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cc PS/Secretary of State (B&L) - B
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PS/PUS - B
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Mr Steele - B
Mr Lyon - B
Mr Wood - B
Mr Marsh
Mr Leach
Mr Lavery - B
Dr Power - B
Mr Dodds - B
Mr Brooker - B
Mr Percival - B
Mrs Collins

ASST
SEC 16 MAR 1993
CENT MM1006/3 SEC

Mr. Lyons
Mr. Perkins

UNDER/ SEC 706/3
15 MAR 1993
CENT SEC

Mr McCaffrey - B

HARTE, HARTE AND MULLAN INQUEST: Q&A MATERIAL

The inquest opens in Enniskillen on Monday 15 March into the shooting by the Army of 2 PIRA terrorists at Drumnakilly, Co Tyrone on 30 August 1988. The Secretary of State has signed a public interest immunity (PII) certificate to protect sensitive Army and RUC information and the identity of police and military witnesses. Q&A material is attached.

Background

2. In August 1988 a threat was identified to a former part-time soldier in the then UDR, who worked as a coal merchant in the Omagh area. To counter this threat his lorry was, with his agreement, taken over by soldiers. On 30 August Soldier M, (the patrol commander), who was in civilian clothes and driving the lorry, stopped near Drumnakilly to change a wheel. A number of uniformed soldiers in the rear of the lorry dismounted to give cover; another patrol was concealed nearby. Some time later a hijacked car containing three men approached. Automatic fire was opened from the car at Soldier M, who had to take cover. The car then stopped and two armed terrorists got out. Given the speed and ferocity of the

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attack, it was not practicable for the soldiers to issue a challenge before returning fire. Three terrorists were found to have been killed. All three were wearing boiler suits, balaclavas and gloves. The three were subsequently identified as active and dangerous IRA terrorists. Two rifles and a handgun were recovered from the scene. Subsequently, the IRA claimed that the three men were "volunteers, killed on active service". They were given paramilitary funerals.

The Inquest

3. The Coroner will be Mr Leckey, who presided over the McElwaine inquest. There will be four military witnesses, Soldiers K-N, none of whom fired. The remaining soldiers (A-J), all of whom fired shots which may have caused death, cannot be compelled to attend and have exercised their right not to do so. Their written statements will be read to the Court. There will also be an RUC Special Branch witness (Sergeant A), who was in charge of a patrol which arrived on the scene shortly after the shooting. The inquest timetable at the moment is as follows:

Monday - evidence of civilian witnesses.

Tuesday - reading of written witness statements made by those not attending the inquest, including Soldiers A-J.

Wednesday - Public Holiday.

Thursday - forensic evidence.

Friday - oral evidence of Soldiers K,L,M,N; finding of inquest jury.

PII Certificates

4. A PII certificate is required to protect military and police witnesses and information. Because this covers both RUC and Army matters, our Secretary of State has signed it (with the Defence Secretary's agreement).

Media Interest

5. Media interest is likely to be high, particularly in light of the McElwaine inquest. Attention is likely to focus on whether or not the terrorists involved could have been arrested, and on the PII

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certificate. Annex A sets out the facts of the incident; Annex B has lines to take on inquests, the use of force generally, and PII certificates; detailed questions on the incident itself, or the units involved, should be referred to HQNI. (We do not disclose whether or not soldiers were members of special units.)

6. You may also wish to be aware that MOD and HQNI are considering issuing a press statement at the conclusion of the inquest. (There was a feeling in both quarters, I understand, that inaccurate press coverage of the McElwaine inquest had been allowed to go unchallenged for too long.) This may require fairly careful handling: I will let you have further details when I have them.

(Signed)

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ANNEX A

THE INCIDENT

On the afternoon of 30 August 1988 fire was opened from a hijacked car at a soldier who was next to a coal lorry on the roadside near Drumnakilly. The soldier had to take cover in order to save his life. He was wearing civilian clothes. Two armed terrorists then got out of the car. Fearing for their lives, other soldiers in the area opened fire. Given the ferocious nature of the attack, it was not practicable for the soldiers to issue a challenge before returning fire. Three terrorists were found to have been killed. All three were known to be active and dangerous IRA terrorists. Two rifles and a handgun were recovered from the scene. It is believed that they had intended to murder a former part-time UDR soldier, who usually drove the lorry.

Subsequently, the IRA claimed that the three men were "volunteers, killed on active service". They were given paramilitary funerals.

The incident was fully investigated at the time by the RUC, and a report was submitted to the independent Director of Public Prosecutions. He directed that there should be no prosecution of the soldiers involved in the incident.

[NB We do not disclose whether soldiers were members of the special forces or not]

A number of inquests have been deferred pending a succession of legal issues raised at the inquest of McKerr, Tomen and Burns.

Q4. Does the Government accept the findings of the jury?

A4. Depending on inquest finding - The findings represent the conclusions of a jury which expressed its own judgement on the basis of the conflicting information presented to it. It is for the prosecuting authorities to consider whether there is any new evidence which was presented to the coroner's court and which would lead them to take further action. The inquest finding itself has no evidential status and may not be used in any future legal proceedings.

Inquests

- Q1. What is the remit of the coroner's court?
- A1. The coroner's court in Northern Ireland is required to establish the identity of the deceased, and how, when and where he or she died. It is precluded from expressing an opinion on criminal or civil liability, and an inquest finding has no evidential value in a criminal or civil court. As in England and Wales, inquests are fact-finding inquiries and not proxy trials.
- Q2. Why did some soldiers not give evidence at the inquest?
- A2. By law, persons who may have caused the death can not be compelled to appear at an inquest. These soldiers chose not to appear at the inquest, as is their legal right, but their written statements were submitted as evidence. The soldiers were not prevented from giving evidence. Four other military witnesses whom the coroner asked to attend the inquest did so; they were present during the incident.
- Q3. The deaths of Harte, Harte and Mullan occurred in 1988. Why is the inquest being held only now?
- A3. A number of inquests have been deferred pending a succession of legal issues raised at the inquest of McKerr, Toman and Burns.
- Q4. Does the Government accept the findings of the jury?
- [A4. Depending on inquest finding - The findings represent the conclusions of a jury which expressed its own judgement on the basis of the conflicting information presented to it. It is for the prosecuting authorities to consider whether there is any new evidence which was presented to the coroner's court and which would lead them to take further action. The inquest finding itself has no evidential status and may not be used in any future legal proceedings.]

Use of Force (General)

Q5. Is there a shoot to kill policy?

A5. No. The rules under which policemen and soldiers may open fire in Northern Ireland are fully consistent with the principles of minimum force and the protection of life. Every shooting involving a member of the security forces is fully investigated; it is for the independent Director of Public Prosecutions to decide whether a prosecution should result. Members of the security forces are subject to the same law as everyone else, as well as internal disciplinary procedures.

Q6. Why no challenge?

A6. There is no requirement for soldiers or policemen to issue a challenge if, for example, to do so would increase the risk that they would be killed.

Q7. Wasn't the operation planned with the intention of killing terrorists?

A7. The aim of security force operations is always to secure the arrest of terrorists, so that they can be properly tried by the courts. But it is obviously not always possible to know terrorists' plans in sufficient detail for the security forces to be able to carry out pre-emptive arrests, or to arrest terrorists at the scene without risking their own lives to an unacceptable degree.

Q8. Was intelligence available in this case?

A8. Unable to comment.

PII Certificates

Q9. Why did the Secretary of State sign a PII Certificate for this inquest?

A PII Certificate specifies and seeks to protect information, or classes of information, whose disclosure would be against the interests of national security. In this case, it is necessary to protect certain information which, if disclosed, would seriously damage the ability of the security forces to provide protection against terrorists. It is obvious that information about such matters as the organisation, methods of operation and training of special units of the RUC and the Armed Forces, would enable terrorists to take countermeasures, and to carry out more shootings and bombings. This cannot be in the public interest, and it is the duty of the Secretary of State to prevent this damage. At the same time, the information which is protected by the PII Certificate is not essential for the purpose of the inquest. The PII Certificate is not designed to prevent the coroner's court from being able to discharge its responsibilities. The particular circumstances and the requirements of justice are considered very carefully in reaching the decision whether a PII Certificate is needed and what it should cover.

Q10. Isn't PII a blanket which prevents disclosure of relevant information?

A10. No. The information protected by the PII Certificate is not essential for the purpose of the inquest, but there is a risk that questions might be asked which would otherwise lead to the disclosure of sensitive information. Where information protected by the PII Certificate was demonstrably relevant to the purposes of the inquest, we would seek as far as possible to make it available to the court.

Q11. How does this PII differ from the one issued in the Matrix-Churchill case?

A11. Each PII Certificate is specific for the particular circumstances of the case; in this case, the Certificate is intended to protect information about special units of the police and Armed Forces in Northern Ireland.

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