THE CRIMINAL JUSTICE ACT, 2006: A CRUSHING DEFEAT FOR DUE PROCESS VALUES?

PROFESSOR DERMOT WALSH*

INTRODUCTION

Herbert Packer famously distinguished between two models of the criminal process at polar opposite ends of a scale.[1] At one end is the 'due process model' where the goal of upholding the rights and dignity of the individual is paramount. Guilt can be proved only through a highly formalised, judicialised, public and transparent procedure. The onus is wholly on the State to prove guilt in accordance with this procedure. The individual can remain silent and non-cooperative. A failure by the State to comply fully with any step in the procedure will lead automatically to acquittal. Judicial standards and process are dominant throughout.

At the other end of Packer's scale is the 'crime control model' where the detection, prosecution and punishment of crime is the paramount goal. The police, as the agency most closely in touch with the coalface of crime, are at the heart of the process. They know who the criminals are, and so they should be left with the powers, resources and authority to establish guilt. The courts are relegated to a secondary position in which their role is largely to approve the case established by the police. In the crime control model, therefore, the police are at the heart of the system, while in the due process model it is the courts.

Traditionally the Irish criminal process has been located firmly within the due process model. I will argue, however, that the Criminal Justice Act 2006 is the culmination of a sustained and successful attack on due process values by a dominant crime

---

* Professor, School of Law, University of Limerick. Text of an address delivered at the National Judicial Studies Institute Conference, on November 17 2006.

[1] Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968).

control ideology over the past 22 years. This crime control victory is reflected in the extent to which the criminal process has become less judicialised and more bureaucratised. Key decisions affecting the liberty, person, privacy and property rights of the individual previously within the judicial domain are now entrusted to Gardai. The centre of gravity of decision-making in the criminal process is moving from the open transparency of the courtroom to the closed, secret offices and cells of the Garda station. Judicial authorisation and control is being displaced rapidly by police discretion which is expanding and becoming increasingly remote from judicial or independent supervision.

I will examine the contribution of the 2006 Act to these developments by focusing in particular on some aspects of those provisions dealing with: police powers of detention; investigation at a crime scene; admissibility of witness statements; and anti-social behaviour orders.

I. POLICE POWERS

A. Detention

It is not that long ago that coercive police action impacting on the liberty, person, privacy or property rights of the individual was generally predicated on prior scrutiny and sanction by a judicial or other independent body. This was so not just for powers of entry, search and seizure but also for arrest and detention. Apart from exceptional statutory measures to deal with subversion or emergency situations,[2] the law did not recognise a police power to detain a suspect for investigation.[3] Once they had sufficient evidence to charge the suspect they had to arrest him, not for the purpose of questioning or further investigation but to bring him before a judicial authority. At this point the case passed from the executive to the judicial sphere. It follows that executive or police dominance in the progress of a case was displaced by judicial dominance at a relatively early stage of the criminal process. Any questioning of the suspect while in the custody of the State would be done openly in the public courtroom under the

---

[2] For example, Offences Against the State Act, 1939-1998, s.30.

[3] *Dunne v. Clinton* [1930] I.R. 366 (H.C.).

supervision of an independent judge, and not in the closed secrecy of a police station under the control of those whom the suspect would perceive to be hostile to his interests.

Today, of course, we take for granted the notion that the police should have a power to detain suspects in their custody for investigation. It must not be forgotten, however, that such a power has only been available officially for arrestable offences generally since 1987. That Act represents a watershed in criminal justice in this country. By conferring a general police power to detain an arrested suspect for investigation the Act effected a fundamental shift in the balance of power between the executive and the judiciary in the criminal process. The police station was now officially a venue in which a suspect could be taken into the custody of the State and called upon to assist the State's investigation of his alleged criminal behaviour. In effect, the police station would rival, if not surpass, the courtroom as the venue for the determination of guilt. Unlike proceedings in the public transparency of the courtroom, however, the questioning in the police station would be conducted in a closed and secret environment where the accused would not be told the case against him in advance or be represented by a lawyer.

The detention provisions of the Criminal Justice Act 2006 have significantly expanded this police role in the determination of guilt by extending the maximum period of detention in police custody to a possible 40 hours. The 1984 Act imposed a maximum limit of 12 hours on the length of time that a suspect can be detained by the police for investigation under the 1984 Act.[4] This can increase to 20 hours to allow for a period of 8 hours rest where the suspect is held overnight.[5] The 12/20 hour limit is a vitally important safeguard for the suspect and for the integrity of the criminal process. The longer a suspect is in police custody the greater the risk that he will be the victim of oppressive treatment to coerce his cooperation. Even in the absence of police impropriety there is ample evidence that the mere fact of being held in police custody is sufficient to induce individuals to confess or to tell their interrogators what they want

---

[4] Criminal Justice Act, 1984, s.4(3).

[5] Criminal Justice Act, 1984, s.4(6).

to hear.[6] There is also the constitutional imperative that the gross intrusions on personal liberty and family life associated with detention in police custody should be kept to the absolute minimum needed to satisfy the public interest in the proper investigation, detection and prosecution of crime.

The 12/20 hour limit would seem to strike a reasonable balance between the needs of the police and the rights of the individual. It gives the police a reasonable opportunity to follow up their initial suspicions by questioning the suspect and, where necessary, to take samples for analysis. The purpose of this investigation should be to determine whether there is sufficient evidence to charge the suspect, and not to prove the case against him. A total of 12 hours for questioning the suspect should be sufficient for this purpose. A doubling of this period to 24 hours, as envisaged by the 2006 Act,[7] would seem disproportionate. It is difficult to avoid the conclusion that it is aimed at enhancing the capacity of the police to establish the suspect's guilt by working on him while in their custody. Even if that is not the intention it will surely have that result. Increasingly guilt will be determined by executive processes in the closed secrecy of the police station rather than by judicial processes in the public transparency of the courtroom. Judicial territory is being ceded to the police to achieve a further streamlining and bureaucratision of the criminal process.

The official justification for this doubling of the period of detention is that the current limits are too onerous on the Gardai. However, no independent research has been commissioned to support this claim or to justify the doubling of the current limits. Nor is there any evidence of large numbers of suspects having to be released without charge in circumstances where charges would have been preferred had Gardai further time to work on them. On the contrary, there is a body of evidence to suggest that the longer the time a suspect spends in police custody the more likely he is

---

[6] Gudjonsson, *The Psychology of Interrogations and Confessions: a Handbook* (Chichester: Wiley, 2003); Ofshe and Leo "The Decision to Confess Falsely: Rational Choice and Irrational Action" (1997) 74 *Denver University Law Review* 979.

[7] Criminal Justice Act, 2006, s.9.

to suffer abuse or to feel pressurised into telling his custodians what he feels they want to hear.[8]

Another disproportionate feature of the 2006 Act is the sweeping nature of the extended detention provisions. Even if there is a case for permitting detention beyond the 12/20 hour period it can surely only apply to exceptional cases. The Act, however, takes the blunderbuss approach of extending the period for all 'arrestable' offences irrespective of their gravity, the circumstances in which they were committed or the complexity of investigation. Much more could and should have been done in the Act itself to ensure that this extended detention power was available only in those cases where it was absolutely needed. Instead the Act has left this to the discretion of the Gardai involved.

B. Crime Control Scene

Further evidence of territorial expansion by the Garda at the expense of the judiciary is provided by the crime scene and associated entry and search provisions in the 2006 Act.[9] There was a time, not that long ago, when private property (particularly a dwelling) was almost foolproof against a summary entry and search by the police in the course of a criminal investigation. If the police needed to secure a non-consensual entry they had to secure an entry, search and seizure warrant issued by a judicial or other external independent authority. When conducting the entry, search and seizure pursuant to a warrant the police would be acting as the agents of the independent authority who had issued it.

Once again these arrangements reflect the traditional due process demarcation between the police and the judiciary in the criminal process. The identification of suspects and the gathering of evidence to establish reasonable suspicion were considered ministerial functions and the proper preserve of the police. Securing evidence by coercion from the suspect or from private

---

[8] See Gudjonsson, *The Psychology of Interrogations and Confessions: a Handbook* and Ofshe and Leo "The Decision to Confess Falsely: Rational Choice and Irrational Action", *supra* note 6; and Ashworth and Redmayne *The Criminal Process* (3rd ed., Oxford: Oxford University Press, 2005) at 83-84.

[9] Criminal Justice Act, 2006, s.5.

property on the other hand was more of a quasi-judicial function, not just because it involved an encroachment on the rights and liberties of the individual but also because of its close association with the trial process. As such it was considered the proper preserve of independent authorities and judicial process.[10]

As with arrest and detention the police have been expanding their entry, search and seizure jurisdiction by encroaching on the judicial territory. The most striking example of this is the appearance in recent years of provisions which empower senior Gardai to issue search warrants to other Gardai without the need for recourse to a judge or peace commissioner.[11] This constitutes a blatant and direct usurpation of the judicial domain by the police. A senior police officer is now doing what previously could only be done by a judge or peace commissioner. Before the Criminal Justice Act 2006 it might have been argued that such powers were few and narrowly circumscribed. All of this is set to change, however, as a result of provisions in the 2006 Act empowering a member of superintendent rank or higher to issue a direction designating a place as a crime scene.[12]

A direction under these provisions automatically authorises Gardai to search for and collect evidence at the crime scene and to impose restrictions on persons present at or seeking to enter the crime scene. Although the crime scene may be private property (including a dwelling), there is no express requirement for the Gardai in question to have a lawful authority to enter onto the crime scene prior to and independent of the superintendent's direction.[13] In effect they will be exercising powers of entry and

---

[10] This analysis is not necessarily inconsistent with the ruling in *Ryan v. O'Callaghan*, High Court, unreported, Barr J., 22 July 1987.

[11] Offences against the State Act, 1939, s.29; Misuse of Drugs Act, 1977, s.26(1); Criminal Assets Bureau Act, 1996, s.14.

[12] Criminal Justice Act, 2006, s.5.

[13] It is arguable that the power to issue a direction under s.5(3) only arises in respect of private property where a request has been made under s.5(1) by a member of the Garda Síochána who is already on the property pursuant to a lawful authority. While this would still represent a significant expansion of police powers the overall effect would be considerably less than that associated with a power to issue a direction independently of any such request. It is submitted, however, that the power to issue a direction in s.5(3) is freestanding and is not dependant on any prior request within the scope of s.5(1).

search pursuant to the authority of a senior ranking member of the Garda, instead of a judge or peace commissioner.[14]

There is provision for judicial involvement in the conduct of an entry and search pursuant to a direction from a Garda of at least superintendent rank, but it operates on an *ex post facto* basis. The initial Garda direction lasts for 24 hours. It can be extended for up to another 48 hours in certain circumstances on application to a District Court Judge. Such an extension can be granted on 3 consecutive occasions.[15] A longer extension can be secured in certain circumstances on application to a High Court Judge.

Although the Garda authorised entry and search lasts for only 24 hours, these provisions still represent a major encroachment by the police into judicial territory. Not only do they empower a senior member of the Garda to authorise intrusions on private property rights which exceed those associated with standard warrants of entry, search and seizure, but they are available in respect of all 'arrestable' offences; i.e. all offences which can be punished on conviction by a prison sentence of 5 years or more. That covers a very wide range of offences and, as such, signals a major qualitative change of policy in respect of these powers of entry, search and seizure. Once again no attempt has been made to confine the power to specific circumstances or situations where, arguably, the need for a swift and decisive police entry and search of private property was so great that it outweighed the privacy and property rights of the individual in question. Instead the State has prioritised executive discretion. Gardai now have a very broad discretionary power to

---

[14] It is worth noting that the inclusive list of things that a member can do in respect of a crime scene pursuant to a direction under s.5(3) does not expressly include a power to enter the crime scene. This lends some, albeit weak, support for the argument that the direction power arises only consequent on a request from a member who is already lawfully present on the crime scene. An alternative, but by no means conclusive, interpretation is that the power of entry is implicit in the general words of the authorising provision. Such a primary power really should have been included expressly if it was the legislative intention to make it available pursuant to a direction.

[15] So long as an extension request is lodged while a direction is in force the direction is deemed to continue until such time as the extension request has been determined. This can have the effect of extending the original 24 hours considerably.

authorise fellow Gardai to enter and search private property under the supervision of Gardai. It would appear, therefore, that the case law classification of the issue of search warrants as an executive function has now been taken to its logical conclusion.

II. WITNESS STATEMENTS

Another illustration of the advance of the executive over the judiciary is provided by the witness statement provisions in the 2006 Act. One of the hallmarks of the criminal trial in the common law world has been the heavy reliance on the need for evidence to be presented orally in open court by first hand witnesses. This feature has played a critical role in supporting due process values at the heart of Irish criminal process. Not only does it underwrite values of openness and transparency but it secures the centrality and primacy of courts chaired by independent judges at the heart of the criminal process. The police function in the gathering of evidence may have expanded immensely, but it remained the case generally that that evidence had to be presented first hand and tested in open court. Increasingly, exceptions are being grafted on to this basic principle. Up to now, however, they have been confined for the most part to mundane administrative matters marginal to the substantive issues to be determined in a case. It is submitted that the witness statement provisions in the 2006 Act take these exceptions to a higher level and herald a further substantive shift in the balance of power between the police and the courts in the criminal process.

The 2006 Act makes provision for witness statements to be admitted as evidence of any fact stated in them where the witness refuses to give evidence, denies making the statement or gives evidence which is materially inconsistent with his or her prior statement.[16] By any standards this is a dramatic, ground-breaking shift in the whole centre of gravity of the criminal process. Suddenly hearsay evidence is admissible as proof of guilt in a potentially huge range of situations. As will be seen below, the judiciary still retain a role in supervising the admissibility of such

[16] Criminal Justice Act, 2006, s.16.

evidence in the interests of fairness to the accused. That, however, does not detract from the fact that the police have now broken through what has for centuries been a very solid section of wall on the border delineating the police and judicial functions in the criminal process. Their capacity to dictate the shape and direction of the trial process behind the scenes has been enhanced immensely at the expense of transparency and independent judicial control.

The new provisions were introduced very rapidly in response to the circumstances of a single murder case which attracted massive public attention due to the provocative antics of the accused in front of media cameras. One of the most striking features of the new provisions, however, is how broadly they are framed. They apply where a person has been sent forward for trial in respect of any 'arrestable' offence which, of course, has an exceptionally broad ambit. Once again no attempt has been made to aim the new provisions more precisely and proportionately at those offences or situations which are giving rise to legitimate concerns. They apply to a 'statement' which does not have to take the form of a formal, written, signed statement given to the police. It can consist of words or even actions which may have been spoken or performed by any person at any time or place. The range of possibilities is immense. The Act does not define a witness, so it is not certain whether the provisions are confined to a statement by someone who actually witnessed the crime being committed, or whether they extend to a statement by anyone who is able to give material evidence of any matter which may be relevant to the accused's involvement in the crime; presumably the latter. It is virtually certain that they also cover a person being questioned in police custody as a possible suspect where another party is eventually charged with the offence in question. In this situation anything said by the suspect exculpating himself from blame by shifting it on to the person ultimately accused could be admitted in evidence. Clearly, there is uncomfortable scope for abuse here.

The Act relies heavily on the court to protect the accused against any such abuse. The court must be satisfied that the statement was made voluntarily, is reliable and that the maker either believed he was telling the truth or understood the

requirement to tell the truth at the time it was made.[17] The court must also be satisfied that the statement would otherwise have been admissible in the form of direct oral evidence from its maker. When assessing the statement's reliability the court must have regard to, *inter alia*, any explanation from the maker as to why he has denied making the statement, given evidence inconsistent with the statement or refused to give oral evidence, as the case may be. If the statement survives these tests it will still be excluded if the court feels that it ought not to be admitted in the interests of justice. While these protections are welcome they do not disguise the underlying fact that the police have made another major advance into the territory previously dominated by the court. When the prosecution case is not developing as expected in the public forum of the court due to one of their witnesses departing from the script, they can rescue the situation by producing a statement taken earlier from the witness by the police. In effect, the police have further strengthened their extant power to direct and shape from behind the scenes what happens on the public stage of the courtroom. In the worst case scenario, they may be able to secure the conviction of an accused on the basis of evidence they have secured from witnesses in the secrecy of the police station despite the fact that those same statements have been repudiated by the witnesses in the public forum of the trial. There is enough concern about this happening in respect of alleged confessions from the accused himself. It is hardly the time to be rushing headlong into the same dangers with respect to witness statements generally.

III. ANTI-SOCIAL BEHAVIOUR ORDERS AND FIXED PENALTY NOTICES

The criminal investigation and trial are not the only criminal justice areas where due process values are being steadily eroded. The same pattern is evident in police powers over public order. The slow, deliberate and transparent procedures associated with the public administration of justice are being replaced by the swift, executive, convenience of direct police action on the street.

[17] Criminal Justice Act, 2006, s.16.

This process had already begun with the Criminal Justice (Public Order) Act 1994 which created a number of public order offences and gave the police very broad discretionary powers to control the behaviour and movement of individuals in public places. The 2006 Act has given it a very significant boost through its provisions on fixed penalty notices and anti-social behaviour orders.

A. Fixed penalty notices

The fixed penalty notice provisions offer a straightforward executive alternative to the traditional administration of justice when dealing with certain public order offences.[18] They empower a member of the Garda to issue a fixed penalty notice to a person whom he or she has reasonable grounds for believing is committing or has committed a disorderly conduct offence between midnight and 7am.[19] There is no requirement that the member should have witnessed the commission of the offence. In effect, the investigative role of the police, the prosecutorial role of the prosecutor and the adjudicative and sentencing roles of the court are all rolled into one and discharged on the street through the exercise of administrative discretion by a member of the Garda Síochána. In many respects it is the ultimate victory of executive convenience over judicial process.

In defence of these provisions it can be argued that they do not deprive the individual of his or her day in court if he or she wishes to pursue that option as an alternative. That, however, ignores the inevitable pressures that the individual will feel under to accept the fixed penalty notice rather than risk the expense and possibly more adverse outcome of a trial. The reality is that the police have been given a very significant power to dispense low visibility justice, and by any standards that represents a definite victory for crime control values over traditional due process values. This assessment is not undermined by the fact that fixed penalty notices are already familiar in respect of a range of

---

[18] Criminal Justice Act, 2006, s.184.

[19] This is defined as, "any unreasonable behaviour which, having regard to all the circumstances, is likely to cause serious offence or serious annoyance to any person who is, or who might reasonably be expected to be, aware of such behaviour"; Criminal Justice (Public Order) Act, s.5(3).

regulatory offences, especially in the field of road traffic. It is the extension of these notices beyond such regulatory offences to public order offences that causes alarm. In effect, important mainstream criminal offences can now be dealt with through an executive process hidden from public scrutiny. It is almost as if we are developing a second tier criminal process in which the police dispense justice without the need to involve the courts.

B. Anti-social behaviour orders

In some respects the anti-social behaviour order provisions of the 2006 Act represent an even more severe attack on due process values than the fixed penalty notice provisions.[20] They give the police the power to issue a behaviour warning to a person who has behaved in an anti-social manner. If the person does not comply with the warning a senior member of the Garda may apply to the District Court for an order prohibiting the person from engaging in certain defined behaviour (an ASBO). Such an order may be granted on the civil standard of proof. Breach of the order constitutes a criminal offence.

Any member of the Garda Síochána may issue a behaviour warning to a person who has behaved in an anti-social manner. The warning will specify what the nature of the behaviour is and when and where it took place. It will require the person to desist from the behaviour in question and warn him that a failure to do so may result in an application to court for an ASBO. The warning remains in force for at least 3 months. This is the equivalent of a member of the Garda Síochána having the power to issue a court order restraining the behaviour of an individual in public over a period of at least 3 months. The question arises, therefore, what safeguards or checks and balances apply to the exercise of this power? The answer is surprisingly few.

For a warning to issue a person must have behaved in an anti-social manner. At first sight this might appear to be a significant restraint. The Act, however, does not specify how the member should make that determination. There is no requirement that he or she should have witnessed the behaviour, so presumably the determination can be based on reports from

[20] Criminal Justice Act, 2006, Pt.11.

secondary sources. Nor does the behaviour have to be coincident in time with the determination. It will be sufficient if it is based on behaviour that has occurred up to one month before the determination. Critically, the member does not have to persuade a judicial or other independent party that the person has engaged in anti-social behaviour, nor even that there are reasonable grounds for such a belief. The reality is that the member makes the determination as he or she sees fit. Given the consequences of a warning that would be a huge and unprecedented discretion to confer on every member of the Garda, even if it was confined to a single criminal offence or a very narrow range of behaviour. It is disturbing, therefore, to find that anti-social behaviour is defined in such vague and broad terms that it covers a very wide range of criminal offences and even behaviour which is not criminal at all.

The Act states that a person behaves in an anti-social manner if his behaviour causes or is likely to cause to another person or persons who are not of the same household as the perpetrator:

- harassment;
- significant or persistent alarm, distress, fear or intimidation; or
- significant or persistent impairment of their use or enjoyment of their property.[21]

Clearly, such behaviour is broad enough to encompass any one of a wide range of criminal offences; including most of the assaults and batteries, public order offences, criminal damage offences, possession offences, vehicle offences and so on. It follows, of course, that the police can now deal with these offences on the street by issuing behaviour warnings to suspects. These warnings are different to cautions which merely register the fact that an offender has been cautioned. The behaviour warning carries with it an immediate restraint on the liberty of the individual, of the type that traditionally would have been imposed only by an independent judge acting through a transparent, public, deliberative judicial process. Now, however, the restraint can be

[21] Criminal Justice Act, 2006, s.113(2).

imposed through an exercise of low visibility discretion on the street by an executive agent of the state. By any standards that reflects a significant transfer of power in criminal matters from the courts to the Garda. It is further evidence of the emergence of a second tier criminal process operated by the police.

The fact that anti-social behaviour extends to non-criminal activity is equally problematic. Arguably the police are being used as a proxy to extend the reach of the criminal process into territory that traditionally had been the preserve of the civil process. Although they are a constituent element of the criminal process, they will be imposing severe restraints on the freedom of the individual to engage in behaviour which was not, is not, and probably never will be, criminal. It is tantamount to the development of a quasi-criminal process under the control of the police. For those affected it will appear as if they are being treated as criminals without the benefit of the traditional process. Their liberty is restrained not by reference to the publicly promulgated standards of the criminal law, but by what an individual member of the Garda deems to be anti-social behaviour. Moreover, the decision to impose the restraint is rooted in the low visibility exercise of executive discretion by a police officer on the ground, rather than in the public transparent environment of a court chaired by an independent judge.

In the event of a person breaching at least 3 behaviour warnings in less than 6 consecutive months an application can be made to the District Court for an ASBO.[22] Notice must be given to the person concerned. In this stage of the procedure, therefore, judicial process takes precedence over the exercise of discretion. It cannot be assumed, however, that this judicial process will be the equivalent of that pertaining to a criminal or even a civil trial. There are a few factors the cumulative effect of which should enable the police to exert a disproportionate influence over proceedings. Firstly, it would appear that the proceedings are civil in form. Certainly the standard of proof is defined as the civil standard, and the order that issues is officially designated a 'civil order' (the expression 'anti-social behaviour order' or ASBO is not actually used in the Act). Presumably it follows that the civil

[22] Criminal Justice Act, 2006, s.115.

rules of evidence apply, although that is not expressly stated. Despite the civil nature of the proceedings the case for an ASBO is presented by a senior member of the Garda who, of course, will have been able to draw on the immense criminal powers and resources of the Garda in compiling the case. Vital evidence in support of his case will include that which has been *created* by fellow Gardai, namely the fact that they had issued behaviour warnings to the defendant. By contrast, the defendant will not have the benefit of protections that normally attach to criminal proceedings. This selective mixing of the civil and criminal processes is highly prejudicial to the defendant and places the Garda in a very strong position to persuade the District Court Judge on a balance of probabilities that the defendant has behaved in an anti-social manner and that an order is necessary to prevent him from continuing to behave in that manner.

CONCLUSION

It is a truism that the justice system cannot stand still. It must respond to changes in society and, in particular, to changes in the threat posed by criminal activity. The courts, the prosecution and the Garda cannot be expected to cope effectively with crime in the 21st century by using the criminal justice tools of the nineteenth. Rapid changes in the nature and volume of certain criminal activities in the second half of the twentieth century have provoked a significant growth in the discretionary powers of Gardai and an associated bureacratisation of the criminal process. Some of these changes, including several provisions in the 2006 Act itself, can easily be justified as a necessary and balanced response to the crime challenge. Others, however, bear the hallmarks of an unbalanced preoccupation with crime control; a surrender to an exaggerated, media-driven perception of the levels of crime or the threat posed by certain types of crime. They are eating away at the due process foundations which have secured a reasonable balance between the state and the individual in criminal justice matters for generations.

It is equally important to appreciate that this damage is being inflicted in a piecemeal fashion through a rapid succession of separate enactments. It is in the combined effect of these

measures that the full damage to due process values is to be found. By introducing them on a piecemeal basis successive governments have managed to obscure the full extent of that damage and have averted any serious, informed public debate about the associated re-orientation in the values underpinning our criminal justice system.

Although the Criminal Justice Act 2006 is the latest in the long line of similar measures, it also stands out from all the rest. It, more than any other, conveys a strong ideological commitment to crime control values over due process values in criminal justice. Not only does it push the crime control boat out into areas that it had not been before, but it also pushes it further and deeper into areas that had already been reshaped in a crime control mould by its predecessors. Even its scope, structure, drafting style, the manner in which it was cobbled together in its formative stage and the fact that it was not publicly available in hard copy for several months after it was enacted reflect the dominance of crime control values over the principles of legality and due process. Does it all add up to a crushing defeat for due process values? There can be little doubt that it represents a very substantial and significant advance for crime control values over due process values. Only time will tell whether that translates into a crushing defeat for the latter.