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FROM: SIMON ROGERS
SECURITY POLICY AND OPERATIONS DIVISION 1
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cc PS/SofS (B&L) - B
PS/PUS (B&L) - B
PS/Mr Fell - B
Mr Thomas - B
Mr Bell - B
Mr Steele o/r - B
Mr Watkins - B
Mr Williams - B
Mr Maccabe - B
Mr Leach - B
Mr Cooke - B
Mr Marsh - B
Mr Maitland - B
Mr McCaffrey - B
Mr Kyle - B

1. Mr Perry [NP 4/11]
2. PS/Sir John Wheeler (B&L) - B

CULLYHANNA SHOOTING: DEATH OF FERGAL CARAHER

The trial of Acting Corporal Elkington and Marine Callaghan of 45 Commando Royal Marines, who were charged following the death of Fergal Caraher on 30 December 1990, is scheduled to begin on Monday 8 November 1993. It is expected that the trial will last for 3 or 4 weeks. This submission reminds the Minister of the background to the incident and advises on a line to take during the trial.

Background

2. Fergal Caraher and his brother Michael met up in the car park of a public house in Cullyhanna, South Armagh, called the Lite n' Easy Bar, on the afternoon of Wednesday 30 December 1990. Fergal Caraher had just passed through a vehicle checkpoint operated by the Royal Marines before stopping in the car park, a short distance from a second checkpoint. The RUC were not present. Michael and Fergal Caraher then got into the car to leave. What happened next has been a matter of dispute ever since the incident.

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The Marines claimed that they moved forward from the second checkpoint to investigate the vehicle, when the car set off at speed striking one Marine a glancing blow and forcing a second Marine onto the bonnet, where he was carried along for about ten metres. As the car continued to drive on two members of the patrol opened fire. They fired about twenty shots, one of which killed Fergal Caraher, while Michael Caraher was seriously injured.

4. The other version of events, put forward by Michael Caraher and the unofficial "public inquiry" into the incident (see below), is that Fergal Caraher was parked in the Lite n'Easy pub car park. His brother, Michael went to join Fergal Caraher who was speaking to soldiers. Fergal Caraher asked one of the soldiers "Are we right?" and when the soldier nodded they got into the car and drove from the car park onto the road. It is then alleged that, without warning, the soldiers opened fire on the vehicle and continued firing for several seconds. It is claimed that no soldiers were hit by the car. Michael Caraher, who was driving the car, drove on for about two kilometres after being hit. An ambulance took his brother and him to hospital, but Fergal Caraher was dead on arrival.

5. A police investigation was carried out by a senior Detective Chief Superintendent of the RUC, but he received very little direct co-operation from local witnesses. They all submitted written statements through the same solicitor and, at first, refused to be directly questioned about them. Over time these difficulties were to a large extent overcome and, in the June 1991, the file was sent to the Director of Public Prosecutions. To help him reach his decision on the case he asked the RUC to conduct a further inquiry into one aspect of the case and he also asked a barrister to re-interview certain witnesses.

6. On 5 February 1992 A/Cpl Elkington and Marine Callaghan were charged with: the murder of Fergal Caraher; the failure of the investigative process to be impartial; and the failure to make public the results of the investigation and

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attempted murder of Michael Caraher;

- unlawfully and maliciously wounding Michael Caraher with intent to do him grievous bodily harm.

Both Marines pleaded not guilty to the charges. I understand that their defence is that they used reasonable force in the circumstances.

"Public Inquiry"

7. The incident attracted a great deal of media interest at the time, not least because there had been allegations of harassment concerning the Royal Marines during their tour. In addition, Kevin McNamara MP, Harry Barnes MP, Lord Hylton, Seamus Mallon MP, Newry & Mourne District Council, Sinn Fein, the Irish side of the Secretariat and Cardinal (then Archbishop) Daly all expressed varying degrees of concern, as did SACHR and the Committee on the Administration of Justice.

8. An unofficial "public inquiry" was convened at the request of the Caraher family and on 22/23 June 1991 a panel of "jurists" headed by Michael Mansfield QC, heard a number of submissions and staged a reconstruction of the events on 30 December. Statements were made, inter alia, by the Caraher family, Father Raymond Murray, the Committee on the Administration of Justice, Professor Hadden, Amnesty International, the Irish Council for Civil Liberties and the Britain and Ireland Human Rights Project, amongst others. *who?*

9. The NIO, police and army declined to be involved. The report of the inquiry was made in January 1992, including background material, an introduction to the inquiry, and recommendations by each of the Panel Members (except for Michael Mansfield who decided to reserve his findings and recommendations to a later date - still awaited). The "jurists" focused on the alleged incompatibility of section 3 of the Criminal Law Act 1967 with accepted international norms, on the failure of the investigative process to be impartial, on the failure to make public the results of the investigation and

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on the failure of the judicial process to defend the rights of individuals, by giving too wide an interpretation to the phrase "such force as is reasonable in the circumstances".

10. As mentioned, the DPP's decision to prosecute came in February 1992 and Peter Caraher, Fergal's father, claimed the Report had prompted this decision. He repeated this claim recently when he gave evidence on behalf of James Smyth in the extradition proceedings in San Francisco.

Line to take

11. In light of this background, as with the Glen Road "joyriders" case, there will inevitably be significant media and public interest in this case. It will be important during the trial not to make any comment about the case. The line is that the trial is on-going and that the matter is sub-judice and therefore the Government is unable to comment. The Government and HQNI, will, however, be expected to comment once a verdict is reached and lines to take for use then will be circulated shortly.

Signed

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