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PUBLIC INQUIRY CONVENED AT THE INVITATION OF THE CARAHER  
FAMILY, CULLYHANNA, NEWRY, CO ARMAGH, NORTHERN  
IRELAND, TO INQUIRE INTO THE KILLING OF FERGAL CARAHER AND  
THE WOUNDING OF MICHAEL CARAHER ON 30TH DECEMBER 1990.

The Inquiry was held before a Panel of Jurists on the 22nd and 23rd June 1991,  
in Cullyhanna Community Centre, Cullyhanna, Co Armagh

TRANSCRIPT OF PROCEEDINGS ON JUNE 22, 1991:

I hereby certify the following to be a  
true and accurate transcript of my  
shorthand notes of the evidence of  
the above-named Inquiry.

Mary O'Sullivan  
Mary O'Sullivan R.P.R.  
Doyle Court Reporters  
Arran Chambers  
2 Arran Quay  
Dublin 7.  
Telephone 722833/862097

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APPEARANCES

Jurists

Mr Michael Mansfield Q.C., Chairman (UK)  
Judge Andrew Somers (Wisconsin USA)  
Ms. Veronika Arenot-Rojahn (FIDH) Germany  
Hon. Kevin Burke (DA Essex,  
County Massachusetts USA)  
Ms. Anne Carine-Jacoby (FIDH) France

Also present

Mr Michael Tropolsky , Q.C.

Counsel for the Inquiry

Mr Fergal Kavanagh B.L.  
Mr Colm Mac Geehin Solicitor

# I N D E X

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>QUESTION NOS.</u>
Paul Tiernan	Mr. Kavanagh	1 - 55
	Chairman	56 - 68
	Judge Somers	69 - 72
	Chairman	73 - 74
	Mr. Kavanagh	75 -
	Mr. Tropolsky	76 - 77
	Mr. kavanagh	78 - 81
Francis McNamee	Mr. Kavanagh	82 - 103
Eamon McNally	Mr. Kavanagh	104 - 137
	Judge Somers	138 - 142
	Mr. Kavanagh	143 - 148
Donal O'Hanlon	Mr. Kavanagh	149 - 153
Paul Tiernan (Recalled)	Mr. Kavanagh	154 - 159
	Mr. Burke	160 - 163
Dr. Donal O'Hanlon	Mr. Kavanagh	164 - 200
	Chairman	201 - 221
	Judge Somers	222 -
	Mr. Kavanagh	223 - 224
Michael Caraher	Mr. Kavanagh	225 - 371
	Chairman	372 - 468
	Mr. Burke	469 - 482
	Mr. Tropolsky	483 - 499
	Judge Somers	500 - 507
	Chairman	508 - 510
Liam Murphy	Mr. Kavanagh	511 - 617
	Chairman	618 - 646
	Mr. Burke	647 - 650
	Ms. Jacoby	651 -

(Cont/d...)

I N D E X

<u>WITNESS:</u>	<u>EXAMINATION:</u>	<u>QUESTION NOS:</u>
Liam Murphy	Mr. Tropolsky	652 - 666
	Judge Somers	667 - 670
Maeve Murphy	Mr. Kavanagh	671 - 726
	Chairman	727 - 755
Tom Hadden	Mr. Kavanagh	756 -
	Chairman	757 - 761
	Mr. Tropolsky	762 -
	Chairman	763 - 783
	Judge Somers	784 - 790
	Chairman	791 -
	Mr. Kavanagh	792 - 794
Eugene McCooey	Mr. Kavanagh	795 - 855
	Chairman	856 - 857
Martin O'Neill	Mr. Kavanagh	858 - 940
	Chairman	941 - 946
	Mr. Tropolsky	947 - 958
Frank O'Neill	Mr. Kavanagh	959 - 998
	Judge Somers	999 - 1001

THE INQUIRY COMMENCED AT 11.30 A.M. AS FOLLOWS:

MR. KAVANAGH: Your attention please. This is a public inquiry convened at the request of the Caragher family, Cullyhanna, County Armagh. The Chairman of the Board of Inquiry, Mr. Michael Mansfield Q.C., will address you.

CHAIRMAN: I am going to stand up. Can you all hear without the microphones if I speak like this because I prefer to do it without a microphone. Can I apologise, first of all, that we are a little late in starting but we are going to attempt to keep to as tight a schedule as possible because there is a lot to deal with in the two day period that's been set aside and we are going to obviously do it as judicially as possible, keeping to as many rules as possible, so that everyone can see there has been a sincere attempt to reach the truth at this inquiry but, before I deal with the Terms of Reference of the Inquiry, I have been introduced by my name but may I just introduce the rest of the jurists on the panel who will sit with me. First of all, there is to my right - may I introduce the women first of all - Veronika Arenot-Rojahn - and the details of these jurists will be available later - and she is a lawyer from Berlin and she represents the International Federation for Human Rights. Equally, to my left, Anne Carine Jacoby, also represents the same organisation. She is also a lawyer. In addition, we have representatives - and she comes from Paris and the lady on my right comes from Berlin - we have, therefore, besides representatives from France and Germany, also two from America. To my right, immediate right, is Judge Somers and to my left - no, he is gone - further right, is Kevin Burke, who is a District Attorney from Essex County in Massachusetts.

Now, there are some other people who you will need to know their role, as it were, in this matter, beside the panel itself. To my immediate left is Michael Tropolsky, a barrister and colleague of mine who has come to assist me. He will not, in fact, play any part in passing judgement or making conclusions. It's merely for administrative reasons but, in addition to that, there are two other very important people who will participate who sit in front of me here. There is counsel to the Inquiry who will be presenting certain material later today and tomorrow, Fergal Kavanagh, and then on the same table, sitting to his left as you look at the two of them is Colm Mac Geehin and, of course, he will be a person to whom further representations will need to be made but I will come to that in a moment. So, those are the

people who are going to be concerned in the running of the Inquiry and, of course, I will come to witnesses in one moment.

Now, the second point I would like to make in opening is, of course, the reason we are all here today having an Inquiry and the reason may be obvious of course and it is very much that there has been really a lack of any public inquiry into incidence of this kind before today but, in fact, it has been very carefully circumscribed and worked out exactly what not only the Terms of Reference should be but the rationale and so that there should be no misunderstanding I am, in fact, going to read those Terms of Reference and the rationale out of the documents, the Preamble, which if the rationale and the Terms of Reference will be publicly available so I am not expecting everybody to be able to keep up with the pace at which I read it. However, it is important that it is publicly stated so I hope you will bear with me while I read out the two documents before turning to the administration of how we'll attempt to proceed.

The Preamble, namely the rationale for our existence today, is stated as follows:

"Believing that all States do, or should, subscribe to the Rule of Law in regulating the conduct of all persons, including law enforcement agencies.

Recognising that a State has the right to enforce the law and to maintain order in accordance with the Rule of Law.

Convinced that the law must be just and must apply to all equally and to be seen to be just and to apply equally.

Re-affirming that it is the duty of a State to protect the life of all persons within its jurisdiction without exception.

Recognising that killing is irrevocable and can be inflicted on the innocent.

Re-affirming that which is contained in all human rights' declarations, conventions and covenants, both national and international, namely, that everyone has the right to life, liberty and security of the person.

Recognising that the Rule of Law prescribes that there should be a prompt elucidation of the facts surrounding and an inquiry into the death of any human being so as to allay legitimate public concerns and fears.

Recognising that this Inquiry is not in any way a Court of Law and expressing the wish that it be seen and understood not to be a Court of Law.

Believing, therefore, that it is desirable in the public interest in the circumstances of this particular case to hold an Inquiry now as to the

presently ascertainable circumstances of the death of Fergal Caraher and the wounding of Michael Caraher.

In pursuance of an invitation by the Caraher family, this Inquiry accordingly adopts the following Terms of Reference:

A. To inquire, insofar as it is practicable (given the limitations on the scope of the Inquiry by reason of the non-availability of evidence which is in the exclusive knowledge and control of the State) into the following definite measures of urgent public importance:

(1) to examine and to ascertain, insofar as is possible, the facts and the circumstances surrounding the death of Fergal Caraher and the wounding of Michael Caraher by members of the British Security Forces at Cullyhanna, South Armagh on the 30th day of December, 1990 and in this connection to have regard to all circumstances or events pre-dating the said death and wounding which appeared to be relevant or connected therewith.

(2) to examine and to ascertain, insofar as is possible, the degree of risk, if any, including in particular the risk to life (if any) to which the member or members of the British Security Forces involved were subjected to immediately prior to and at the time of the said death and wounding by the actions of Michael and Fergal Caraher.

(3) to examine and to ascertain, insofar as is possible, any apparent lawful objective of the British Security Forces or legally justifiable reasons for their opening of fire at Cullyhanna, South Armagh on the 30th day of December, 1990.

(4) to examine whether any challenge or order to halt was made to which either Fergal or Michael Caraher had a reasonable opportunity of responding to prior to the use of legal force.

(5) to examine:

(a) the method of operation of formal vehicle or civilian check points; and

(b) the method of checking, questioning and/ interrogating citizens in connection with such formal check-points; by the British Security Forces as carried out at Cullyhanna, South Armagh on the 30th of December, 1990.

(6) to examine whether or not the use, and method of use, of firearms on the 30th of December, 1990 at Cullyhanna, South Armagh, by a member or members of the British Security Forces could, on the facts available to this Inquiry, be legally justifiable on the grounds that it was



in the circumstances necessary to protect the life of any person or to effect a lawful arrest."

So, you know I'm about half way through, I'm sorry there are rather a lot here -

"(7) To examine the current official procedures of the investigations of killings and/or woundings carried out by the British Security Forces, including the Police and to consider the adequacy of the same, having regard to the necessity in a Democratic Society under the Rule of Law that fear, suspicion and rumour be allayed and that a prompt and comprehensive inquiry be carried out which will explain to the satisfaction of the public the circumstances of any such killing or wounding.

(8) to examine the extent and limits of the powers of arrest granted by law to the British Security Forces and to consider whether:

- (a) such powers are excessive in their expressed terms;
- (b) the ambit of these powers insofar as they have been interpreted by the courts are excessive.

(9) to examine all legal provisions which authorise and permit British Security Forces to use firearms in the course of their duties in the circumstances which presently exist in Northern Ireland and to consider:

- (a) such powers are excessive in their term;
- (b) the ambit of these powers insofar as they have been interpreted by the courts are excessive.

(10) to examine the practice which denies to the family and legal advisers of a person whose death or serious injury was caused by members of the British Security Forces prompt access to evidence which in the exclusive knowledge and control of the State and which is vital for the prosecution of any legitimate claim against the Security Forces.

(11) To examine the practice which denies to a family of a person whose death or wounding was caused by members of the British Security Forces, the names and ranks of the members of the Security Forces who caused the said death or woundings.

(12) To examine relevant domestic laws of the United Kingdom and Northern Ireland which relate specifically to the operation of the Security Forces in Northern Ireland and, in particular, their powers to stop, question, arrest and interrogate civilians and to consider whether

the expressed terms of those powers, or their current interpretation by the Courts are adequate to protect the right of life of all persons within its jurisdiction so as to ensure that no person shall be arbitrarily deprived of his or her life.

(13) To examine the relevant domestic laws of the United Kingdom and Northern Ireland which relate specifically to the operation of the Security Forces in Northern Ireland and to consider whether same infringe the provisions of the European Convention of Human Rights, the Geneva Convention and Protection of Civilians and all other relevant international laws and conventions designed to protect the lives of citizens in accordance with the rule of law."

and B, which is separate from all of the matters which I have just been outlining to make a term of reference therefore -

"All such recommendations, if any, relating to the death of Fergal Caraher or the wounding of Michael Caraher as the Board may deem appropriate having taken into account the limitations on the scope of this Inquiry.

C. To make such further or other recommendations, if any, as the Board may deem conducive to prevent the reoccurrence of similar deaths or woundings in Northern Ireland in the future." (Quoted)

Deep breath! Now, I'm sorry it's taken a little time to outline it. In essence, there are two halves as you will see. Essentially, we're here to establish, as far as we are able, what actually happened on that fateful day on the 30th of December but, in addition to what happened, insofar as it can be ascertained, the other half is clearly looking at policy decisions that underlie the use of force in context of the kinds again that arose on that day. Now, that is a considerable amount of material to be able to accomplish within two days and what I want to announce, at the outset, is that we do not pretend, as a panel, to be able to accomplish it inside two days. Therefore, what we are anticipating should be the process, is that we'll hear as much live evidence as is available over these two days. At the end of tomorrow we'll not issue any kind of interim judgement because, in our view, that would be quite wrong. We will, in fact, adjourn proceedings at that point to allow a 28 day period for the submission of any other material from any other person or bodies who chooses so to do and that material will be considered. Clearly, the giving of live evidence has much more effect and weight. I am not saying any written submissions will clearly be disregarded, merely that it is better, if people wish to make submissions, that they appear at the Inquiry but we understand that

its not always possible. So, we want to give everybody the fullest possible opportunity of making those representations. After that period of 28 days each of the members of this panel, quite separately and independently, as it were, pass judgement and they will make a written submission of their conclusions which will be publicly available at that point and it will, therefore, be seen that this panel has been independently gathered together and will exercise such authority as it has, again quite independently from any pressure group whatsoever and its report, hopefully, will be available, as I say, within a period after the expiration of 28 days.

Now, there are one or two again introductory matters that must be understood and relate to what I have just said. Invitations have been extended, for example, to the authorities in this matter. For example, the RUC and the Army, and there has, to date, as far as I am aware, been no response indicating their desire to be here today or to make representations. Now, if there are any people here today sitting in the audience in front or outside clearly who wish to be heard would be accredit themselves and make themselves known to the solicitor to the Inquiry whose identity I indicated earlier and who sits at the table and also, I think, as a matter of record, if there are any people in the audience who are members of the RUC or the Armed Forces they ought to make their presence known and, secondly, whether they are willing to make representations because we do not wish it to be said that anybody has been excluded nor do we wish it to be said that people have, in fact, been here and noted that opportunity. So, I would ask for that. I am not necessarily expecting that people will rush forward but we do hope that people will identify themselves if they have anything to say on this matter and we are open to receive those representations. Now, as far as the witnesses and the family are concerned, there are, as far as we are aware - so again it's clear to the public - no criminal proceedings that have been instigated. There has, of course, been no other public inquiry set up by any other agency. There has been no inquest opened into this matter, this particular matter that we are looking at. The only proceedings that have been issued are civil proceedings by - if I can put it this way - the family of the victims. They have issued civil proceedings but again, so far as we are aware, they have only got just beyond the writ stage where an appearance has been entered by the other side. I mention all of that because what we do here is not intended to be in contempt of any proceedings nor is it intended to prejudice any proceedings and it cannot legally do so unless, in fact, the civil proceedings had got to the stage of the setting down for a hearing. All these

matters have been considered. The family has been advised about them and so has witnesses.

Now, may I deal with witnesses. There is no compulsion on any witness to come through the doors into this Inquiry, nor is there any compulsion upon them to speak. They do so quite voluntarily and I want that also made clear to all and what they say is being said and recorded clearly to my right by a Stenographer, recorded on cameras that you can see here and I have been anxious to ascertain whether the witnesses or anyone who wishes to participate in this Inquiry have any objection to that because, plainly, it is understood that some people might be anxious about merely standing up in public, let alone in front of a camera and as far as I know, nobody has any objection. If, however, any objection wishes to be again made to me I will listen to that and if I feel it's a legitimate objection then I will ask the cameras, both moving and still, to remove themselves. So, we have high and due regard for the welfare of anyone, whether they are an factual witness or an expert witness, giving evidence in this Inquiry. So, we would receive representations on that later.

Now, as far as the agenda today is concerned, there will plainly be an opening statement in a moment by counsel to the Inquiry, Fergal Kavanagh, and after that, witnesses as to facts. So, we are dividing it up so far as we can. Witnesses as to facts of the incident itself will be called and we'll attempt to get through as many of those as we can before, in fact, the second half of the Inquiry dealing with expert witnesses about the policy matters that I indicate come within the sort of second half of the Terms of the Inquiry. Now, because of the difficulty of some experts getting here at particular times, it may have to be that they are interposed when we are still dealing with factual material. So that today we'll be adjourning - unless I'm otherwise instructed because food is either getting cold or if it's not hot food or other refreshments are put out - the luncheon adjournment is at 1 o'clock. Is that still the case? I think it is, nobody is indicating otherwise. So, we'll continue up until 1 o'clock for a break until two and then we'll continue this afternoon, not until we drop but certainly until we feel we have accomplished as much as is reasonable within one session this afternoon. It may be necessary to have a break this afternoon. We'll run into tomorrow plainly and we'll do the same again tomorrow and we'll sit to hear everybody that wishes to give evidence over this two day period, so that everybody is being given that opportunity.

I am going to pause - which is slightly unusual for a lawyer - I am going to pause for a moment to see if there are any questions that anybody has about procedure that it's not clear about where we are going from this moment because, again, if anybody has a question they want to raise about what's going to happen about so and so, now is the time to raise it and I will attempt to answer it. That's just on procedure. If everybody is clear about that then - I will just pause for a minute in case anybody wants to reflect. Otherwise, if there is no matters arising? All right. Well then, I'm going to ask Fergal Kavanagh if he would be so kind as to, as it were, make an opening statement as to this matter and then we'll proceed to witnesses. Thank you for your attention.

MR. KAVANAGH: Mr. Chairperson, Your Honour Somers and members of the Board of Inquiry, this incident occurred on the 30th day of December, 1990 at approximately 3.15 and thereafter in the afternoon at Cullyhanna in South Armagh. It commenced, for the purposes of setting out before you the facts, with Michael Caraher and Liam Murphy moving from a public house called McWeeneys which is on the Freeduff Road and I will be referring to the map as we proceed through it but this is the Freeduff Road and Michael Caraher and Liam Murphy, having spent some time, as yet we don't know how long, in that public house, moved around and drove up the Slate Quarry Road.

CHAIRMAN: Can you just stop for a minute. I think since it is a public Inquiry, I think at the back it's very difficult to see that plan, is it? Have you got one there? You can all see it. As long as everybody can see, that's fine.

MR. KAVANAGH: When driving along the Freeduff Road around into the Slate Quarry Road they encountered a Southern registered car driven by a Donal O'Hanlon and this had previously bought some petrol and was having difficulty in its ignition system and was spluttering, if you like, as it moved up the Slate Quarry Road. Oliver McArdle then joined them to assist them in putting right this car which had finally stopped. They had come around more or less opposite the portacabin here to assist in fixing the points or the ignition system of this car. Donal O'Hanlon, in his Southern registered car, had stopped finally having to get out and do something with it. Michael Caraher and Liam Murphy came around to assist him. They drove, we'll hear, beyond his car, pulled in on the left hand side to assist him. Coming then from the Dundalk Road direction up the Tullynaval Road was Oliver McArdle and he stopped also to assist them.



Joining them was Fergal Caraher also who came across the scene, saw his brother Michael and his other friend, Liam Murphy, assisting, stopped and also assisted with this particular car. I think it will be shown that Oliver McArdle was the one who finally got the car going again and it moves off in the direction of Dundalk up the Tullynaval Road, after approximately ten minutes or so, which is what it took to get this car going again. That left Fergal Caraher, Michael Caraher and Liam Murphy standing on the side of the road more or less opposite the portacabin area here. They were discussing going into Dundalk for a drink or to spend the afternoon there. What it was decided, at that point in time, I think we'll hear, was that Liam Murphy would drive everybody else into Dundalk and that Fergal Caraher was to park his car and travel with them. They then - Michael Caraher and Liam Murphy move off from that area - Fergal Caraher moves off from the area first and he goes up to park his car and he drives down the Tullynaval Road to the public house which we know is called the Lite "n Easy. He drives into the front which is an open gravelled car-parking lot and turns it around facing the road and parks it and we'll hear exactly where he parks it or approximately where he parks it close to the front of the roadway. A few moments after that, Michael Caraher and Liam Murphy move off, follow them up the road. Liam Murphy sees his wife Maeve also and for that reason decides, because of the situation with relation to a car which was owned by a father-in-law or something like that, that the cars would then be switched and that instead of Liam Murphy and Michael Caraher driving to Dundalk with Fergal that the car would be driven by - that Fergal Caraher would bring his car and that Liam Murphy would leave his car down at the shop. Now, before they had actually moved off what appears to be, we'll hear, a four-man British Army Patrol checks out and speaks to the persons standing where the car was being fixed and restarted. There were approximately four members of the British Army on that patrol and they asked a number of questions. As they were asking questions Maeve Murphy, who would be Liam Murphy's wife, we'll hear, passed and she was asked - she asked was everything okay and they heard that everything was okay. There was also a Jim McAllister who travelled from Dundalk passing this mobile foot patrol down here and they asked was everything okay and clearly everything was okay and the answer was yes. Maeve Murphy had passed, as I said, and ended up and parked down at the Spar supermarket which is, unfortunately, off this map, the Spar shop and petrol pump. There was some sort of jovial talk whereby Maeve Murphy was asked by Fergal Caraher "are you looking for your husband" and she

replied "no", just "are you all right" and everything was settled and people decided that everything was all right at that point in time. The four soldiers appeared to be happy and we'll hear that they moved off and went back on to the Slate Quarry Road. In position on the Tullynaval Road was a vehicle check-point, a mobile vehicle check-point, where the members of the security forces were checking vehicles coming from the Dundalk area into Cullyhanna. Now, this check-point had started and commenced, we're told, somewhere around St. Patrick's Park and the St. Patrick's Roman Catholic Church here and because of the nature in which these check-points apparently operate they move slowly backwards up along the road as a number of cars are checked. So, the check-point is moving down along the road. There doesn't seem to be any problem for Maeve. She is stopped shortly but then drives straight through and there is no difficulty with that. Also, Oliver McArdle, he drives through. Liam Murphy and Michael Caraher also drive through and are waved on. Fergal Caraher likewise. So, it was decided after Liam Murphy had seen his wife Maeve pass through that he would leave his car with his wife and that they would travel in Fergal Caraher's car. To that end Fergal Caraher, already having got in and parked his car in the public house before Liam Murphy and Michael Caraher drive through, had to be informed and it will be shown that Michael Caraher was dropped off by Liam Murphy somewhere outside this car park in the Lite 'n Easy public house and to inform Fergal Caraher that he, in fact, was going to be the driver and not Liam. Liam went on down then to his wife in the Spar shop to give her the keys and the car and was to walk back up again. As Michael Caraher was dropped off he was noticed and seen by a number of people who had been stopped in this particular check-point where there were at least a queue of five, possibly six, cars and as they were searched or questioned they moved on. The evidence will show that at the very front of this queue, while perhaps the incident with the car broken down was occurring down here, that there was a car in the front driven by an Oliver Donnelly. Immediately behind him would be a Eugene McGooy or Cooy in a blue Audi car. Behind him then would be a Jimmy Quinn. Behind him was a Martin and Frank O'Neill in a Mazda 323. Behind them were Kevin Palmer who was a passenger, a rear driver side passenger in a Mitsubishi Colt Galant and behind him was Peter Quinn in a red Nissan Sunny and joining him, coming out of the Lite 'n Easy public house here, was the owner of that public house, Pat Martin, who comes into the tail end of the queue of cars as they are being searched. Now, not all of those cars are present in the queue at

the same time. There is clearly, as Oliver Donnolly's car is cleared or passed, it drives off but it apparently will be the case that there are at least four cars queuing up between the chapel entrance and the public house and the last person to join that queue, Pat Martin, heading in the direction of Cullyhanna, the main part of Cullyhanna village, is Pat Martin, the publican who owns this public house and it's his evidence that I would ask the Board to consider very carefully because he is the person who is, perhaps, in the best position to say what occurred on this occasion.

So, we have the situation arising then whereby there is the four man patrol whose attention is obviously drawn to the three cars that are pulled in here opposite the portacabin because the Southern registered car is broken down. They make their inquiries and they become quite satisfied that there is no difficulties or problems and they move off in the opposite direction where the other check-point is. You have Michael Caraher and Liam Murphy passing down after Fergal Caraher has passed his car - parked his car - and Michael Caraher is dropped off by Liam Murphy. Two soldiers have approached, at that point in time, Fergal Caraher, having moved from the operation of the check-point here. The soldiers apparently - and evidence will show - are discussing or speaking to Fergal Caraher. Fergal Caraher has got out of his car, apparently about to lock it, parking it there and is to the front of his car and is being spoken to by the soldiers. The soldiers are speaking to Fergal Caraher. Michael comes up too then and said, "listen, there is a change of plan. How are we fixed? Can we go in your car? Liam has problems with the other car in that his wife needs it this afternoon" or words to that effect and we'll hear that evidence. The soldiers appeared to be satisfied. Fergal Caraher apparently says words to the effect "are we right? Is everything okay?" The soldier walking away apparently nods and it will be Michael Caraher who will, perhaps, give this evidence and the situation then is that these two soldiers are in the vicinity, one of them moving further back than the second one which was closest to the car. The two people, Fergal Caraher and Michael Caraher, to the front of it. Michael said "listen, I will drive". He gets into the car, drives. Fergal gets into the passenger side and just as they are moving out of the car park some shots are fired as they come on to the road and the evidence will show and tend to show where these shots came from and the position of the particular soldiers at the time that the shots were fired. It would apparently be the case that the two soldiers were joined by a third and that third had been speaking to one of the persons parked, and we'll hear who, in this roadway here. There was a number of



people being checked but one of them suddenly, for whatever reason, decides to join the other three. Pat Martin will give evidence to say that there were words uttered which he thinks were "desiray" or "desirack" and we'll find out, perhaps, what they may or may not have meant in the course of the Inquiry but he hears these words being spoken and, at that point in time, the soldier who was speaking to him through the window of his car moves from Pat Martin up along the roadway to join the other two. As the car drives out shots are fired. There is a number of single shots and a number of bursts and we'll hear which came first from the witnesses. There is a number of shots fired, soldiers taking a kneeling position apparently on the roadway, into the car as it leaves the car park and drives down the road. There will be evidence as to which windscreens were put in. There also will be evidence with relation to the type of wounds inflicted and their entry and exit perhaps. The car splutters or smoke comes from the back of it as it passes the Spar shop some 75 or 100 meters down the road and then restarts again and Michael Caraher may give evidence with relation to how far he was able to drive it, why he continued to drive it and where it ended up. The situation then was that the car finally came to a halt. There were a number of people also in St. Patrick's Park here, one of them Francis Caraher, who was able to observe from a gable window the checkpoint. That's their home there and he had noticed that there was a checkpoint in operation and he had seen his brothers in the Lite 'n Easy public house and had decided to join them for the purpose of going to Dundalk on the 30th of December in the afternoon. As Francis Caraher came out of St. Patrick's Park and turned up the Tullynaval Road he was stopped by a soldier who said, "you can't go on," and he was perhaps in a very good position to see exactly what happened in front of him along the road in that the position of the soldiers and the method in which the car came out of the car park, the direction in which it was travelling. He wasn't allowed go any further than that. There were some words spoken and he was directed to back up and get out of the area and he will give evidence of having to do a circuitous route to come back around to try and find his brothers here and, in fact, he does find them - we'll hear the distance - perhaps half a mile or three quarters of a mile or a mile down the road and he isn't permitted to go up to the car because of the particular nature of the scene that is discovered there. At least of the four to five vehicles that were in the checkpoint, Martin O'Neill's car, being at the front by the time the incident was about to occur, was having his boot checked by a soldier so he was out of the car and in a position to see, looking down the street, what was occurring behind him.

Kevin Palmer also was in a position to see what was happening, he being in a car there also, and Pat Martin, as we have said, who will possibly be in the best position to indicate what exactly occurred.

The other material evidence then is that Jimmy Quinn, who moved through St. Patrick's Park, heard the shooting and he went to see what was happening and he collected Liam Murphy on the roadway here and went up to see the car stopped. So, he managed somehow to get through the checkpoint as the soldiers, we'll hear, were picking up spent cartridge cases and that occurred just prior to Francis Caraher being stopped. There was also another man, called Frank Rafferty who will give evidence of having passed through the checkpoint, the nature of the checkpoint he passed through on foot and where, a few minutes later, he had heard the shots and saw the car where it came to a halt. Alan Durnan also viewed the scene from his house and he saw the incident. Alan Durnan apparently lives in St. Patrick's Park and that's his house here, just a couple doors up from the Carahers and he saw the incident. He went to the scene and he was able to drive through as the soldiers picked up the spent cases. He gives evidence that he could see no injuries to British Soldiers. There was no question of, as far as he was concerned, anybody receiving attention or being hurt and he saw Jimmy Quinn and the car passing.

So, just to very quickly summarise. Michael Caraher and Liam Murphy having a drink or being in this pub, move around the Slate Quarry Road. They come across a car in trouble being driven by Mr. O'Hanlon. They go to assist him. Fergal Caraher also pulls in seeing his brother there, goes to assist him. The mobile patrol is satisfied and moves off. Liam Murphy and Michael Caraher driving down after Fergal Caraher had left and parked his car. As they pass Fergal Caraher's parked car, Liam Murphy says, "listen, I have to give the car to my wife." He drops Michael to tell Fergal that we'll go, in fact, in his car and Fergal joins - Michael joins Fergal Caraher here in the car park. They are spoken to by a number of soldiers who have moved from the vehicle checkpoint. Notwithstanding the fact that they had driven through the checkpoint without getting stopped or checked, the soldiers come over to speak to them. It's decided then that everything seems to be okay. Michael Caraher will give the impression or got the impression, certainly, that Fergal had asked him was everything all right. Michael drives out, Fergal in the passenger seat. The shooting commences and the car comes to a halt some distance up the road.

There is one point which I have omitted to mention to you and that is that Liam Murphy and his wife, Maeve, having dropped the car, were heading back up in the direction of the Lite 'n Easy car park and just as they come out on to the road Mr. Murphy and his wife were chatting, he had just given her the keys of the car when the shooting occurred. Mrs. Murphy runs back to take some shelter. Mr. Murphy lies on the ground burying his head and he hears a car going by. With relation to the noise of the exit of the car there is some reference and there will be some evidence that perhaps the exhaust was slightly faulty or somewhat noise in the Rover car that Fergal Caraher had as it drove passed Liam Murphy. So that, quickly, was a synopsis of the incident as it's believed it may have occurred and that there are witnesses who can substantiate that.

So, I just intend then, to call Mr. Paul Tiernan, Solicitor, to give a background as to the circumstances.

MR. PAUL TIERNAN WAS EXAMINED AS FOLLOWS BY MR. KAVANAGH.

1. Q. MR. KAVANAGH: Well, I think, Mr. Tiernan, you are a Solicitor in the firm of Tiernan and Company, Solicitors, is that right?  
A. That's right.
2. Q. I think you are also the solicitor for the Caraher family and for Michael Caraher, would that be the case?  
A. That is correct.
3. Q. And could you tell the Tribunal of Inquiry when you first got instructions with relation to this matter?  
A. On the evening of the incident, the 30th of December.
4. Q. What were your instructions?  
A. To inquire as to what happened and to make investigations with the RUC.
5. Q. And is it the case that proceedings have now been issued in this matter?  
A. Proceedings were issued in the High Court in Belfast on the 18th of April, 1991.
6. Q. I see, and what is the nature of those proceedings?  
A. For the recovery of compensation for the death of Fergal Caraher and painful injuries sustained by Miceal Caraher.