduct towards property as well as towards persons; and it will not be restricted to conduct causing or intended to cause injury or damage, but will include any other violent conduct (such as kicking cars or throwing missiles). Thus section 5 as amended should continue to catch behaviour of the kind described in Allen v Ireland, because it will cause bystanders to fear unlawful violence to their persons or their property. This will cover the sort of disorderly and tumultuous conduct involved in football violence.

The proposals in the Public Order White Paper will also give the police power to impose conditions on an assembly in the open air if they reasonably apprehend serious public disorder, or serious disruption to the life of the local community. The conditions will cover numbers, location and sutation. Thus if the police apprehend serious public disorder in connection with a fixture they will not be able to prevent the match being played; but they will be able to limit the number of spectators (even to the point of making it an event behind closed doors).

(ii) Alcohol

Further restrictions on the opening hours of licensed premises

An amendment to the Licensing Act 1964 would be required if the justices were to be given power to attach conditions to a liquor licence requiring premises to close before, during or after a football match. Changes in the law on these lines would need to extend to all licensed premises (public houses, restaurants, wine bars, off-licences, hotels, guest houses and licensed clubs). The new provision could, for example, empower justices to attach such conditions where the premises concerned were within (say) half a mile of a football ground and they considered it desirable in the interests of preventing public disorder. A right of appeal to the Crown Court against the justices' decision should be available to an aggrieved licensee.

Given the powers already available to close licensed premises (described at 1(c) above) it is very doubtful whether a new provision restricting permitted opening hours could be justified. And it would be strongly resented by members of the public whose freedom to choose where to eat or drink would be curtailed.

Restrictions on the sale or supply of alcohol within football grounds

At present alcohol may be sold at a football ground under an on licence (for sales to the public) or a club licence (for sales to club members only). If it is decided to take measures to prevent fans bringing alcohol into football grounds it will also be necessary to ensure that alcohol cannot be supplied within the grounds. The Scottish example could be followed. The

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Criminal Justice (Scotland) Act 1980 deals with this by simply prohibiting the possession of alcohol. Under section 73 of the Act, any person who is in possession of alcohol in the relevant area of a designated sports ground at any time during the period of a designated sporting event is guilty of an offence. The "relevant area" is defined as any part of a sports ground to which spectators attending a designated sporting event are granted access on payment, or from which a designated sporting event may be viewed directly.

Under the Scottish legislation, the Secretary of State has designated all associations and rugby football clubs for the purpose of prohibiting the sale or supply of alochol in their grounds. The legislation is not intended to apply to the consumption of alcohol within private areas of the ground, such as boardrooms, but it does apply to the private boxes from which the game can be viewed. Designation of particular grounds, rather than general designation, would also be a possibility.

If we decide to prohibit people bringing alcohol into football grounds, we could also follow the Scottish model and prohibit the possession of alcohol by all spectators at football matches in England and Wales.

Unlike the previous suggestions for legislation in this note, no legislative vehicle is readily available. The parallel provisions to the Scottish Criminal Justice Act could be included in the Public Order Bill next Session, but there would then be a risk of widening the scope of that legislation to permit other amendments on a wide variety of licensing and criminal justice matters. The extent of the risk is difficult to assess without consulting the House authorities when the Public Order Bill is drafted.

(iii) Section 15(1) of the Police Act 1964

We have considered wheter seftion 15(1) of the Police Act 1964 needs to be amended to enable Chief Constables to decide how many police officers to send to each match and to charge appropriately.

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Section 15(1) enables a chief officer of police to provide on request special police services at any premises or place within his police area, subject to payment in accordance with such scale of charges as may be determined by the police authority. "Special police services" are services which would not, in the absence of arrangements under section 15, be provided in pursuance of the general duty of the police to preserve law and order. Thus at a football match the organisers are charged for the services of police officers provided for duty solely inside the ground. Officers on duty outside the ground, for the purposes of crowd and traffic control, are regarded as performing normal police duty.

Section 15(1) applies not only to football matches and other major sporting events but to any event where the organisers consider a police presence desirable and the police would not normally be present in pursuance of their normal duties. The whole purpose of the section is to enable police services to be provided on request: the decision whether or not to comply with such a request is a matter for the chief officer. Where a request is complied with, the police authority already has power to charge the organisers the economic cost of providing the service.

The difficulty with football matches is that the organisers may not always be prepared to request and pay for the number of police officers which the chief officer considers necessary to maintain order inside the ground, although agreement is normally reached, in negotiation with the organisers, on the number to be provided. It is worth noting that the number of policemen deployed at football matches every Saturday is comparable with the number used each day during the NUM dispute. There is nothing to prevent the chief officer putting more officers inside the ground than the organisers have requested, but the

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additional costs have to be met by the police authority. The problem is to ensure that the organisers meet the full costs of whatever number of officers the chief officer considers necessary to maintain order inside the ground. We are doubtful whether an amendment to section 15(1), which is concerned with police services provided on request, is the best way of dealing with this.

A possible way forward, if we pursue the proposal to designate Third and Fourt Division clubs under the Safety of Sports Grounds Act 1975 would be to encourage all local authorities to do what most already do, and put into safety certificates a requirement to secure the attendance of such numbers of police officers as the Chief Constable thinks necessary and to pay for their attendance, although there is some doubt whether this could be legally enforced.

(iv) Safety of Sports Grounds Act 1975

Power to compel authorities to follow the Home Office guidelines when issuing safety certificates would require legislation; and, as already indicated in paragraph 1(b) above, available evidence suggests that this is not a problem. But should it be found that authorities were not imposing recommended safety conditions, the possibility could be examined of giving power under the 1975 Act to require authorities to adhere to the guidelines or, more particularly, to impose specific conditions.

Group (C.A.) [1984]

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[HOUSE OF LORDS]

*REGINA . . . . . RESPONDENT

AND

YOUNG . . . . . PETITIONER

1984 June 27

Lord Diplock, Lord Keith of Kinkel and Lord Templeman

PETITION by the defendant for leave to appeal to the House of Lords from the decision of the Courts-Martial Appeal Court [1984] 1 W.L.R. 654.

The Appeal Committee dismissed the petition.

J. A. G.

[QUEEN'S BENCH DIVISION]

* ALLEN AND OTHERS v. IRELAND

1984 March 23; April 3

Kerr L.J. and Nolan J.

Crime—Public order—"Threatening . . . behaviour"—Football supporters causing disruption in public place—Group arrested and charged—No evidence of identity of members of group—Whether defendants' presence in court showing prima facie case—No evidence of defendants' acts of threatening behaviour—Whether voluntary presence in crowd sufficient—Public Order Act 1936 (1 Edw. 8 & 1 Geo. 6, c. 6), s. 5 (as amended by Race Relations Act 1965 (c. 73), s. 7 and Criminal Law Act 1977 (c. 45), Sch. 1)

A large group of football supporters, approximately 250 in number, arrived in London by train, rushed through Euston Station, forcing bystanders out of the way, and proceeded on to the main road, chanting and shouting as they went and disrupting the flow of traffic. The group was soon surrounded and contained by the police, and its members were told that they would be arrested for threatening behaviour, contrary to the Public Order Act 1936[1], as amended. They were removed to one of three police stations where they were charged and subsequently bailed. They were to be tried in groups of about 10. At the trial of the first group of defendants it was submitted at the close of the prosecution evidence that there was no case to answer on the grounds, inter alia, that there was no evidence of identification to show that the defendants were part of the group arrested. The stipendiary magistrate rejected that submission.

On appeal by the first group:—

Held, dismissing the appeal, (1) that, in order to establish a prima facie case that a defendant who surrendered to his bail before a court and answered to the name laid in the charge was the same person as the person who was arrested, charged and bailed on that particular charge, a magistrate could take judicial notice of the due processes of arrest, charge and bail within his jurisdiction; and that, accordingly, since the defendants had

[1] Public Order Act 1936, s. 5, as amended: "Any person who in any public place or at any public meeting—(*a*) uses threatening, abusive or insulting words or behaviour . . . with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence."

appeared at court on the correct date and pleaded to the charges in their names after they had been arrested, charged and bailed for using threatening behaviour on a particular day at a particular place they had a case to answer (post, p. 908A–B, C–D).

(2) That, even though there was no evidence that a defendant had taken part in the threatening behaviour with which he was charged, a court was entitled to conclude that his voluntary presence as part of a crowd engaged in threatening behaviour raised a prima facie case of participation against that defendant; and that, accordingly, the magistrate was right to consider that on the facts found by him the defendants did have a case to answer (post, p. 910A–B, D–E).

Reg. v. Jones (Kevin) (1977) 65 Cr.App.R. 250, C.A. considered.

Parrish v. Garfitt, (Note) [1984] 1 W.L.R. 911, and *Reg. v. Allan* [1965] 1 Q.B. 130, C.C.A. applied.

The following cases are referred to in the judgment:

Cooke v. McCann [1974] R.T.R. 131, D.C.
Creed v. Scott [1976] R.T.R. 485, D.C.
Hays v. Ministry of Transport [1982] 1 N.Z.L.R. 25
Marshall v. Ford (1908) 72 J.P. 480, D.C.
Parrish v. Garfitt (Note) [1984] 1 W.L.R. 911, D.C.
Reg. v. Allan [1965] 1 Q.B. 130; [1963] 3 W.L.R. 677; [1963] 2 All E.R. 897; 47 Cr.App.R. 243, C.C.A.
Reg. v. Jones (Kevin) (1977) 65 Cr.App.R. 250, C.A.

The following additional cases were cited in argument:

McMahon v. Dollard [1965] Crim.L.R. 238, D.C.
Maile v. McDowell [1980] Crim.L.R. 586, D.C.

CASE STATED by the East Central Metropolitan Stipendiary Magistrate sitting at Highbury Corner.

On 27 August 1983, an information was preferred by the prosecutor, Richard Edwin Ireland, against the defendants, Bryan Allen and others, that they did on 27 August 1983, in a public place at Euston Road, London, N.W.1 use threatening behaviour whereby a breach of the peace was likely to be occasioned contrary to section 5(*a*) of the Public Order Act 1936, as amended by section 7 of the Race Relations Act 1965 and Schedule 1 to the Criminal Law Act 1977.

The stipendiary magistrate (Mr. R. H. Lownie) heard the information on 12 October 1983. In terms of *Reg. v. Hunstanton Justices, Ex parte Clayton*, The Times, 6 July 1982, he heard the informations of the 11 defendants together. For the purposes of the case stated the position of each of the defendants was identical. The magistrate found the following facts. (a) On 27 August 1983 special trains containing football supporters were arriving at Euston Station and at approximately 12.30 p.m. one such train had arrived at platform 15. (b) On that day at approximately 12.35 p.m. a group of men ran through the inner concourse of Euston Railway Station, passed by the railbar, and out through the swing doors into the outer concourse, turned right through the ornamental gardens, crossed Melton Street and passed along the first block of Euston Road. (c) The group appeared to have no fixed destination and after about 150 yards along Euston Road the head of the column turned to retrace its steps. (d) The group having crossed Melton Street was surrounded and contained by a team of police dog handlers with their dogs. (e) No one joined or left

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] 3 W.L.R. 677; [1963] 2 All E.R. 897;

p.R. 250, C.A.

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the group after the dog handlers were in position. (f) The prosecutor, a police sergeant of the metropolitan police, passed up the group telling them in a loud voice that they had been arrested for threatening behaviour contrary to the Public Order Act 1936; he detailed the caution and told the group that statements would be taken later. (g) The police sergeant supervised the removal of the entire group to three police stations, which they entered. (h) The group was approximately 250 in strength, and while crossing the outer concourse was 10 to 12 across; that it stayed together as a group and became quite concentrated after it had crossed Melton Road. (i) While running the group was chanting and shouting; that the words could not be discerned but the noise was deafening. (j) Both concourses of the railway station were busy and bystanders were required to get out of the way of the running group and that a small number were pushed and some fell over; those who had been enjoying the sunshine on the outer concourse had to scatter. (k) As the group passed the railbar they were joined by some who had been drinking there; glasses were thrown to the ground and the noise of broken glass could be heard. (l) At Melton Street traffic was brought to a halt by the actions of the group; while crossing, members of the group addressed comments through the open windows to occupants of vehicles, some vehicles were kicked, a small number of the group made their way, where there were obstructing vehicles, over the bonnets or indeed over the roofs of the vehicles. (m) On Euston Road itself people on the pavement had to leave the footway and walk on the roadway. (n) Due to swift action by the police the incident was terminated after five minutes. (o) No actual complaint was made by a member of the public to the prosecutor and no claim of criminal damage intimated. (p) None of the defendants was reliably identified as being present in Euston Road or at any earlier stage. (q) The defendants were part of the group arrested in Euston Road having surrendered to bail at Highbury Corner Magistrates' Court and presented themselves to answer the charges in their names laid before the court.

It was contended by the defendants that (i) it was not shown by the evidence that the 11 defendants in court were part of the group arrested in Euston Road; (ii) if the defendants were indeed part of that group, that none of them had been identified as doing any individual act which would constitute the offence; (iii) there was no evidence that what took place was prearranged; (iv) if the court was to found on the decision in *Parrish v. Garfitt* (*Note*) [1984] 1 W.L.R. 911, that case could be distinguished (a) the distance travelled being 1,100 yards as against approximately 500 yards, (b) that quite serious damage was done in Bristol compared with the incident in the Euston Road and its effect would be to throw the onus on the defendants to prove their innocence. The magistrate did not hear the prosecution on that point.

The magistrate was of the opinion that (i) the group detained by the dog handlers in Euston Road on 27 August at approximately 12.35 p.m. was a homogeneous one, nothing being said either in examination-in-chief or in cross-examination that women, children or old men were culled from the group; (ii) members of the public felt threatened by the conduct of the group in running through a crowded area and in chanting and shouting; (iii) that the conduct of the group was of such a serious and persistent character that it amounted to threatening behaviour likely to cause a breach of the peace in terms of the Act of 1936; (iv) that the decision in *Parrish v. Garfitt* was applicable to the present case, on the facts before the magistrate and having regard to the standard to be applied in assessing

whether there was a case to answer or not; that if, in justice and in common sense, there was a "cut-off" point in its application that point had not been reached, and further, if there was a difference of degree, between the two cases that should be reflected in sentence.

The question for the opinion of the High Court was whether the court was entitled to hold that there was a case to answer, there being no evidence that any of the defendants had participated in the threatening behaviour with which they were charged.

David Bean for the defendants.
Victor Temple for the prosecutor.

Cur. adv. vult.

3 April. KERR L.J. read the following judgment of the court. This is the judgment of the court on a case stated by the East Central Metropolitan Stipendiary Magistrate sitting at Highbury Corner. It arises out of the massed exodus from Euston Station of a group of about 250 football supporters on the arrival of a train from Birmingham on 27 August 1983, and their behaviour in Euston Road, N.W.1 until they were arrested shortly thereafter. The charge against all members of the group was that they used threatening behaviour whereby a breach of the peace was likely to be occasioned, contrary to section 5(*a*) of the Public Order Act 1936, as amended by section 7 of the Race Relations Act 1965 and Schedule 1 to the Criminal Law Act 1977. The members of the entire group were taken to one or other of three police stations, and it is proposed to try them on various dates in groups of about 10.

The present case concerns the first such group of 11 defendants. Their trial before the magistrate proceeded on 12 October 1983, up to the conclusion of the evidence for the prosecution, and the position of each of the defendants was identical in relation to the prosecution evidence. Upon its conclusion there was a submission that the defendants had no case to answer, and this was followed by legal argument. The magistrate declined to accept this submission and stated the present case on the question whether he was entitled to hold that there was a case to answer. This issue has revolved round two related points which were argued before us on behalf of the defendants. First, Mr. Bean raised a point, which he described as procedural, concerning the identification of the 11 defendants in court as having been members of the group of about 250 persons who were arrested on the occasion in question. Secondly, he raised the substantive point as to whether there was any evidence that these defendants had taken any part in the conduct which formed the basis of the charges. Both of these points are to some extent related, but it is important to bear in mind throughout that the issue is not as to the guilt or innocence of these defendants but solely as to whether or not they have a case to answer. [His Lordship read the facts as set out in the case stated, and continued:] We deal first with the point as to identification. On behalf of the 11 defendants Mr. Bean submitted that there was nothing which linked their appearance in court with their presence in Euston Road, N.W.1 on 27 August 1983. All that had happened was that they had surrendered to their bail at Highbury Corner Magistrates' Court on that day, answered to their names when called upon, and pleaded not guilty to the charge which was read out to them. There was no evidence of individual identification, nor any direct evidence to show that they had

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formed part of the group which had been arrested and which had then been charged and released on bail. In answer to this, Mr. Temple on behalf of the prosecution relied on the findings that the whole of this homogeneous group of about 250 football supporters had been arrested and on paragraph (q) of the case stated. As he put it rhetorically, in effect: "Unless these 11 defendants had formed part of the group whose members were arrested and who were then taken to one of the three police stations, charged and bailed, how could they have come to surrender to their bail on the correct day at the correct court and to answer to the charge in question laid in their correct name?" He therefore submitted that these facts in themselves provided some evidence from which the magistrate could conclude that these 11 defendants had formed part of the group which had been arrested in the Euston Road on that day, and that to this extent there was clearly a case to answer so far as the question of their identification, in this sense, was concerned. Mr. Bean countered this by referring us to a number of cases in which a similar issue had arisen, but pointing out that in each of them there had been some evidence which linked the identity of the defendant before the court with that of the person alleged to have committed the offence in question. These were all cases of motoring offences where the defendant had been brought before the court by means of a summons after a motorist had been stopped for an alleged offence and had given the defendant's name and address when he was asked to identify himself. The cases to which we were referred were *Marshall v. Ford* (1908) 72 J.P. 480, *Cooke v. McCann* [1974] R.T.R. 131, *Creed v. Scott* [1976] R.T.R. 485 and the recent New Zealand case of *Hays v. Ministry of Transport* [1982] 1 N.Z.L.R. 25 which reviewed the earlier cases as well as a number of similar unreported cases from New Zealand. In all these cases it was held that the fact that the defendant appeared in court and answered to the charge in his name was some evidence of identification linking him with the commission of the alleged offence. The point taken by Mr. Bean, however, was that in all these cases there was some evidence linking the identity of the defendant before the court with that of the person who was alleged to have committed the offence in question, whereas in the present case there was no such evidence, because no evidence had been called on behalf of the prosecution that persons in the name of Bryan Allen and the other 10 defendants had been charged with having committed any offence of threatening behaviour in the Euston Road on 27 August 1983.

In our view the distinction between those cases and the present is that in all those cases a summons had been issued in the name of the person who appeared in court. The person answering to the name and address in the summons was thereupon bound to appear, but there would then be nothing to link that person with the offence unless there was also evidence that someone had given that person's name and address by way of identification at the time of the alleged offence. The present case is not one of summons, and the only question in our view is whether the necessary link of identification can be established on a prima facie basis. In our view this link is established by Mr. Temple's rhetorical question and the findings in paragraph (q) of the case stated, and nothing further is required to support a prima facie case that the defendants who appeared in court on 12 October 1983, formed part of the group which was arrested, charged and bailed in connection with the events in the Euston Road on 27 August 1983.

In this connection we agree with Mr. Temple's submission that a magistrate can take judicial notice of the ordinary processes of arrest, charge and bail within his jurisdiction so as to raise at least a prima facie case that a person surrendering to bail and answering to the name laid in the charge is the same person as the person who had been arrested, charged and bailed, although it would of course be open to him to rebut this inference. We would also echo the words of Kenneth Jones J. in *Creed v. Scott* [1976] R.T.R. 485 with whose judgment in this court Lord Widgery C.J. and Thompson J. agreed. In that case the motorist in question had not appeared, but counsel was present in court to represent him. Kenneth Jones J. said, at p. 487:

> "That means that he had obviously received the process which had been served on him and had instructed counsel to appear on his behalf before the justices."

Similarly in the present case, there is obviously at least a prima facie case against Bryan Allen and the other 10 defendants that the reason why they appeared on 12 October 1983, at Highbury Corner Magistrates' Court, and pleaded to the charges in their names concerning the events in the Euston Road on 27 August 1983, was that they had been arrested, charged and bailed as part of the group of persons who were alleged to have been guilty of threatening behaviour in the Euston Road on that day. We therefore reject Mr. Bean's first point that the facts found in the case do not raise any prima facie evidence of identification against these defendants to that extent.

We then turn to Mr. Bean's second point concerning the substance of the charges; that even if the defendants were present and formed part of the group, there was no prima facie evidence of any participation on their part in any of the threatening behaviour which is alleged to have taken place on that occasion. In rejecting this submission the stipendiary magistrate relied mainly on the decision of this court in *Parrish v. Garfitt* (*Note*), see post, p. 911, of which we were supplied with a transcript. The judgment was delivered by Lord Widgery C.J. and Waller J. and Kilner Brown J. were in agreement with it. *Garfitt* concerned the somewhat similar, but considerably more prolonged and violent, conduct of a group of football supporters during the evening of 19 August 1974, after a football match at Bristol and involved similar issues as to the participation of members of that group in charges of threatening behaviour. It is a fortiori to the present case, since the issue was whether the defendants had been rightly convicted of the offence in question, whereas the issue before us is only whether there is a case to be answered. Before returning to the judgment in that case, it is convenient to set out the grounds on which the magistrate decided in the present case that there was a sufficient case to answer. In this connection it should perhaps be pointed out that he appears to have addressed his mind mainly to the substantive issue as to evidence of participation, since the so-called procedural point concerning identification may not have been argued before him to the same extent as before us. [His Lordship read the opinion of the magistrate as set out in the case stated and continued:] He was therefore of the opinion that on the facts found the "cut-off" point of "no case to answer" had not been reached so as to require the case to be stopped against these defendants.

In his judgment in *Garfitt* Lord Widgery C.J. cited the following passage from paragraph 8 of the case stated by the justices, at p. 912D–E:

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> "We were of opinion that on the night of 19 August 1974, a group of people had been guilty of grave persistent misconduct in Cumberland Road, which undoubtedly amounted to threatening behaviour likely to cause a breach of the peace. We were well aware that there was no evidence of individual identification of the various acts which took place, but we were satisfied that the defendants were members of a group carefully segregated by the police and arrested, and which group in association and as a body had been guilty of the behaviour complained of; furthermore, we were satisfied that having regard to the considerable distance over which these activities occurred, they would have had ample opportunity of disassociating [sic] themselves from the group."

He then referred to the decision of the Court of Criminal Appeal in *Reg. v. Allan* [1965] 1 Q.B. 130 and said, at p. 912F–G:

> "It was an affray case, but affray cases are not dissimilar to the situation with which we are dealing in the present instance. The headnote, which is fully supported by the report itself, says, 47 Cr.App.R. 243: 'Before a jury can convict a defendant of being a principal in the second degree to affray, they must be convinced by the evidence that he, at the very least, by some means or other encouraged the participants. Where presence at an affray is prima facie not accidental, it is evidence, but no more than evidence, of encouragement.' I think one finds all the relevant law in those two simple sentences."

He then upheld the approach adopted by the justices in *Garfitt* in the following passage, at pp. 912H—913B:

> "There is ample ground for saying that the justices were fully conscious of the fact that they could not in this instance just convict the group and then impose a penalty on each individual member of the group. The final sentence which I have read in paragraph 8 makes it abundantly clear that the justices realised that they could not convict and punish any individual unless they were satisfied that that individual had played some part in the threatening behaviour, and, following the language from *Reg. v. Allan*, unless they could prove that each individual had, at the very least, by some means or other encouraged the participants. Voluntary presence on the scene in cases of this kind can, as the authority of *Allan* discloses, be evidence of encouragement of the principal. It is not conclusive proof of guilt with the principal. It is evidence only. But as evidence it can of course be adopted by the tribunal of fact and held to be fact if the tribunal thinks it right."

However, on behalf of the defendants Mr. Bean submitted that *Reg. v. Allan* [1965] 1 Q.B. 130 and *Parrish v. Garfitt* (*Note*), post, p. 911, could not stand with the subsequent decision of the Court of Appeal in *Reg. v. Jones (Kevin)* (1977) 65 Cr.App.R. 250 in which the judgment was given by Lawton L.J. and the court included Geoffrey Lane L.J. and MacKenna J. That was a case of an alleged assault in which it was held that evidence of the defendant's presence at the scene of the assault, without any physical participation by him, was insufficient to convict him of participation in the assault, and that his mental state in this regard was irrelevant unless it was also evidenced by something amounting to active

encouragement. But in our view that decision does not weaken the authority of *Allan* and *Garfitt* in the context of the issue in the present case. What these cases decide is that a defendant's voluntary presence during an affray or as part of a crowd engaged in threatening behaviour is capable of raising a prima facie case of participation against the defendant, which is the issue raised by the present case stated, but that mere voluntary presence is not sufficient to convict a defendant unless the court is satisfied that he at least also gave some overt encouragement to the others who were directly involved in the affray or threatening behaviour. Thus, it would obviously be open to any individual defendant in the present case to give evidence that he was not only innocent of any threatening behaviour himself, but that he had also not in any way encouraged any acts of threatening behaviour by others, and that he was merely swept up in the crowd without any opportunity of dissociating himself from what others were doing.

On behalf of the prosecution Mr. Temple submitted that before any of the defendants in the present case could be convicted, it would at least have to be proved that each of them had actively, wilfully and intentionally encouraged the group as a whole, or other members of it, in the acts of threatening behaviour on which the charges were based, and that the nature of these acts, the duration of the incident and the opportunity for dissociating himself from these were all matters which would fall to be considered in relation to each individual defendant before he could be convicted. Without attempting to formulate any exhaustive definition of the evidence required to justify a finding of guilt, we are satisfied on the authority of *Allan* and *Garfitt* that the magistrate was correct in concluding that on the facts found by him the defendants have a case to answer. The question for the opinion of the court is:

> "Whether the court was entitled to hold that there was a case to answer, there being no evidence that any of the defendants had participated in the threatening behaviour with which they were charged."

On the facts found in the case and for the reasons stated above we accordingly answer this question in the affirmative.

Appeal dismissed.
Case remitted to magistrate to continue with the trial.
Costs of defendants and prosecutor out of central funds.

18 April. The court granted a certificate under section 1(2) of the Administration of Justice Act 1960 that a point of law of general public importance was involved in the decision, namely: "Whether the voluntary presence of a defendant as part of a crowd engaged in threatening behaviour over a period of time and/or distance is sufficient to raise a prima facie case against him on a charge of threatening behaviour there being no evidence of any act done by the defendant himself."

Leave to appeal refused.

Solicitors: Victor Mishcon & Co.; Solicitor, Metropolitan Police.

[Reported by ROBERT RAJARATNAM, ESQ., Barrister-at-Law]

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Leave to appeal refused.

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NOTE

[QUEEN'S BENCH DIVISION]

* PARRISH AND OTHERS v. GARFITT

1975 June 12 Lord Widgery C.J., Waller and Kilner Brown JJ.

Crime—Public order—"Threatening . . . behaviour"—Football supporters causing disruption in public place—No individual identification of acts of threatening behaviour—Whether offence committed

CASE STATED by Avon justices sitting at Bristol.

The defendants were six members of a crowd of football supporters of about 150 in number. After the match was over, the crowd was seen by the police running, shouting, throwing bottles and stones and causing disruption to the gardens of local residents; some tried to overturn cars and damaged them. The crowd was cordoned off by the police and arrested. The defendants were convicted of using threatening behaviour and appealed against their convictions on the grounds that the justices misdirected themselves on the evidence.

The following case is referred to in the judgment:

Reg. v. Allan [1965] 1 Q.B. 130; [1963] 3 W.L.R. 677; [1963] 2 All E.R. 897; (1963) 47 Cr.App.R. 243, C.C.A.

Malcolm Pill for the defendants.
Sir Joseph Molony Q.C. and *Florence O'Donoghue* for the prosecutor.

LORD WIDGERY C.J. This is an appeal by case stated by Avon justices sitting at Bristol. On 4, 5, 6, 7 and 8 November 1974 these justices were concerned with a charge against the present six defendants and 48 others for that they on 19 August 1974, at Cumberland Road, in the city of Bristol, did use threatening behaviour whereby a breach of the peace was likely to be occasioned, contrary to section 5 of the Public Order Act 1936, as amended. The justices convicted all 54 of the persons before them on this occasion, and six appealed against their convictions by case stated.

The facts are well set out and I take first paragraph 3 of the case, which contains what are generally called the primary facts of the incident. On the evening of 19 August 1974 there was a football match at the Ashton Gate Football Ground in Bristol between Cardiff City and Bristol City Football Clubs. At about 9.20 p.m. a crowd of about 150 supporters, and I think they must have been supporters of Cardiff, although it does not really matter for present purposes, came along Coronation Road, marching, chanting and gesticulating; bottles were thrown from amongst this crowd which smashed in the road. Police officers who were on duty at Vauxhall Bridge managed to direct most of the Cardiff City supporters across the bridge to Cumberland Road, where coaches were waiting to return some of them to Cardiff, and enabling the others to take the most direct route to Temple Meads railway station. On the bridge the crowd broke into a run, shouting and gesticulating. The crowd was pursued by Police Constable Lasbury, who saw a mini car turned on its side to cheers from other supporters in the crowd. He saw many supporters join their coaches, but the remainder of the crowd ran up Cumberland Road. He followed in a police car, passed the crowd and was joined by other police officers at Gaol Ferry Bridge, and there a group numbering about 116 youths, including all the present defendants, was arrested. The other police officers had come by Land Rover and were available to assist in making the arrest.

Then there was a very important finding in paragraph (d):

> "During the course of the passage of the group along Cumberland Road, in addition to the mini-van"—which, it will be remembered, was turned over—"two other motor vehicles were damaged, about eight members of the crowd attempting to turn one of them over; windows were also broken in houses and other premises, and in relation to these, one was broken by a milk bottle which came through the window of a public house; another by a stone which went through the window into a room where the residents were watching television, and a third was broken by two youths armed with a stick and an iron bar, who assaulted the owner and his wife when they sought to intervene. In addition to this damage, members of the group were seen to run all over the road and in residents' gardens, shouting, bawling, screaming, jumping, pulling railings down and overturning dustbins, which conduct terrified the residents."

The justices then go on to set out the contentions before them, and I need not take time by referring to that. We pass then to paragraph 8 of the case which contains what is called in this instance, and in my experience is popularly so called by justices, their opinion. This is their final conclusion based on the primary findings of fact, based on the inferences which they had a right to draw and their opinion generally. They say:

> "We were of opinion that on the night of 19 August 1974, a group of people had been guilty of grave persistent misconduct in Cumberland Road, which undoubtedly amounted to threatening behaviour likely to cause a breach of the peace. We were well aware that there was no evidence of individual identification of the various acts which took place, but we were satisfied that the defendants were members of a group carefully segregated by the police and arrested, and which group in association and as a body had been guilty of the behaviour complained of; furthermore, we were satisfied that having regard to the considerable distance over which these activities occurred, they would have had ample opportunity of disassociating [sic] themselves from the group."

Before I come to the argument addressed to this court today I will make brief reference to some of the authorities which have been cited because there is no difficulty about the law so far as the issues in this case are concerned. I start, and perhaps finish, with *Reg. v. Allan* [1965] 1 Q.B. 130. It was an affray case, but affray cases are not dissimilar to the situation with which we are dealing in the present instance. The headnote, which is fully supported by the report itself, says, 47 Cr.App.R. 243:

> "Before a jury can convict a defendant of being a principal in the second degree to affray, they must be convinced by the evidence that he, at the very least, by some means or other encouraged the participants. Where presence at an affray is prima facie not accidental, it is evidence, but no more than evidence, of encouragement."

I think one finds all the relevant law in those two simple sentences.

The way in which the case is put for the defendants today by Mr. Pill is that he submits that the justices approached this on a wrong basis. He has a criticism of their having separated their findings of primary fact from their opinion, but I confess I do not follow that objection and it certainly is a practice which is not uncommon. But he says they approached this case on the wrong basis because they said, here is a group of people; we will say whether the group is responsible for threatening behaviour and, if it was, it will then follow that all the individual members of the group were guilty also. I hope that does not do gross injustice to how Mr. Pill was putting his case, but in substance it seemed to me that was what he was contending. In my view that is exactly what the justices did not do. There

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is ample ground for saying that the justices were fully conscious of the fact that they could not in this instance just convict the group and then impose a penalty on each individual member of the group. The final sentence which I have read in paragraph 8 makes it abundantly clear that the justices realised that they could not convict and punish any individual unless they were satisfied that that individual had played some part in the threatening behaviour, and, following the language from *Reg. v. Allan*, unless they could prove that each individual had, at the very least, by some means or other encouraged the participants. Voluntary presence on the scene in cases of this kind can, as the authority of *Allan* discloses, be evidence of encouragement of the principal. It is not conclusive proof of guilt with the principal. It is evidence only. But as evidence it can of course be adopted by the tribunal of fact and held to be fact if the tribunal thinks it right.

Here the group in question was a rather special group, if only for this reason that not only was it concerned throughout with these disgraceful acts of disturbance and threats, but it was carefully segregated, as the justices find. In other words, the police had their eye on this group for a very substantial period, a period in which in a somewhat intoxicated condition no doubt the group made its way over 1,100 yards of road in the general direction of the railway station. When one has regard to the conduct of this group as described by the police officers, when one has regard to the behaviour of the group, and in particular to its holding together as a cohesive group for something like 1,100 yards of roadway, when one takes all those matters into account, it was within the justices' competence, without error of law, to reach the conclusion which they have reached, namely, that each of the members of this group was encouraging the others in the activity prevailing. Once one reaches that point, then any allegation of error of law goes out of the window, and it follows that the appeal must be dismissed.

WALLER J. I agree.

KILNER BROWN J. I also agree.

Appeal dismissed with costs.

Solicitors: C. B. Rivlin, Lewis & Co., Cardiff; Roger Walton & Co., Pontyclun; Blyth, Dutton, Robins, Hay for R. O. M. Lovibond, Bristol.

[Reported by ROBERT RAJARATNAM, ESQ., Barrister-at-Law]

[QUEEN'S BENCH DIVISION]

*REGINA v. SECRETARY OF STATE FOR THE HOME DEPARTMENT, *Ex parte* KIRKWOOD

1984 Feb. 10 Mann J.

Crown—Minister, determination by—Whether subject to review by courts—Order for extradition of foreign national—Prior application to European Commission of Human Rights—Stay on order pending judicial review—Whether jurisdiction in court to make order staying executive functions—Whether minister under obligation to comply with directive of European Commission—Crown Proceedings Act 1947 (10, 11 & 12 Geo. 6, c. 44), s. 21

The Government of the United States of America applied for the extradition of the applicant on charges of murder and attempted murder alleged to have been committed in the state of California. The applicant was arrested and, on the warrant of a metropolitan stipendiary magistrate, he was committed into custody to await extradition. He applied to the European Commission of Human Rights claiming that his extradition would be contrary to article 3 of the European Convention for the Protec-