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CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 1

CHAPTERS 1-3

INTRODUCTION, THE EVIDENCE AVAILABLE AND THE LAW

CHAPTER 1

1A-1 INTRODUCTION.

1A-1 This section introduces our submissions, contained in eight volumes and ten chapters, and explains the way in which they have been organised.

1A-2 Despite the frequency with which we have stated that we represent individual soldiers, there is still a perception that we represent the Army or the Ministry of Defence. We do not. We represent 484 individuals. For convenience, and for the avoidance of doubt, we set out below the names or ciphers, as appropriate, of the individuals whom we represent.

SOLDIERS GIVEN CIPHERS BY THE WIDGERY INQUIRY				
A	Z	028	123	159
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AD	004	033	127	200/240
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SOLDIERS GIVEN CIPHERS BY THE PRESENT INQUIRY

INQ0002	INQ0366	INQ0763	INQ1152	INQ1834
INQ0005	INQ0370	INQ0765	INQ1155	INQ1853
INQ0007	INQ0371	INQ0767	INQ1157	INQ1869
INQ0010	INQ0372	INQ0768	INQ1163	INQ1872
INQ0012	INQ0375	INQ0772	INQ1164	INQ1873
INQ0013	INQ0382	INQ0773	INQ1171	INQ1874
INQ0014	INQ0391	INQ0778	INQ1173	INQ1877
INQ0015	INQ0398	INQ0782	INQ1174	INQ1883
INQ0017	INQ0402	INQ0785	INQ1194	INQ1888
INQ0019	INQ0404	INQ0796	INQ1195	INQ1891
INQ0020	INQ0405	INQ0802	INQ1197	INQ1900
INQ0021	INQ0406	INQ0806	INQ1208	INQ1901
INQ0022	INQ0418	INQ0807	INQ1210	INQ1903
INQ0024	INQ0420	INQ0812	INQ1217	INQ1905
INQ0025	INQ0422	INQ0815	INQ1231	INQ1908
INQ0054	INQ0423	INQ0819	INQ1236	INQ1917
INQ0058	INQ0428	INQ0832	INQ1237	INQ1918
INQ0061	INQ0429	INQ0834	INQ1241	INQ1919
INQ0063	INQ0437	INQ0836	INQ1252	INQ1923
INQ0066	INQ0441	INQ0840	INQ1257	INQ1924
INQ0067	INQ0444	INQ0841	INQ1260	INQ1935
INQ0078	INQ0452	INQ0849	INQ1266	INQ1939
INQ0081	INQ0455	INQ0852	INQ1275	INQ1940
INQ0095	INQ0457	INQ0876	INQ1280	INQ1951
INQ0113	INQ0468	INQ0881	INQ1288	INQ1954
INQ0118	INQ0473	INQ0883	INQ1298	INQ1955
INQ0119	INQ0486	INQ0887	INQ1305	INQ1957
INQ0122	INQ0487	INQ0889	INQ1310	INQ1958
INQ0123	INQ0494	INQ0891	INQ1318	INQ1982
INQ0127	INQ0512	INQ0896	INQ1324	INQ1984
INQ0131	INQ0521	INQ0897	INQ1326	INQ1986
INQ0133	INQ0522	INQ0904	INQ1333	INQ1990
INQ0139	INQ0528	INQ0907	INQ1334	INQ1997
INQ0145	INQ0532	INQ0912	INQ1335	INQ2000
INQ0146	INQ0535	INQ0914	INQ1336	INQ2001
INQ0151	INQ0538	INQ0915	INQ1342	INQ2002
INQ0152	INQ0551	INQ0917	INQ1343	INQ2032
INQ0153	INQ0554	INQ0921	INQ1348	INQ2033

INQ0155	INQ0555	INQ0933	INQ1350	INQ2037
INQ0166	INQ0558	INQ0945	INQ1413	INQ2038
INQ0171	INQ0559	INQ0947	INQ1521	INQ2041
INQ0172	INQ0581	INQ0951	INQ1527	INQ2043
INQ0177	INQ0583	INQ0956	INQ1538	INQ2044
INQ0178	INQ0588	INQ0957	INQ1540	INQ2045
INQ0189	INQ0589	INQ0960	INQ1544	INQ2047
INQ0206	INQ0594	INQ 0966	INQ1548	INQ2050
INQ0214	INQ0598	INQ0967	INQ1560	INQ2054
INQ0228	INQ0603	INQ0975	INQ1570	INQ2056
INQ0229	INQ0604	INQ 0979	INQ1579	INQ2057
INQ0235	INQ0614	INQ1010	INQ1581	INQ2065
INQ0245	INQ0627	INQ1016	INQ1593	INQ2067
INQ0248	INQ0633	INQ1027	INQ1603	INQ2078
INQ0251	INQ0635	INQ1030	INQ1751	INQ2079
INQ0254	INQ0637	INQ1032	INQ1758	INQ2089
INQ0255	INQ0639	INQ1041	INQ1761	INQ2105
INQ0261	INQ0646	INQ1043	INQ1764	INQ2117
INQ0262	INQ0657	INQ1044	INQ1770	INQ2121
INQ0268	INQ0663	INQ1045	INQ1779	INQ2146
INQ0275	INQ0665	INQ1046	INQ1782	INQ2148
INQ0290	INQ0682	INQ1056	INQ1784	INQ2149
INQ0292	INQ0691	INQ1058	INQ1788	INQ2160
INQ0293	INQ0693	INQ1059	INQ1790	INQ2225
INQ0295	INQ0707	INQ1068	INQ1791	INQ2236
INQ0300	INQ0722	INQ1077	INQ1799	INQ2238
INQ0301	INQ0723	INQ1087	INQ1803	INQ2241
INQ0304	INQ0727	INQ1093	INQ1805	INQ2242
INQ0321	INQ0736	INQ1096	INQ1822	INQ2245
INQ0325	INQ0738	INQ1111	INQ1823	INQ2554
INQ0350	INQ0740	INQ1112	INQ1824	INQ2565
INQ0352	INQ0747	INQ1124	INQ1825	INQ2584
INQ0360	INQ0748	INQ1139	INQ1826	INQ2592
INQ0362	INQ0753	INQ1141	INQ1829	INQ2597
INQ0364	INQ0754	INQ1147	INQ1832	

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NAMED MILITARY CLIENTS			
Conder	Jackson	Nichols	Tickell
Dalzell-Payne	Kitson	Ramsbotham	Tugwell
De La Billiere	Loden	Small	Welsh
Ford	MacLellan	Steele	Wilford

NON MILITARY CLIENTS		
Blakesley	Stephen	West

1A-3 Against the overwhelming majority of these individuals, no allegation of misconduct has been made, formally or at all. In the absence of "Salmon letters", we have attempted to identify what we believe are the main issues and to address them in these submissions, without unnecessary repetition, and, where possible, with economy. We do not consider it appropriate to address every issue which was opened by counsel to the Inquiry or touched upon by counsel for the other Interested Parties. Rather, we have sought to address what, on the basis of our present understanding, we believe to be the main issues before the Tribunal. Where appropriate, we have provided analyses of exhibited documents, including some which were not examined, or not fully considered, during the course of the evidence.

1A-4 We have attempted to present our submissions in chapters 6-10 below in accordance with the sequence of sectors adopted by the Tribunal throughout its proceedings. To the extent that they inevitably overlap, in time or in the relevance of more general aspects of the evidence, we have attempted to avoid duplication. This involves cross references between chapters. We have, where it has been thought to be helpful, reproduced maps and photographs for reference purposes, but, where matters of detail are important, the Tribunal will obviously wish to consider these submissions with the benefit of the best quality prints that are available to them.

1A-5 The content of the following Chapters may be summarised as follows.

Chapter 2 addresses certain general issues concerning the evidence available to the Tribunal.

Chapter 3 contains our submissions upon legal issues.

Chapter 4 considers the significance of evidence deriving from (and withheld by) the IRA, with separate consideration given to the positions of the Official IRA and the Provisional IRA.

Chapter 5 deals with plans for the march on the 30th January 1972 and the events of the day from the perspective of the senior officers. It also addresses, on behalf of our clients, the various ill-defined allegations of conspiracy made against politicians, civil servants and senior officers.

Chapters 6-10 contain our submissions relating to events in Sectors 1-5, respectively.

1A-6 A significant volume of documentary evidence has been served by the Inquiry in recent weeks, since the close of oral evidence. We understand that yet further material is still undergoing the redaction process. Self evidently we cannot address what we have yet to see, and time has not permitted us to take account of what has recently been served, but we will consider everything that we have and, if appropriate, will deal with it by way of supplementary submissions or in our submissions in reply. In particular we should record that the Tribunal's letter dated 11th March 2004, in which they explain the steps which were taken to invite and require members of the IRA to cooperate with the Inquiry, could not be taken into account when chapters 2 and 4 of these submissions were drafted.

ANTHONY LAWTON
Assistant Treasury Solicitor
18th March 2004.

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CHAPTER 2

THE EVIDENCE AVAILABLE TO THE TRIBUNAL

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THE EVIDENCE AVAILABLE TO THE TRIBUNAL

CHAPTER 2A

2A-1 INTRODUCTION.

2A1 In this Chapter we propose to address thematically certain aspects of that evidence which is before this Inquiry and, indeed, that which is not.

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CHAPTER 2B

EVIDENCE COLLECTED IN 1972.

2B-I NICRA STATEMENTS

2B-1 We adopt the submissions of the Aitken team on the subject of NICRA statements, which submissions we have seen in draft.

2B-2 While we would accept that each NICRA statement must be considered on its merits in the light of all the evidence, there are serious concerns as to the NICRA statement taking process and as to the content of a significant number of NICRA statements. As a result, the Tribunal should exercise particular caution before accepting NICRA statements as either accurate or comprehensive. This is particularly so when an individual gave a NICRA statement in 1972, but has not given evidence, written or oral, to this Inquiry.

2B-II THE RMP/SIB STATEMENT TAKING PROCESS

INTRODUCTION

2B-3 During the course of the present Inquiry a great deal of criticism has been directed at the quality of the statements taken by the Royal Military Police. Indeed, the Irish Government's case advanced in strenuous support of the creation of this Inquiry relied heavily on the very detailed criticism which Prof. Walsh had made of alleged inconsistencies on the basis of RMP statements. However, in considering this body of evidence it is essential to have in mind the limited purpose the statements were intended to fulfil and the circumstances in which they came into existence.

2B-4 The RMP statements taken in the immediate aftermath of Bloody Sunday under the direction of Warrant Officer 1st Class Wood were never meant to be anything more than brief contact reports. They were gathered for the purpose

of getting basic information up the chain of command as quickly as possible. This was a fact finding mission.

- 2B-5 The investigation continued following the announcement of the establishment of the Widgery Inquiry. In most respects the nature of the investigation remained the same. The early statements taken under WOI Wood were its foundation. Further statements were taken according to the same procedures,¹ often by the same personnel and under the same pressure of time. These further statements were not intended for the use of the Widgery Inquiry but for provision to the Army legal team. At this stage, the aim was to get information to the Army Legal Team as quickly as possible.
- 2B-6 Interviews that took place on the night of Bloody Sunday and in the early hours of the next day were conducted with soldiers who were inevitably tired, by investigators who were armed with little background information. Many of the investigators would have had little knowledge of Londonderry.
- 2B-7 Properly trained Special Investigation Branch (SIB) investigators were thin on the ground and had to be supplemented with corporals from the RMP, some of whom had very little training or experience. Nevertheless, soldiers were allocated to interviewers on a cab rank basis. In many cases, the junior NCOs from the RMP were detailed to take some of the most important statements. Individual interviewers had to take large numbers of statements over a short period of time.
- 2B-8 Notwithstanding the fact that this incident concerned the killing and wounding of civilians by soldiers in circumstances that were bound to be controversial, the soldiers gave interviews under compulsion, without caution

¹ Wood's Brief and Aide Memoire. CW1.48.

and without the benefit of legal advice or representation. This was the deliberate policy of the SIB which sought to justify it on the basis that the statements were being taken for a limited purpose only, and could not subsequently be used to the prejudice of the soldiers concerned.

2B-9 It now transpires that "RMP maps" were marked up at some stage after the interviews – and not by the soldiers concerned. Timings in the body of the statements may have come from WOI Wood's briefing to his men rather than from the soldiers themselves. It also appears that investigators would replace references by soldiers to specific weapons with less definitive terminology. So, a soldier's reference to a rifle might result in a statement about a "long straight object". As a result, in many instances the oral statements of the interviewees had been materially altered by those taking the statements.

2B-10 The statements were not meant to stand up to the detailed scrutiny of a public inquiry. Defects and inadequacies in the statements produced may not have been the fault or the responsibility of the soldiers making the statements and the soldiers should not be prejudiced by criticisms directed at the statements.

PURPOSE OF SIB INVESTIGATION

2B-11 The purpose of the investigation conducted under the direction of WOI Wood in the wake of Bloody Sunday was strictly limited; its aim was to supply information to HQNI as quickly as possible.

2B-12 WOI Wood gave unequivocal evidence about the limited nature of the investigation:

The SIB actions could not be said to constitute a full and exhaustive investigation.²

2B-13 The *Aide Memoire* accompanying WO1 Wood's *Brief for Investigators* of 14th July 1971 added:

a. The information is required for higher command to answer immediately any allegations that may be raised by civilians.

b. It is not a normal SIB "investigation" as such...

... you are only there to find out what has happened. Assessment of criminal responsibility is not your task in these enquiries.³

2B-14 Wood was asked during his oral evidence:

Q. Can we summarise the situation, then, by saying this: that you were really trying to get the basic information up the chain of command as quickly as possible?

A. Exactly.

Q. What you were not doing at this early stage was producing statements for the purposes of a criminal trial?

A. No way at all.

Q. Or indeed a public inquiry?

A. Other than a Coroner's Inquest.⁴

2B-15 Lt Col Overbury agreed:

The evidence to be collated included the statement made by each soldier who had fired live rounds on 30 January. Each statement had been made to the military police in accordance

² CW1.1, paragraph 5 and Day 383/146/6

³ CW1.48

⁴ Day 383/147/7

with Standing Operational Procedures... They were certainly not made in contemplation of providing evidence to a Tribunal of Inquiry.⁵

2B-16 Further statements were taken from the soldiers following the establishment of the Widgery Inquiry. Col Overbury's evidence was that:

Once it was announced that there would be a Tribunal of Inquiry and the Army Tribunal team was set up. The SIB was requested to carry out a full investigation, in the course of which they decided to interview many of the soldiers again. This investigation was not a criminal investigation. None of the soldiers had been charged with any offence and I was certainly not aware that any was even suspected by the military authorities of having committed an offence. The purpose of the investigation was to find out exactly what had happened.⁶

2B-17 At this stage, the methods used remained the same; the "full investigation" was conducted according to the terms of WOI Wood's Brief,⁷ often by the same personnel. The SIB did not seek to replace the statements taken by him and his men but to add to them. Whereas the aim under WOI Wood had been to get information to Command as quickly as possible, subsequent statements were taken to get information to the Army Legal Team as quickly as possible.⁸

LIMITED BRIEFING

2B-18 Those conducting the interviews were given very little background information in advance.

⁵ CO1.2, paragraph 7

⁶ CO1.41, paragraph 27

⁷ Overbury at Day 243/12/15 and Day 243/77/25

⁸ CO1.7, paragraph 17 of Overbury's Report of Army Tribunal Team of 25th March 1972.

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INFORMATION RECEIVED BY SIB

2B-19 According to WOI Wood:

Belfast and country IS investigations were not instigated from a briefing note in the sense of an operations log circulated after the event. We did receive these logs but they came far too late to be of use to us.⁹

2B-20 Time would always be of the essence and he again notes:

It would not have been possible to accomplish the amount of work we did if we had waited for a consolidated report of the night's events.¹⁰

2B-21 Instead, the SIB would gather such information as it could from sources that were immediately available, such as radio reports or interim reports from RMP Operations or Brigade.¹¹

2B-22 WOI Wood recalled in oral evidence that:

All the regiment, all the higher command would have in the way of a briefing that they could give us was that there had been a shot fired at this location, under these claimed circumstances.¹²

2B-23 The situation was the same in the wake of Bloody Sunday. It is not surprising that the SIB received little information in advance of the investigation, when the express purpose of their deployment was to gather information for Command.

⁹ CW1.60, paragraph 31

¹⁰ CW1.60, paragraph 33

¹¹ CW1.60, paragraphs 32-33

¹² Day 383/152/20

BRIEFING TO INVESTIGATORS

2B-24 It follows that WOI Wood was unable to pass much information to his men in advance of the interviews they were to conduct.

2B-25 His evidence was that:

*Service investigators received no instructions before an IS enquiry... They were not told much beyond, say, that a patrol of X Company of Y Regiment in Z street had opened fire on some civilians and claimed to have hit them.*¹³

2B-26 This is reflected in the evidence of INQ 2064:

*In general.. we were not briefed as to what the incident involved or what issues we were expected to cover with the witness. If we received any briefing at all. it was given in outline only by the Sergeant Major...*¹⁴

2B-27 INQ 2064 expanded upon this in oral evidence:

Q. Would you have known anything about the soldier before he came into that interview room to speak to you?

A. In what respect?

Q. Would you have known what his particular involvement in the incident you were investigating was supposed to be?

A. No, not normally, no.

Q. Would you have known any details about his conduct in the past?

A. No.

¹³ CW1.61, paragraph 34

¹⁴ C2064.1, paragraph 6

Q. Would you have known how long he had been serving in Londonderry?

*A. No.*¹⁵

2B-28 Corporal Brobson's evidence was to similar effect:

Q. Before you began an interview with a particular soldier, were you at least aware in outline of the circumstances of the shooting incident that that soldier had been involved in?

*A. I do not think I was, no.*¹⁶

2B-29 He was challenged by Michael Mansfield QC:

Q. ... when you went you understood that people, civilians, had been killed; you knew that?

A. No.

Q. You did not even know that?

A. No.

Q. What did you know when you went?

A. Not very much. I am afraid.

Q. Is that right, that you did not even know that people had been killed?

A. I have really no recollection of details of deaths at this stage, the early stage.

Q. I do understand that, but you knew that people had been killed by soldiers, did you not, in general terms?

A. On this particular day?

Q. When you went to take statements?

¹⁵ Day 252/16/11

¹⁶ Day 275/110/2

A. No, I did not.

Q. Why did you think you were taking statements?

A. Well, because I had been detailed to.

Q. Just that?

A. Precisely.¹⁷

2B-30 WOI Wood acknowledged that some of the investigators arriving in the wake of Bloody Sunday would have received no briefing at all:

Q. You say that you would then have briefed the interviewers before you started interviewing. Would this have been a group briefing or would you have briefed individuals as you tasked them to do particular statements?

A. We would have aimed to have a group, but it was inevitable that some would have turned up later.¹⁸

FEW SIB INVESTIGATORS WERE AVAILABLE IN THE WAKE OF BLOODY SUNDAY

2B-31 There was only a small pool of fully trained SIB investigators to call upon. WOI Wood was in charge of a "very small" SIB detachment based at Lisburn.¹⁹ There was a single SIB investigator based at Londonderry, Sergeant Major INQ 1831, and he was absent on other duties on 30th January 1972.²⁰ WOI Wood himself was absent on other duties for the week from 31st January.²¹

¹⁷ Day 275/130/10

¹⁸ Day 383/127/1

¹⁹ CW1.55, paragraph 2

²⁰ CW1.67, paragraph 1; paragraph 9, C1831.1, paragraph 9

²¹ CW1.10, paragraph 62

2B-32 He therefore had to draw on his personnel from Lisburn to assist with the Londonderry statement taking process. The limited briefing these men received was thus compounded in many cases by a lack of knowledge of Londonderry.

2B-33 After WOI Wood left, investigators were also brought in from England.²²

NATURE OF INTERVIEWS

2B-34 The information sought at the interview stage was very basic indeed.

2B-35 This much was reflected in the oral evidence of Assistant Provost Marshal Lieutenant Colonel INQ1383:

Well, I think the crux of this was that I wanted them to concentrate their efforts on who had fired; how many rounds they had fired; who they had fired at; what the line of fire was; I wanted all the statements to be taken from every man who had fired and how many rounds and I wanted all this to be consolidated in a general plan so that we got to the truth of what actually had happened as quickly as possible.²³

2B-36 WOI Wood explained how this was interpreted in practice:

55. The statements were prepared in a very standard way. We would make a note of who the soldier was, what he was doing on the day, what he was armed with and where he was put on duty.

56. The interviews would be conducted in a question and answer session. We knew the sequence of events and we knew the information we wanted from experience of taking statements on other jobs...

²² e.g. WOI INQ 1835.

²³ Day 304/99/18

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57. ... in relation to the events of that day we had to work under great pressure of time and confined ourselves to compiling the normal contact reports.

58. There was no time to spend talking and then writing up afterwards, we just had to get down to business. The interviewer would write the statement out in longhand during the course of the interview and the interviewee would then sign it at the end of the interview. We would not write down what was said word for word as most of the interview was merely grunts; we would turn what we were told into what looked like a proof of evidence on the spot. The witness would not be sent a copy of the statement...²⁴

2B-37 He was asked in oral evidence about his reference to the "grunts" that would come from the interviewees:

Q. That may be a slightly extreme description of the situation, but you were dealing with soldiers who may not have been particularly articulate, particularly after the type of situation they had been in?

*A. (Witness nodding). That is exactly -- what you take is exactly right.*²⁵

2B-38 Warrant Officer 2nd Class INQ 1835 gave similar evidence, especially in relation to the compilation of what were essentially contact reports. He described how:

*I took short, almost proforma, statements setting out that the soldier was on duty that Sunday and that he was at such and such a point and that he had occasion to fire. We took what were really very short statements identifying targets.*²⁶

²⁴ CW1.9

²⁵ Day 383/149/8

²⁶ C1835.5, paragraph 29

2B-39 The speed with which the statements had to be taken was an important factor.
WOI Wood observed:

The inability of the Army to issue an immediate and fully comprehensive explanation of the incident was damaging to relations with the community.²⁷

2B-40 The important interviews that led to the early RMP statements were therefore conducted by men who had a very limited understanding of what had taken place or where it had taken place, who were asking questions with a limited aim and who were under a considerable pressure of time.

USE OF JUNIOR PERSONNEL

2B-41 RMP corporals, the largely untrained SIB "aides,"²⁸ were relied on to a heavy extent in the statement taking process that followed Bloody Sunday. In many cases, the least experienced personnel were taking some of the most important statements.

2B-42 WOI Wood was questioned about this:

Q. The fact is: at the time you were involved, the SIB was overstretched with the work it had to do in the short period of time it had to do it?

A. Yes, we, we never had the luxury that we had an immense amount of time or resources.

Q. And you became reliant, to a heavy extent, on the use of your corporals, the junior personnel who were attached to your company?

²⁷ CW1.55, paragraph 4

²⁸ pace INQ 2052, Day 252/5/20

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A. They were invaluable, yes.²⁹

2B-43 Yet, according to him:

*None of these junior NCOs had received any formal training in law or investigative procedures. Some of them would have taken part in an in-theatre training course which was designed to instruct them in the procedures of taking statements from soldiers involved in IS incidents.*³⁰

2B-44 He accepted that the use of "some" in this paragraph indicated that there may have been corporals who had not received even the basic in-theatre training.³¹

2B-45 Sergeant Major INQ 1831 stated in his BSI statement:

*Obviously it would have been good practice to interview those involved in the shootings first, using the most senior and experienced investigators available. Members of the RMP did some interviewing and recording of statements as well as SIB investigators. They were trainees and would not have recorded statements from those Paras involved in the shootings but only back-up and corroborative statements.*³²

2B-46 However, he was quite wrong to suggest that junior personnel had not been used to take the important statements. He accepted in oral evidence that the good practice could not, in fact, have been followed in the wake of Bloody Sunday.³³

2B-47 What had happened was that statements were allocated as between fully fledged SIB investigators and RMP junior NCOs on a random basis. WO1 Wood explained:

²⁹ Day 383/154/6

³⁰ CW1.67, paragraph 2

³¹ Day 383/155/3

³² C1831.2, paragraph 11

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Shooting incident statements on Bloody Sunday were taken on a cab rank basis by whoever was available, whether an SIB investigator or [RMP corporal] statement-taker. Pressure of work and lack of resources made this necessary.³⁴

- 2B-48 The statements taken by two RMP corporals serve as good examples:
- 2B-49 Corporal INQ 1855 had taken thirteen statements by 1800hrs on 1st February 1972. All were from soldiers who had fired live rounds, although it is right to note that the final six were secondary statements.
- 2B-50 Corporal Brobson, who was only eighteen at the time and had only been attached to the SIB since the end of 1971, took statements from a number of the soldiers who had fired live rounds and from the commander of one of the platoons most heavily involved.³⁵
- 2B-51 The statements taken by Corporal Brobson and INQ 1855 are set out in the two tables OS7.59-60, reproduced below.

³³ Day 258/143/15

³⁴ CW1.62, paragraph 45

³⁵ Day 275/125/6

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2B-52 Statements taken by Corporal INQ 1855 (OS7.59)

Date/Time	Statement taken from
30.01.72	
2130	O
31.01.72	
0025	V
0130	C
0200	D
0240	F
0630	R
01.02.72	
no time given	K
1400	N
1430	O
1710	AC
1730	AD
1745	AB
1800	AA

2B-53 Statements taken by Corporal Brobson (OS7.60)

Date/Time	Statement taken from
30.01.72	
2130	Y
31.01.72	
0210	H
1235	M
1320	119
1400	E
1410	F
1420	G

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01.02.72	
1515	J
03.02.72	
2105	102
04.02.72	
1100	111
1140	161
1320	142
1455	153
1530	151
1600	107
2045	103

A LARGE NUMBER OF STATEMENTS WERE TAKEN EACH DAY

2B-54 The limited personnel available, the pressure of time and the many soldiers to be seen inevitably meant that individual members of the SIB/RMP took large number of statements each day.

2B-55 Corporals such as Mr. Brobson and INQ 1855 took very many statements indeed.³⁶ As appears from the table below, WO1 Wood had taken nine statements by 0200 hours on 31st January, in eight cases from soldiers who had fired live rounds.³⁷

Date/Time	Statement taken from
30.01.72	

³⁶ OS7.59-60, infra

³⁷ OS7.62

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2025	AC
2055	AD
2130	Z
2210	AA
31.01.72	
0030	Q
0100	A
0110	B
0130	017
0200	T

2B-56 Interviewing on this scale might allow for the gathering of basic information in a short period of time but it did not result in carefully produced statements. Often no more than half an hour was allowed for an interview with a soldier who had opened fire, notwithstanding the fact that a civilian may have been injured or killed as a result.

THE STATE OF SOLDIERS GIVING STATEMENTS SHORTLY AFTER THE EVENT

2B-57 The members of 1 Para. in question had left Holywood Barracks in the early morning of 30th January.³⁸ They had travelled to Londonderry and waited there for some time before deploying into the Bogside. It is their evidence that during the deployment they came under attack and responded with live fire. Many were then required to give witness statements late at night or in the early hours of the following morning. Soldiers from the 1st Battalion Royal Anglian Regiment (1 R ANGLIAN) and 22 Light Air Defence Regiment (22 LAD RA) were also questioned that evening and night.

³⁸ C1853.13

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2B-58 The soldiers would have been tired. It is common sense that a tired witness may not produce a good witness statement (and a tired interviewer may not take one).

2B-59 WOI Wood felt he could not win:

I was always aware that we might later be criticised, for example, by those representing the soldiers, whatever we did. If we saw the soldier early, there would be a suggestion that he was tired and confused and that we were not in possession of all the facts. If we left it until the soldier was rested, there would be someone who would claim that the soldier and his companions had had a chance to agree a story, or that the soldier's actual recollection had been changed by conversations with others who might have been involved.³⁹

2B-60 This did not unduly trouble him; his view was that the soldiers he and his colleagues saw were fit for interview. However, it is important to consider what kind of interview he was then considering. This was not a normal investigation; his overriding concern was to gather basic information as quickly as possible. In those circumstances, he was not prepared to wait to take statements from properly rested soldiers.

2B-61 It is also material that the attitude of soldiers to members of the RMP was inevitably one of apprehension.

2B-62 Soldiers *were* tired when they gave their statements, which were affected as a result. For example, Soldier C finished giving his statement to an RMP Corporal at 0130 hours on 31st January. He made certain corrections to it when he gave a further statement to the Treasury Solicitor on 5th March. He explained:

³⁹ CW1.59, paragraph 26

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*I would like to point out that when my statement was taken I had been up for over 20 hours and was exhausted. This could be why these mistakes arose.*⁴⁰

2B-63 Sir Basil Hall, solicitor to the Widgery Inquiry was aware of the problem. He stated:

*In my view the SIB statements made on the night of 30 January immediately after the events of Bloody Sunday were made under conditions which were likely to have been stressful and before any decision had been made to have a Tribunal of Inquiry. As stated in my memorandum of 16 March 1972 to Mr Ware,⁴¹ I did not regard such a statement given to the SIB as being a proper basis for examination in chief and for this reason fresh statements were taken from all relevant witnesses. As anyone who has taken witness statements will appreciate, there can be differences in the memory of events immediately after they occurred and after later consideration in less stressful circumstances. It does not surprise me therefore that there are some inconsistencies between what soldiers may have said to the SIB officers and that which is recorded in their statements to the inquiry.*⁴²

Denial of Judges' Rules Protections

2B-64 Time was of the essence. WO1 Wood noted:

*HQNI's requirement for the expeditious reporting of IS incidents was paramount. It was necessary to find a method of interviewing soldiers outside the constraints imposed by criminal legislation, mainly the Judges' Rules relating to the giving of a caution.*⁴³

⁴⁰ B68.018, paragraph 27

⁴¹ Mr Ware, Treasury Solicitor at paragraph 3, KH2.13

⁴² KH2.10 paragraph 31(a)

⁴³ CW1.57, paragraph 15

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2B-65 The soldiers, therefore, gave their statements under compulsion, without caution and without representation.

2B-66 WOI Wood acted deliberately to avoid such "constraints", notwithstanding the fact that many of the soldiers concerned had been involved in incidents in which live rounds had been fired with grave results.⁴⁴ As he said in oral evidence:

*We knew that was the only way it could be done...*⁴⁵

Statements given under Compulsion

2B-67 Following his posting to Lisburn, WOI Wood suggested to the Assistant Provost Marshal, Lieutenant Colonel INQ 1383 that a protocol be drafted to deal with the situation following an Internal Security incident. His proposal included:

*Military witnesses to be required to make their statements or reports as part of their military duties and to be under compulsion to answer questions put to them.*⁴⁶

2B-68 This proposal was adopted.⁴⁷

2B-69 WOI Wood's understanding was that, in so acting, he would not compromise the interests of the soldiers he interviewed because, following the case of *Smith*,⁴⁸ they could simply be re-interviewed with all of their legal entitlements:

⁴⁴ Day 383/158/7

⁴⁵ Day 383/159/2

⁴⁶ CW1.56, paragraph 10(iii)

⁴⁷ INQ 1384 at Day 304/140/18

⁴⁸ (1959) 43 Cr. App. R. 121

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The practical effect of this process was that the question of self-incrimination did not arise in any initial IS investigation into what had happened. The soldier's mandatory statement was not a bar to subsequent investigation undertaken in accordance with the Judges' Rules that would protect his interests.⁴⁹

2B-70 This is not the place to debate whether WOI Wood was in fact correct. We accept that this was his honestly held belief. However, in the second round of interviews that followed the establishment of the Widgery Inquiry, the element of compulsion was deliberately continued. Lieutenant Colonel Overbury recounted how:

... all the soldiers involved were ordered to attend a meeting at their barracks. I was introduced as an officer from the Army Legal Services. I then explained to them [what]my duties were in respect of the Inquiry ordered by the Prime Minister. I then formally ordered them, on the authority of the General Officer Commanding, Northern Ireland, to make such further statements as were necessary, to make all statements relating to the events under inquiry available to the Tribunal and to give evidence thereon at the Tribunal. I then told them that I had the authority to inform them any statement they had made or would make or any evidence they gave to the Tribunal could not and would not be used in evidence against them in any subsequent proceedings arising out [of] their actions on 30 January 1972.⁵⁰

2B-71 Whereas WOI Wood justified the use of compulsion on the basis that it was the only way he could get at the information in the time available to him, Colonel Overbury suggested its continuation was, paradoxically, to protect the soldiers. They were being protected from incriminating themselves in the very statements they were being forced to make.

⁴⁹ CW1.58, paragraph 20

⁵⁰ CO1.3, paragraph 12

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Soldiers were not cautioned

2B-72 WOI Wood's evidence was that:

*In no case did we take any contact report statement under caution.*⁵¹

2B-73 A caution was not necessary, he felt, where the interviewers were not making an assessment of criminal responsibility but were simply there to find out what had happened.⁵²

2B-74 The situation persisted once the Widgery Tribunal had been announced. The further interviews conducted by the SIB were again without the benefit of caution. Colonel Overbury commented:

*This investigation was not a criminal investigation. None of the soldiers had been charged with any offence and I was certainly not aware that any was even suspected by the military authorities of having committed an offence.*⁵³

2B-75 In oral evidence, he confirmed that he believed no caution was necessary:

Q: So far as that investigation is concerned, would any of those statements have been taken under caution?

*A: No, sir, because that would have been for the purpose of the Tribunal of Inquiry, and it was not necessary to caution soldiers for that purpose.*⁵⁴

⁵¹ CW1.2, paragraph 5

⁵² CW1.48

⁵³ CO1.42, paragraph 27

⁵⁴ Day 243/11/5

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Soldiers were not represented

- 2B-76 The soldiers received no advice in advance of their interviews and were not represented at them. Yet, the statements were being taken about an event that was bound to be controversial. In theory an interviewee could ask for his officer to be present at such interviews but in practice it did not happen at all.⁵⁵
- 2B-77 The interests of the soldiers were simply never considered during the RMP statement taking process.
- 2B-78 With hindsight, Colonel Overbury realised that the soldiers suffered as a result. His *Report of Army Tribunal Team* of 23rd March 1972 referred to the fact that:

*Individual soldiers were required to undergo interview and to make statements so often that their memory and/or morale was affected. It is clearly essential for the soldier to have placed on record his account of events as soon as possible by a competent investigator. He should not, thereafter, be interviewed for further particulars until all further statements have been considered and analysed ...*⁵⁶

and that:

*Consideration must always be given to the standing of the individual soldier at an early stage and legal advice should be obtained if there is any possibility that his evidence might incriminate him.*⁵⁷

⁵⁵ CW1.9, paragraph 55 and C2052.1, paragraph 6 Day 252/17/3

⁵⁶ CO1.8, m paragraph 29

⁵⁷ CO1.8, paragraph 31

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2B-79 It has now been established by the Ruling of the present Tribunal delivered on 20th July 1999, which rejected a claim by former soldiers to legal professional privilege in documents relating to the Widgery Inquiry, that, notwithstanding the grave allegations many faced, soldiers were not legally represented in those proceedings.

OTHER MATTERS RELEVANT TO THE STATEMENT TAKING PROCESS

Maps

2B-80 Marked-up maps were attached to many RMP statements, showing the position of the soldier in question and of his target. Military witnesses have been questioned in detail about the positioning of arrows on maps, on the incorrect assumption that the soldiers placed them there.

2B-81 WOI Wood's evidence was that the normal practice in Belfast during interview with a soldier was to refer to and mark up a map. The soldier would then sign the map at the end of the interview.⁵⁸ As far as Bloody Sunday was concerned, it had been WOI Wood's evidence that:

I had made enough copies of the plans of the area to enable one plan to be marked up in each interview and each of the investigators was given plans of the area to mark up and attach to the soldiers' statements. I cannot remember whether the plans had building names on it, but as the statements that we took contain place names, they must have done as neither the interviewees nor the interviewers would have known the names of the buildings otherwise.⁵⁹

⁵⁸ CW1.63, paragraphs 50 and 54

⁵⁹ CW1.9, paragraph 52

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2B-82 This was qualified during his oral evidence by his acceptance that locations may have been *described* in the body of the statements and not marked on a map:

The question with regard to the marking up of the maps, if they had had sufficient copies, then I would have expected them to use marked-up maps. If they had not had sufficient copies, then I would have expected them to use the map for explanation purposes and to make it clear in the text of the statement, exactly what they were talking about.

Q. One possible scenario is that there was a map that could be consulted or looked at for place names, street names and the like, but there were not sufficient copies of it for it to be marked up at that time?

A. That is a possibility.

Q. And that would, therefore, result in a description in a statement rather than a marked-up map?

A. Yes, in any statement in any case there would be the two, the soldier would describe in the body of his written statement where he was and where other people were and he would also mark that on the map if the map was available.⁶⁰

2B-83 The evidence strongly suggests that maps were marked up by persons unknown at some stage *after* the statements had been taken. Not one of the maps is signed by the relevant soldier.

2B-84 WOI Wood, therefore, stated:

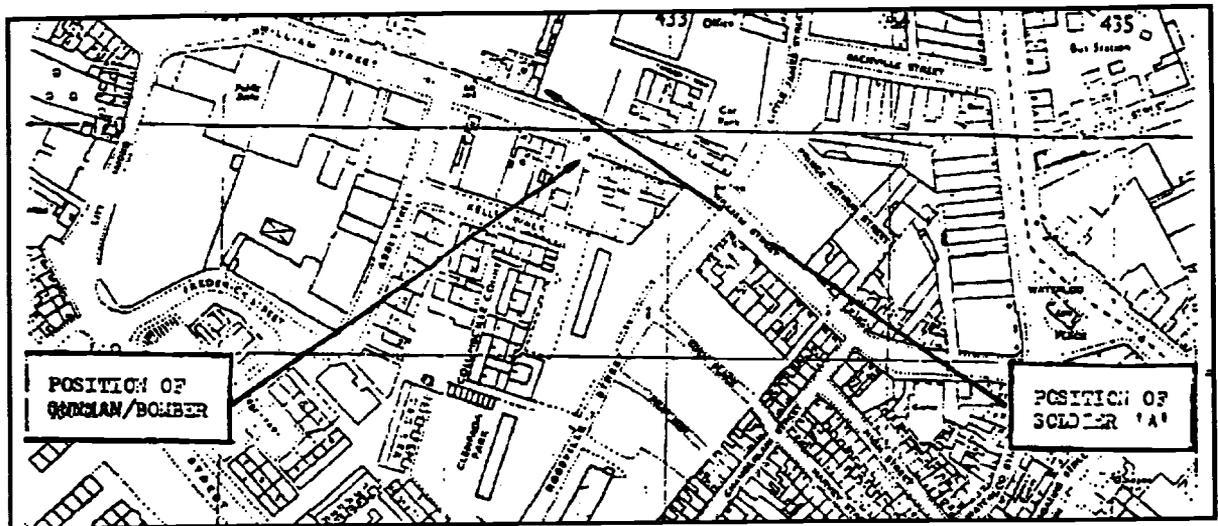
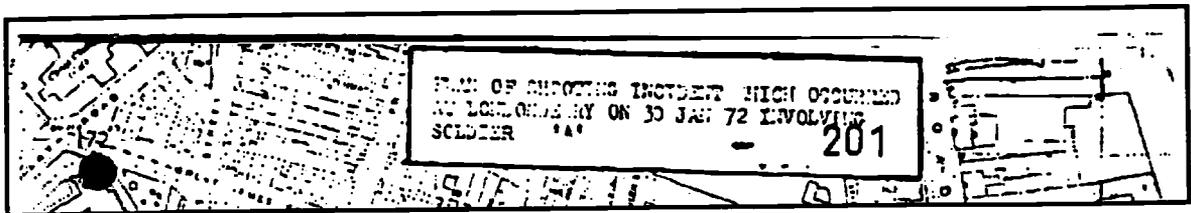
The possibility is that during the follow-up inquiry someone said, now we have got maps: we will use them and they were created at that time. Or it is possible that the maps were created from the text of the statement the soldier had made.⁶¹

⁶⁰ Day 383/160/2

⁶¹ Day 383/161/1

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2B-85 The case of Soldier A provides a good example of how and when maps were used by the RMP. His RMP statement contained a description of his own position and that of the nail bomber he engaged.⁶² It made no reference to a marked-up map. Indeed, his subsequent "SA" statement to the Treasury Solicitor included a correction of the *description* but again no reference to a map.⁶³ The map attached to Soldier A's statement is not signed by Soldier A and comes to us already typed up in a generic format.⁶⁴



2B-86 The title "Plan of Shooting Incident which occurred in Londonderry on 30 Jan 72 involving Soldier..." is the same as that which occurs on most RMP maps, with only the soldier's letter changing. Even the description of the

⁶² B1

⁶³ B9

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target is generic with: "Position of gunman/bomber" allowing for one of the options to be struck through. The typing, use and shape of boxes and shape of arrows remain the same throughout the RMP maps.

2B-87 Added complications arise from the fact that the map which was used for marking was not itself up to date. It shows, at the most critical location, buildings which were no longer there at the time of Bloody Sunday.⁶⁵ It is unfortunate that this was not appreciated at the time when the soldiers were being questioned, when the map was being marked up or when criticisms were made by Prof. Walsh and in Counsel to the Inquiry's Report concerning the precise location of an arrow in what was mistakenly described as the "alleyway".

2B-88 There is evidence to support WOI Wood's suggestion that maps would have been available at interview to consult – if not to mark up. However, the maps used at that stage may not have been very clear. Soldier A, for example, referred to the confusion caused by the use of "a one inch map" on which he could not locate his position exactly.⁶⁶

2B-89 It was Colonel Overbury's view that maps were generally not as helpful to the soldier as photographs. His *Report of Army Tribunal Team* concluded:

*Much greater use must be made of photographs in the interviews of witnesses, whose accurate recollection of facts is more likely to result from the study of photographs than from maps.*⁶⁷

⁶⁴ **B3**

⁶⁵ The laundry building on the south side of William Street is shown on the RMP map but was no longer standing at the time of Bloody Sunday, as photographs such as P201 demonstrate.

⁶⁶ **B20.026**

⁶⁷ **CO1.8, paragraph 30**

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2B-90 For all of these reasons, it would be dangerous to place much reliance on the RMP maps. It would certainly be unjust to hold individual soldiers accountable for apparent discrepancies that exist between RMP maps and subsequent descriptions or marked-up photographs.

Timings

2B-91 It is now apparent from the evidence of WOI Wood that timings which appear in RMP statements may have come from his briefing, rather than from the soldiers themselves.

2B-92 His evidence was that:

I would have asked at Brigade HQ what the sequence of events was and then I would have briefed my men on the basis of that information. I don't think I was given the logs; I think the information was merely passed on orally. Therefore, the timings of events in the statements would have been from briefings that I would have given.⁶⁸

2B-93 He confirmed this in oral evidence.⁶⁹

Terminology

2B-94 Where relevant, a soldier would usually inform his interviewer that he had seen a specific type of weapon, such as a rifle. However, it was RMP policy at the time to replace specific references with less definitive terminology, for reasons WOI Wood explained in his oral evidence.

⁶⁸ CW1.8, paragraph 51

⁶⁹ Day 383/128/21

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2B-95 For example, the RMP statement of Soldier M refers to his sighting of two crawling men pushing:

*long black stick shaped objects.*⁷⁰

2B-96 Soldier M commented about this phrase in his Eversheds statement:

*I am sure I would not have said this; I would have been quite firm in that interview that the two men were carrying what I was sure to be weapons.*⁷¹

2B-97 Corporal Brobson, who took M's statement, agreed that the phrase might have come from him and not from M.⁷²

2B-98 WOI Wood took the statement of Soldier AC, which records both:

I saw he was holding a long straight object in both hands. He had hold of the object as if it were a rifle.

and:

*I saw a puff of smoke from the long straight object and heard the sound as of a shot fired.*⁷³

2B-99 WOI Wood was asked during his oral evidence:

Q. Is that the kind of language that would have been used by the soldier or is that the type of non-leading terminology something that you might have inserted?

A. The soldier would say it was a rifle. He was quite clear it was a rifle from the outset. We had had situations put to us that the man may well have been carrying a walking stick in an

⁷⁰ B348

⁷¹ B372.007, paragraph 42

⁷² Day 275/124/12

⁷³ B920 & CW1.32

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unorthodox manner, or whatever. If we had said in the statement that the man was carrying a rifle when he was first seen at some 100 yards or whatever, someone would say what sort of rifle was it, bolt or piston-operated, did it have a long or short magazine, straight or curved magazine -- if the soldier said it was this or that or the other, then the accusation would be that he had the eyes of an eagle and that was totally impossible. If he said he could not remember it had a long or straight magazine, the question would come back that he was obviously mistaken and therefore it must have been a walking stick.

...

So we adopted the position that what was seen was a long straight object, if it was talking about a rifle. If it was a hand gun, then obviously we had a different terminology for that. If it was a blast bomb, we had different terminology for that...⁷⁴

2B-100 The absence of a reference to a specific weapon in an RMP statement does not, therefore, signify that the soldier concerned was unsure of what he had seen. Furthermore, it does not follow that his reference to a specific weapon in a subsequent statement marks a hardening of his evidence.

2B-101 We will, where appropriate, comment on examples of the questioning of individual soldiers on the misconceived basis that he choice of phrases such as "long black stick shaped object" was theirs.⁷⁵

CONCLUSION

2B-102 RMP statements were gathered for the purpose of getting basic information up the chain of command or to the Army Widgery Legal Team as quickly as possible. They were never intended to stand up to the detailed scrutiny of a public inquiry.

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2B-103 In many cases, junior RMP NCOs were detailed to take statements, including some of those from the soldiers most involved in the day's events. Individual interviewers had to take large numbers of statements over a short period of time. The end result was often a brief statement which did not cover all of the potentially relevant evidence the soldier had to give. Soldiers gave interviews under compulsion, without caution and without the benefit of legal advice or representation. Interviews that took place on the night of Bloody Sunday and in the early hours of the next day were conducted with soldiers who were inevitably tired, by investigators who were armed with little background information.

2B-104 In those circumstances, it would neither be safe nor fair to hold a soldier accountable for all inaccuracies in, omissions from, or inconsistencies arising from his RMP statement or statements.

2B-III THE WIDGERY INQUIRY STATEMENTS

INTRODUCTION

2B-105 Mr Basil Hall (later Sir Basil Hall) of the Treasury Solicitor's Department was appointed as Solicitor to the Widgery Tribunal. In that capacity he was responsible for the gathering of evidence for the Tribunal.

2B-106 The evidence was produced in the form of witness statements obtained as a result of interviews conducted under the direction of Mr Hall by lawyers from the Treasury Solicitor's office, Mr. John Heritage, Mr. Chris Leonard, Mr. Michael R. Hirst⁷⁶ and in some cases by Mr Hall himself.⁷⁷ The Tribunal has

⁷⁴ Day 383/150/14

⁷⁵ See Chapter 8B.

⁷⁶ KH6.2 paragraph 4.

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copies of anonymised versions of all of these statements. These copies are all unsigned and undated. The original statements (whether signed or not), the manuscript drafts and the notes of interview have not been traced but the Tribunal has heard evidence of the procedures that were adopted.

2B-107 It is clear that the Solicitor and his staff worked in very difficult circumstances and under great pressure of time. In a very short period, they interviewed and obtained statements from 52 civilians, nine RUC Officers, 46 media witnesses and 58 military witnesses.⁷⁸ The statements from military witnesses were given the reference prefix S.A. (Statement Army) and a number.

THE PURPOSE AND PROCEDURE.

2B-108 After referring to the statements taken by the RMP, to which he referred as "SIB statements", Mr. Hall in his post-Widgery Report said:

I would not myself regard a statement given to SIB as a proper basis for an examination in chief and, accordingly, fresh statements were taken from all whom it seemed probable would be called...⁷⁹

2B-109 The statements were prepared as the evidence in chief but, in the event, the military witnesses were taken through their evidence by Counsel representing the Ministry of Defence.

2B-110 Guidance notes for those involved in the process had been prepared by Mr. Hall.⁸⁰ The notes specified that questions would be based on information the

⁷⁷ KH2.3 paragraph 11.

⁷⁸ KH2.15, paragraphs 3,5,6 and 8.

⁷⁹ KH2.13.

⁸⁰ KH2.21-23.

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Tribunal had received, but witnesses were not to be shown copies of statements by other witnesses or any other material in the possession of the Tribunal.⁸¹

2B-111 Those taking the statements of soldiers had access to the RMP statements that had been made previously by most of the relevant soldier witnesses.⁸² The interviewer was usually on his own⁸³ and the interview took the form of questions and answers. The soldiers were usually accompanied by an Officer from Army Legal Services although that representative was not acting on behalf of the soldier. Colonel Overbury stated in his evidence:

Q. Simply to help Lord Saville with his question, do you recall whether there was any debate, despite the strained relationships between Counsel and the solicitors involved, as to whether anybody was acting for the individual soldiers?

A. No, sir. It was impossible for the Directorate of Army Legal Services to act for individual soldiers. They cannot do it. They have to be represented by outside Counsel.

Q. That of course did not happen in this case?

A. No, sir.

LORD SAVILLE: And the Directorate of Army Legal Services would know that. would he not?

*A. He would, sir, yes.*⁸⁴

2B-112 Mr. Heritage thought that he made a verbatim note, by way of statement, and read it over to the witness and that thereafter a fair copy would be made for signature. In one instance, he believes a typist may have been present to take

⁸¹ KH2.23.

⁸² KH6.3, paragraph 6

⁸³ KH2.4, paragraph 12

⁸⁴ Day 243/125/7 -20

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down the statement for immediate signature or forwarding to Counsel as a corrected draft and in another case, (Soldier 027), the initial draft was prepared from the RMP statements.⁸⁵

2B-113 The position with regard to signature of the statements is far from clear. No signed versions have been produced but both Mr. Hall⁸⁶ and Mr. Heritage⁸⁷ believe the statements were signed. There was some speculation that statements were sent to Army Legal Services for them to obtain signatures but there is no firm evidence of this.⁸⁸

THE SPEED OF THE EXERCISE.

2B-114 The Widgery Tribunal was formally opened on the 14th February 1972 and a direction was made to the effect that all witnesses be interviewed and statements taken from them. The oral hearings began on the 21st February and were underway before the military witnesses were interviewed and made statements.

2B-115 There was clearly intense pressure on those taking the statements. Mr Heritage speaks of the team

... often struggling to keep pace with the large number of witnesses who were giving evidence each day⁸⁹

and states:

⁸⁵ KH6.4, paragraph 8

⁸⁶ KH2.4, paragraph 15

⁸⁷ KH6.4, paragraph 8

⁸⁸ Day 250/159/18

⁸⁹ KH6.2 paragraph 4

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I retain a faint recollection that on occasions, under heavy pressure of time, we shortened our procedure either by having a typist present to take down the statement for immediate signature or by forwarding the statement to Counsel in the form of a corrected draft. In at least one case (Soldier 027) I proceeded by using the SIB statement as a basis, obtaining and recording more detailed evidence on important points.⁹⁰

2B-116 Mr. Hall, in his report dated 16th March 1972, outlined lessons to be learned from events and suggested more people should have been involved in assembling the evidence. He said:

In the situation in which we were, we were at time only one day ahead of the Tribunal and in some cases witnesses were examined on draft, unsigned statements.⁹¹

CONCLUSIONS

2B-117 These statements were drafted by lawyers and not by the witnesses. They were the product of interviews subject to severe time constraints conducted by interviewers who were under pressure to produce the statements quickly from soldiers who had received no legal advice but who had effectively been ordered to make them. There is some evidence to suggest that not all of them were signed by the witnesses, but the information available does not reveal which ones may have fallen into this category. Having regard to all of the circumstances, it would be unfair for the Tribunal to hold against individual soldiers the fact that certain matters are not contained in their statements.

⁹⁰ KH6.4, paragraph 8

⁹¹ KH2.14.

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2B-IV ORAL EVIDENCE TO THE WIDGERY INQUIRY

- 2B-118 The present Inquiry has the advantage of a complete transcript of the oral evidence given to the Widgery Inquiry in Coleraine in 1972.
- 2B-119 A number of witnesses before the present Inquiry have stated in their evidence that, while they now have no recollection of a given event on Bloody Sunday, if it was referred to in their evidence to the Widgery Inquiry then it did in fact occur.
- 2B-120 In assessing the weight which should be accorded to the different categories of evidence before it, the present Tribunal may consider that, in general terms, the oral evidence of witnesses before the Widgery Inquiry in 1972 is likely to have been founded on a more accurate recollection of what occurred than more recent accounts. Of course, a witness could have been mistaken both in 1972 and today and a witness who was intent on lying would have been as capable of attempting to do so in 1972 as today; but a truthful witness would have been much more likely in 1972 to have had an accurate recall of what occurred.
- 2B-121 Whatever view is taken of the many criticisms which have been made of its procedures, the Widgery Inquiry undoubtedly had the advantage of having been convened immediately after the events of Bloody Sunday. As a result, the events would have been fresh in the minds of those who gave oral evidence.
- 2B-122 Moreover, the oral evidence to the Widgery Inquiry was tested by cross examination. It is, of course, the case that that Inquiry has been criticised on the ground that the questioning of soldiers might have taken a different course in certain particulars if Mr. McSparran had been supplied with copies of the statements made by soldiers to the RMP. However, having regard to the nature of those statements, the purpose for which they were produced and the circumstances in which they were taken, it is our submission that the

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significance of those statements has been greatly exaggerated for reasons considered at length in Section 2BII, above.

2B-123 While it is the case that certain difficulties have been experienced in understanding some parts of the evidence given in 1972 - we have in mind, for example, the failure to trace the scale model of the Bogside produced for the Widgery Inquiry and the difficulty in interpreting precise locations referred to by witnesses - the present Inquiry is, in our submission, likely to find the oral evidence to the Widgery Inquiry of assistance.

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CHAPTER 2C

EVIDENCE COLLECTED BY THE PRESENT INQUIRY

2C-1 DOCUMENTARY EVIDENCE FROM GOVERNMENT SOURCES.

CONTEMPORANEOUS GOVERNMENT DOCUMENTS

2C-1 The present Inquiry has the great advantage of having received disclosure of contemporaneous documents produced by the United Kingdom Government and the Government of Northern Ireland, relating to the situation in Northern Ireland and in Londonderry in particular, in the months preceding Bloody Sunday, the prospect of and planning for the civil rights march and the immediate aftermath of Bloody Sunday.

2C-2 These documents bear a range of markings. Many are marked "Secret" or "Perimeter". In the normal course of events these documents would not have been expected to be disclosed to the public for many decades, if ever. As Mr. Christopher Clarke QC observed in opening:

All of this material was, in 1972, highly secret. Most of it is stamped with the words "secret", "restricted", or "Perimeter" or all three. But for the existence of this Inquiry much of it would still be either secret or unknown.¹

2C-3 Some idea of the range of documents disclosed is apparent from the following remarks of Mr. Clarke in his opening statement.

The materials to which I have been referring at some considerable length include the following: minutes of GEN 47, the relevant Cabinet Committee; minutes of the Northern Ireland Cabinet; minutes of the Joint Security Committee of Northern Ireland; minutes of the Director of Operations Committee of Northern Ireland; minutes of the Northern Ireland Policy Group or Northern Ireland Policy

¹ Day 3/98.

*Committee of the Ministry of Defence; current situation reports of the Ministry of Defence; intelligence summaries of Headquarters Northern Ireland; operational summaries of Headquarters Northern Ireland; internal security instructions from Headquarters Northern Ireland; directives from the Commander of Land Forces and an appreciation of the military situation by him; operational directives for the headquarters of the 8th Infantry Brigade; intelligence summaries of the 8th Infantry Brigade; papers and briefing notes at the highest level both in the military and in Government, including but not limited to, briefs to the Prime Minister of Great Britain, to the Secretary of State for Defence and others from, amongst others, the Chief of the General Staff and the Permanent Secretary to the Ministry of Defence.*²

- 2C-4 As a result, the present Inquiry is as well placed as it could be at this late date to assess the conduct of the United Kingdom and Northern Ireland Governments in relation to Bloody Sunday.

DOCUMENTS RELATING TO THE REPRESENTATION OF THE ARMY BEFORE THE WIDGERY INQUIRY

- 2C-5 The disclosure provided by the Government included documents relating to the representation of the Army before the Widgery Inquiry in 1972 which remained in the possession of the Government.
- 2C-6 As a result, this Inquiry has been given copies of all surviving documents relating to the representation of the Army before the Widgery Inquiry, including briefs to counsel and notes prepared by counsel. The Inquiry has disclosed this material to all interested parties.

INTELLIGENCE MATERIALS RELATING TO TERRORIST ACTIVITIES.

- 2C-7 In January 1999, at an early stage in this Inquiry Mr. Lawton requested that the Inquiry should, as a matter of urgency, approach the security

² Day 3/97 to Day 3/98

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services, and particularly GCHQ, with a view to inviting them, and if necessary requiring them, to produce whatever information they possessed in relation to the activities of terrorist organisations which was relevant to the Inquiry's search for the truth.³ This request was repeated on a number of occasions thereafter.

2C-8 On 21st February 2001, Mr. Tate, the Solicitor to the Inquiry, wrote to the interested parties setting out the Tribunal's "preliminary thoughts" on the issue of civilian witnesses and intelligence material. The interested parties were invited to submit written submissions on this issue in advance of an oral hearing. That hearing, at which the security services were represented, took place in May 2001 and resulted in a Ruling of the Tribunal dated 1st June 2001.

2C-9 In that ruling the Tribunal decided to seek disclosure of certain categories of directly relevant intelligence material from the security services. It rejected the submission on behalf of some of the families, that it should not seek disclosure of this directly relevant material.

We cannot accept this submission, since it seems to us that we would be in derogation of our duty to conduct as

³ Letter from Mr. Lawton to Mr. Ridd, Solicitor to the Inquiry, 13th January 1999.

"It seems to me therefore that, as it appears that the Tribunal has not been successful in identifying any of the gunmen by interviewing the civilian witnesses so far, it should now as a matter of urgency approach the security services, and particularly GCHQ, with a view to inviting and, if necessary, requiring them, to produce whatever relevant information is available. By "relevant information" I have in mind particularly not only information from sources within the Bogside (be those informers, phone taps, other intercepted communications, information obtained during subsequent investigations, or any other source) about what actually happened and which civilians were involved in firing shots on Bloody Sunday, but also any information (whether obtained before or after Bloody Sunday) relating to the planning of activities of and by, for example, the IRA on Bloody Sunday."

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thorough an Inquiry as possible if we did not at least investigate and consider what material of this nature was held by the agencies.⁴

It rejected a submission that calling for this material would lead people to believe that it was not acting in an impartial and independent way and added

The fact that the Tribunal has asked the agencies to produce directly relevant material does not, as it seems to us, indicate any partiality or lack of independence, but merely a desire to explore all avenues of inquiry properly open to us.⁵

2C-10 The Tribunal had identified the following categories of directly relevant material.

- (1) "Material that would add to the Inquiry's knowledge and understanding of the events of Bloody Sunday. In other words information that throws any light either on the plans made by any paramilitary organisation for Bloody Sunday or on the actual events of that day."

The Tribunal observed that the agencies had already been asked to produce this material and had assured the Inquiry that it had been produced.

- (2) "Material that would identify those persons who are not presently witnesses before the Inquiry who might reasonably be supposed to be likely to have, or to be able to provide, information about the planning of the paramilitary organisations for Bloody Sunday or about the actual events of the day."

⁴ At paragraph 37

⁵ At paragraph 39.

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The Tribunal considered that this was too broad a formulation and that it would be a virtually impossible task for the agencies to search for this material. It therefore asked the agencies, at least in the first instance, to confine their search to material in the files of those individuals identified to them by the Inquiry, namely those individuals from or in respect of whom the Inquiry has or expects to have some evidence about Bloody Sunday.

- (3) "Material in relation to the Inquiry's witnesses that contains information that tends to show or which permits one reasonably to suppose that those witnesses have, or are able to provide, information about the planning of the paramilitary organisations for Bloody Sunday or about the actual events of the day."

The Tribunal requested disclosure of this material.

2C-11 The Tribunal observed:

Despite the difficulties and delays that will be likely to attend the process, we repeat that it seems to us that our duty to explore all available avenues that could extend our knowledge of what happened on Bloody Sunday must lead us at least to start on the process of discovering whether the agencies have any directly relevant material, while appreciating that ... this may cause delays and we may not in the end be able to use some at least of that material.⁶

2C-12 The Tribunal correctly identified the crucial importance of this material. Its importance was increased by the fact that the Inquiry was clearly experiencing difficulty in establishing from civilian witnesses who had been involved in the various manifestations of the IRA at the time of Bloody Sunday. However, this fact also limited the effectiveness of the search requested under category 2.

⁶ At paragraph 48

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2C-13 However, the Tribunal declined to seek disclosure of certain other material which, the soldiers' representatives had maintained was directly relevant to the Inquiry's search for the truth. It did so in the following terms.

There remains the suggestion raised by the soldiers that we should add to the categories of relevant material any information in the possession of the agencies which relates to the general practice of paramilitary organisations in Northern Ireland, for example their tactics, their use of vantage points and sniper positions, their use of crowds as cover, or their procedures for dealing with casualties or fatalities. As to this we accept the submission of Counsel for the agencies that this would again require a trawl through their entire files on the troubles in Northern Ireland. We further accept that a suggested limitation to the years 1968-1972 inclusive would be of no real assistance, since the files are not kept in date order. If any such information appears from materials relating to the list of identified individuals to which we have referred, then it seems to us that it can and should be provided, but to go beyond this seems to us to be a wholly impracticable suggestion.⁷

2C-14 In our respectful submission, this part of the Tribunal's ruling has resulted in a most serious lacuna in the information which might have been made available and, as a result, has impaired the Inquiry's ability to discover the truth of what occurred on Bloody Sunday.

2C-15 Unfortunately, there was, even following the Tribunal's ruling of 1st June 2001, a very considerable delay in making the material provided by the agencies available in any form to the interested parties. We do not underestimate the very considerable volume of work involved in producing, examining and redacting these documents. However, the fact that intelligence material on civilians became available only at a late stage has had a number of serious consequences for the Inquiry.

⁷ At paragraph 48

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2C-16 No provision had been made in advance for the allocation of ciphers to individuals who were now identified as having had involvement with terrorist organisations. When ciphers were allocated to these individuals, it was not possible to employ the same ciphers to link the individuals with other material before the Inquiry, which had been disclosed to the interested parties and the public, in which they had been identified by name. As a result there has been not only a loss of transparency in the Inquiry's proceedings but a loss of information to the interested parties which could have been avoided.

2C-17 The impact of these matters on the proceedings before the Inquiry is considered subsequently in Sections 2D and 2F.

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2C-II BLOODY SUNDAY INQUIRY STATEMENTS

INTRODUCTION

2C-18 Following the creation of this Inquiry, a huge number of witness statements "BSI statements" were taken by solicitors acting on behalf of the Inquiry. The vast majority of these were taken by Eversheds, Solicitors.

2C-19 The passage of time and its effect on memory are inevitably substantial obstacles in the path of this Inquiry's search for the truth of what occurred over thirty years ago. In this section we address the difficulties and dangers inherent in such an investigation after so many years, the procedures adopted by Eversheds in taking statements and the status and reliability of those BSI statements which are evidence before the Inquiry but which have not been tested by calling the witness to give oral evidence.

PASSAGE OF TIME AND ITS EFFECTS ON MEMORY

Introduction

2C-20 In 1972, Noreen Donnelly gave a statement in which she recorded a number of events that she witnessed on Bloody Sunday, including these startling statements:

... a man said to me "Look at the man on the flats with a gun" But I was unable to see him...

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As I was about to enter the arch at Kells Walk a boy told me to go back. Don't come in here as the boys have guns up in the flats. There are about thirty...⁸

By the time she gave her BSI statement, there was not much of the day's events that she could remember:

I'm afraid I have very little memory of events on Bloody Sunday and given that I made a statement at the time ... I see little point in going over this old ground. The detail in my original statement will obviously be so much better than anything I could remember today, even though I can't recall any of the events recorded in it.

2C-21 She identified a number of problems associated with an attempt to recall memories so long after the event:

The problem is that these events took place 30 years ago. That combined with the fact that everyone in Derry has seen television footage from Bloody Sunday for years and years means it is, in my view, useless to try and remember anything independently now. I'm very suspicious of long term memory anyway because I know it can play tricks. I do feel guilty that I can't remember more but I have tried and I simply can't.⁹

She added:

I am totally amazed at people who say they can remember it all. I know a terrible thing like this affects people's memory in different ways and sometimes you block things out but, quite honestly, after thirty years I am surprised anyone can remember anything.¹⁰

2C-22 The European Court of Human Rights recently commented on the difficulties inherent in a factual investigation into events which occurred many years ago. In *Finucane v. United Kingdom* (Application 00029178/95), Judgment of 1st July 2003, the Court held that the United

⁸ AD127.001

⁹ AD127.002 paragraph 2

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Kingdom was in breach of the procedural obligation imposed by Article 2 ECHR. However, in considering the appropriate remedy it observed:

As regards the applicant's views concerning provision of an effective investigation, the Court has not previously given any indication that a Government should, as a response to such a finding of a breach of Article 2, hold a fresh investigation into the death concerned and has on occasion expressly declined to do so (Ülkü Ekinci v. Turkey, no. 27601/95, judgment of 16 July 2002, § 179). Nor does it consider it appropriate to do so in the present case. It cannot be assumed in such cases that a future investigation can usefully be carried out or provide any redress, either to the victim's family or by way of providing transparency and accountability to the wider public. The lapse of time, the effect on evidence and the availability of witnesses, may inevitably render such an investigation an unsatisfactory or inconclusive exercise, which fails to establish important facts or put to rest doubts and suspicions. Even in disappearance cases, where it might be argued that more is at stake since the relatives suffer from the ongoing uncertainty about the exact fate of the victim or the location of the body, the Court has refused to issue any declaration that a new investigation should be launched (Orhan v. Turkey, no. 25656/94, judgment of 18 June 2002, § 451). It rather falls to the Committee of Ministers acting under Article 46 of the Convention to address the issues as to what may practicably be required by way of compliance in each case (cf. mutatis mutandis, Akdivar and Others v. Turkey, judgment of 1 April 1998 (Article 50), Reports 1998-II, p. 723, § 47).

2C-23 We draw particular attention to the Court's observations on the passage of time and its effect on evidence. The Court was there concerned with the murder of Mr. Finucane which took place on 12th February 1989, some 14 years before the judgment. In the present Inquiry the Tribunal is asked to make findings in relation to events which occurred more than twice as long ago.

¹⁰ AD127.003 paragraph 9

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2C-24 The deleterious effect on a witness's memory of the passage of time, the risk that recollections may become contaminated by information received from other sources and the fact that the memory can play tricks create substantial problems for this Inquiry. These matters are considered in greater detail below.

Memory Loss

2C-25 Memories fade over time. The earliest BSI statements were taken over a quarter of a century after the events described in them. Statements were still being taken well over thirty years after Bloody Sunday. It is hardly surprising, therefore, that the solicitors taking them were faced with a number of witnesses who could no longer recall what they had seen on the day.

2C-26 For the purposes of submissions regarding memory loss, we have deliberately considered witnesses who gave accounts, however brief, in 1972. In that way comparison can be made between their description of a specific event then and the state of their recollection now.

2C-27 Detective Sergeant Cudmore made a statement shortly after Bloody Sunday. It records that he was on duty in the area of Great James Street where he witnessed rioting, the use of baton rounds and gas, and the deployment of Paratroopers through military barriers. He also heard low velocity gunfire.¹¹ Yet he retains no memory of this at all:

I can see by reading a statement which I made at the time, that I was on duty in Great James Street on the day of the march. I can recall coming back to Londonderry from Belfast on the morning of the march. There was mammoth traffic jams because the Army had set up road blocks and I was concerned that I would be late starting work. However, apart from this, I have no recollection of what happened on

¹¹ JC26.011

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*the afternoon of the march. Although my statement shows that I was on duty in the City Centre that afternoon, I have no memory of being there to police the march.... I have no memory of seeing the Civil Rights march, and I honestly have no recollection of what I heard and saw that afternoon.*¹²

2C-28 He further has no recollection of interviewing six of the Bloody Sunday injured in the weeks that followed.¹³

2C-29 Ken Murphy witnessed the shooting of a youth in Glenfada Park on Bloody Sunday, according to the brief statement he made the next day.¹⁴ He gave his BSI statement twenty-eight years later, by which time he could no longer recall what he had seen:

4. I went to the flat a couple of weeks ago and stood outside for 20 minutes or so trying to recall what I had seen on Bloody Sunday. I am afraid it was a total blank.

*5. I gave a statement in 1972 about what I saw on Bloody Sunday, and this is attached. Now I can remember absolutely nothing about what is described in this statement, nor giving the statement itself. However, if I said it at the time then it was true.*¹⁵

2C-30 Perpetua Gray's brief statement from 1972 recounts events she witnessed in Barrack Street.¹⁶ Her BSI statement was taken almost thirty years after Bloody Sunday.¹⁷ She could recall nothing of the events when she gave that statement:

As I have said, I know I ended up in a house in Barrack Street but I don't remember anything about coming out of the house or being with Brenda Doherty or seeing any soldiers. Brenda says in her statement at Appendix 2 that I

¹² JC26.005

¹³ JC26.007 paragraph 13

¹⁴ AM457.004

¹⁵ AM457.3; signed 31st January 2000

¹⁶ AO63.1

¹⁷ Statement signed 26.10.01

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talked to a soldier. I have no recollection of this but it sounds like the sort of thing I would do. I was certainly bold in those days. I don't remember the incident referred to the statement at Appendix 1 involving an injured man or the man being searched or the flash of the gun in the soldier's hand. All I have is a very clear memory that I had defied my father in the first place [by going on the march] and I had to get home before he did and even if I did get home in one piece I would never be able to tell anyone where I'd been.¹⁸

2C-31 The 1972 account now seems alien to her:

My husband has said to me that in the 24 years we've been married, not once can he remember that day ever being mentioned between us.... When he heard about the statements that mentioned my name he said to me "How could you have forgotten this?" I agree with him - if all that happened how is it I don't remember it? It feels as though these are somebody else's recollections, not mine.¹⁹

2C-32 The eight-line statement Margaret Gallagher gave shortly after the event records that she saw two people being shot on Bloody Sunday. She no longer recalled these significant incidents when solicitors took a statement from her for the purposes of this Inquiry, almost thirty years later. As in the case of Perpetua Gray, the statement she gave in 1972 is now unfamiliar to her:

5. It never occurred to me that anyone would want to talk to me about Bloody Sunday until some fella came to find me. I was actually at my brother's house when he called and he said that I had made a statement already and therefore I should come and give evidence to the new inquiry. At first I was so convinced I hadn't made a statement I said to him that they must have the wrong person....

7. I really would like to help the new inquiry and I can understand why, having seen the attached statement, people might think that I have some interesting recollections of the

¹⁸ AO63.003 paragraph 9

¹⁹ AO63.003 paragraph 10

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*day. However, this statement just doesn't register with me at all.*²⁰

2C-33 Ken Murphy, Perpetua Gray and Margaret Gallagher had only brief 1972 statements from which to try, unsuccessfully, to refresh their memories. Another witness was confronted with photographs of himself actually taken on Bloody Sunday – but could still not recall the incident depicted.

2C-34 It was suggested in the course of the proceedings that Ciaran Donnelly's photograph P641 shows the stage at which Michael Kelly's body had been brought from the rubble barricade around the gable end of Glenfada Park North. Patrick Moyne has identified himself (indicated with an arrow) next to the group carrying the body.²¹



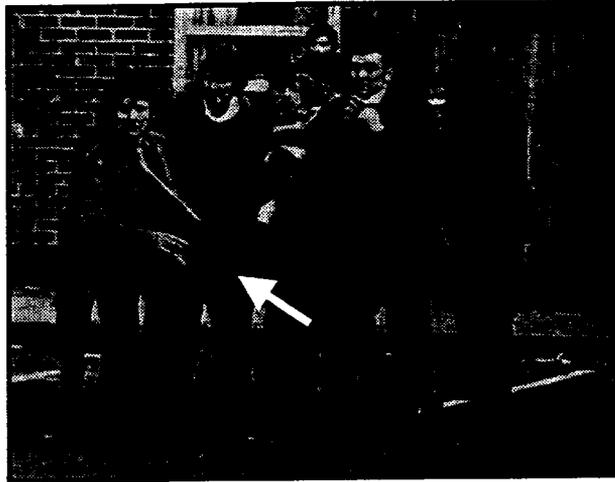
2C-35 P642 was taken by the same photographer shortly afterwards, as Michael Kelly's body was carried within Glenfada Park North. Again, Mr. Moyne has identified himself with the group in the photograph (indicated with an arrow).²²

²⁰ AD83.002; statement signed 23.10.01

²¹ Day 162/31/8

²² Day 162/32/09

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2C-36 Mr. Moyne was apparently interviewed shortly after Bloody Sunday. The short note produced of the interview includes the following:

Pat Moyne, pictured in Irish Times pic carrying Kelly body across glenfada park says that he believes that the body was put down at the entrance to the alley way leading into abbey park when firing started in glenfada. it was not until there was a lull in the firing that the body was taken in to No. 8 Abbey Park. ...²³

2C-37 Yet Mr. Moyne's BSI statement makes reference neither to the photographs nor to the events described in the interview note. It transpires that, notwithstanding the photographs and the note, Mr. Moyne no longer recalls having helped to carry a body.²⁴

2C-38 This difficulty is particularly acute in the case of those witnesses whose first recorded accounts of Bloody Sunday were given in their BSI statements. They have faced particular difficulties in recalling events that took place so many years ago. This is for the obvious reason that they

²³ AM444.008

²⁴ Day 162/32/18

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gave no contemporary statements or interviews from which they could refresh their memories.²⁵

Memory Contamination

2C-39 The loss of memory over time may be the most obvious of the difficulties faced by those taking statements for the purposes of this Inquiry, but it is certainly not the only one. Between Bloody Sunday itself and the provision of the BSI statements, witnesses' recollections have also been affected, or "contaminated", by information from many other sources. The witnesses have, consciously or subconsciously, often found it difficult to disentangle their own recollections from information they have since received from a variety of sources. For example, they may have discussed events with others involved; or read newspaper articles and books about the day, or watched television news, documentaries or films about Bloody Sunday.

2C-40 For the purposes of these submissions we refer to the evidence of three witnesses closely affected by the events of Bloody Sunday. They have had good reason to interest themselves in the large body of information produced since the day. Consequently, they are good examples of witnesses whose recollections are at risk of contamination.

2C-41 Michael Bradley, who was shot on Bloody Sunday, was quite clear about the dangers involved in giving a BSI statement so long after the event:

MR CLARKE: Mr Bradley, do you have with you your statement which was sent to the Tribunal in September 1999?

A. Yes, I have a statement here in front of me.

²⁵ See, for example, the evidence of Manus McDaid (AM 169; Day 407/124/9) considered below at paragraph 2C-53.

Q. I believe you want to make it clear at the start that the statement represents your best recollection of the events of Bloody Sunday, but that having read numerous articles and seen numerous programmes and talked to numerous people, you find it difficult to determine what you actually remember and what you have learned as a result of your researches; is that right?

*A. That is correct.*²⁶

2C-42 Mr. Bradley was a particularly important witness. He was interviewed by Eversheds and he signed a BSI statement in which he said that his recollection was as clear as crystal and that he could see the scene as clear as if it was yesterday. (AB66.4, AB66.5, paras. 15, 17.) Nevertheless, when he came to give his oral evidence he drew the Tribunal's attention to the concern referred to above. He also made a number of corrections to his statement including one on the ground that he believed that he had been influenced by what he had seen and heard after Bloody Sunday.

2C-43 John O'Kane, who was Gerry McKinney's brother-in-law, has given similar evidence:

Q. ... you have told the Tribunal how difficult it is to separate out things that you believe happened in the light of conversations that you have had with other people; that is the truth, is it not?

A. That is the truth, yes.

Q. There is obviously, particularly if I may say so in the light of the tragedy that befell your family, a lot of conversation and people telling other people what happened and it is difficult to sort out what you can honestly remember yourself from the many, many stories that other people have told you about what they saw?

*A. Yes.*²⁷

²⁶ Day 94/1/10

²⁷ Day 163/45/2

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2C-44 John Nash, whose father and brother were both shot on Bloody Sunday, suggested that he was alive to the same dangers:

... can I say as well, Mr Clarke, I have done extensive research, I have been researching many, many years into Bloody Sunday and basically what I have done here is try and leave out any of the research material that I have done. What I have done here is basically try to give to this Inquiry a true and as accurate account of the memories that I have.

Could I say as well that I have also contacted many, many witnesses in order that they come and give statements to this Inquiry and in contacting those witnesses, I have also had to listen to their memories of what they seen that particular day. So basically what I have -- what I am actually trying to say is, in giving this statement, although there may be inaccuracies within this statement, you know, I could have given a statement of 20 or 30 pages that could possibly have been accurate in every way, shape and form, but I wanted to give to this Inquiry the memories that I have, not the memories that other people have.²⁸

2C-45 However, Mr. Nash was not as successful in this regard as he claims. The version of events set out in his BSI statement has demonstrably been contaminated by information received from other sources. In that statement he discussed the shooting of Barney McGuigan:

As I was pushed through the other side of the Rossville Flats by the force of the crowd, I saw a man fall. I later found out it was Bernard or Barney McGuigan. I can't say which way he was facing or from where he was shot, I saw it all very quickly.²⁹

2C-46 The statement suggests both that Mr. Nash saw a person shot, and that the person was Barney McGuigan. However, Mr. Nash's oral evidence demonstrated that neither suggestion was necessarily correct:

Q. ... Can you say that he was shot?

²⁸ Day 97/86/7

²⁹ AN6.002 paragraph 13

FS 7 . 86

A. I cannot.

Q. Did you see what happened to him?

A. I did not. There again, um, I was in a state of total shock and panic and there again it was just a glance again. Obviously through conversations that I had had, probably later on, someone had mentioned to me that this -- you know, Barney McGuigan was shot at or around that particular point and I automatically assumed...³⁰

2C-47 It now appears that Mr. Nash saw a person fall, no more, and then made certain assumptions based on information he had received from others. Mr. Nash's BSI statement, read without reference to his oral evidence, therefore gives a very misleading account.

2C-48 The difficulties experienced by Messrs. Bradley, O'Kane and Nash will inevitably have been experienced, to varying degrees, by other witnesses. Witnesses honestly mistaken about what they actually saw themselves on Bloody Sunday may nevertheless appear to be coherent and convincing about what they describe in interview. The written BSI statements that result will contain no clues that some of the information they contain comes from or has been influenced by other sources.

Memory Distortion

2C-49 The memory can become distorted for a variety of other reasons. It is sufficient for the purposes of these submissions to refer to the fact that one's memory can play tricks, such a phenomenon becoming more likely the longer the period that elapses between the incident in question and one's attempt to recall it.

³⁰ Day 97/85/23

FS 7 : 87

2C-50 John O’Kane also gave an account in his BSI statement of seeing Damien Donaghy and John Johnston shot, when he had not in fact witnessed the event:

I heard two or three distinct shots, which I recognised as gunfire. They seemed to come from the direction of Ritchie’s factory. As the shots rang out, two men fell to the floor. At the time I was facing Columbcille Court with my back to the Grandstand bar and the men were on my left about ten feet away from me, at the point marked D on the map. I actually saw the two men fall. I remember that one was an older man and that one was a young lad but I cannot remember what they were wearing or what they looked like. The men would have been standing amongst the other people in the crowd when they were shot [Emphasis added].³¹

2C-51 When Mr. O’Kane gave oral evidence to the Tribunal, he accepted in answer to questions from Christopher Clarke QC that he had merely been told about these shootings.³² Edwin Glasgow QC elicited how it came to be that he gave an account of actually seeing the men shot in his BSI statement:

Q. ... If you want to look at them, please tell me, otherwise I will not bother with the statements; you told Mr Clarke, who asked you questions first of all, that in your statement to Eversheds you had said that you actually saw the men fall and when that was written down, you honestly believed that was the picture?

A. At that time, yes.

Q. Yes, indeed. Indeed, in your supplemental statement, the last statement you have made so as to clear matters up to the best of your belief, you actually looked at that passage and said that you remembered those events in the way in which you had described them, particularly in that paragraph. Again, even at that date, you honestly believed you had seen the men fall?

³¹ AO48.2 paragraph 8, emphasis added.

³² Day 163/002/01 – Day 163/004/25

A. Yeah, well, that -- them supplementary statements that I made were 20-something years --

Q. Nearly 30 years?

A. Nearly 30 years after, but at the time, like I said in my written statement, that they were shot as we were going up in that direction.

Q. I am not criticising, and I entirely accept that, sir. The point I wanted was this: you yourself have had the experience that you can share with all of us, of actually having an honest mental picture of something that you believe you saw, although you subsequently come to realise that you could not have done; that is right, is it not?

A. Yeah, that is right. You are referring to the two that is shot at the back of the Grandstand Bar?

Q. Yes.

A. Yeah, on reflection I would say now that, you know, I did not actually see them, it happened before.

Q. Yes, and Mr Clarke helped you with your earlier statements, which you very frankly accepted, but it still does not alter the fact that when you truthfully made both your statements to Eversheds, you honestly believed in your own words that you actually had a mental picture of something that actually you had not seen?

A. That is correct, yeah.³³

2C-52 It became clear that Mr. O'Kane did not, in fact, see the two men shot. Something had happened to his memory during the intervening three decades that led him to believe that he had. The BSI statement therefore contained an honest but inaccurate account of what the witness had actually seen on the day.

2C-53 Manus McDaid, who had no 1972 statement to which he could refer, gave the following very precise account of three officers standing on the Kells

³³ Day 163/45/24

FS7 . 89

Walk pram ramp. The recollection, whilst no doubt genuinely held, is inaccurate; it is at odds with all of the other evidence received by the Tribunal.

17. I could also see three army personnel standing halfway up the pramway to the south of Kells Walk, about 30 feet away from me. They were standing at the southern-most end of the pramway, at the top of the first elevated section, before it doubled back and rose further in a northerly direction....

18. I believe these three men were officers. They had peaked caps rather than helmets, and carried three stars or studs on each of their shoulders. They were wearing normal khaki clothes, rather than camouflage battledress, and they did not appear to be wearing flak jackets or coats. They had short jackets on with webbing belts.

19. The three army officers were white and were standing in a line shoulder to shoulder looking south from the end of the pramway. Two of them were tall and quite young looking. The third, who stood between them, was older and shorter. The officer on the far right of the group had binoculars and appeared to be looking beyond the rubble barricade towards Free Derry Corner.

20. The officers did not appear to be carrying weapons although I could only see them from the waist up and they may have had pistols below my line of vision. They certainly had no guns in their hands. I was struck by how relaxed and casual they looked despite the gunfire going on around them. At no time did I see them crouch or take cover.³⁴

2C-54 Mr. McDaid's memory has played tricks on him, whether or not he is able to acknowledge the fact:

Q. I should tell you that your evidence of three apparent officers being on the pram ramp is difficult to square with some of the evidence the Tribunal has heard and I do not think that any soldier or indeed any civilian speaks of someone shooting from the position where you saw the

³⁴ AM169.003; map is at AM169.005

soldier fire six or seven shots. Is it possible that over the years your memory has played you tricks?

A. No.³⁵

Military Witnesses: Special Considerations.

2C-55 In this Inquiry a substantial number of the soldiers we represent face serious allegations of criminal wrongdoing. All have given their account in BSI statements. In a number of instances the passage of time has meant that they too have sometimes found it difficult to remember details about the day's events.

2C-56 An example is provided by Soldier M who was one of three soldiers to fire from the wall at Kells Walk at two men crawling from the rubble barricade towards the entrance to Block 1 of the Rossville Flats. It has been suggested that he may have shot Kevin McElhinney.³⁶ His BSI statement includes a description of the moment when his attention was drawn to the crawling men:

... My next memory is of Soldier 039 pointing out two men to me. These men were south of the rubble barricade and were crawling along the western edge of Block 1 of Rossville Flats and were moving in a southerly direction. They were on their hands and knees, and both of them were carrying or dragging what looked very much like weapons of some kind...³⁷

2C-57 In his oral evidence he was pressed for further detail about this description. He explained the difficulty he faced in recalling events in such a degree of detail after such a long period of time:

Q. ...Again, if your impression as you have described it this morning is correct, [the weapons] would have been at least

³⁵ **Day 407/124/9**

³⁶ Counsel's First Report paragraph 15.5, page 18.

³⁷ **B372.004 paragraph 23**

FS 7 . 91

partly shielded from your view by the upper part of the men's bodies; is that not right?

A. I do not know, sir.

Q. Why do you not know?

A. Because I am relying on memories that are not clear and I believe that they were visible. If people are crawling with their body slightly raised, you can get clear views.³⁸

2C-58 Soldier M gave his BSI statement over twenty-eight years after Bloody Sunday. His oral evidence was given a further three and a half years after that. He should not be criticised or disadvantaged in any way because his memory is no longer clear.³⁹

2C-59 It is relevant to consider the analogous situation of a defendant in a trial at the Crown Court, where he is accused of an offence alleged to have taken place many years before. In such cases, the trial judge will be bound to refer to the issue of delay when summing up the case to the jury. In so doing, he or she may adapt the specimen direction, extracted below, which refers to the prejudicial effect of delay on those accused of offences:

We are now concerned with events which are said to have taken place a long time ago. You must appreciate that because of this there may be a danger of real prejudice to a defendant. This possibility must be in your mind when you decide whether the prosecution has made you sure of the defendant's guilt.

...

You should make allowances for the fact that with the passage of time memories fade. Witnesses, whoever they may be, cannot be expected to remember with crystal clarity events which occurred [... ago]. Sometimes the passage of time may even play tricks on memories.

³⁸ Day 365/091/17

³⁹ M's BSI statement was signed on 24.03.00; he gave oral evidence on 15.09.03 (Day 365).

You should also make allowances for the fact that from the defendant's point of view, the longer the time since an alleged incident, the more difficult it may be for him to answer it...You only have to imagine what it would be like to have to answer questions about events which are said to have taken place [...] years ago to appreciate the problems which may be caused by delay. Even if you believe that the delay in this case is understandable, if you decide that because of this the defendant has been placed at a real disadvantage in putting forward his case, take that into account in his favour when deciding if the prosecution has made you sure of his guilt.⁴⁰

2C-60 In our submission the Tribunal would be bound to give considerable weight to these considerations when considering the position before this Inquiry of individuals facing grave allegations of criminal conduct.

THE EVERSHEDES PROCESS

Introduction

2C-61 In 2000 Mr. Peter Watkin Jones, the commercial litigation partner who headed the team of Eversheds solicitors taking BSI statements, was interviewed by Times journalist Fiona Bawdon. The resulting article appeared in the Law Supplement of the newspaper on 4th April 2000. The article, "Bloody Sunday – not just an exercise in memory", explained the technique employed in taking BSI statements and included the following statement:

The soldier walked in briskly and sat down. His account of his part in the events of January 30, 1972 ... lasted no more than five minutes. That's all I can remember, he explained.

Undaunted, the lawyer sitting opposite him began gently probing ...

Gradually, and to the soldier's amazement, a more detailed picture began tumbling out. Using a questioning technique

⁴⁰ Crown Court Bench Book Specimen Directions, April 2003 update.

called cognitive interviewing, the lawyer was able to access his long-closed memory. Eight hours later, the soldier was still talking.

Afterwards, drained, the soldier said: "I've told you things today I didn't know I knew. I've told you things I've never told my family.

His experience was far from unusual. Many of the 1,300 people questioned by Eversheds ... were also prompted into recalling events with startling clarity. The thousands of pages of signed statements that Eversheds amassed will form the basis of the inquiry...

- 2C-62 The article suggests that the cognitive interviewing technique, as employed by Eversheds, successfully unlocked memories, and that BSI statements drafted following interview contained detailed accounts of what witnesses had actually seen on Bloody Sunday. We consider below whether that really was the case.

Cognitive Interviewing

- 2C-63 The cognitive interviewing procedure has been developed in the past twenty or so years by psychologists such as the Americans Fisner and Geiselman.⁴¹ At its base is a set of principles derived from cognitive theory. The aim of the cognitive interview is to assist witnesses to retrieve recollections of particular events and thereby to obtain their testimony.
- 2C-64 Interviewees are encouraged to report everything they can remember about the event in question. They may also be asked to describe the feelings they experienced at the time and features external to the incident, such as the physical area in which they found themselves. This is done in an attempt to recreate the context in which memories were originally made. They may be asked to recall events in different temporal orders in a

⁴¹ See, for example, Fisner and Geiselman, Memory-enhancing Techniques for Investigative Interviewing. The Cognitive Interview, (1992).

further attempt to unlock certain recollections. These techniques, derived from cognitive theory, have been enhanced by principles from the social psychology of communication, whereby the interviewer will, for example, try to establish a rapport with the interviewee. The technique as adopted by Eversheds led to interviews that generally followed the same pattern:

- (1) The interviewee is greeted and the purpose of the interview is explained;
- (2) The "Free Recall Stage": the interviewee is asked to report everything he can recall of the day's events;
- (3) The "Detailed Recall Stage": the account just given is probed and the interviewer attempts to prompt further recollections, by reference to maps or photographs if necessary; and
- (4) Only at end, is reference made to earlier statements or accounts given by the interviewee in 1972 or over the years that followed.⁴²

2C-65 In addressing the use made of cognitive interviewing techniques on behalf of this Inquiry, we wish to emphasise that we accept that interviews have been carried out by Eversheds in good faith. Nevertheless, we do submit that the resulting product, the BSI statements, should be treated with some caution. In particular, we have concerns as to the nature of the interviewing techniques applied and the particular difficulties inherent in undertaking such an exercise in relation to events which occurred so many years ago.

2C-66 There are great difficulties in effectively employing the technique in circumstances where recollections are unclear because of the passage of time or may have become contaminated by information from other

⁴² Donna Hoath of Eversheds briefly describes the typical interview at AR10.16 paragraph 3.

sources. One should be wary of claims such as that made in the Times article that

"Many of the 1,300 people questioned by Eversheds ... were also prompted into recalling events with startling clarity."

2C-67 Liam Mailey gave his BSI statement twenty-seven and a half years after Bloody Sunday. Understandably, there was much he could not remember when he gave his initial account to Eversheds interviewers during the "Free Recall Stage". The cognitive interviewing technique enabled him to flesh out these bare recollections, but not always with information about incidents he witnessed on Bloody Sunday. He was asked in oral evidence:

Q. Are the contents of that statement true to the best of your knowledge and belief?

A. The contents of the statement are accurate in as much as that is the statement that I made. However, given the techniques that were used to try and remind me of the day, I think this is probably a montage of various days that I was photographing rather than a single day.⁴³

2C-68 The topic was returned to later. Mr. Mailey found himself in a similar position to the soldier referred to in the article in The Times, in that initially he remembered relatively little of the day's events:

Q. -- you found, inevitably, that it became something of a "montage" was the description you used, I think?

A. Yes, yes. I think it is, I think the technique was quite good in as much as I went on that night up to London, um, they said "how much do you remember of the day" and I said "very little, other than inside the flats, but the rest of the day is a complete blank", and he got an awful lot of words from me.

However, this is achieved by describing an image which then I recognised and input some meat to it. However, it is

⁴³ Day 163/93/22

quite difficult because I have been out there every single day, so some of the images were not necessarily of that day and I know that at least a couple of them subsequently turned out to be wrong.

Q. ... I am sorry to interrupt you, but it meant, did it not, that when the statement came back to you for your signature, it was not a question of it being unrecognisable, but you would not have expected a flowing statement such as was produced to have been possible when you first went to the interview?

A. Yes, I am very impressed with the technique, but it is not exactly precise.

...

A. I think what, what then happened subsequently is that you are shown your statement of several years ago and that turned out to be a better trigger.

However, I still have a considerable difficulty in remembering details of that day.⁴⁴

2C-69 In Mr. Mailey's case, therefore, the cognitive interview produced a montage of events taken from a number of different days. This was not the desired effect but was perhaps to be expected after such a long period of time. The soldier interviewee from the Times article suggested that Eversheds had managed to unlock "things ... I didn't know I knew". His initial five minute recollection had been transformed into an eight hour discussion of the events of Bloody Sunday. It is possible that in his particular case uncontaminated recollections were indeed unlocked. We suggest, however, that such claims should be treated with extreme caution. The dangers identified by Mr. Mailey are inherent in all statements produced by the use of cognitive interviewing techniques.

⁴⁴ Day 163/133/13

2C-70 Hugh Gilmore's brother, Bernard, gave a BSI statement in which he described two incidents, that certainly did not take place on Bloody Sunday. The first concerned a group of soldiers at the Creggan cemetery:

2. After Mass that day, I went up to the Creggan through the moor. This must have been at about 12.00 noon. There is a cemetery there at the flashpoint at Brandywell. I noticed at the cemetery wall there were about 20 jeeps along the moor. A group of Paratroopers were standing there...

3. One particular para stands out in my mind. He had fair hair and tattoos everywhere on his hand. He was standing separately from the other paras, shepherding people past. I would say he was approximately 30 years of age and was 5'7". His chest was about 40" and he had blue eyes. I remember that he had no gaiters on his trousers. His rifle was strapped to his wrist and he was holding it...⁴⁵

2C-71 Mr. Gilmore then described how the Paratrooper and his colleagues made intimidating and abusive comments at civilians as they passed by. When it came to his oral evidence, he was asked:

MR CLARKE: Mr Gilmore, do you have with you your statement of 14th July 1999 to this Tribunal?

A. I have, yeah.

Q. I believe that there are some corrections or qualifications that you would like to make to it?

A. Yeah, please.

Q. Firstly, in paragraphs 2 to 4, you describe an incident in the cemetery wall in the Brandywell in relation -- you describe the activities of somebody you think was a paratrooper. Am I right in thinking that you now think that that incident may have occurred at some time other than on Bloody Sunday?

A. Oh, it definitely did, yeah.

⁴⁵ AG38.001 paragraphs 2 to 4

Q. When did it occur?

A. I am not quite sure -- Motorman, maybe.

Q. You think it may have been Operation Motorman?

A. Yeah.

Q. That is to say some considerable time after Bloody Sunday?

A. Yes. it definitely occurred on another day⁴⁶

2C-72 The detailed description of the incident contained in the BSI statement was revealed in further questioning to have been "just something I related to Bloody Sunday" because: "...there were a lot of soldiers there and a lot of people being harassed...". He could not say when the incident actually took place, accepting it may not have been during Operation Motorman either.⁴⁷

2C-73 Mr. Gilmore's BSI statement also contained a description of a barrier in Little James Street:

...I looked along Little James Street briefly. The Police had formed a barricade across the street. Behind the police were cameramen and photographers, perhaps 30 or 40. There were about eight or ten Landrovers parked up in front of the police. The police and the Landrovers were effectively forming a barricade across the street...⁴⁸

2C-74 However, in oral evidence, Mr. Gilmore again accepted that this may be a reference to something that happened on another occasion:

Q. If we look at page 38.2, the second page of your statement, you have again, I accept honestly and helpfully, corrected the mistakes you made about what was going on at the barriers with the Land Rovers and the Pigs -- the

⁴⁶ Day 087/194/2

⁴⁷ Day 88/40/10

⁴⁸ AG38.002 paragraph 11

barricade and the soldiers and the rubber bullets flying over from Chamberlain Street.

Again, if I may put it to you collectively, all together: are those things that may have been seen on another day or simply that you think your recollection is in any event at fault?

A. Could be, could be happening another day. It could happen another day and I just recall it Bloody Sunday, because most of the activity was happening on that waste ground so, um ..⁴⁹.

2C-75 Mr. Gilmore's BSI statement, therefore includes detailed reference to these incidents but with no suggestion that they may, in fact, have occurred on another occasion. The following suggestion was therefore put to him:

Q. ... you will accept if we had simply read your statement we would have got a very, very misleading understanding of what you were trying to say to this Tribunal?

A. Exactly, yes, I understand that, yes.⁵⁰

2C-76 There are other instances which suggest that the reliability of detailed recall prompted by cognitive interviewing techniques is subject to some doubt. Pauline McDermott states at an early stage of her BSI statement⁵¹:

I have tried desperately hard over the years to forget about what happened on Bloody Sunday. I don't know whether it is because of this or because my memory has faded with the passing of time, but I can't recollect with any great accuracy the events of that day.

2C-77 Nevertheless, the statement continues with a long and detailed account provided by her during a cognitive interview. Most strikingly, her

⁴⁹ Day 88/41/24

⁵⁰ 88/42/13

⁵¹ AM186.2, para. 6

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recollection at the time of making her BSI statement conflicted in many important respects with an account she gave on 1st February 1972.

Information Provided by the Interviewer.

2C-78 Further problems arise where the central tenets of the cognitive interview are not adhered to. The aim is to probe and to prompt the interviewee's *own* recollections. These are not obtained if it is the interviewer who provides the information. This is not to suggest that anything underhand has taken place. However, there is inevitably a risk that, in an attempt to prompt recollections or in a subconscious attempt to seek coherence between the statements of interviewees of a particular type, interviewers may supply particular details. There is evidence that this has occurred on occasion.

2C-79 Thus, for example, Simon Winchester observed in the course of his oral testimony:

...where there were two grassy slopes in 1972, there are clearly only one in 1999, and when the lawyer from Eversheds took me to suggest where I had gone after coming out of the gap between blocks 2 and 3 and gone up that flight of steps, I believe it is probable that I may have confused Fahan Street East which has a low wall to its -- well, behind me if I am facing into the Bogside -- with the much larger wall, the city wall, which I would have reached had I gone even further up the grass slope. So I think that answers in a way the altitude question, in other words, was I on Fahan Street or was I at the bottom of the city wall.⁵²

2C-80 John Friel's BSI statement includes this evidence about the march on Bloody Sunday:

⁵² Day 116/173

...our parents warned us to be careful and to watch ourselves. We had heard that there was to be no IRA involvement. People were told it was safe to march.⁵³

Yet not all of that information came from him:

Q. The only other matter I want to ask you about is this: you have told the Inquiry that in one respect at least a suggestion was made to you by those taking your statement, the people from Eversheds, that then appeared in the statement as if it was your thought, the suggestion "people were told it was safe to march"?

A. I quite vividly remember where I gave the statement to Eversheds. There was two young ladies and while I was telling them that the IRA were not going to be in attendance at the march, one of them said to me "and people were told it was safe to march" and I have marked here in my statement, I nodded an assent, but those are not my words.⁵⁴

2C-81 William Nellis's BSI statement contained the following account:

I crossed the road at Fahan Street West into Abbey Park...I recall that number 6, which was the end house of the first row of four, had its door open and a number of people around it. I have marked it with a D on the attached map (grid reference E14). I went in to the house and saw a youth who I knew was Joseph Mahon, my younger son's friend, lying on a sofa or couch...⁵⁵

2C-82 It was Mr. Nellis's oral evidence that the number and precise location of the house he was referring to was inserted by the statement-takers:

Q. You have said in paragraph 19 of your statement that you recall seeing the youth you said it was in 6, Abbey Park. In fact the Tribunal has a statement from Isabel McCourt who lives at [REDACTED]

...

⁵³ AF32.001 paragraph 3

⁵⁴ Day 118/150/1

⁵⁵ AN13.003 paragraph 19

You will see in paragraph 6 that she refers to a young man who was injured and was lying on the settee; do you see that?

... you will see in paragraph 8 there she actually says that she later found out the man on the settee, on the sofa, was Joe Mahon.

If I could ask you to look at AM141.6, which is the map that was attached to her statement, and where she has marked --

A. I would like to make some correction here now: I did not say the number of the house, that was put on by the people who were taking the -- I, I mentioned the houses in this vicinity and they says "this would have been number 6", so I did not mention any number -- I did not see a number on a door, if that would be of any use.⁵⁶

2C-83 INQ1799 was a member of C Company, 1 PARA. His BSI statement describes where he went after passing through barrier 14:

I believe that I turned left (south) into Chamberlain Street and when I was at about position A (grid reference O13) on the attached map, I remember seeing a civilian gunman directly in front of me...⁵⁷

2C-84 Information about the route he took south came not from him but from the statement takers

Q. ... I have shown you video footage which shows you in the area of the waste ground at Eden Place. I have explained to you the evidence of Lieutenant 110. It raises the question that you may be mistaken when you say that you initially deployed down Chamberlain Street?

A. I have to say I do not think I am mistaken. It was put to me that I deployed down Chamberlain Street. I am afraid I did not read the signposts of where I was deploying at the time. What I can confirm is that the rioters we saw when we first deployed were in fact facing barrier 14, therefore on

⁵⁶ Day 165/48/13

⁵⁷ C1799.004 paragraph 31

William Street; that left turn may or may not have been taken, but it is not a conscious memory on my part.

Q. You do not have a recollection of turning down Chamberlain Street?

A. No, I do not.⁵⁸

He was questioned further about this:

Q. When you were initially asked you indicated, that is the Eversheds statement, that you went into Chamberlain Street?

A. That is correct, yes.

Q. What you said when you were asked by Mr Rawat was that you were not mistaken about Chamberlain Street, it was suggested to you that you had gone into Chamberlain Street; who suggested it?

A. I think Eversheds, in the map that was up in front of us. There certainly was not a photograph like this.

Q. Why did you agree with it?

A. Because I did not have a distinct memory as to which way the pursuit had gone and that was a plausible explanation. We could have gone straight forward or to the left.

Q. It was not because you had a distinct memory?

A. No, it was not.

Q. When you told them you were aware, were you, that you could be completely wrong?

A. Not "completely wrong," no.

Q. Why did you not just say to them, "I cannot be certain"?

A. Because I was certain that I was pursuing a group of people to my front, um, and the exact direction of that pursuit could have been a straightforward frontal move or

⁵⁸ Day 314/140/22

*it could have been off to the left. I was not in a position to be clear about the difference of those streets, having not really seen a map before.*⁵⁹

2C-85 His responses demonstrate the particular difficulties faced by an interviewee, who is asked about an incident that occurred many years before, by an interviewer who is also suggesting an answer.

2C-86 Gerry Doran was one witness who commented on how Eversheds pointed out to him that he had identified the wrong person in the wrong place, and he was told by his interviewers James Wray's location when he was shot.⁶⁰

Failure to Reflect in the Statement what was actually said in Interview

2C-87 Eversheds produced written statements based on what had been said at interview. Inevitably, and appropriately, this would involve the transformation of often lengthy conversations into coherent written accounts. This is a difficult task and it was not always conducted successfully. The statements produced did not in each case include all of the relevant information imparted at interview, nor did they always accurately reflect what was said at interview.

2C-88 At the time of Bloody Sunday, Dick Grogan was a reporter with the Irish Times. He was interviewed by Eversheds but the statement produced subsequently omitted some of the information he had given. He was asked in oral evidence:

Q. Because you say -- I do not suggest you are seeking to resile from it -- that the witness statement we had is really a summary of a conversation?

A. Oh, yes.

⁵⁹ Day 314/169/9.

⁶⁰ Day 157/182/9.

FS 7. 105

Q. You say "oh, yes" with some emphasis, sir, for the record; is that because you felt there was a bit more that you said than is in this summary?

A. Well, we spoke for quite a while, so obviously there was more. You know, I presume the person who summarised it chose to take what pieces he thought were most relevant.

Q. I do not seek to criticise the statement-taker, as far as you were concerned it was more a summary than your statement?

A. Oh, yes, yes.

Q. Did you feel, therefore, when you signed the statement that there were extra bits that you wanted to put in?

A. Not at that time. Certainly over the couple of years since and having had recourse to the evidence given here, certain things that I would have mentioned then would have seemed to me to have assumed more significance, such as my recollection of seeing a Saracen enter the Bogside at about 10 o'clock that morning.

At the time I thought pretty well nothing of that, I did not know was it a regular thing, but subsequently obviously I thought it might have been more significant and might have been dealt with in more detail.⁶¹

2C-89 The fault was not Mr. Grogan's. He could not have been expected to insert the missing information into his draft statement, when he himself was unsure of its relevance. This raises the question of what relevant information may have been omitted from other witnesses' statements.

2C-90 John Nash's BSI statement did not, according to him, accurately represent what he said at interview. He was asked in oral evidence about part of that statement:

Q. In the same paragraph, you have a sentence which reads:

⁶¹ Day 189/23/3

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"I turned around as they came in. As the soldiers debussed they came out firing a large volley of shots."

I think you would prefer that to read:

"They came out firing a volley of shots?"

A. Can I say whilst making the statement at this particular point I myself became rather excited and I think the girl who was actually writing down what I was saying, the fact that I became excited, I was speaking very quickly and I think, no fault of the girl's, that she had great difficulty in understanding what I was trying to say. At that time as well I can quite clearly remember that we had a tea or coffee break and the paragraphs from 9 to 11 are basically the same conversation that I was having, so we have, you know, more or less, in a full conversation, that conversation is broken down by -- into paragraphs, which is not really in any sense a true reflection of what I was trying to say. But as I say, no fault of the girl, it was probably, and I would accept that that was my fault.⁶²

2C-91 We do not suggest that the Eversheds interviewers had an easy task, particularly when dealing with excitable witnesses. However, an incident such as Bloody Sunday will inevitably result in excitable and emotional interviews in some cases. It is the task of the interviewers to ensure they have understood what has been said, and then accurately to reflect that in the written statement. A statement that does not provide a "true reflection" of what was said at interview is flawed.

Failure to obtain pertinent Documentation

2C-92 It has also been established that Eversheds interviewers did not always seek all relevant documentation from the witnesses they were interviewing.

⁶² Day 97/77/19

2C-93 Simon Winchester had significant information to give and, as a journalist, potentially important written records to which he could refer. The interviewing solicitors were apparently not interested in the records:

Q. ... The only question I would ask you is this: you openly told the solicitors to the Inquiry that you might have your old notebooks and you would look for them. This is not a criticism of you, but did Eversheds not ask you to see if you could produce your notebooks for them?

A. In a way that I was relieved to find was rather casual, they did not. I say "relieved" because it would be incredibly onerous to look for them.

Q. Eversheds struck you as being casual when it came to discussions about your notebooks, notwithstanding the fact that your statement referred to the fact that you had met members of the IRA, that was your view; they were casual about that, were they?

A. About the specific point about producing my notebook, I would say that was --

Q. Nobody has written to you to ask you to find your notebook?

A. Nobody has demanded for them, no, so I thought there is no pressure. I am not going to dig through my garage, and anyway they are probably not there.⁶³

2C-94 Michael Starke, who was also a journalist at the time of Bloody Sunday, was interviewed by Eversheds. He explained the nature of that interview when he came to give oral evidence. It was also only when he came to give oral evidence that he produced a number of photographs and documents. He was asked:

Q. You were interviewed by Eversheds, was that in 1998?

A. Yes, it was, yes.

⁶³ Day 116/141/4

Q. When you were interviewed by Eversheds, did they ask you if you had any contemporaneous documents or photographs?

A. As I recall, not. The discussion was long and discursive - - some of it is reflected in long and discursive matters in the statement -- but as far as I recall they did not ask me for any specific documents or photographs.⁶⁴

2C-95 Written records of events and other contemporaneous documents are among the most important source of evidence to an Inquiry that is conducted so long after the event. A failure to seek such documents from all relevant witnesses as a matter of course, may have led to a significant loss of information. We only know of instances where questioning before the Tribunal has disclosed the fact, or the possibility, that documents existed, or may have existed, which were not asked for.

Reticence: Withholding Information

2C-96 The success of the Eversheds statement taking process relied to a great extent on gaining the trust of those they interviewed, a point not missed by the April 2000 Times article by Fiona Bawdon, which has already been referred to above. It continued:

There was huge initial distrust to overcome. The Widgery Inquiry, set up immediately after the shootings, which had largely exonerated the Army, had left terrible scars in the community. A posse of English lawyers descending on a city (which had already suffered enough) was unlikely to be welcomed with open arms. "We knew we'd have to earn their trust." says Mr Jones. "We knew we'd be seen as part of the Establishment. One wrong word from any of us, and we'd all be going home." The soldiers, too, had their reasons for being suspicious.

...

⁶⁴ Day 192/54/20

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Mr Jones introduced a dress code: strictly informal, so as not to intimidate the interviewees. Suits were out. Jumpers were in. Some lawyers apparently found this the hardest part of what was a challenging project by any standards: they had to be sent back to change two or three times before finally emerging sufficiently dressed down.⁶⁵

2C-97 In fact, many witnesses refused to provide information of the most vital nature. This is addressed in detail in the following sections of these submissions.

2C-98 Others gave accounts deliberately designed to hide the truth of what had taken place. Damien Donaghy lied to Eversheds. His BSI statement includes this claim:

7. ... I did not get involved with the lads throwing stones and I did not throw any stones myself. It was not a serious disturbance. I would not even describe it as a riot.

8. I watched the young lads throwing stones for no more than a couple of minutes...⁶⁶

2C-99 His oral evidence quickly revealed that this was not the truth:

MR CLARKE: Could we have on the screen AD120.5. Mr Donaghy, do you have with you your statement to this Tribunal, signed on 18th May 1999?

A. Yes, I do.

Q. Are the contents of that statement true, to the best of your knowledge and belief?

A. I would like to add to it, Mr Clarke.

Q. Please do.

A. "After discussions with my legal representatives and because the main reason we are here is for the truth to be told, I may wish to admit that I threw stones. I also would

⁶⁵ *Bloody Sunday – not just an exercise in memory*, The Times, 4th April 2000.

⁶⁶ AD120.006

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like to add that when I was shot, I did not have a nail bomb or anything else in my hands."

*That is it.*⁶⁷

2C-100 The solicitors were not to blame for drafting a statement which repeated lies spoken at interview. It would, however, be wrong for them to suggest or for the Tribunal to work on the basis that they had in fact always successfully gained the confidence of all of those whom they interviewed. The Donaghy example is significant because it demonstrates that even someone who had called for the establishment of a new Inquiry into Bloody Sunday, and who had claimed to seek the whole truth about the day's events, was not forthcoming at interview.⁶⁸ His statement conveyed a misleading account of Bloody Sunday.

READ ONLY STATEMENTS

2C-101 Many of the BSI statements referred to in these submissions were revealed to be flawed only after the witnesses' accounts were probed in oral evidence. Their *written* statements presented a misleading picture of the events of Bloody Sunday. Nevertheless, the Tribunal could not realistically have heard oral evidence from all witnesses who had given BSI statements. It is, of course, accepted that the Tribunal had to decide where it was reasonably necessary for it to call witnesses to give oral evidence. No criticism is made of that. However, the Tribunal should remain alert to the inevitable risk, or probability, that some potentially important information may have been lost.

2C-102 The Tribunal has stated through its solicitor that when it considers a witness's disputed evidence:

⁶⁷ Day 70/1/12

⁶⁸ Damien Donaghy can be seen in a photograph, campaigning for a new inquiry into the events of Bloody Sunday, behind a sign which reads "Time for truth", at www.bloodysundaytrust.org/educampaign.htm.

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It will ... carefully assess his written statement, and in deciding to what extent it should be accepted or rejected or how much weight it should be given, the Tribunal is likely to pay particular attention to its inherent plausibility, its internal consistency and the extent to which it fits in with other evidence before the Tribunal.⁶⁹

2C-103 Such an approach may allow the Tribunal successfully in certain cases to identify and disregard parts of statements which contain inaccurate accounts of what witnesses claim to have seen on Bloody Sunday. This may be the case where, for example, a witness has confused other incidents with those of Bloody Sunday. However, it is questionable how successful the approach can be in other cases. The situation the Tribunal faces is one in which:

- (1) The recollection of many witnesses has become contaminated with information about Bloody Sunday received from a number of different sources. The written BSI statements that result contain no clues that some of the information they contain comes from or has been influenced by these other sources;
- (2) Interviewers have, on occasion, themselves supplied particular details during interview, leading to statements that do not accurately reflect a witness's own recollection;
- (3) Interviewers did not always seek all relevant documentation from the witnesses they were interviewing. Written records of events and other contemporaneous documents are among the most important source of evidence to an Inquiry that is conducted so long after the event. A failure to seek such documents as a matter of course may have led to a significant loss of information;

⁶⁹ Letter dated 16.01.03 from John Tate to Anthony Lawton.

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(4) In practice, the trust of many witnesses was not gained by Eversheds. Some witnesses failed to provide information of the most vital nature; others gave accounts deliberately designed to hide the truth of what had taken place; and

(5) Underlying everything is the problem created by the passage of time. The risk of memories being lost, becoming contaminated or otherwise distorted inevitably increases the longer the interval between the event in question and the attempt to recall it.

2C-104 There is, therefore, a real danger that the stated approach of the Tribunal to disputed but untested BSI statements may not reveal flaws in the statements caused in these circumstances.

Damien Friel

2C-105 One example is provided by the evidence of Damien Friel. In his BSI statement, Damien Friel gave a graphic and detailed account of a soldier with a red beret firing indiscriminately from the pram ramp at the southern gable wall of Kells Walk. Mr. Friel says he witnessed this from a small window in 2 Kells Walk.⁷⁰

2C-106 Mr Friel gave oral evidence on Day 159. He was questioned at some length by Mr. Christopher Clarke Q.C. and members of the Tribunal as to the view from the window in question and was then questioned by Mr. Peter Clarke Q.C. specifically on behalf of Soldiers C and D.⁷¹

MR CLARKE: Mr Friel, are you saying that by pushing your cheek against that window pane you could see down the pram walk?

A. Yes.

⁷⁰ AF30.4 paragraph 21

⁷¹ Day159/156/15

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Q. Are you sure you did not stick your head out of the window?

A. I do not think so.

Q. I am not suggesting there were not soldiers there, I do suggest that there were no more than seven rounds fired by two soldiers, but I am bound to question whether you could actually see right the way down that pram ramp from that window, which is recessed in any event; you are sure you did?

A. Yes.

LORD SAVILLE: Mr Friel has a clear recollection of this. The building is still there; we could always go and look for ourselves if we got the permission of the people in whose building it is.

2C-107 We invited the Tribunal to follow up Lord Saville's suggestion of a view and this took place on the 15th May 2002 with representatives of the interested parties and photographers present. Both still and video pictures were taken. Correspondence about the procedure to be adopted ensued, and we asserted that Mr. Friel could not possibly have seen what he claims to have seen from the window and requested that he be recalled. After the photographs⁷² and video⁷³ were distributed we renewed our submission for Mr. Friel to be recalled. Seven more letters followed to which no, or no satisfactory, response was received until a few days before the close of evidence on the 10th February 2004, when the Inquiry informed us that medical evidence had been received and Mr. Friel was unfit to be recalled.

2C-108 The view and the video and photographs taken at the view, establish that Mr. Friel could not physically have seen those events. His evidence on this issue was clearly wrong and must be rejected.

⁷² P8.1125-1129

⁷³ Video 68

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Daniel Hutton

2C-109 We refer to the matters set out below at paragraphs 2C-251 to 2C-256.

Evidence Relating to Damien Donaghy

2C-110 We refer to one last body of evidence to demonstrate the dangers inherent in relying on untested BSI statements. A number of witnesses gave evidence as to what Damien Donaghy had been doing immediately before he was shot. However, some probing of their accounts when they gave oral evidence revealed that they had not actually been aware of Mr. Donaghy until *after* he had been shot.

2C-111 Reference has been made above to the mistaken account given by John O'Kane.⁷⁴

2C-112 Eugene Lafferty's BSI statement included this claim:

*Bubbles and Mr Johnston were just walking along at the time when they were shot. They did not do anything at all to warrant being shot. I know this for certain because they were so close to me.*⁷⁵

2C-113 Yet, Mr. Lafferty accepted in oral evidence that he could not actually say what Damien Donaghy or John Johnston were doing before they were shot:

Q. Had you had any reason to notice either of them before that moment; did you even know that they were there?

A. No, the crowd, there was that many.

Q. The crowd was too thick?

A. When you seen the crowd moving.

⁷⁴ See paragraphs 2C-50 - 2C-52, above.

⁷⁵ AL1.008 paragraph 10

Q. I entirely understand that, that is why I remind you of the video in case you had seen it. It was so dense you would not be able to recognise or see anybody on the extreme opposite pavement?

A. No.

Q. But it was after these gentleman had been shot that you realised that you knew one of them? A. Yes.

Q. I say, not unreasonably, you assumed that both of them had simply been coming down with the crowd along with you?

A. I presumed, yes.

Q. You presumed that?

A. Yes.

Q. If the Tribunal is given evidence by people who actually saw what they were doing, you would not be in any position to dispute that because you did not see them until after they had been shot?

A. Well, I would not be able to dispute it.⁷⁶

2C-114 John McGee's BSI statement records that:

No one around me was doing anything which, in my view, justified live shots I did not see anyone throwing stones or anything else at the soldiers on the roof and I am certain that neither Damien Donaghy nor those around me were engaged in anything sinister.⁷⁷

2C-115 However, Mr. McGee conceded in oral evidence that he had not in fact seen Damien Donaghy until after Donaghy had been shot:

Q. Had you seen him before you saw him lying on the ground?

⁷⁶ Day 064/119/02

⁷⁷ AM223.1 paragraph 3

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A. No.⁷⁸

2C-116 Jim Doherty's BSI statement included this account about Donaghy and Johnston:

*I was standing directly behind both men when I saw them shot. At the time they were shot, both men were simply standing and looking across towards Little James Street. They were not doing anything or holding anything. There was no stone throwing going on at that time.*⁷⁹

2C-117 However, Mr. Doherty was to concede, in answer to questions from Christopher Clarke QC, that:

- (1) he had not seen Damien Donaghy before he was shot;
- (2) he did not see whether Damien Donaghy had been throwing stones; and,
- (3) people were throwing stones at the time.⁸⁰

2C-118 Gerry Duddy said in his BSI statement:

*Bubbles was doing nothing wrong, nothing to justify him getting shot...*⁸¹

2C-119 During his oral evidence he conceded that he had not in fact been aware of Damien Donaghy before he was shot.⁸²

2C-120 In our submission the Tribunal should be alive to the real danger that its acceptance in evidence of disputed but untested BSI statements may result

⁷⁸ Day 065/037/04

⁷⁹ AD73.3 paragraph 11

⁸⁰ Day 065/073/22; Day 065/102/07; Day 065/105/10

⁸¹ AD146.2 paragraph 6

⁸² Day 059/132/19 – Day 059/132/21

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in unfairness. The Tribunal will understand that this is a matter of particular concern to those who face allegations of serious wrongdoing.

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2C-III CIVILIAN EVIDENCE TO THIS INQUIRY

2C-121 In this section we address a number of matters of which the Tribunal should take account in assessing the evidence of civilian witnesses. In particular, we address the effect of passage of time on memory, the effect of the folklore which has grown around the events of Bloody Sunday, the unique pressures to which the people of Derry have been exposed in relation to their evidence, the desire in certain quarters to present evidence which portrays soldiers in the worst possible light and, in certain instances, the deliberate suppression and withholding of evidence.

PASSAGE OF TIME AND ITS EFFECTS ON MEMORY

2C-122 The citizens of Londonderry are in the same position as all other witnesses so far as the passage of time and its effect on memory are concerned. Notwithstanding the impact which the events of Bloody Sunday are bound to have had on those who witnessed them, the passage of more than thirty years will inevitably have had a deleterious effect on the ability of witnesses to recall those events with accuracy.

2C-123 This matter has been considered in detail in Section 2C-II, paragraphs 2C-20 to 2C-54 above, in connection with BSI statements.

FOLKLORE AND MYTH

2C-124 It is an unfortunate fact that the events of Bloody Sunday have been overlaid with myths which are demonstrably untrue but which have nevertheless achieved wide currency. This is, perhaps, not entirely surprising given the horrific nature of what undoubtedly occurred and its impact on individuals and the entire community. As a result many may have become persuaded that they witnessed things which simply did not occur. Some may have come to claim for themselves a direct part in the events of the day which is not founded in fact. We do not suggest that the

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propagation of such folklore is necessarily the work of persons with dishonest motives. On the contrary, many will have become convinced that they are in fact giving a truthful account. A number of factors may be in play here. In some cases there may be an unconscious assumption of involvement or desire to have been involved. Some witnesses may have been influenced sub-consciously by an unwillingness to accept that they failed to see what others are claiming to have seen. In some cases guilt or grief may have played a part. On the other hand, there may be cases where individuals are motivated by a desire to embellish or exaggerate what they actually witnessed in order to support what they believe to be the truth of what occurred, or simply to depict the acts of soldiers in the worst possible light.

2C-125 The currency of such myths has not been limited to the city where the events occurred. With the aid of the media they have, over the years, been retailed world-wide. A striking example is provided by the report which appeared in The Guardian immediately after Bloody Sunday. The author, Simon Winchester, was asked about it in his evidence.

Taking it as shortly as I may, can I ask you to remind yourself of what you actually wrote the following day and which, understandably, caused considerable interest. If we go to M83.44, this is the article --

A. So written the same day, not the day following.

Q. Appeared the following day. It is really the very well-known opening sentence, that:

"The tragic and inevitable doomsday situation which has been universally forecast for Northern Ireland arrived when soldiers, firing into a large crowd of civil rights demonstrators, shot and killed 13."

Was that intended to describe a single incident in which soldiers had fired into a crowd of demonstrators killing 13, which is, with respect, the way it reads; was that what you were intending to tell the world had happened?

A. I believe so, unless I am misunderstanding your question, that is indeed what I --

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Q. A single incident in which a group of soldiers had fired into civil rights demonstrators and shot 13 of them; that is the way you saw it, is it?

A. In summary, I think it is how the world regards the events of 30th January.

Q. Forgive me, the world may, prior to this Inquiry, have regarded them as that partly as a result of what you wrote, but the 13 you knew or you know now to have been shot over a very wide area, over a matter of at least half an hour in different incidents, did you not know that?

A. Of course I knew it -- I beg your pardon, of course I knew it. To summarise in one paragraph the events of that day, to conflate the events of 30 minutes into one sentence, I think this -- I think the paragraph, the introduction to the story, which is after all only an introduction, serves as well as does the headline above it.⁸³

2C-126 Nevertheless, it is inevitable that the folklore which has come to accompany Bloody Sunday has a particular currency in Derry itself. In approaching the evidence of civilians, the Tribunal will have to bear in mind the potential distorting effect of myth on the evidence of entirely honest witnesses.

2C-127 Nell McCafferty has acknowledged to the Tribunal the effect of time and legend on the reliability of memory and testimony. She described seeing James Wray come towards the house in which she was sheltering and his falling.⁸⁴ She admitted that "*Memory plays tricks*",⁸⁵ and that her memory is vague on many details and may be "*totally untrue*".⁸⁶ She acknowledged the power of emotion in distorting memory, admitting that she may have imagined seeing James Wray because, "*I am feeling rotten about it.*"⁸⁷ She acknowledged how convincing false memories can be, explaining that she

⁸³ Day 116/155 - Day 116/156.

⁸⁴ Day 168/135/4

⁸⁵ Day 168/128/21

⁸⁶ Day 168/134/7

would trust the article she wrote immediately after Bloody Sunday more than her later memory, but saying "*the later memory is so vivid*".⁸⁸

2C-128 John O'Kane recognised that parts of his evidence may have been unintentionally incorrect. He admitted that although he claimed in his BSI Statement to have seen Damien Donaghy and John Johnston shot, actually they were shot before he got there, and that he had heard about it from people in the crowd. Crucially, he said, "*I actually thought that I seen it*".⁸⁹ He explained that it is perfectly possible to have

*an honest mental picture of something that you believe you saw, although you subsequently come to realise that you could not have done.*⁹⁰

2C-129 Mr O'Kane gave a less intense example. He explained how it is possible to go to another country, and

*say to yourself "I think I was here before", but actually have seen it on TV, maybe years ago; that is what you are actually saying.*⁹¹

2C-130 Ben Keaveney, a witness with experience of counselling trauma victims, gave the Tribunal a very good description of how this mythologizing process can work its effect:

*I still have a vision of him [James Wray] lying on the floor, but that could be just something that has been imposed by reading about it, although emotionally, which is maybe not the best way to give evidence, emotionally I feel that I saw him, I feel that he was there...*⁹²

⁸⁷ Day 168/134/14

⁸⁸ Day 168/137/3

⁸⁹ Day 163/2/22

⁹⁰ Day 163/47/10

⁹¹ Day 163/49/3

⁹² Day 160/37/22

2C-131 In the following paragraphs we set out, by way of example, certain instances in which stories have grown in the telling and have achieved the status of accepted truth.

Alana Burke

2C-132 The evidence concerning the injury to Alana Burke is particularly instructive. Alana Burke was knocked down by Pig 2 as it entered the Rossville Flats car park. However, for some witnesses this was no accident; for some it is part of the accepted truth of Bloody Sunday that Alana Burke was deliberately chased by the driver of the Pig and then crushed by it against the wall of the Rossville Flats.

2C-133 The person who disposes of the myth is Alana Burke herself. She accepted in 1972 that she could not say that she was knocked down deliberately, and she has never maintained that she was crushed against the wall of the Rossville Flats by the Pig.⁹³ However, this has not in any way inhibited the propagation of the myth.

⁹³ She has explained that whilst watching the riot at Barrier 14 she had been gassed and the heavy coat she was wearing had been drenched by the water cannon. (Day 76/75/4) As a consequence she had been very sick (Day 76/75/4) and was, in her own words, "in quite a sorry state". (Day 76/96/15-Day 76/97/6) When the Pigs entered the Bogside she began to run south towards the Rossville Flats but, as she explained to Christopher Clarke QC, she "could not move because I was laden down. My clothes were covered in dye, it was a long coat and I was so heavy I could not move, I seemed to be rooted to the spot. (Day 76/82/3) Miss Burke explained what happened in her BSI Statement:

At this time I was looking for the female friend that I had lost and I was terrified. Everyone was running towards the alleyway between Block 1 and Block 2 of the Rossville Flats. Lorney McMonagle tried to pull me out of the way but he let go and I was hit by a Saracen which entered the Rossville Flats car park from Rossville Street. I was hit just behind the wire fence on the courtyard side. (AB 101.1 paragraph 5)

Miss Burke spoke of the incident in interviews she gave shortly after Bloody Sunday, whilst she was still in Almagelvin Hospital. She said to The Irish News (L139), "I couldn't say it was deliberate"; and the Evening News quoted her as saying "I could not say if the Saracen deliberately ran me down" (L94)

2C-134 Anthony Harkin considered that Alana Burke was singled out by the Pig driver as "easy prey":⁹⁴

As I ran, the army vehicles overtook me. The first one seemed to swing in east, from the north and driving towards me. It seemed to me that the Saracen driver was trying to hit people with the vehicle. Because I knew Saracens did not turn very easily, I thought that I would wait until it was almost at me and then jump to one side in order to get out of the way. The next moment it swerved to the east. Just before it swerved, I noticed a group of girls come running south out of the alleyway. One of them was wearing a bright red coat and I believe that this caught the driver's eye; he saw an easier prey. The next moment I saw the Saracen hit the girl in the red coat. The impression I had was of seeing her bowled over. When she hit the ground she rolled out of the way and I don't know whether the Saracen actually drove over her or not."

2C-135 Antoinette Coyle, a Knight of Malta, saw Alana Burke in a house in Joseph Place, and has said that Alana Burke told her she had been "crushed by a Saracen against a wall".⁹⁵

2C-136 John Lafferty reported in 1972 that in one of the ambulances was a girl called Burke "who had been crushed by a Saracen".⁹⁶

2C-137 Frank Campbell is another who gave an account in his 1972 statement of how he met a young girl at the front of the Flats who was

*crying, she was in a bad way. She told me she had been squashed by a Saracen. I took her into one of the houses.*⁹⁷

2C-138 Curiously, however, by the time that he came to give his BSI Statement, Mr Campbell's evidence went a lot further. He claimed to be an

⁹⁴ AH 11.3 paragraph 13

⁹⁵ AC 85.8 paragraph 33; Day 95/69/25-66/70

⁹⁶ AL 2.4

⁹⁷ AC 137.3 paragraph 10; Day 121/7/12

eyewitness to the Pigs deliberately trying to run down Alana Burke and other people. He maintained this unequivocally in oral evidence.⁹⁸

Q.... And you say that these vehicles were being deliberately driven at people?

A. Yes, they surprised me, because I was always brought up to respect law and order and to see people who were supposed to be there, you know, providing law and order, deliberately driving at people -- they were definitely deliberately driving at people.

Q. Just to be clear about it, you do mean, do you, that the drivers of those vehicles were deliberately attempting to run people down?

A. Yes.

Q. And not just driving towards people in the expectation they would get out of the way?

A. No, no.

Q. What was it that enabled you to tell that they were deliberately trying to run people down?

A. If you are driving into an area, you drive in and park. They were not driving in and parking, they were driving round in circles, you know, at a speed. You know, one or two of them pulled up and parked, you know. The other ones drove round in circles and to me they were trying to knock down people.

Q. Can we look at what you say in the second half of paragraph 9? You say here: "A couple of Saracens kept driving around the wasteground and another three or four stopped in the area of the Rossville Flats car park, approximately where I have marked .. on the map. There would have been at least five to six in total. At this point I could not hear any shooting." Is that really correct, that a couple of vehicles kept driving round the wasteground?

A. Yes, round where D and E are.

⁹⁸ Day 121/7/4-8/17

2C-139 Mr Campbell said that he doubted that his memory was playing tricks on him about that, and that to the best of his recollection "*there was other ones [Pigs] in there [the Car Park] driving around.*"⁹⁹ Mr Campbell was "*definite, very positive*"¹⁰⁰ about his allegation that Alana Burke was deliberately run into, and that she was standing near to him at his point F, roughly in the centre of the east side of Block 1 of the Flats. He said that had he not got her out of the way, "*the Saracen would have squashed her against those block of flats, the bottom of them.*"¹⁰¹ He was sure of the location, even having been shown by Mr Roxburgh the position that Alana Burke herself marked as the point where the Saracen hit her which was nearer to the fence on the waste ground.¹⁰² Mr Campbell remained adamant that his recollection – rather than hers - was correct.¹⁰³ He went on.¹⁰⁴

.. I picked her up she was where I am talking about at F. She was hit first and then the Saracen drove at her again and that is when I caught her and ran with her behind the wall behind over towards block 2.

Q. Can you recall where the vehicle that hit Miss Burke had come from?

A. No, not exact, no. It was in there just driving around at the time The impression I got at that time was that she was running away, because to me it was more of a glancing blow. If it had have hit her full on, it would have killed her, you know. It was more of a glancing blow from the side of the Saracen.

2C-140 Mr Roxburgh pointed out to Mr Campbell that Alana Burke's recollection was that she did not meet him until she had crawled through the alleyway

⁹⁹ Day 121/9/3-13

¹⁰⁰ Day 121/9/23

¹⁰¹ Day 121/9/23 – 10/1

¹⁰² AB 101.5 at position X

¹⁰³ Day 121/10/2-21

¹⁰⁴ Day 121/10/19 – 11/12

out of the car park. Despite this he remained confident that his recollection was correct.¹⁰⁵

No, to my recollection, when she was hit and again when the Saracen tried to ram her against the high flat wall, that is when I caught her and I ran with her.

2C-141 Mr Campbell also claimed to see "other people" being hit by the vehicles but could not say how many¹⁰⁶.

2C-142 The account of Alana Burke being crushed against the wall was clearly current in the Bogside during the days following Bloody Sunday. Murray Sayle of the Sunday Times felt able to report:¹⁰⁷

A Saracen raced into Rossville Flats parking area. The crew saw that they were not in the spot allocated by the operational plan, and the driver reversed the vehicle against a low retaining wall (crushing Alana Burke) and raced out to its allotted position.

2C-143 Christopher Clarke QC asked Mr Sayle from where he had received that information. He replied:¹⁰⁸

A. I can tell you. From a number of witnesses, and I think one of them was Chapman.¹⁰⁹ That would be my recollection. Certainly from a number of witnesses, because we asked them: did they remove to exactly the same place... The only time in the entire sequence of events that anybody could tell us that the actions of the military had been other than purposeful, i.e. pre-planned, because no orders were

¹⁰⁵ Day 121/12/16-121/13/23

¹⁰⁶ AC 137.3 paragraph 10; Day 121/15/16-16/12. Mr Campbell's BSI evidence is at odds with his 1972 NICRA Statement as to when he first saw Alana Burke; he also claimed in 1972 to have been knocked down himself but said in his oral evidence to this Inquiry, denying authorship of the 1972 statement, that he was definitely not knocked down. (AC 137.7; Day 121/16/13 -20/14) The driver of Pig 2 has always acknowledged that as the Pig slowed to a halt it accidentally hit a man who got up and ran away.

¹⁰⁷ M71.28

¹⁰⁸ Day 217/65 - 67/11

¹⁰⁹ Mr Chapman did not say this in either his statement or his oral evidence to the Widgery Inquiry.

being shouted and backing off they crushed this unfortunate young lady -- clearly unintentionally, that is a pretty big vehicle and it is a very narrow street. That is where that comes from.

Q. I think you did speak to Alana Burke?

A. I cannot remember, but certainly I or Derek did, yes. I cannot specifically remember speaking to her.

Q. Can we have on the screen AB101.9. She has given evidence to this Tribunal. She was indeed hit by a Saracen at approximately the apex of the arrow as shown on this picture as it was entering into the car park and not shot as the driver reversed against a low retaining wall and there does not seem to be a low retaining wall anywhere near the arrow. Should we infer that this description of what happened to Alana Burke is unlikely to have come from her?

A. I do not know. I understand -- she was not shot, was she, I thought she was crushed. Forgive me, I heard you to say shot. She was, and my understanding, and what sticks in my mind is that the Saracen backed on to her and caught her between the wall and -- the exact details, where it happened, I cannot now help you with, it was a long time ago.

2C-144 Other accounts of soldiers driving with malicious, near homicidal intent abound. William Harley alleged that a Pig knocked down a man, and then, as he tried to get away, kept going at him such that it seemed to Mr Harley that *"he was turning his wheels deliberately to try and run the man over on the ground."*¹¹⁰, although he accepted in questioning by Edwin Glasgow QC that in fact this might be more a matter of interpretation.¹¹¹

2C-145 Thomas Harkin claimed to have been knocked down deliberately by a Pig that was equipped with spikes, and which circled round before hitting him.¹¹² Such was the Pig driver's determination to run him over, Mr

¹¹⁰ Day 77/5

¹¹¹ Day 77/47/16-48/1

¹¹² Day 113/40/3

Harkin said that the vehicle seemed to try to reverse back over him, and he was only spared by his friend pulling him out of the way.¹¹³ William Harley, despite being an eyewitness to the Pig's arrival in the car park, did not see this episode.¹¹⁴ James Quinn, Mr Harkin's companion in the same episode, gave a different account of the incident.¹¹⁵

Bernard McGuigan

2C-146 The death of Mr. McGuigan has acquired an additional macabre dimension as a result of the many accounts of what subsequently happened to what is believed to be his eyelid but is variously described as his eyelid, eye or eyebrow. Whilst it may well be the case that part of Mr McGuigan's eyelid was recovered and placed in a matchbox shortly after the firing had finished, the number of people who claim involvement in this at various stages is simply not credible.

2C-147 Seeing the eyelid, let alone picking it off the wall, must have been an unforgettable and horrifying experience. James McCafferty, for example, described seeing a perfectly formed eyelid complete with eyelashes.¹¹⁶ John Friel said, "*I have simply never seen anything like it*"¹¹⁷, and Patrick Kelly could not look at it stuck on the wall "*as it was too terrible.*"¹¹⁸ It might be thought that the person who actually performed this task, and those who saw him or her do it, would not easily forget it. Similarly, those who had not performed the task would not, ordinarily, seek to trespass upon the experience and claim it for themselves.

¹¹³ **AH 106.2 paragraph 7**

¹¹⁴ **Day 77/10**

¹¹⁵ **Day 113/154/11 ~ 158/10**

¹¹⁶ **AM 60.3 paragraph 13**

¹¹⁷ **AF 32.7 paragraph 33**

¹¹⁸ **AK 21.10 paragraph 34**

2C-148 Yet, somehow, eight individual witnesses either claim to have undertaken the gruesome task of removing the eyelid from the wall, or name different people who did. Eileen Collins said that she put it in a matchbox and gave it to a priest.¹¹⁹ Eileen Doherty said that it was Jim Friel who, "*very angry about the whole thing*", knocked the eye to the ground.¹²⁰ Kathleen Doherty remembered telling her friend Sheila not to touch the eyelash that she, Sheila, had lifted from the ground.¹²¹ John Duffy saw Mickey Rooney pick the eyelid off the wall and put it in a matchbox¹²²; however, curiously, Michael Rooney said that it was John Duffy who "*removed the eyelash from the wall and put it in a matchbox*", and then "*place[d] the matchbox on top of the stone which was on top of the banner.*"¹²³ Alan Harkens remembers Jack Murray "*picking up Barney McGuigan's eyelid and putting it in a matchbox*".¹²⁴ Donna Harkin thought that her father put the eyelid in a matchbox and laid it on Mr McGuigan's body.¹²⁵ John McDevitt told how he personally took the eyebrow or eyelid with eye lashes on it down and put it in a matchbox and then placed the matchbox "*in one of Mr McGuigan's pockets*".¹²⁶ However, Noel Millar also lifted the eyelid off the wall (with a matchstick) and put it in a matchbox and placed it near Mr McGuigan's head.¹²⁷

2C-149 The original location of the eyelid varies. Eight witnesses claim to have seen it stuck to the gable end of Block 1. Approximately fifteen saw it on the gable end of Block 2. A number are unspecific as to which wall it was

¹¹⁹ AC 72.4 paragraph 22

¹²⁰ AD 64.9 paragraph 19

¹²¹ AD 77.2 paragraph 9

¹²² AD 160.3 paragraph 20

¹²³ AR 28.6 paragraph 22

¹²⁴ AH 8.4 paragraph 18; he picked it up from the ground – Day 96/18/22-19/3

¹²⁵ AH 13.7 paragraph 45

¹²⁶ AM 191.2 paragraph 11

¹²⁷ AM 477.2 paragraph 8

stuck. Three saw it on the ground and Eileen Collins says it was stuck to the threepenny bits¹²⁸.

2C-150 In the same way, the accounts of the timing of witnessing the eye vary wildly and irreconcilably. At least ten people said that the eye was removed from the wall whilst Mr McGuigan's body was still there. Other accounts vary from its still being on the wall after Mr McGuigan's body had been removed to its being still in public circulation up to a day later. Noel Kelly saw the matchbox containing the eyelid on top of a brick just after the body had been moved.¹²⁹ John McGhee saw on the gable end of Block 1, after Mr McGuigan's body had been removed, a piece of flesh that someone pointed out as being an eyebrow.¹³⁰ Patrick Moore saw the eyelash still on the wall, although this time in the middle of the gable end of Block 2, after Mr McGuigan's body had been taken away, and a group of people resolving to remove it¹³¹.

2C-151 However, the following day, according to Alfie McAleer, someone was running around showing the matchbox and its contents to people, such that he was moved to exclaim:

*How weird can this town get – there are people grieving and this idiot is running around with a piece of skin in a matchbox.*¹³²

2C-152 James McCafferty remembers the next day having to shoo a dog away from a box placed on the blood soaked ground "so that it did not interfere with the eyelid".¹³³ Seamus McConell saw, the next day, a sombre group of men discussing the matchbox and its contents (an eyelash with skin

¹²⁸ AC 72.4 paragraph 22

¹²⁹ AK 17.13 paragraph 16

¹³⁰ AM 224.5 paragraph 32

¹³¹ AM 417.6 paragraph 31

¹³² AM 37.10 paragraph 27

¹³³ AM 60.3 paragraph 13

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attached to it).¹³⁴ Carmel McCallion saw two eyelids on two red bricks on the ground the following day.¹³⁵ When Eileen Collins removed it from the wall, it was early the next morning¹³⁶ Michael Rooney saw John Duffy take it down the following day¹³⁷ but John Duffy saw Michael Rooney pick it off the wall and put it in a matchbox sometime not long after the shooting had finished¹³⁸.

2C-153 The eye and its matchbox also appears to have ranged far and wide. Eileen Collins gave it to a priest.¹³⁹ Gerard Doherty put it on Mr McGuigan's body.¹⁴⁰ Seamus Doherty saw it on Mr McGuigan's chest.¹⁴¹ Noel Doherty saw that a boy had an eyelid in a matchbox near the entrance to Block 1 about an hour after the shooting.¹⁴² Vincent Harkin thought that the matchbox was on the floor whilst the body was still there.¹⁴³ Noel Kelly saw it by some bricks.¹⁴⁴ but John McDevitt had put it in one of Mr McGuigan's pockets.¹⁴⁵ Noel Millar put it on the ground next to his head.¹⁴⁶ James Toye thought that somebody had placed it where Mr McGuigan was lying and made an altar there.¹⁴⁷ To Alfie McAleer's dismay, the next day it was on public display in its matchbox, surrounded by groups of men.¹⁴⁸

¹³⁴ AM 130.2 paragraph 11

¹³⁵ AM 66.6 paragraph 26

¹³⁶ AD 64.9 paragraph 19

¹³⁷ AR 28.6 paragraph 22

¹³⁸ AD 160.3 paragraph 20; Day 80/143

¹³⁹ AC 72.4 paragraph 22

¹⁴⁰ AD 65.6 paragraph 37

¹⁴¹ AD 102.3 paragraph 14

¹⁴² AD 92.3 paragraph 18

¹⁴³ AH 34.3 paragraph 15

¹⁴⁴ AK 17.13 paragraph 16

¹⁴⁵ AM 191.2 paragraph 11

¹⁴⁶ AM 477.2 paragraph 8

¹⁴⁷ AT 13.3 paragraph 15

¹⁴⁸ AM 37.10 paragraph 27

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John Johnston

2C-154 The likelihood is that before he was shot Mr. Johnston was doing nothing which would have drawn people's attention to him. Despite this, and notwithstanding Mr. Johnston's own evidence about what he was doing when he was shot, there are witnesses who have claimed that Mr. Johnston was engaged in various acts of heroism. Their evidence is of no assistance in discovering the truth about the shooting of John Johnston but serves as a further illustration of the manner in which myths have come to cloud the events of Bloody Sunday.

2C-155 One suggestion is that Mr. Johnston was remonstrating with the soldiers who had fired.

2C-156 Eddie Doherty embellishes his account with details which appear nowhere in the account of Mr. Johnston himself:

A...he was looking towards the GPO, you know, and you know, my recollection is that he was remonstrating with them, you know that they shot this young lad you know.

Q. When you say that he was remonstrating, what did he appear to be doing?

A. You know, he was sort of pointing. I recall he possibly was pointing, you know. He seemed a bit angry that this young lad was shot, you know.¹⁴⁹

2C-157 An alternative myth is that John Johnston was going to help Damien Donaghy when he was shot. This myth has persisted, despite the fact that it was expressly denied by John Johnston when he gave evidence to the Widgery Tribunal.¹⁵⁰ This may be partly due to the fact that Damien Donaghy has recounted it in his various accounts:

¹⁴⁹ Day 065/9

¹⁵⁰ AJ5.8 paragraph A.

2C-158 In an undated first hand account which Damien Donaghy gave whilst he was still in hospital he stated,

*"...Shouted to a man I'd been shot. He came over, that man, and he was shot, when he was helping me."*¹⁵¹

2C-159 Damien Donaghy told Praxis,

*"Johnson went to lift me, he was shot too".*¹⁵²

2C-160 The story was repeated in Damien Donaghy's BSI statement:

*I was told some time afterwards by Michael Deakin, who died about two and a half months ago, that John Johnston was bending down to lift me up when he too was shot. I did not know Mr. Johnston at that time.*¹⁵³

2C-161 Others have given similar accounts of John Johnston's activities at the time he was shot.

2C-162 Noel Kelly gave the following account in his BSI statement:

*An older man (I have since recognised him from pictures I have seen as being John Johnston) went over to help the boy but, as he was standing over him, there was another shot and he fell to the ground, almost on top of the boy.*¹⁵⁴

2C-163 William Kearns, in what appears to be a NICRA statement, said the following:

This boy was standing at the corner. A shot rang out. The bullet pierced his leg. I didn't know at this time whether it was a rubber bullet or not. I was running back again to the waste ground. I looked back to see if the boy was alright. He made to get up and fell again. I was going to help him

¹⁵¹ AD120.26

¹⁵² AD120.25

¹⁵³ AD120.6 paragraph 11

¹⁵⁴ AK17.9 paragraph 6

*to get up when this old man started to help him. When he got to the boy, he got shot.*¹⁵⁵

2C-164 William Curran told Praxis:

*Johnston, I didn't know Mr Johnston at all, but he had made to lift Donaghy at the same time as I had, but I heard Johnson say oh, my leg, and he got a ricochet, I think. I think it was a ricochet he got in the leg.*¹⁵⁶

2C-165 Mr. Curran was asked about his BSI statement, which was to the same effect as remarks in his Praxis interview, when he gave evidence on Day 055:

Q. Then you describe in paragraph 15 how immediately after seeing Bubbles Donaghy: "I approached him and stood at his feet. I glanced round and saw an older man, who I now know as John Johnston, coming to help Donaghy as well. When Johnston was about five or six feet away from me, I saw him clutch his shoulder. I cannot remember precisely where he was in the waste ground when he was shot." Can you tell us in what direction Mr Johnston was moving, where he had come from and where he was going to?

A. Well, I had my back to him and I came from my right side, indicating that he must have come up William Street or came behind me through the waste ground.

Q. You had your back to him and you were facing in what direction?

A. I was facing Bubbles Donaghy's, yes. I saw Mr Johnston out of the tail of me eye and I assumed he was coming to help Donaghy.

Q. That was an assumption on your part?

A. Yes.

2C-166 Betty Curran's BSI statement is in similar terms to that of her husband's:

¹⁵⁵ AK44.1

¹⁵⁶ O6.8

I subsequently heard that Mr Johnson had been hit too. He had been running over to Bubbles when he fell.¹⁵⁷

2C-167 Charles McDaid's statement to the Widgery Tribunal gives the same impression:

I then saw a youth fall on the west side of William Street ... I called on him to lie still and then I saw a man run out to this boy from the direction of Columbcille Court and I shouted to him to stay down as the soldiers were firing live rounds and not rubber bullets. By this time people were pushing up William Street to see what was happening and I turned towards them to keep them back. Upon doing so there was more gunfire and someone shouted that the man had been shot.¹⁵⁸

2C-168 There are major inconsistencies between Mr. McDaid's oral evidence to the Widgery Tribunal¹⁵⁹ which was to the effect that he did not see the man who was shot, and the evidence that he gave to the present Inquiry which was that he had seen John Johnston hit.

Q. If we go back to paragraph 19 at AM161.3, we should correct paragraph 19 so as to read: "As I saw him in the area marked "F", Johnson was moving forward in a westerly direction"?

A. Yes.

Q. You shouted to him, "get down, they are firing live rounds", and you then heard another shot, again from a northerly direction, and he went down; you think that he was hit on the leg?

A. Yes.

Q. Did you hear any more shots other than the two followed by the one that you have described?

A. No.

¹⁵⁷ AC130.2 paragraph 12

¹⁵⁸ AM161.14

¹⁵⁹ AM161.16 paragraph E

Q. Mr Johnston, you did not know him at the time; is that right?

A. Not by name. I knew him by seeing him in the town, he was a prominent man.

2C-169 Surprisingly Mr. McDaid claimed to have no present recollection of seeing a young boy being hit.¹⁶⁰

2C-170 John Johnston expressly denied that he had been going to assist the injured Damien Donaghy. He was asked in terms when he gave evidence to Lord Widgery:

Q. Had you gone to assist the boy?

A. No.

Q. Did you not turn round to him at all?

*A. No.*¹⁶¹

Charles McMonagle

2C-171 In the same way, we would draw attention to Don Mullan's book "Eye Witness Bloody Sunday" which includes a photograph of a Knight of Malta lying on the ground as two soldiers make their way south towards the Rossville Flats car park. Beneath the photograph appears the caption:

*In direct violation of the Geneva Convention, a young Knights of Malta paramedic is in a crumpled heap having been attacked by two members of 1 Para.*¹⁶²

2C-172 The Knight of Malta is Charles McMonagle.¹⁶³ In a statement in his own handwriting which he made in 1972 he explained that he had been

¹⁶⁰ 060/143

¹⁶¹ AJ 5.8 paragraph A

¹⁶² Don Mullan, Eye Witness Bloody Sunday The Truth, Wolfhound (1998).

knocked to the ground by the crowd while he was tending to a casualty. He was then confronted by a soldier who, when Mr. McMonagle pointed to his Maltese cross on his uniform breast, released him.¹⁶⁴ In his BSI statement he said that he was confronted by a soldier who, when he pointed to his Red Cross, roughed him up and went through his kit. However, in his oral evidence he accepted that the account he had given in 1972 was correct. He explained that he had been knocked to the ground and "*trampled under foot*" initially by the fleeing crowd, and not by the soldiers.¹⁶⁵ The soldier then pointed his rifle at him whilst he ascertained who he was and whether he was a threat. The soldier then let him go. While Mr. McMonagle may have been brusquely treated, he himself accepts that he was not the victim of violence as stated by Mr. Mullan.

PRESSURES ON CIVILIAN WITNESSES

2C-173 Many witnesses appearing before this Inquiry have emphasised the character of the Bogside and the Creggan as a small and intimate community. It is undoubtedly the case that over the last thirty-two years the members of that community have shown sympathy and support for those who have suffered as a result of the events of Bloody Sunday, not least in their call for a new Inquiry into the events of that day. Moreover, there are widely held convictions among local people as to what occurred on Bloody Sunday. While such solidarity is, in certain respects, commendable, it also possesses less attractive features. In some quarters, minds may be closed to any truth other than "our truth". Many witnesses have told the Tribunal that they know the truth of what occurred that day. Furthermore, there is a real danger that any departure from or

¹⁶³ AM 367

¹⁶⁴ AM 367.20.

¹⁶⁵ 102/143

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disagreement with the shared conviction of what occurred – a conviction which, as we have demonstrated, is sometimes distorted by folklore which has come to be accepted as the truth - will be regarded in Londonderry as an act of disloyalty.

2C-174 However, there are other, much more sinister forces at work in Derry. Throughout the years of the Troubles the various groupings of the IRA had a stronghold in Derry and demonstrated time and again their capacity for murderous violence directed not only against what they considered to be the forces of an occupying power¹⁶⁶ but also against civilians who transgressed their notions of loyalty. Despite the current ceasefire, it is clear that the Provisional IRA remains hugely influential in Derry, as do a number of individuals who were prominent in its leadership during the Troubles. The Tribunal will not need to be reminded that during the period when it has been operating in the city dissident Republican terrorist organisations have carried out and continue to carry out a bombing campaign in and around Londonderry and that it was eventually determined that it was too dangerous for military witnesses to attend there to give their evidence. Moreover, the Tribunal has recently received compelling and disquieting confirmation of attempts by terrorists or former terrorists to suppress evidence to this Inquiry.¹⁶⁷

¹⁶⁶ In February 1999 Channel 4 broadcast a documentary which included footage from a propaganda video made by the Continuity IRA. A representative of that organisation stated that it showed a cell of the Continuity IRA and that the film had been shot “in a house in the Bogside in Derry”. Hooded terrorists were shown handling weapons including a grenade, an AK47, a Magnum handgun and an American-made M203, factory produced, grenade launcher. The terrorist stated:

We're experienced volunteers....We'll be starting a military campaign sooner rather than later. Targets will be Security, Brits, Cops, that type of thing. Bit of commercial, Banks, Tax Offices.

¹⁶⁷ See, further, Section 2DII, below.

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2C-175 As a result, the people of Derry have been subjected to the most extraordinary pressures so far as their evidence to this Inquiry is concerned.

2C-176 In our submission it has been obvious during the hearings at which civilians have given oral evidence that many were under great pressure not to depart from a shared perception among the people of this city as to the truth of what occurred on Bloody Sunday. Liam Clarke, in an article entitled "Bloody Sunday truth fails to eclipse "the big Derry myth"" published in the Belfast edition of the Sunday Times on 15th February 2004, refers to "the big Derry myth" in the following terms.

This shared myth was forged in the trauma of that awful day and cherished ever since. It says that the IRA had planned and done nothing and that the army had launched a premeditated attack with the intention of killing as many people as possible. Anything else is an attempt to let the army off the hook.

2C-177 In the course of this article he refers to an advertisement which appeared in the Derry Journal on Friday 13th February 2004, the last day of the Inquiry's sittings to hear evidence.

The ad was taken out by the families of the dead and wounded of Bloody Sunday. Like much of the evidence given at the tribunal it was misleading.

It was addressed to "all those in the Derry community" who had provided evidence to the Bloody Sunday tribunal. "You delivered the truth with dignity and you did not waver under intense, at times, hostile examination", it said. The ad noted, truthfully, that the process of giving evidence was traumatic for many, but didn't say that the trauma often arose because they were frightened of or unwilling to tell the truth.

A list of witnesses so commended was published with the advertisement and, while many told the truth, it is clear that there were quite a few on it who had admitted lying about Bloody Sunday, who gave incredible accounts, or who had unexplained memory lapses. Others not on the list provided sick notes when the time came to give evidence.

2C-178 Liam Clarke concluded:

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What does all this prove? It certainly doesn't prove that the Paras didn't shoot 14 people dead and it doesn't suggest that they were justified in doing so.

What it does show is that the pressure on people to keep within the consensus in their community is immense, even when immunity from prosecution is guaranteed to those giving evidence. There are worse things to be feared than prosecution and they include death, maiming and being shunned in your local peer group.

2C-179 The fears of the people of Derry are perhaps most acute when it comes to naming those involved in Republican terrorism in 1972. The Tribunal will be mindful of the fact that many civilian witnesses have refused to identify persons they knew to have been members of the IRA on Bloody Sunday.¹⁶⁸

2C-180 In the course of his evidence Mr. Eamonn McCann made the following comments:

One last question: in relation to other persons who have been asked names and to reveal names, can you give perhaps the Tribunal some insight into the difficulties that that creates personally for them?

A. I think it has created a great difficulty for individuals. It has also created a certain degree of apprehension among people who are potential witnesses or witnesses for the future, in that they believe they are being put in the position of being, um, invited, indeed pressurised, into becoming, in effect, informers.

That in general terms runs directly counter to the ethos of the community that people come from, but more than that, knowledge is being ascribed to them which they do not have. I repeat again, it should be kept in mind that the IRA is a secret organisation, that it has on many occasions killed people who have revealed its secrets. I am not for a moment suggesting that people feel under threat of death over the question of giving evidence to the Bloody Sunday Inquiry, certainly not. I am just indicating the strength of

¹⁶⁸ This is considered further in Chapter 2D III.

the IRA's belief in its own secrecy and desire to maintain its own secrecy and people are -- many people are troubled in Derry about what appears to be the balance, of the tone and pattern of questioning at the Inquiry in relation to this matter.

They feel like they are in the position of -- it is as if they were people who were in a Post Office and somebody came in and shot it up and then discover that they are questioned as to what they might have done or what the dead might have done to have provoked the assault on the Post Office, and the pressure is put on them to reveal knowledge which they might have, but which they do not really have at all, about anything that what other individuals there might have done to precipitate this event and they feel it is unfair and it contradicts the expectation which many people had of this Tribunal, because after all nobody at all, that this Tribunal has challenged the fact that all those who died or were wounded on Bloody Sunday, died or were wounded by British Army bullets.¹⁶⁹

- 2C-181 Others have been more forthright and, we would submit, more realistic in their assessment of the pressures on witnesses before this Inquiry.
- 2C-182 Nell McCafferty has written with great eloquence of the dilemma of the civilian witnesses. ("Derry breathes a sigh of relief", Sunday Tribune, 6th May 2001.)

It has not been much reported that people have been reduced to tears during testimony before Saville, as they tried to avoid answering direct questions about people whom the inquiry suspects were members of the IRA. You could be wrong, and could inadvertently put that person in danger. You could be right and put that person in danger, all these decades later, when loyalist paramilitaries are still killing Catholics. You could face unspecified sanctions if you refuse to name people, Saville has softly warned.

And you could put yourself in danger, a nervous woman told me, who hopes that she will not be called to testify...

¹⁶⁹ Day 87/71/06 - Day 87/72/22.

2C-183 With regard to the Official IRA she asks:

...what if the names of suspected members of the Official IRA are put to future witnesses? There is a heartfelt longing that these men would name themselves and get it over with and get everybody else off the rack.

2C-184 She explains that there was at first a huge sense of relief when it became known that Martin McGuinness was prepared to admit that he had been a member of the Provisional IRA.

At first there was a huge wave of relief. Unlike the dogs in the street, those who have testified at the Bloody Sunday inquiry in Derry have gone through grammatical hoops trying not to name Martin McGuinness as a leading IRA figure. Relatives of the dead had called for the full truth to be told, but some relatives agreed off the record that they dreaded being put to the test under oath.

2C-185 She explains how Eamon Deane was the first person to agree on the record in response to questioning in this Inquiry that he believed Mr. McGuinness to be a member of the IRA.

He answered the question fully and truthfully last Tuesday after Sinn Fein leaked the contents of the first draft of McGuinness's proposed testimony. He felt a burden fall from him, he grinned recalling last weekend's confirmation of a front-page report in this newspaper in March. He would, he insists, have told the full truth anyway. He was lucky, he says, that he did not know the identities of the five men who were with McGuinness when Deane met them some distance away from the scene of the massacre, even as the shooting continued. He was lucky in that had he known the others, naming them might have amounted to informing.

For, as Miss McCafferty explains, Mr. McGuinness's confirmation that he was an IRA member:

...has paradoxically opened another chasm. He will not name any other member of the IRA who was in his company that day. Does that mean that those who might name them are, by contrast, informers?

2C-186 The position of those regarded by the IRA as informers is an uncomfortable one. Peter Taylor's record of an interview with Martin McGuinness in 1972 states:

"Informers know the penalty", McGuinness once coldly told me. "Death".

The former commander of the Derry Brigade can be ruthless as well as charming.¹⁷⁰

2C-187 In his evidence to this Inquiry Denis Bradley was asked by Arthur Harvey QC about the culture which gives rise to a civilian reticence to name members of the IRA:

Q. If I take you just to develop that matter in relation to the names of persons who, within this community in 1972 were either known or believed to be members of the Provisional IRA or the Official IRA; would it be correct to say that within this community there is still -- the Bogside, Long Tower, the Creggan -- there is still an old-fashioned rural, parochial atmosphere in which a lot of people claim to know more about other people's business than their own?

A. If I say that -- if I say yes to that I may have difficulty living within the city for a while.

Q. Is it not an Irish tradition?

A. It is an Irish tradition and I understand and I will accept what you are interpreting.

Q. In other words, people will collectively in the terms of a community consciousness be aware of quite a lot, but be reluctant to speak to outsiders lest it be regarded as a betrayal?

A. Yes.

Q. Would that be one of the reasons why so many persons may know or believe members of the Provisional IRA in 1972 but are genuinely embarrassed and reluctant to name them?

¹⁷⁰ M112.55.

A. Yes.

Q. Is there also a feeling within Derry that there is an absolute moral responsibility upon those persons who were members of organisations in Derry in 1972 to come forward and assist this Inquiry?

A. Yes.

Q. Is it also correct to say that there is a feeling that ordinary decent people are being embarrassed to the point where it is almost intolerable when they are asked the names of individuals who will not come forward themselves?

A. To my knowledge, some people have come close to having nervous breakdowns.¹⁷¹

2C-188 Liam Clarke and Kathryn Johnson refer to this state of fear in Martin McGuinness: From Guns to Government, 2nd Ed., where they state:

Paddy Ward, the commander of the Fianna who was given nail bombs by McGuinness before he gave orders for their withdrawal when he realised the scale of the British military presence, has agreed to give evidence to the Saville Inquiry and is in correspondence with W. J. Tate, Solicitor to the Inquiry. Ward no longer lives in Derry, so is subject to no threats from the IRA. Others are not so fortunate. It is clear that witnesses, among them former IRA men, will remain reluctant to testify before Lord Saville as long as Martin McGuinness remains reluctant to admit the truth of his actions on Bloody Sunday. (at p. 12)

2C-189 Kathryn Johnson states in her BSI statement:

In particular I wish to assert journalistic confidentiality in relation to certain sources. A number of people have asked that their identities be kept confidential and as I state on page 11 of the book, for this reason and for legal reasons a number of people have been given pseudonyms. I have been asked by Eversheds to contact such sources and ask them to release us from any obligations of confidentiality, or to ask them to make statements to this inquiry. Without exception,

¹⁷¹ Day 140/175/3-176/13

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*we have already asked all such sources if they intended to give evidence to the Inquiry. Almost without exception, all such sources have made it plain to us their wish not to be identified and their fears of what might happen should they be identified.*¹⁷²

and gave evidence:

*Can I make it clear, we spoke to a wide variety of people, politicians, clergymen, policemen, former Republicans and the people who would still describe themselves as Republicans, but we do not wish to give away any information about those sources, except what was publicly stated in the book. Some of these people still live in Republican areas and are fearful for their lives should their identities be disclosed.*¹⁷³

The IRA Official Line

2C-190 On the night of Bloody Sunday the IRA sent out a clear signal that the public line was to be that there had been no relevant IRA shooting on Bloody Sunday. A note of the press conference held by the Official IRA at midnight on 31st January 1972 records that:

The officer claimed that the IRA Official wing had at no time fired shots in the immediate vicinity of the area where the deaths occurred.

...

*He could not speak for the Provisionals but to the best of his knowledge there was no shooting at all against the Army in the William Street / Rossville Flats area.*¹⁷⁴

2C-191 The Provisional IRA issued a similar statement that night. A note of the press conference records that:

¹⁷² M111.2, paragraph 10

¹⁷³ Day 387/18/04-11

¹⁷⁴ ED12.4-5

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The officer commanding the city's IRA Provisional Brigade said: "At no time did any of our units open fire on the British army prior to the army opening fire."

"In order to avoid any possibility of danger to civilians the Derry Provisional Command of the IRA ordered all weapons out of the total route of the march area this morning."¹⁷⁵

- 2C-192 One consequence of such a clear statement by both sections of the IRA is that the civilian population of Londonderry was left in no doubt that if they spoke out about having seen gunmen on Bloody Sunday they were contradicting the official IRA line.

Civilian Reticence and Notable Exceptions.

- 2C-193 The Tribunal has heard evidence from a number of civilian witnesses who have indicated that under no circumstances would they have mentioned seeing civilian gunmen in statements they made in 1972.

- 2C-194 Peter McGrisken was asked by Mr Roxburgh why he had failed to mention in his contemporary statement a confrontation he had witnessed between members of the Official and Provisional IRA. He replied:

At the time I, it is hard to say, there was no way I wanted to mention a thing like that, as you say.¹⁷⁶

- 2C-195 James Norris was asked by Ms McGahey about a similar omission:

Q. In your statement in 1972 you did not refer to having seen the gunman with a revolver; why was that?

A. Possibly because after the shootings that I felt it was inappropriate to mention that there was a gunman there and it was only as a result of Bishop Daly speaking out on television that I felt confident enough to come forward and say that.

¹⁷⁵ ED12.1-2

¹⁷⁶ Day 106/113/7-16

Q. Was that this time, to this Tribunal?

A. Yes.

Q. Why was it inappropriate in 1972?

A. Well, I felt the mood in the city after the shootings did not lend itself to it.¹⁷⁷

2C-196 David Capper witnessed a gunman fire a pistol near the Shiels' house¹⁷⁸ at soldiers in a derelict buildings close to the church.¹⁷⁹ For "diplomatic" reasons he had given the impression to the Widgery Inquiry that he had not seen the gunman as he had not wanted to get involved in identity parades.¹⁸⁰ In his oral evidence to this Inquiry he explained that when he had seen the gunman fire he had been in a crowd of twenty or thirty people who had scattered.¹⁸¹ It is clear from this oral evidence that this Inquiry could and should have heard about this incident from many other witnesses.

2C-197 Monica Barr is one of only a handful of witnesses to have mentioned seeing a civilian gunman, a man firing a pistol from Block 1 of the Rossville flats, in the statement she made to NICRA. Having done so she was so scared that she never mentioned seeing the gunman to anyone again:

Q. I asked you earlier about the taped statement that you gave. Do you remember giving the statement?

A. No, I do not.

Q. Do you remember having any discussions at all with anybody about having seen a gunman fire from the Rossville Flats?

¹⁷⁷ Day 147/114/6 -18

¹⁷⁸ Day 73/69

¹⁷⁹ Day 73/11/9-14.

¹⁸⁰ Day 73/65/7-14

¹⁸¹ Day 73/123/13 -Day 73/124/5

A. No. I remember -- I can remember that I did give a statement at the time. I do not remember giving a taped statement, but because of the fact that I had seen the gunman that day, I did not make any statement to anybody else about it.

Q. Because you had seen one?

A. Yes.

Q. Why not, why did you not want to give a statement to anyone else?

A. I do not know, I was just scared at the time because of the way things were at that time.

Q. Did anybody tell you that you should not talk about having seen --

A. No.

Q. A civilian gunman?

A. No, it was just me myself, I did not want to talk about it.¹⁸²

2C-198 The pressures which were operating in 1972 are all too apparent from the evidence to this Inquiry of Marian McMEnamin. Mrs. McMEnamin explained that she had wrestled with her conscience regarding whether she ought to come forward and tell this Inquiry that she had seen a gunman on Bloody Sunday.

I hate myself for saying this; I have never told anybody about this before, not even my husband and we have been married for over 25 years. I feel disloyal to the innocent men who died on Bloody Sunday, but I did see him and I feel that the truth must now be told.¹⁸³

2C-199 Peter Clarke QC asked Mrs. McMEnamin:

¹⁸² Day 148/16/25-Day 148/17/22

¹⁸³ AM363.2 paragraph 7

Q. Can you give us a rough estimate given the stewards had some words with this gunman? How many people you witnessed seeing that gunman; what is the smallest figure?

A. I never spoke to anybody about that gunman.

Q. How many people did you see who must have seen him, 20?

A. I would say there was such panic there that I could not speak for other people, but there could be maybe half a dozen people may have seen them.

Q. And your mother?

A. We never spoke about it, never.

Q. That was just the last point. Your mother saw him as well?

A. I do not know, we did not speak about it.

Q. It is not something one spoke about, was it, a gunman on that day was not something you mentioned in the Bogside?

A. I never spoke about it to anybody; I never mentioned it to my husband; I have never spoken about this until now. There could have been an unspoken thing there with my mother and myself, but she never mentioned it to me.

Q. May I ask, because you have had to screw up your courage to make a statement, have you not, it has been very difficult?

A. Uh-huh.

Q. Indeed. Was it any particular incident that prompted you to make that courageous step?

A. I felt that the truth had to come out and I felt that, I felt I did not, I did not say to begin with because it was disloyal to the people who were innocent because I could have been shot that day and now I feel the truth has to come out, you cannot hide behind it any longer and I just think if everybody tells the truth, there will be some closure here.¹⁸⁴

¹⁸⁴ Day194/220/4-221/11

2C-200 It is no surprise given the conditions operating in Derry in 1972 that the civilian population was genuinely fearful of the consequences of giving details about members of the IRA and the extent of paramilitary activity on Bloody Sunday.

Civilian Evidence to the Present Inquiry

2C-201 In this regard, matters have changed very little since 1972. It is apparent that a large number of witnesses are still unwilling to provide information about the IRA. Some have expressly stated that their refusal stems from a fear of the consequences.

2C-202 Charles McGill did not refer in his NICRA statement to having seen a gunman and men with nail bombs on Bloody Sunday. Although he told Eversheds about them, he refused to include any reference to what he had seen in his first signed statement to the present Inquiry. His reasons are contained in the Eversheds note which is attached to his second statement:

[Mr McGill]... says that he has to live around here and he only gave us the information after we assured him that his statement would only be signed when he had amended it as he wished and was happy with it. Although he allows me to write this information down, he stressed it was not to go in his statement.¹⁸⁵

2C-203 His second statement, signed two days before he gave evidence, confirms:

The reason why I did not want this information to be put in my Eversheds statement is explained in the Eversheds note. However, I also I did not want people to use as an excuse to detract from the enormity of what I had seen that day -¹⁸⁶

2C-204 Implausibly, when he gave evidence, just two days after signing his second statement, Mr McGill claimed that fear had played no part in the

¹⁸⁵ AM230.11

¹⁸⁶ AM230.10 paragraph 12

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significant omissions from his various statements and he had simply not wanted to "detract from seeing cold blood murder."¹⁸⁷

2C-205 Bernard Doyle made it clear that he would give no information about the IRA for fear of reprisals:

Q. If you had seen members of the Provos or the Stickies firing guns you would not tell anyone, would you?

A. They were not firing -- there were nobody firing any guns that day, no way. The only people fired guns that day was the Army and that is all.

Q. But you see the problem is for some reason it is a laughing matter in some parts of this chamber?

A. I am not laughing at anybody.

Q. But some people were just earlier?

A. I am laughing at nobody.

Q. You are not frightened of the Provos now, are you?

A. I, I will be honest with you.

Q. Please do?

A. I live in Derry and I have to live in Derry.

Q. Absolutely?

A. We will put it that way.

Q. So you would not tell us about the Provos?

A. No way.

Q. Come what may?

A. No way.¹⁸⁸

¹⁸⁷ Day 069/165/18-19

¹⁸⁸ Day 180/148/6-25

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2C-206 James Deeney voiced the following concerns of civilians about coming forward and giving evidence to the Tribunal:

A. I wanted to ask a question of the Tribunal: effectively I did not have the option of anonymity. All the soldiers did whether they wanted it or not and, you know, it seems to me that that is, um, more favourable treatment, you know, for the army, you know. What if I have a job, reputation or whatever, what if I travel round Northern Ireland, you know what I mean, what about my reputation, what about my safety and so on and so on? I, effectively, did not have the option of anonymity.

.... A. I make no bones about it. What I am or what I was, you know what I mean, but supposing that I would have had a reputation with, say, professional work colleagues or whatever, you know, I would have been much more reluctant to come forward, you know, giving that, if you know where I am coming from.

LORD SAVILLE: I can understand that, Mr Deeney, and there are circumstances, as I have just said, where we would consider granting anonymity to individuals, but quite often in inquiries of this kind, the search for the truth does involve people necessarily being embarrassed or put in difficult circumstances and simple embarrassment, I am afraid, is not something we would necessarily take into account if we felt that such embarrassment, if we gave it full force and effect, would impede us for our search for the truth. Our object is to search for the truth about what happened on Bloody Sunday and we will do so as fairly and justly as we possibly can.

A. I have no doubt you will try, but I did not use the word embarrassment, and also maybe some people might have to travel round different parts of Northern Ireland because of, say, a work situation or whatever and some of those areas could maybe be hostile, you know.¹⁸⁹

2C-207 It can be inferred from the alterations made to Mr Deeney's statement that he personally had anxieties about admitting to knowing the identity of a member of the IRA. In his first BSI statement Mr Deeney refers to seeing

¹⁸⁹ Day 086/168/8-170/23

some members of the Official IRA coming out of a house with a rifle. He confirmed to Edmund Lawson Q.C. that his draft BSI statement had included a sentence in which he said that he vaguely knew one of the gunmen, but was not prepared to name him. This sentence had been removed from the final version of his statement; probably, he agreed, at his own request.¹⁹⁰

2C-208 Kieran Gill gave a third supplemental statement detailing the risk to his personal safety if he was ordered to disclose his IRA sources:

It is my understanding that both organisations continue to exist and continue to have access to weapons.

There would be a very high risk that on the hypotheses which I have given ... the PIRA and OIRA would learn what I had done...

It is notorious that PIRA and OIRA exact revenge on those whom they regard as informers. Individuals within the organization may also behave in this way on their own initiative. It is also obvious that they would not be dissuaded from such reprisals because I was acting under the compulsion of an order from the Tribunal.¹⁹¹

2C-209 Patrick Moore was asked by Edwin Glasgow QC about corrections which he sought to make to his BSI statement regarding a member of the IRA:

Q. Could we look, please, together at paragraphs 26 to 28? There are the two sentences I would ask you to take in mind together, if you would. Firstly, the first line of paragraph 26, where you said in the statement:

"Taking cover with us behind the wall was a known republican" and the second sentence which you corrected when you first gave your evidence:

"The person who I recognised as a republican" and you now say "who I was told was a republican". Without

¹⁹⁰ Day 086/148/9-152/13

¹⁹¹ M105.31 paragraphs 5-8

wishing to be rude, Mr Moore, can you say why your statement, as taken and signed by you two years ago, clearly indicated you did know this man to be a republican; how is it you have changed your mind about that, if you have?

*A. It is not really I have changed my mind, it is just it is not interpreted the way I said it, that is all I can say. I understand what you are saying as well.*¹⁹²

- 2C-210 Patrick Moore also refers in his BSI statement to seeing “TV people, a politician and known republicans” but responding to a question by Gerard Elias Q.C. he stated that he could not name any of these individuals.¹⁹³
- 2C-211 Francis Duddy claimed that he could not be sure who had been in the bookies with him and on that basis initially declined to give any names of others who might have been there, save positively to deny that Martin McGuinness had been present.¹⁹⁴
- 2C-212 Patsy Murphy denies having any knowledge of civilian gunmen¹⁹⁵ despite the fact she is recorded as having given a joint Praxis interview with Nuala O’Donnell, the note of which records that “They both confirm Nell’s gunman story, but their memories are not as good as Nells”.¹⁹⁶ The ‘Nell’ referred to is Nell McCafferty who refers to seeing two men with rifles near the Bogside Inn.¹⁹⁷
- 2C-213 Other witnesses have claimed, without giving a particular reason, that they are simply unable to help in relation to membership or activities of the IRA. The Tribunal has given a clear indication that it is aware that in a number of cases where witness have not given a reason for refusing to

¹⁹² Day 98/61/12-Day 98/62/5

¹⁹³ Day 098/65/12-66/14

¹⁹⁴ Day 089/104/16-105/14

¹⁹⁵ Day 165/66/18-71/7

¹⁹⁶ M59.1

¹⁹⁷ M54.3 paragraph 6

answer questions about the IRA, fear of terrorist reprisals may have played a part in this decision. On the final day of oral evidence Lord Saville commented:

*In a number of instances during the course of taking oral evidence at this Inquiry, witnesses have refused to answer questions. These witnesses include journalists and members or ex-members of paramilitary organisations as well as others...*¹⁹⁸

Having dealt with the first two categories of witness Lord Saville stated:

In the case of others the refusal was, in some instances, to provide similar information. Here no particular reason was advanced to justify the refusal, though to our minds it is possible, at least in some cases, that fear of possible reprisals from paramilitary organisations still active, may have been the reason.

*In some of these cases, therefore, the refusal may be justifiable on the grounds that to require an answer would be to breach the individual's rights under Article 2 of the European Convention on Human Rights.*¹⁹⁹

Priests as Protected Spokesmen

2C-214 Dennis Bradley gave illuminating evidence of the pressure under which the civilian community had been at the time of Lord Widgery's Tribunal not to speak of paramilitary activity:

A. There was no inhibition among the clergy who went forward to Widgery and whom the rest of the community would not have gone forward without, to tell the truth about Bloody Sunday vis-a-vis the gunmen that they saw; that was a conscious decision. I mean we were consciously aware that there were evidence to two gunmen having fired shots and we decided as a group of people to go forward to Widgery and to give that evidence, and also encourage

¹⁹⁸ Day 427/119/10-14

¹⁹⁹ Day 427/120/11-20

other people to go forward. That was 27 years ago, whatever it was.

Q But would it be right to say that of your own knowledge, for example, a very, very large number of people must have seen the gunman that you are now talking about in Columbcille Court and the confrontation with the Provisionals and decided not to tell anybody about it? So that you can deal with the whole thing, I put that to you because you refer to him having fired in circumstances where there were thousands of people milling about and of the fact that Columbcille Court was crowded at the time. Does it not follow that if that incident is true, the one you have recounted on a number of occasions, that some of which appear to claim that you were present, there must have been in your own words "thousands", but I will settle for scores of people who saw that incident, but have chosen for some reason not to give evidence about it; can you comment on that

A. Give evidence to who?

Q. First of all to Lord Widgery. Why did people not simply come out and tell the truth --

A. Because I think that people considered -- my best interpretation of the answer to the question that you are asking me is that people made the opinion -- rightly or wrongly, they may have been wrong, I will acknowledge they may have been wrong -- that we were talking, all of us were talking about Father O'Gara's gunman. That may have been an assumption and the truth of the matter is that we as the clergy and the priests of this town decided we would tell the story because we had seen it and that other people would not put themselves in that exposed position, and our attitude to that has been that the Republican movement itself must ultimately tell that story because only they know it and the rest is interpretation, and therefore all we could give would be our visual view of it.

Q. Does it boil down to this, I do not say this remotely critically: your understanding may be that because the clergy were prepared to come forward and give personal accounts of those gunmen that they saw; it was not necessary for ordinary civilians to potentially put themselves on the wrong side of the IRA by giving evidence about what they had also seen?

A. I think that is reasonably accurate. I also just would add the thing that I think that people probably thought it was the same gunman anyway, but I cannot be totally sure

about that, but I think your interpretation is reasonably accurate.

Q. There may be a large number of people who did see gunmen on the day, but who honestly believed, in your view, that because the clergy were going to speak to it, they were relieved of the fear and the worry of having to give evidence against the IRA?

A. Well, if there had been sightings of all these other gunmen that you refer to by other people I would have certainly been told of it and I would have put it somewhere into a statement if I had been told it, maybe not at Widgery but I would have put it into other evidence somewhere throughout the last 30 years.

Q. It was not only Widgery, Mr Bradley, was it? It was when you made your statement to NICRA you made no mention of your knowledge of that gunman even in that statement?

A. Yes, but I was caught then as I am caught now between circumstantial, told, rumour evidence and factual evidence which I had to sign to as having actually seen and I have always been in that situation and tried to handle it as honestly as I can.

Q. Did you not think it was important, at least from NICRA's point of view, in investigating the truth of what happened that you, as a Catholic priest and a hugely respected man in this city, knew of an incident that had taken place with a civilian gunman; did you not think it right to tell them?

A. Because I thought it was already being told in a better fashion than I could tell it by some people who had already seen it, rather than me who had been told it second, or third or fourth hand.²⁰⁰

2C-215 It appears therefore that the approach adopted by the clergy in 1972 may have had the effect of inhibiting others from providing full accounts of what they witnessed on Bloody Sunday.

²⁰⁰ Day 140/206/1-140/209/16.

2C-216 Moreover, not all of the priests were forthcoming in 1972, despite their protected position. Father Carolan failed to mention in 1972 that he heard automatic fire, yet was able to mention it in his BSI statement.²⁰¹

The Mahon interviews.

2C-217 The fact that, nearly thirty years later, some witnesses were only prepared to talk 'off the record' to Paul Mahon is further evidence that there remains concern amongst civilian witnesses about the repercussions of their admitting to having seen IRA activity in the Bogside on Bloody Sunday. This matter is addressed in detail below.

Discussion

2C-218 In these circumstances, the reluctance of civilian witnesses to give evidence of the activities of gunmen on Bloody Sunday is entirely understandable. However, as a result, the Tribunal should accord very considerable weight to the evidence against interest of a civilian who tells of having seen a gunman on the day, even if dozens of other witnesses say that there were no gunmen present.

2C-219 John Barry, who as a journalist investigating the events of Bloody Sunday met many of the same difficulties faced by the Tribunal, articulated the logic of this approach:

One of the difficulties in trying to unravel what the, what the IRA in general had done that day was that there was clearly a reluctance on the part of many -- I do not say all in the community, but the reluctance on the part of many -- to talk about it and therefore we tended to place -- I certainly tended to place -- more weight upon people who said: yes, I did hear something; I did see something or -- and certainly I would have placed most weight upon someone who was, at least according to this note, a self-

²⁰¹ H3.3 paragraph 10

proclaimed IRA man who said: yes, I did do something. I would have placed most weight upon that. As a general proposition, and I ask you to believe I am not being facetious here, but as a general proposition I do remember repeatedly telling my colleagues or reminding my colleagues of a saying which I have found very useful, which is a rubric by the great mathematician CS Hardy, who once advised his pupils that when the Archbishop of Canterbury says he believes in God, that is just in the way of business; it is when he says he does not that you can take it he means it, and that weighed with us on the question of what the IRA had done that day and what the civilian witnesses said.²⁰²

THE MAHON INTERVIEWS

- 2C-220 At a late stage in its proceedings the Inquiry disclosed to the interested parties a series of transcripts of interviews conducted by Paul Mahon. Although Mr. Mahon was and remains convinced that soldiers acted unlawfully and without justification on Bloody Sunday he was not prepared to withhold from the Inquiry evidence which might be inconsistent with that view.
- 2C-221 These interviews are a useful indicator of what a substantial number of local people were prepared to say when they believed their words would never come to the attention of The Bloody Sunday Inquiry. It is interesting that not one of the civilian witnesses who gave an interview to Mr. Mahon ever mentioned to the Inquiry that he had done so.
- 2C-222 The Tribunal is now aware of vital discrepancies between the accounts given by individuals to Mr. Mahon and their evidence to this Inquiry.
- 2C-223 The interviews that have been disclosed to the Tribunal were ostensibly recorded on the understanding that the recording machine would be switched off if an interviewee wished to say anything about the activities

²⁰² Day 194/ 41/07- 194/42/03.

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of the IRA,²⁰³ another person's membership of the IRA,²⁰⁴ or other facts deemed adverse to the interests of the families.²⁰⁵

2C-224 A number of the videos upon which the interviews were recorded have been put out of the Tribunal's reach. The inescapable inference to be drawn from the circumstances of their removal is that the videos which are still outstanding contain material which someone did not want the Tribunal to hear. This issue is further addressed in Section 2C IV, below.

2C-225 To the civilians who spoke to him, Paul Mahon's objective appeared identical to that of the families. He became an employee of Brendan Kearney, Kelly & Co., the solicitors instructed by Michael Bridge and Michael Bradley.²⁰⁶ Often enough, Michael Bradley was present at the interviews.²⁰⁷ He and Mr. Mahon were clearly people to whom witnesses felt they could speak privately and without compunction. Things could be said here in safety which could not be said elsewhere. That is why the Mahon interviews are so telling. They reveal traces of the truth which, it appears, some were anxious to keep from the Tribunal.

John Kelly

2C-226 John Kelly is the brother of Michael Kelly and former chairman of the families' campaign for a new inquiry.²⁰⁸ In his BSI statement John Kelly was unequivocal about the activities of the IRA on Bloody Sunday:

*There were no civilians carrying firearms, nail bombs or other weapons on that day....*²⁰⁹

²⁰³ For example, see: X4.17.74 paragraph 2

²⁰⁴ For example, see: X4.18.50-51

²⁰⁵ For example, see: X4.27.54-55

²⁰⁶ AM19.8 paragraph 24

²⁰⁷ AM19.13 paragraph 27

²⁰⁸ AK13.1 paragraph 1

2C-227 Mr. Kelly confirmed the truth of his BSI statement on oath before the Tribunal when he was called to give evidence.²¹⁰ However, with the disclosure of the interview he gave to Paul Mahon,²¹¹ it has become clear that Mr. Kelly knew about at least three of the gunmen who were present on Bloody Sunday.

2C-228 First, in that interview he discussed OIRA 1's shot in Columbcille Court. He suggested he had first-hand knowledge of what happened:

PM: And was he a member of the Official IRA?

JK: I don't know.

PM: Right, OK.

JK: Quite a possibility.

PM: Right, so he was a maverick.

JK: Maverick.

PM: OK. Do we know or are we theorising here?

JK: No, it's a fact.

PM: Right, because the army would say, oh, yes...

JK: He was a maverick.

PM: They would say there was another 10 of them.

JK: No.

PM: How do we know that's not the case and that he was a maverick?

JK: Because I was there.²¹²

²⁰⁹ AK13.4 paragraph 14

²¹⁰ 167/082/08

²¹¹ It is unclear when Mr. Kelly was interviewed by Paul Mahon, but it is likely to have been at some date in 1998.

²¹² X4.17.28

2C-229 Whether Mr. Kelly had personally seen OIRA1 fire a shot is unclear. However, he gave evidence to the Tribunal that no civilians had guns on Bloody Sunday when he knew this to be untrue. Furthermore, he was certainly aware that this gunman had fired a shot before the launch of the arrest operation:

PM: Right. What was the timescale when that was fired? Was that before the pigs had actually come into Rossville Street area? Before the Paras had actually come through the barricade?

JK: [Nodding] Yeah.

PM: OK, so from the army's point of view it was quite legitimate for them to say at this stage that there was at least one gunman with a high velocity rifle in that area and possibly there might be more.

JK: [Nods]

PM: It would have been legitimate for them to have said that at that stage.

JK: Right, fair enough, yeah.

PM: OK.

*JK: I can't argue against that.*²¹³

2C-230 Secondly, the interview also reveals that Mr. Kelly knew that a member of the Official IRA with a handgun was at the bottom of Chamberlain Street. However, Mr. Kelly did not personally hear him fire his pistol:

PM: ... That there was in fact a gunman alongside the wall in Chamberlain Street.

JK: In Chamberlain Street, yes.

PM: Right. And he's been identified I believe as, again, a member of the Official IRA.

²¹³ X4.17.29

JK: *[Nodding]. Uh hum.*

PM: *And again, he's been classed as another gunman, right? And he was firing a revolver, I believe. Now you said before that as far as you're concerned, he didn't fire any shots at all.*

JK: *That's right.*

PM: *But the Bishop [Daly] says that he definitely fired one shot.*

JK: *Uh huh.*

PM: *And possibly two.*

JK: *I never heard anything.*

PM: *OK.*²¹⁴

2C-231 Thirdly, Mr. Kelly told Mr. Mahon about visiting a civilian who had been injured in a gun battle at some point after the main shootings:

JK: *... don't forget too, you know, in relation to the IRA, a deal was struck on the day that no guns would be there during the march. There was no guns there apart from the two that we were talking about earlier on. But there was a reaction after that when people, when guns started coming in from the Creggan and there was a bit of shooting went on I think later that night. I think there was some people shot that night, I'm not sure. There was one man I visited who was shot for definite that night. There was a gun battle [indecipherable] and he was hit. He was hit in the backside [laughing] but he, you know, he lived.*²¹⁵

2C-232 As an Interested Party before this Inquiry who has been frequently in attendance at its hearings, there can be little doubt that Mr. Kelly would have been aware of the importance of the Tribunal identifying each and every person who was injured by gunfire on Bloody Sunday. It was made clear by Edwin Glasgow QC during his opening that the issue of

²¹⁴ X4.17.29

²¹⁵ X4.17.73 paragraph 6

unidentified casualties was central to the issues for the Tribunal to decide. But Mr. Kelly said nothing to the Tribunal of visiting the wounded man.

2C-233 Mr. Kelly also gave an account which was inconsistent with that he gave to Mr. Mahon when telling the Tribunal:

Q. Was either your friend or you taking any part in the riot that was going on?

A. During the period of the riot we stood and watched what was going on. In those days, like, I was just a married man, I had two children at the time and, and I did not take part in riots at that time. So myself and Jim just watched what was going on. As I said in my statement there, it became uninteresting after a period of time.²¹⁶

2C-234 In his account to Paul Mahon he had frankly admitted throwing a stone:

JK: ... Now to be truthful, I was over at the barricade in William Street...

PM: Right.

JK: ... to see what was going on. I threw a stone.²¹⁷

2C-235 Similarly, Mr. Kelly failed to inform the Inquiry, by whatever means, that he was aware that Damien Donaghy had also been throwing stones:

JK: That was young "Bubbles" Donaghy we called him.

PM: Right.

JK: He was part of the... he was coming down William Street and of course he sees this fight with the Para and he starts throwing stones.²¹⁸

²¹⁶ 167/083/09

²¹⁷ X4.17.25

²¹⁸ X4.17.23

2C-236 Mr. Kelly has spent the last ten years calling for the truth about Bloody Sunday to come out. The Tribunal will recall the speech he made at the end of his evidence:

LORD SAVILLE: Do you have any further questions? Mr Kelly, thank you very much.

A. Could I say something, please, in relation to the fact that my mother was to give evidence to this Inquiry, my mother was there on Bloody Sunday. She was in Kells Walk -- flat at Kells Walk and she witnessed some of the things that happened in Rossville Street on the day itself. What I can say to you is that 30 years on my mother still prays that the truth and justice will come out of this Inquiry and she has great faith in this Inquiry. What I can say to you from her is that hopefully that you will not allow the interference of English courts in relation to -- especially what is going on now at the present time, the venue and in the past, anonymity, distract from what your job -- I am talking about the Tribunal here -- is here to do. Hopefully -- and we see it as an opportunity for the truth of what happened on Bloody Sunday to come out of this Inquiry.²¹⁹

2C-237 In an interview he gave to Joanne O'Brien before this Inquiry was announced,²²⁰ Mr. Kelly talked about what his family had been through since the day Michael Kelly was killed, and said:

Maybe that's one of the driving forces behind me in relation to this campaign. I want to see it come to a successful conclusion for my mother and the rest of them.

²²¹

2C-238 The Mahon tapes raise a question as to what may be considered a successful conclusion.

²¹⁹ Day 167/088/20

²²⁰ See in particular AK13.21-23

²²¹ AK13.23 paragraph 2

Michael Havord

2C-239 The transcript of Michael Havord's interview with Mr. Mahon reveals that he was aware that an individual who was shot on Bloody Sunday received covert treatment for his injuries at Letterkenny Hospital:

MH: Paddy Devlin then told me that he came to [indecipherable] area. There was somebody wounded and Paddy Devlin gave the guy his car to get him to Letterkenny. I remember that because it was quite a brand new car. In them days, you know, we didn't all have cars in those days.

PM: Right. And who was the wounded person, do you know?

MH: I don't know his name.

PM: No and how was he wounded, can you remember?

MH: I think he was shot in the arm, I think.

PM: Right.

MH: He went to Letterkenny, anyway.

PM: He definitely went to Letterkenny?

MH: Yeah.

PM: Right.

MH: Paddy Devlin lent him his car to get him across the border.

PM: And someone drove him?

MH: Someone drove him, yes.

PM: To Letterkenny, right. ²²²

²²² X4.13.38

2C-240 Although Mr. Havord did not say this in evidence, it is unlikely that he was unaware of its significance. His BSI statement gave a very different impression:

On the corner of Westland Street and Lecky Road we were met by someone who said that someone had been shot and needed to get them to hospital. I remember Paddy Devlin giving them the keys of his car and telling them to take it to the hospital. I remember it was a fairly new car at the time.

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2C-241 Mr. Havord was also able to give evidence concerning the timing of the arrival of a car containing armed men in the vicinity of the Bogside Inn. This is how Mr. Havord put it when he told Mr. Mahon about it:

MH: So I headed up to Creggan. You know, I must tell you now that that's when I seen the first Republican gunmen.

PM: Yes, right.

MH: Arriving down from the Creggan.

PM: This is before you actually... you came out of the house that you were in Westland Street.

MH: No, it would have been just before we went in.

PM: Before you went into the house, right.

MH: Yes, because I can remember the car pulled up and four of them jumped out...

PM: Right.

MH: And Fenner Brockway turned around to me and he said, "I don't want to see this." 224

²²³ AH46.6

²²⁴ X4.13.38-39

2C-242 Mr. Havord went on to confirm to Mr. Mahon that the men were definitely armed and that they received every encouragement from the crowd at Free Derry Corner.²²⁵

2C-243 In his evidence to the Tribunal, Mr. Havord changed his account so that the timing of the arrival of the IRA was *after* Fenner Brockway had been taken into Mrs. McCourt's house to use her telephone:

Q. You then describe going towards Mrs McCourt's house, getting into her house, Lord Brockway phoning the BBC and then, as you came out of her house in Westland Street, a car came screeching down the road. How long were you in her house?

A. I have not a clue. It was long enough for Fenner Brockway -- I said the BBC, I actually believe now it was the Home Office, I do not know. But he had already been in and had his say on the telephone to them, so it could have been maybe half an hour. ²²⁶

2C-244 Mr. Havord told the Tribunal that he was against violence:

There was only two avenues that one could have taken: one was the civil rights way, the other was the paramilitary way. The paramilitary way, I would not have believed in and basically, as an Englishman, I would have considered it treason. ^{227o}

2C-245 He had given a rather different account to Mr. Mahon a year earlier:

MH: I didn't notice they were definitely rifles. I didn't look too closely because, umm, I kind of trained myself, being an Englishman involved in, if you like, on the Nationalist side...

PM: Yes.

²²⁵ X4.13.40

²²⁶ Day 125/045/15

²²⁷ Day 125/009/14

MH: I kind of trained my self to ignore that detail because... then I always... I honestly considered going into the Republican movement.

PM: Right.

MH: Especially after Bloody Sunday.

PM: Yes.

MH: But I just said to myself, I wouldn't trust [indecipherable].

PM: Yes.

MH: My concern was because it was so obvious that the security forces had intelligence.

PM: Yes.

MH: And I just thought I would have been a number one suspect.

PM: Indeed.

MH: I would say that's probably why I never actually became involved with the...the Republican movement.²²⁸

2C-246 Bearing in mind that Mr. Havord was the Derry Civil Rights Association representative on the NICRA Executive Committee and one of the organisers of the march, it is perhaps not surprising that he did not reveal his views on political violence to the Tribunal.²²⁹

Francis Dunne

2C-247 Francis Dunne told Mr. Mahon on 31st March 1998 that his impression was that Father Daly's Gunman fired a pistol blindly around a wall at soldiers on the waste ground:

²²⁸ X4.13.40-41

²²⁹ AH46.1 paragraphs 5-7

PM: You actually said something interesting, he pointed this round...

FD: That's what I thought very stupidly, you know, because he didn't look. He could have shot a civilian.

PM: He didn't look at any time around the corner?
.....

FD: Aye, his body wasn't round the corner, you know what I mean, he didn't have from what I could see and from the impression I formed, he just sort of edged along the wall, popped it round the corner.... Without looking....

PM: Did you get the impression that he fired at all?

FD: Well, I couldn't see any reason, you know what I mean.²³⁰

2C-248 Although Mr. Dunne did mention in his BSI statement made in 1999 seeing Father Daly's Gunman, he did not say that his impression was that the gunman fired a number of blind shots at the soldiers:

*The impression I had was that he had a handgun in his right hand and he was edging along the wall towards Block 1. I did not see him fire any shots and I did not see the soldiers firing at this time.*²³¹

2C-249 Later in his statement he referred to the evidence he had given to the Widgery Inquiry, saying:

The only comment I have on this evidence relates to page 26 of the transcript and paragraphs E and F. I refer in these paragraphs to the fact that someone may have been shooting back at the army. I cannot now recall the exact details but someone may have in fact fired a shot or two. This was after all the army shooting. There was definitely some shooting but I do not know where it was from. I was

²³⁰ X4.8.20-21

²³¹ AD173.27 paragraph 22

*not in a position to say if there was any shooting at the army.*²³²

2C-250 Edmund Lawson QC asked him about this when he was in the witness box.

Q. You indicate then that, being charitable towards them, you assumed someone had fired towards the army at that stage?

*A. Yes, but you know, hindsight is a wonderful thing and, um, I must admit that it has also struck me that it was possibly the army shooting from the wall that may have caused the same impression, so you know I am, I am just -- to some degree I am recording the fact that there was shooting from different directions. I was not sure who was shooting, but I was certainly quite clear of the shooting that came from the army.*²³³

Daniel Hutton

2C-251 Daniel Hutton gave false evidence to the Tribunal about the shooting of Alex Nash. On Bloody Sunday Mr Hutton observed the Rubble Barricade from the junction of Rossville Street and Fahan Street West, i.e., from the south.²³⁴

2C-252 In his undated BSI statement, he said:

*I do not know for certain where Mr. Nash had been shot from, but believed that he had been shot from the north of the Rubble Barricade. I may have formed this impression as I recall seeing a soldier by himself to the west of Rossville Street at the southern end of Kells Walk at the approximate point marked "L" on the attached map (grid reference K12) who was kneeling on one knee. The soldier had a foot up on a wall with his rifle to his chest or shoulder.*²³⁵

²³² AD173.31 paragraph 42

²³³ Day 090/085/05

²³⁴ AH93.4 paragraph 16

²³⁵ AH93.5 paragraph 17

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2C-253 Mr. Hutton was not called to give evidence.

2C-254 The transcript of the interview he gave to Paul Mahon on 18th July 1998 reveals a more candid account.

DH: When Mr. Nash was shot, I could see over Rossville Street, I couldn't see any soldiers shooting back at me. I thought the shooting was coming from the Walls to be honest with you, but again the Walls were a fair bit away so I couldn't identify if anyone was shooting from there or not.

PM: Right.

DH: With Mr. Nash being shot where he was shot he was at the barricade.

PM: Yes.

DH: Thinking back, it would have been nearly impossible for someone to shoot him from Rossville Street.

PM: Why not?

DH: Because he was behind the barricade, he was ducking and trying to get to Willie, you know. I remember so well that he was hiding down and then trying to get out the next thing I knew he was shot and [indecipherable].

... ..

PM: Weren't there soldier down there?

DH: There were soldiers here, but at that stage when I looked around I didn't see soldiers now.²³⁶

2C-255 Mr. Hutton went on to indicate to Paul Mahon how wedded he was to this account:

DH: I have always maintained whoever talked to me that Mr. Nash was shot from the Walls. It was the only way he could have shot from where he was at, but again it's an

²³⁶ X4.15.12-13

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assumption on my part. Again I am not a ballistics expert.
237

2C-256 Mr. Hutton maintained this account to everybody except the Bloody Sunday Inquiry, it seems.

Raymond McClean

2C-257 Dr. Raymond McClean told Paul Mahon about how, in the early 1970s, he had refused to testify in a proposed prosecution against a member of the IRA about the medical treatment he had given to him. It appears from this account that he had contacted the IRA and had taken instructions from them.²³⁸

2C-258 Dr. McClean did not tell the Bloody Sunday Inquiry about this. In fact, when he was called to give evidence, he told the Tribunal on oath that he did not know anybody in the IRA at the time of Bloody Sunday.²³⁹ To Paul Mahon, he had suggested that he did have at least some idea of who were those members of the IRA who had fired shots on Bloody Sunday, but he stopped short of naming them:

*I have some indication of who they were, and they certainly were mavericks, but I don't want to go into that.*²⁴⁰

2C-259 Similarly, he told Paul Mahon about hearing automatic fire when he was treating Damien Donaghy and John Johnston in the Shiels' house,²⁴¹

²³⁷ X4.15.16

²³⁸ X4.20.43-44

²³⁹ Day 175/101/18

²⁴⁰ X4.20.5 paragraph 4. See also the statements made by Dr. McClean to Peter Taylor for Remember Bloody Sunday considered below at paragraphs 2D-39- 2D-41.

²⁴¹ 4.20.15 at line 1

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whereas he told the Tribunal that these shots were not in a "regular pattern."²⁴²

Fulvio Grimaldi

2C-260 Although Fulvio Grimaldi was not a member of the local community he was manifestly sympathetic to it. He revealed to Paul Mahon on 5th July 1998 that he knew he had taken a photograph of a civilian gunman:

PM: You took a picture of a man at the wall...

FG: Yeah.

PM: ...a gunman....

FG: Yeah.

PM: ...which is not here....

FG: Yes, yes.

*PM: ... because it has mysteriously gone missing from the public records office.*²⁴³

... ..

*FG: ... I only remember that people grabbed a person with a revolver.... And said "you're mad", "you're crazy" and "fuck off" and things like that.*²⁴⁴

2C-261 To the Inquiry, Mr. Grimaldi gave a different account:

I know that some people say there was a civilian gunman in the car park at that time, but I never saw him. Susan believed that one of the photographs I took in the Rossville Flats car park showed a civilian gunman. I have heard that someone has taken one of the pictures I took in the Rossville Flats car park and has blown it up to produce a very fuzzy picture of a man who they say is the gunman. I

²⁴² Day 175/027/24 – Day 175/028/02

²⁴³ X4.48.45

²⁴⁴ X4.48.53

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did not specifically take a picture of that man, he just happened to be there. If he was a civilian gunman, I was not aware of it at the time. ²⁴⁵

Patrick O'Donnell

2C-262 In some instances the Mahon interviews not only illustrate the reticence of some witnesses but also reveal how some witnesses gave the Tribunal accounts which were calculated to present British soldiers in the worst possible light. Compare for example the following accounts of Patrick O'Donnell. This is his BSI statement, signed on 5th May 1999:

I was trying to hold a hanky to my shoulder and the soldiers were shouting abuse at me and poking me in the back, telling me to "get my fucking hands up" and calling me a "Fenian bastard". They were squealing at the top of their voices. They knew that I had been shot because Father Bradley or someone else told them. They must have known because one of the soldiers said "You have a bullet to carry – and you can have another one." ²⁴⁶

2C-263 This is what Patrick O'Donnell said a few months earlier when Paul Mahon asked him to describe the behaviour of the soldiers who arrested him:

PM: *What did they say? Can you remember?*

PO'D: *Well it was... they was just shouting, you know what I mean.*

PM: *Right, were they abusive?*

PO'D: *Aye, sort of a bit, only when they discovered... maybe they seemed a bit more abusive to me when they discovered I was shot.* ²⁴⁷

²⁴⁵ M34.60 paragraph 44

²⁴⁶ AO35.3 paragraph 18

²⁴⁷ X4.30.18-19

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2C-264 Patrick O'Donnell's failure to mention that the soldiers involved in his arrest threatened to shoot him when Mr. Mahon specifically asked him what the soldiers had said is curious. This omission and the fact that Patrick O'Donnell never mentioned this threat in any of his contemporary statements suggest that some witnesses may have given the Tribunal sensationalised accounts. However, the allegation Mr. O'Donnell made was taken seriously enough by counsel to the Tribunal to put it to Soldier J and Widgery 119.²⁴⁸

Malachy Coyle

2C-265 There are other instances where the Mahon interviews reveal how witnesses were at pains to present the actions of British soldiers to the Tribunal in the worst possible light. Malachy Coyle told Paul Mahon on 26th March 1998 that the soldiers he saw in Glenfada Park looked as though "*they were military alert to danger and they were kneeling down or standing up.*"²⁴⁹

2C-266 Mr. Coyle plainly did not want the Tribunal to think that the soldiers he saw looked as if they were under threat. He tried to retrieve a similarly frank account he had let slip in the BSI statement he signed on 26th November 1998:

Q. ...Crossed out very carefully in the statement is:

"As they ran into the car park, they were all (with the exception of the soldier without a helmet) in a slightly crouched position and seemed to be taking care to look around and obtain cover. I had the impression that they were afraid of being shot at themselves and were looking for snipers." Did you at least say that, even if you have changed your mind about it afterwards, or are you saying you never even said that?

²⁴⁸ Put to Soldier J at: Day 370/81/17; put to Widgery 119 at: Day 363/166/07

²⁴⁹ X4.45.52 paragraph 8

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A. I do not think it was part of my initial statement, no. I do not know, those two things were in and when I read them, I did not, I cannot -- I am almost positive I did not say that, you know. The other one too, which I countersigned, I did not say that either, you know.

Q. I have to ask you, Mr Coyle, because it might have quite serious implications.

A. I understand that, it is not a case of changing it to make it look good. I cannot remember having said that.

Q. You cannot remember having said it?

A. Having said it. I got the transcript, I think the next day, and when I read I went down to Paddy and I says, "Look, that there is not right, I do not know what it is doing in there". I do not know who put it in there, but it was not me.

Q. Whoever put it on there, the coincidence is this, Mr Coyle: there is at least a large measure of truth in that?

A. I do not know, maybe, as I said, to the best --

Q. Do you remember? A. I do not remember, I do not remember seeing soldiers....²⁵⁰

Joseph Friel

2C-267 Joseph Friel also tried to portray British soldiers in the worst possible light. In his BSI statement he described a member of 1 PARA firing from just above the hip:

There were three or four soldiers - one at the front and two, possibly three, right behind him. I could not say whether they were wearing helmets. The soldier in front was moving forward at no great pace and was firing. He had his gun in front of him at just above waist height and was moving it from side to side -- not swinging it, just moving it a few inches from left to right. The other soldiers were not firing their weapons.²⁵¹

²⁵⁰ Day 156/094/01; for the deleted passage see: AC97.5 paragraph 32

²⁵¹ AF34.3

2C-268 Joseph Friel told the Tribunal under oath that his memory of this was crystal clear:

Q. Finally, as far as the Glenfada car park is concerned, can I be absolutely clear about this: did you see the soldiers coming in with one of them with a gun at his hip or is that an unclear recollection?

A. That is one of the few memories that I would say was totally crystal clear because, as I said, I came that close to being killed, that could have been my last vision on this entire earth.²⁵²

2C-269 The picture he presented to Paul Mahon was different. He suggested that the soldier who fired was in a crouched position:

PM: Right, so they're now coming in under the ramp, which runs there above on the William Street end of Glenfada Park. They are at ground level, and how many soldiers are there again?

JF: Three.

PM: There are three soldiers and one of them stands out.

JF: Because he, as I'm saying, he came down and crouched [with] the gun, pointed. The other two as I was saying it's many years ago but it's like fresh in your memory.

PM: Yes.

JF: They were coming around just like that.

PM: Right. So we had three soldiers. We had one of them crouched, right? You say that his gun.... He was in a firing position?

JF: He was shooting.

PM: Where was he shooting? Did he have his rifle against his shoulder? No. Oh, so his rifle was halfway

²⁵² Day 155/115/21

between his hip and his shoulder? His rifle was in this position?

JF: Right here.

PM: Right. So he was shooting....

JF: He wasn't in an aiming position.

PM: Right.

JF: He was like that.

PM: And the other two soldiers, they in fact were not shooting at all.

JF: Not shooting at all. Not that I saw. ²⁵³

2C-270 Joseph Friel also disclosed to Mr. Mahon that he had been on the march on Bloody Sunday.²⁵⁴ He even told Mr. Mahon that his image appears on video at the front of the march, although he did not provide the Tribunal with this information.²⁵⁵ The explanation he gave for attempting in his BSI statement of 21st July 1999 to deceive the Tribunal about his presence on the march was as follows:

My reason for misstating the position was that I had given the same account in my statement to the Widgery Tribunal and felt that I should keep the two accounts consistent. I had given the incorrect account to the Widgery Tribunal because at the date of the march I was a tax official in the Inland Revenue in Derry and in the climate of that time I was concerned that, if my superiors discovered that I had taken part in what was a proscribed march, it might result in my dismissal from secure employment. Having recently reflected on the matter and bearing in mind that I am no longer a government servant, I have decided that I ought to set the record straight. ²⁵⁶

²⁵³ X4.9.21-22

²⁵⁴ X4.9.3

²⁵⁵ X4.9.4

²⁵⁶ AF34.67 paragraphs 3-5

2C-271 However, Mr. Friel told Paul Mahon that he had not been in the least concerned about losing his job with the Inland Revenue:

PM: Yes. OK. So he [John Bierman] was trying to get a sensational story about you working for her Majesty's Inspector of Taxes or...

JF: It actually appeared in one of the papers that Joe Friel says... the way it was put was [never fear of losing your job]. That was more or less the last [you] really think about.

PM: Yes.

JF: About losing your job.

PM: Indeed, indeed.

JF: More or less you work for the Queen and you're not afraid to speak.²⁵⁷

2C-272 Joseph Friel's interview with Paul Mahon revealed a further inaccuracy in his evidence to the Inquiry. He told the Tribunal under oath that he headed towards Free Derry Corner to hear the speeches:

Q. Tell us if you need the map, but can you just describe in your own words how you went south: did you go down Rossville Street or across the wasteground, or where?

A. I cannot mind.

Q. No recollection?

A. No recollection whatsoever.

Q. Were you in fact heading for your home, your father's flat?

A. No, I was heading towards the platform where the speeches were being made. When the army I see come in, the last thing that I mind was actually Bernadette Devlin.

²⁵⁷ X4.9.38

Bernadette Devlin was speaking. What she was saying I have not a clue now. ²⁵⁸

2C-273 However, when Joseph Friel spoke to Paul Mahon he gave the following account:

PM: Were you actually... was it your intention to actually go home then, to actually go to the Rossville Flats, or to just get away from the immediate vicinity of the riot?

JF: Well to tell you the truth I was just going home for a cup of tea.

PM: Were you? Right. You thought you'd have a cup of tea. Right.

JF: The crowd as far as I was [involved in the usual rioting] and then got all the [spares] to go back up to Free Derry Corner and listen to the speeches. I was never a man for all those speeches.

PM: No.

JF: I think that all politicians are rubbish.

PM: Right, right.

JF: So I had no intention of even going to the platform. So I was going back to the flats. ²⁵⁹

Michael Bridge

2C-274 On the assumption that he told the truth to Mr. Mahon, Michael Bridge told a very significant and apparently calculated lie on oath to the Tribunal. In his BSI statement he described what happened after he had seen Jack Duddy shot:

²⁵⁸ Day 155/100/10

²⁵⁹ X4.9.5

I believe I got within a couple of yards or so of Jack Duddy and the small group around him. I turned and saw a soldier. I cannot describe this soldier in detail save that I believe he was wearing a helmet without a visor. He was standing with his rifle in an aiming position at his shoulder pointing in my direction. He was in the position I have marked with a C... ²⁶⁰

I walked no more than 3 or 4 paces towards the soldier in position C. I believed he was responsible for shooting Jack Duddy. I identified this soldier probably because he was closest to me, probably no more than 20 yards or so. As I walked, I was holding my arms and hands in a questioning / despairing gesture. My hands were open with palms facing upwards held up to about shoulder height with my arms bent. I had nothing in my hands and I believe there is absolutely no way in which the soldier could have perceived me as a threat. ²⁶¹

I cannot remember precisely what I was shouting to the soldier but I was certainly giving him a mouthful saying something along the lines of "what the fuck do you think you are doing?" People have said that I was saying "shoot me, shoot me" but I do not recall this. The best I can say is that I was giving this soldier a mouthful of abuse. I was so annoyed and upset by the sight that I was not acting rationally. I do not believe I would have been in that position if I had been [sic] I do not believe I threw a stone. ²⁶²

2C-275 Michael Bridge gave sworn testimony to the Tribunal that he did not throw any stones in the moments before he was shot:

Q. You say there that you do not believe you threw a stone. Could we have on the screen a portion of the transcript: day 84, page 149? This is a portion of the evidence of Billy Gillespie. I want to show you this passage so that you may deal with it. In line 5, he says this: "Mickey, I will never forget –

LORD SAVILLE: Perhaps you better start at the beginning.

²⁶⁰ AB84.5 paragraphs 31-32

²⁶¹ AB84.5 paragraph 35

²⁶² AB84.5 paragraph 36

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MR CLARKE: The question was there: "Question: You describe how when you got to the car park you picked up some stones to throw; were there other people throwing stones at that stage? "Answer: Yes, there were a few and as I say Mickey Bridge was there and Mickey, I will never forget, had half a red brick and there was a soldier had come to the corner of the first flats and Mickey lifted the brick and I threw me stones. Mickey threw his and Mickey was shouting something. Then he shouted 'shoot me [it must be] bastards', something like that, you know, and the next thing the soldier just standing there and he just shot like that there. He was standing up at the time when he fired the gun." Then he goes on to describe your injury?

A. Well –

Q. Is there any truth in that?

A. No, I was aware -- I was here when he gave his evidence, like I was when most people gave their evidence here. He is not relating the same situation that I was in. ²⁶³

2C-276 Michael Bridge's BSI statement was supplied to the Inquiry on 30th September 1999 with a covering letter from his solicitors Brendan, Kearney, Kelly & Co., which read as follows:

I enclose herewith statement in respect of Mr Michael Bridge as requested. I confirm that the draft faithfully and accurately records the account which he gave and that the account which he gave represented his best recollection of the events at that stage. ²⁶⁴

2C-277 In fact Michael Bridge played a tape cassette to Paul Mahon during his interview with him and this was recorded on video. On that cassette recording Michael Bridge admitted that he had thrown stones at a soldier moments before he was shot:

Yeah, he was dead, he was down, obviously dead.... [I turned anyway, and I gathered up some stones] and the soldiers at this time were... the Saracens, were [just at the

²⁶³ Day 093/051/11

²⁶⁴ AB84.1

high flats on the wasteground]. There was one soldier in particular. He was [along a wall]. I started throwing stones at him. [Indecipherable references to hands in the air and verbal abuse] 'You can shoot anybody, so shoot me?' It sounds stupid, but you'd never believe that they would do it you know. But he shot. He shot five or six shots [at me into the leg....²⁶⁵

Discussion

2C-278 The discrepancies revealed by the Mahon interviews are in many instances in themselves highly relevant to the Inquiry's search for the truth. However, they also give rise to a wider issue. If the Tribunal concludes on the basis of this evidence that a number of witnesses have not been prepared to give to the Inquiry a full and frank account of what they witnessed on Bloody Sunday - whether for reasons of fear, an unwillingness to cause hurt, loyalty to their perception of the interests of the families, an unwillingness to advance the possibility of this Inquiry reaching a conclusion inconsistent with their conviction as to what occurred, a desire to portray British soldiers in the worst possible light, or any other reason - it has to consider whether these are isolated instances or whether they are symptomatic of a more general attitude among civilian witnesses towards this Inquiry. While there is no doubt that many civilian witnesses will have given truthful evidence to the Inquiry, to the best of their ability, there is at the very least a real danger that many others, in addition to those whose lack of candour has been fortuitously exposed, will not have been entirely frank in their evidence and will have withheld pertinent facts from the Inquiry. In this regard we draw attention to the fact that the records of a substantial number of interviews conducted by Mr. Mahon have been deliberately placed beyond the reach of this Inquiry.²⁶⁶ While, ultimately, it is impossible to know what facts have

²⁶⁵ **X4.3.5 paragraph 1.** The full contents of the tape cassette have not been disclosed to the interested parties.

²⁶⁶ See Section 2C IV, below.

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been concealed from the Inquiry, it seems probable that the most serious instances of witnesses withholding or falsifying evidence have not come to light. As a result, it is submitted that that the Tribunal should approach the civilian evidence to this Inquiry with extreme caution.

2C-IV DELIBERATE WITHHOLDING AND SUPPRESSION OF EVIDENCE.

2C-279 In earlier sections of this submission, we have drawn attention to the reticence of witnesses and their reluctance to come forward and tell the truth about the events of the day, and particularly to speak of matters which might be thought either to be contrary to the interest of the deceased and wounded or the IRA or to provide any justification, however remotely, for the shooting of live rounds by the soldiers. This section deals with another serious issue, namely the attempted or actual suppression of evidence.

THE EVIDENCE COLLECTED BY PAUL MAHON

2C-280 Paul Mahon went to University in 1994 as a mature student and obtained a degree in contemporary political studies. During the course of his studies, he became interested in Northern Ireland affairs and Bloody Sunday in particular. He wrote a dissertation entitled "Bloody Sunday – Murder and Justice Denied in the Name of the Crown"²⁶⁷ During the period of his research and study, Mr. Mahon came into contact with members of the BSJC and he provided Messrs Madden and Finucane with copies of material he had obtained in the course of his research. After completing his degree in 1996, Mr. Mahon obtained sponsorship to continue his research into the events of Bloody Sunday.

²⁶⁷ AM19.2 Paragraphs 3 to 5 Unfortunately, a mistake has occurred in relation to the numbering of this statement. The reference AM 19 has been allocated to both Liam Mailey and Paul Mahon.

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2C-281 During the course of 1998, Mr. Mahon, with the active assistance of some of those intimately concerned with the BSJC, conducted a large number of interviews with eye witnesses. Those interviews were generally, if not always, recorded on video and/or audio tape with the consent of the interviewee. At the time, Mr. Mahon was working as a freelance researcher and he considered, it would seem quite rightly, that the tapes were his property.²⁶⁸ These tapes were eventually made available to the Tribunal in June 2002. The tapes themselves have never been distributed to the Interested Parties. We understand that there may have been redaction difficulties with the transcription exercise but it was, nonetheless, unfortunate that the bulk of the transcripts was not made available to the Interested Parties until 31st October 2003.

2C-282 In July 1999, Mr. Mahon apparently began working virtually full time for Messrs Brendan Kearney Kelly & Co (“BKK”), the solicitors representing Michael Bridge and Michael Bradley in connection with this present Inquiry.²⁶⁹ One of his tasks for BKK was to assist in the preparation of the response on behalf of Mr. Bradley and Mr. Bridge to Counsels Report No. 1.²⁷⁰ Mr. Mahon prepared a draft of the response which was submitted for approval internally by BKK and their counsel in September 1999.²⁷¹ The response,²⁷² which was in the event in the form of the draft prepared by Mr. Mahon, was submitted to the Tribunal by letter from BKK dated 15th December 1999.²⁷³

2C-283 The circumstances surrounding the ‘leak’ of the response to the press are irrelevant, but, in summary, the press reported (Mr. Mahon says

²⁶⁸ Day 412/175/05

²⁶⁹ Day 412/007/02

²⁷⁰ AM19.19 paragraph 45

²⁷¹ AM19.19 paragraph 45

²⁷² AM19.415

²⁷³ AM19.20 paragraph 46

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misreported)²⁷⁴ that the submission contained an acknowledgement that the first shot on Bloody Sunday had been fired by the IRA. What the response actually said was:

We would hesitate to concur that enough substantial evidence exists for the Inquiry to assert 'apparently fired from somewhere in the region of Rossville Flats' but we would agree that sufficient significant evidence does exist to establish an incoming shot towards the Army's position fired at 15.55 in the sector.

We have some difficulty in understanding where the heresy can lie in that concession, but it appears, on any view of the evidence, that it caused major offence to some – and that Mr Mahon was blamed.

2C-284 The Tribunal will, no doubt, review the sequence of events that followed publication as asserted in detail by Mr. Mahon in his statement,²⁷⁵ not least because they must be relevant to the hotly contested issue as to his credibility, but the consequences for Mr. Mahon (as he alleges) resulting from him being held responsible for the apparently approved, but unacceptable response may be summarised as follows:-

- (a) He became the subject of vilification and threats: serious threats were passed on to him through Mr. Brendan Kearney.
- (b) He was excluded from discussions about the repercussions.
- (c) His employment was terminated.
- (d) Further and more direct threats were made.
- (e) Some of his research material went missing.

²⁷⁴ Day 412/012/22

²⁷⁵ AM19.20 paragraphs 46 to 57

The nature and level of the threats has been challenged but the other consequences listed have not.

2C-285 When Mr. Mahon went to work for BKK, he took with him his whole archive and this was placed in an office known as the "Bloody Sunday Office" which was on the top of the building. So far as Mr. Mahon was aware, it was alarmed and secure.²⁷⁶ At the time of his dismissal, Mr. Mahon sought and obtained from Mr. Kearney an undertaking that his research material would be safe and not touched.²⁷⁷ Mr. Mahon went, by arrangement, on or about the 20th January 2000, to collect his material and discovered that it had been removed to an attic and secured. He removed the available material to his home in Donegal and, when he checked, he found that a significant number of video tapes and audio back up tapes was missing. On reporting this to Mr. Kearney, his unchallenged evidence is that he was informed that it would not be in his interests to follow up the missing material or words to that effect.²⁷⁸ He made further attempts to ascertain what had happened to the tapes and was told by Mr. Bradley that Mr. Bridge had removed them. After a meeting, at which Mr. Bridge admitted removing the tapes (although he did not say how he obtained access to a locked room in his solicitor's office) Mr. Mahon reported the matter to the Police and he made a statement.²⁷⁹ This set out Mr. Mahon's account of what happened at the meeting attended by Mr. Mahon and his wife with Mr. John Kelly and Mr. Bridge on the 25th February 2000. In his statement to this Tribunal, Mr. Mahon asserted that Mr. Bridge threatened him with violence.²⁸⁰ It may be important to record at this point that counsel for Mr. Bridge and Mr. Bradley (instructed by BKK) did not

²⁷⁶ AM19.375

²⁷⁷ AM19.21 paragraph 52

²⁷⁸ AM19.376

²⁷⁹ AM19.375-381

²⁸⁰ AM19.23 paragraph 59

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challenge any part of Mr. Mahon's testimony when he gave evidence on Days 411, 412, and 413.

2C-286 Detective Sergeant. Kelly records, in note form, a telephone conversation he had with Mr. Bridge on the 13th March 2000²⁸¹ in which Mr. Bridge is recorded as having referred him to Mr. Kearney. On the 23rd March 2000, a letter from BKK was delivered to the Police, the full text of which reads;

*We enclose a number of tapes which have been given to us.
We have been instructed that ownership of these tapes rests
with those who appear on them.*

On the assumption that these were the tapes returned by the Police to Mr. Mahon on the 19th April 2000, the letter is extraordinary: it does not reveal who had "given" them to BKK; and it puts forward a claim as to ownership so manifestly wrong in law, that it is difficult to see how that assertion was conscionably made.

2C-287 In a further statement made to the Police on the 22nd April 2000,²⁸² Mr. Mahon acknowledged that he had received three video tapes and one audio tape. There remained a number of "missing tapes." Unfortunately, Mr. Mahon did not keep records of the persons he interviewed nor an inventory of the tapes he had made and so, with a limited number of exceptions, it is not possible to identify now which tapes have gone missing and who was recorded giving interviews on them. Mr Mahon is, however, able to say with certainty that video tapes of interviews with the following are missing:

- (1) "Mad Dog" Doherty;²⁸³
- (2) George Downey;²⁸⁴

²⁸¹ AM19.282

²⁸² AM19.381

- (3) Danny McGowan,²⁸⁵
- (4) Pearse McCaul,²⁸⁶
- (5) An additional interview with Michael Bridge.²⁸⁷

2C-288 Mr. Mahon's evidence is that the primary sources for his information about the gunman at Columbcille Court were George Downey, "Mad Dog" Doherty, Michael Bradley and PIRA 1.²⁸⁸ The information from Mr. Bradley was given informally and was not recorded. Mr. Mahon's interview with PIRA 1 was video taped, and a transcript has been provided.²⁸⁹ There is, however, no reference in the interview to the Columbcille Court gunman. It was confirmed by Mr. Mahon in evidence to the Tribunal that he did, indeed, hear about the Columbcille Court gunman from PIRA 1 but that that part of the interview took place whilst the tape was deliberately switched off.²⁹⁰ Mr Mahon was quite categoric in stating that he interviewed the other two sources of this information, "Mad Dog" Doherty and George Downey, on video. The tapes of these interviews are now missing.

2C-289 Although OIRA 1, who fired a .303 rifle at a soldier, and OIRA 2, his colleague who was with him at the time, have admitted the substance of the incident, it is still a hugely controversial issue and Mr. Mahon's interviews with "Mad Dog" Doherty and George Downey are likely to have provided relevant evidence.

²⁸³ Day 412/148/09

²⁸⁴ Day 412/146/01

²⁸⁵ Day 412/167/07

²⁸⁶ Day 412/167/01

²⁸⁷ Day412/167/25

²⁸⁸ AM19.12 paragraph xi

²⁸⁹ Day 412/148/19

2C-290 The late Danny McGowan²⁹¹ has given a variety of conflicting accounts as to his movements and activities on the day but ill health, and sadly his death recently, have prevented the Tribunal hearing evidence from him by way of elucidation. The interview he gave to Mr. Mahon may well have provided answers to some of the questions that arise as a result of the inconsistencies.

2C-291 Another of the missing tapes recorded an interview with Pearse McCaul²⁹² The Tribunal will recall that Mr McCaul spoke, in his BSI statement,²⁹³ of removing an unidentified body from the rubble barricade into Glenfada Park North before Michael Kelly was moved. Mr McCaul was then one of the party which began to carry Michael Kelly's body towards the north east corner of Glenfada Park North but, for some unknown reason, diverted their path to make for the south west corner. The Tribunal will bear in mind not only Mr McCaul's evidence that it was not the presence of soldiers which caused this diversion²⁹⁴ but also the evidence of other civilian witnesses of there being both gunmen and young men with nail bombs in the north east corner.²⁹⁵ Mr McCaul was only two feet away from Jim Wray when he was shot,²⁹⁶ close, it is submitted, to at least two OIRA gunmen, in all likelihood including OIRA 1. The Tribunal will also recall the evidence of Paul Mahon himself about being told by Liam Wray about the apology offered by the Official IRA to Mr Wray's brother as to this very incident.²⁹⁷ It is, we submit, therefore, highly likely that the tape of the interview with Mr McCaul would have been of real interest to those who are anxious that the whole truth be told to this Tribunal.

²⁹⁰ Day 412/147/14

²⁹¹ Day 412/167/08

²⁹² Day412/167/01

²⁹³ AM93.3 paragraphs13-14

²⁹⁴ Day 164/128/18

²⁹⁵ See Chapter 9 of these submissions.

²⁹⁶ AM93.4 paragraph 17 corrected from north west to south west at Day 164/095/05

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2C-292 The fifth of those tapes known to be missing is that recording an additional interview with Michael Bridge.²⁹⁸ One of the tapes returned to Mr. Mahon via the Police was of an interview with Mr. Bridge but another is still missing.²⁹⁹ Since, on his own unchallenged admission, it was Mr. Bridge who removed the tapes from the offices of BKK, it must be disturbing to the Tribunal that it is left to speculate as to what it was that was said to Mr. Mahon in a recorded interview that the Tribunal may not hear.

2C-293 It is convenient to refer at this point to a further 'missing' video tape, that relating to an interview Paul Mahon conducted with Joe Mahon. Mr. Paul Mahon has not asserted that this tape was stolen, but his evidence is that the tape was given to Mr. Bradley who in turn, gave it to Joe Mahon.³⁰⁰ It is significant that Joe Mahon is said to have been concerned and worried about the nature of the interview.³⁰¹ Mr Joe Mahon was the source of evidence, described by Christopher Clarke QC in opening, as being "of the most graphic character,"³⁰² of the alleged "execution" of Jim Wray. Joe Mahon's version of this event, which has now made its way into "docu-drama"³⁰³ has, in our submission, been proved by forensic evidence to be fallacious.³⁰⁴ Other than to a very small number of people, it is not known what Mr. Joe Mahon told Mr. Paul Mahon but it seems that the Tribunal has been deprived by Mr. Joe Mahon himself, and for reasons known only to him, of seeing and hearing what he said to Mr. Paul Mahon when first interviewed. The Tribunal is bound to ask itself why.

²⁹⁷ See Chapter 9 of these submissions.

²⁹⁸ Day 412/167/25

²⁹⁹ AM19.381

³⁰⁰ Day 412/147/14

³⁰¹ Day 421/106/12

³⁰² Day 029/004/23

³⁰³ Greengrass documentary

³⁰⁴ See the evidence of Dr Shepherd at Day 230/096/15-097/13

2C-294 At a preliminary hearing on the 27th September 1999, Lord Saville announced that the parties had been asked to confirm in writing that they had produced to the Tribunal all relevant material in their possession other than that for which privilege was claimed. He recorded that BKK had provided that confirmation.³⁰⁵ The date is significant because, by then, Paul Mahon had been working for them for about three months and, as is recorded above, all of his research material was in the offices of BKK. According to Mr. Mahon's evidence, the existence of his material in their offices was considered when the letter of confirmation was given.³⁰⁶

Q. Then your statement continues, I want your help about this: "That was why he felt able to tell the Inquiry that he had no material relevant to Bloody Sunday. I eventually picked up the material from the offices of BKK." That penultimate sentence I have read to you, that was why he felt able to tell the Inquiry he had no material relevant to Bloody Sunday, that indicates, does it, that it was acknowledged that the material was yours?

A. Yes, indeed.

Q. Expressly so?

A. Expressly so.

2C-295 There can be little doubt that, in circumstances where solicitors physically had documentary material that was plainly relevant and obviously of evidential importance in their own "Bloody Sunday Office", it – or at least its existence - should have been disclosed. Even if non-disclosure might have been justified on the basis that Mr. Mahon still owned the material (which he may well have done), there really can be no doubt at all, given the relationship between Mr. Mahon on the one hand and BKK, Michael Bridge and Michael Bradley on the other, that had BKK wanted the Tribunal to have the material, Mr. Mahon would have

³⁰⁵ Preliminary hearing 27th September 1999

³⁰⁶ Day 412/178/05

agreed to that. Indeed, had Mr Mahon not agreed one would have thought that BKK would have terminated their relationship with him and brought the existence of the material to the Tribunal's attention. There could be no question of Legal Professional Privilege arising in the circumstances in which the interviews had taken place. The inference is that someone had concluded that the Tribunal should not see the material in question.

2C-296 After the dismissal of Mr. Mahon and after a failed attempt to retrieve from the Tribunal the submission that had been lodged in response to Counsel's Report No. 1, BKK prepared and submitted on the 23rd February 2000 a short Addendum³⁰⁷ to their response. This asserted that, since "our report was prepared in September 1999"³⁰⁸, they had reviewed and analysed Mr. Capper's Eversheds statement, the Tribunal's analysis of Mr. Capper's tape and the transcript of a radio broadcast by Mr. Capper on 7th January 2000 and concluded that Mr. Capper's evidence did not support the proposition that there was a shot fired towards the Army's position at or about the relevant time. The Addendum then says

It appears, therefore, that the only evidence to support the proposition that there was such a shot must be the evidence of the soldiers who allege that they heard it.

It is very difficult to see, in the light of the evidence available to BKK, Mr. Bridge and Mr. Bradley, how that statement can be justified.

2C-297 It will be borne in mind that the information that had been given to Mr. Mahon was that the individual who had fired from Columbcille Court was OIRA 1, and Mr. Bradley himself had identified this individual to Mr. Mahon.³⁰⁹ It will also be recalled that, when Mr. Mahon was in a meeting on the 4th January 2000 with BKK, Mr. Bridge and Mr. Bradley at BKK's

³⁰⁷ AM19.427

³⁰⁸ September is, of course, when Mr. Mahon says he submitted his draft to BKK and counsel for consideration. It was not sent to the Tribunal until 15th December 1999.

offices, there was an interruption when OIRA 1 arrived at the office, and the meeting so far as Mr. Mahon was concerned came to an end.³¹⁰ This evidence was also not challenged on behalf of Mr. Bridge and Mr. Bradley although, through his counsel, OIRA 1 provided the Tribunal with his version of events.³¹¹

Q. Before we stray into that area, Mr Mahon, if we just take it in stages. The first thing I suggest to you is that the meeting did begin downstairs, you did come from upstairs, but only Mr Bridge was there when the meeting began and Mr Bradley join the meeting a short time later?

A. No, my recollection was they were both there.

Q. Why I say that to you is that OIRA 1 will say Mr Bradley was actually giving him a lift that day to collect his car from the garage and he called into the offices of Kearney Kelly because this meeting was taking place. OIRA 1, who is a long-term acquaintance of Mr Bradley was sitting in the car outside that office, with Mr Bradley's wife, while Mr Bradley went in and he met you and the meeting continued for some 20 minutes or so?

The Tribunal may have little difficulty in preferring Mr. Mahon's account to that put on behalf of OIRA 1.

2C-298 The attempts to deprive the Tribunal and the Interested Parties of the Mahon interview tapes are in vivid contrast to the actions of those involved in respect of the tapes of Mr. Mahon's interviews with INQ 2003. This witness told the Tribunal that he telephoned Messrs McCartney & Casey.³¹² The sequence of events thereafter is set out in some detail by Mr. Mahon in his statement.³¹³ Suffice it to say that Mr. Mahon interviewed the former member of 1 PARA at great length in

³⁰⁹ AM19.12 paragraph xii

³¹⁰ AM19.20 paragraph 49

³¹¹ Day 412/140/22

³¹² C2003.45

³¹³ AM19.15 paragraph 38

November 1999 and that some of what Mr. Mahon was told was potentially harmful to the Parachute Regiment and to some of the individual soldiers. The transcripts of these interviews were distributed to the Interested Parties on the 6th June 2000. It is not known if the Tribunal received the tapes and had them transcribed, or if BKK arranged for the transcripts to be made but, whichever is the case, there was clearly no attempt to suppress the evidence of INQ 2003.

2C-299 There is, moreover, considerable controversy about the relationship between Messrs Madden and Finucane and Mr Mahon and about their actions with regard to his research work. Mr Mahon was clearly well known to that firm and had made available to them photographs and other information as long ago as 1996.³¹⁴ Unlike BKK, however, Madden and Finucane and those for whom they act have, through Barry MacDonald QC, sought strenuously to explain and defend their position in the face of allegations by Mr Mahon. In these circumstances, in the knowledge that the Tribunal will wish to deal with the allegations made by Mr Mahon, these submissions attempt no more than a summary of the allegations and, where appropriate, a brief comment upon them.

2C-300 There is, first, a dispute between Mr. Mahon and Madden & Finucane as to whether or not he was ever employed by them. Mr. Mahon asserts that a letter of appointment that Madden & Finucane claim to have written³¹⁵ was never received by him, he was never employed by them and that the letter was "written for the file" in order that Madden & Finucane could assert a claim for Legal Professional Privilege on behalf of their clients over the material collected by Mr. Mahon³¹⁶ and thereby avoid production of it to the Tribunal. There is, it seems, a head-on conflict about this, although, in a letter commenting upon the allegation dated 15th January

³¹⁴ AM19.4 paragraph 9

³¹⁵ A copy of the letter dated 7th May 1998 has been produced to the Tribunal: AM19.412

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2004³¹⁷, Mr. Madden does not say, in terms, that it was handed or delivered to Mr. Mahon or received by him at the time it was written. He says that it was clearly not posted “and my assumption is that it was intended to deliver it by hand.”

2C-301 The second area of dispute relates to an alleged threat made by Mr. Madden during the course of a telephone conversation which took place on the 30th November 1999. Mr Mahon claims that, after learning for the first time of the purported letter of employment and denying any knowledge of such employment, he was threatened that if he failed to give an undertaking that, in effect, legal professional privilege attached to the material he had collated, Mr Madden “would take certain action including telling the families”³¹⁸ It appears that the telephone call made by Mr. Madden is not denied, but the threat is.³¹⁹

2C-302 Thirdly, Mr. Mahon claims that Madden & Finucane, as a means of interfering with or preventing his research, created difficulties for him with his University by complaining about the way in which he was conducting his interviews. There was an exchange between Mr. Mahon and Mr. MacDonald³²⁰ on Day 412 but there does not, in fact, seem to be a very great deal of difference between the competing versions. Mr. Mahon says that a call was made complaining about him and Mr. MacDonald asserts that his solicitors were checking Mr. Mahon’s credentials and indicated that “*there was some concern in Derry... about the way in which you were conducting interviews.*”³²¹ As it appears that Mr. Mahon had been providing information and assistance to Madden & Finucane since

³¹⁶ AM19.22 paragraph 58

³¹⁷ AM19.410

³¹⁸ Dav 413/025/09

³¹⁹ Day 413/074/09

³²⁰ Day 412/072

³²¹ Day 412/071/16

1996³²², it does seem a little odd that his credentials were being checked two or three years later.

2C-303 Fourthly, Mr. Mahon claims that it was Madden & Finucane who provided him with a copy of the Soldier 027 statement (in late 1998 or early in 1999) on "*the understanding that I would stop conducting interviews*"³²³ He claims that this condition was imposed by Liam Wray and Charlie McGuigan³²⁴ neither of whom is represented by Madden & Finucane. Nevertheless, it does appear from the questions asked and suggestions put that there was concern about the extent of Mr. Mahon's interest in the activities of the IRA on the day. It also appears, as a matter of fact, that Mr. Mahon did not interview any other witnesses after that time.

2C-304 Finally, there was a dispute about a restriction said to have been placed upon Mr. Mahon in respect of the presentation that he made to Madden & Finucane and counsel with Don Mullen. Mr Mahon said that he had been told by Peter Madden that he did not want IRA activity dealt with within the presentation.³²⁵ This, too, is denied by Mr. Madden, and Mr. MacDonald pointed to the fact that Mr. Mahon did refer to Father Daly's Gunman as supporting Mr. Madden's denial and evidencing Mr. Mahon's dishonesty.³²⁶

2C-305 Neither we, nor those we represent, had any involvement in any of these matters. Indeed, until the evidence of Mr. Mahon was introduced at a late stage, we were not aware of them. We have set out our understanding both of the facts and of the quite serious contradictory allegations that have

³²² AM19.2 paragraph 6

³²³ AM19.7 paragraph 20

³²⁴ Day 412/184/08

³²⁵ Day 412/153/16

³²⁶ Day 413/057/09

been made. The only submission that we wish to make is that the Tribunal should determine what happened and why it happened because, all that appears to be plain to us is that the Tribunal has not received the information and assistance which it was and is entitled to expect. That has disturbing implications in respect of this Tribunal's quest to discover the truth and the whole truth as to what happened on Bloody Sunday.

FULVIO GRIMALDI AND THE PHOTOGRAPH OF FATHER DALY'S GUNMAN

2C-306 Fulvio Grimaldi photographed the gunman who became known as Father Daly's Gunman yet he failed to mention him³²⁷ and claimed not to have seen him.³²⁸ John Barry of the Sunday Times Insight Team explained how the photograph came to light only when the Insight Team noticed that a couple of negatives were missing from a sequence of film Mr Grimaldi had provided.³²⁹ Edwin Glasgow QC asked Mr Grimaldi about this. Mr Grimaldi denied that he had withheld the film and stated his belief that the Sunday Times Insight Team were responsible for a lot of "trickery",³³⁰ echoing his earlier dark assertion to Christopher Clarke Q.C. that "*one knows in the service of whom the Sunday Times Insight team works ... they were in the pay of the British Secret Service.*",³³¹ and describing Peter Pringle as "*dishonest*".³³²

2C-307 In his BSI Statement Mr. Grimaldi said he was not aware of a civilian gunman in the car park and, by way of excuse, likened his photograph of Father Daly's Gunman to "*taking a picture of an ant in a flowerbed.*"³³³ Although he said in oral evidence that had he seen a gunman he would

³²⁷ M34.3 paragraph 12

³²⁸ M34.50 letters F-G; M34.71 paragraph 111; M34.76 paragraph 117.8 (a)

³²⁹ M3.5 paragraph 20

³³⁰ Day 131/160-162

³³¹ Day 131/44

³³² Day 131/92

³³³ M34.60 paragraph 44

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have mentioned it,³³⁴ he refused to acknowledge the evidence put before him during his oral evidence that clearly established that the photograph was indeed of a gunman.³³⁵

2C-308 Furthermore, Mr. Grimaldi's evidence to this Inquiry is impossible to reconcile with the statements he made in an interview with Paul Mahon. This has been considered in detail at paragraphs 2C-260 to 2C-261, above.

2C-309 It will be recalled that it was Mr. Grimaldi who presented in a most theatrical manner to the Widgery Tribunal bullets that he claimed he had picked up on Bloody Sunday.³³⁶ Close examination proved that they had been fired into sand and distorted.³³⁷ Mr. Grimaldi said in his BSI Statement that he collected some of the bullets himself and that the cartridges were given to him "*later on*". He denied any attempt to distort or interfere with the bullets that were given to him.³³⁸

MISSING PHOTOGRAPHS: SECTOR 3

2C-310 Significant photographs taken in sector 3, and particularly of the rubble barricade, are missing.

Eamon Melaugh

2C-311 Amongst the photographs taken by Eamon Melaugh were these in Sector 3:

³³⁴ Day 131/43

³³⁵ Day 131/41-47

³³⁶ M34.52 letter B

³³⁷ D500.1

³³⁸ M34.74 paragraph 117.5(a)

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- (1) one photograph of two soldiers on the West side of Rossville Street, and therefore probably of P and 017;³³⁹ and
- (2) ten to twelve photographs of activity at the rubble barricade. The barricade photographs included:
- (3) one of Michael McDaid before he was shot;
- (4) five or six of dead or wounded people lying behind the barricade;³⁴⁰ and
- (5) one of civilians standing in the area of the barricade.³⁴¹

2C-312 Mr. Melaugh was still able to describe the McDaid photograph and to differentiate it from another photograph of Mr. McDaid:

... the photograph I was referring to that I personally took - that I gave to this individual, young McDaid is actually standing on top of the rubble, here he is walking past the rubble in the middle of the road [referring to Robert White's photograph P650]. The picture I am referring to actually shows him standing on top of the rubble, I can remember that vividly.³⁴²

2C-313 It is Mr. Melaugh's current recollection that this photograph was taken after the shooting had stopped and after he had photographed the bodies of Bernard McGuigan, Paddy Doherty and others.³⁴³ That cannot be correct and, in fact, in 1972 Mr. Melaugh had told Mr. Keville that he had photographs (plural):

³³⁹ AM397.004 paragraphs 33 to 35; Day 143/33/1

³⁴⁰ AM397.007 paragraphs 71 to 72; Day 143/59/19

³⁴¹ Day 143/113/22

³⁴² Day 143/54/10

³⁴³ Day 143/54/17

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*of young McDaid seconds, two seconds before he was shot dead...*³⁴⁴

2C-314 Clearly, then, Mr. Melaugh's Sector 3 photographs were of great potential significance. Yet, not one of them has reached this Tribunal. According to Melaugh, this was because the negatives went to John Lloyd of Time Out in 1972 and he did not return them.³⁴⁵ This may not account for all of the missing negatives. None of Mr. Melaugh's rubble barricade photographs was used in the consequent Time Out article, calling into question whether they were amongst the "selection" of photographs Mr. Lloyd agrees he received from Mr. Melaugh. Mr. Lloyd adds that those he did receive should have been returned by Time Out's photo editor.³⁴⁶

2C-315 The fact that negatives were sent to John Lloyd certainly cannot account for the absence of the prints taken before they were sent off. We now know what happened to the only print of the McDaid photograph.³⁴⁷ Mr. Melaugh's BSI statement includes the following paragraph:

*A couple of weeks after Bloody Sunday I was on the street in the Bogside area talking with a friend and showing him the photographs that I'd taken on Bloody Sunday when two members of Sinn Fein came up uninvited and listened in.*³⁴⁸

2C-316 It was expanded upon in oral evidence:

... Now, the person who identified young McDaid asked me could he keep a copy of the print, and I immediately gave it to him.

Q. Do you know who that was?

³⁴⁴ AM397.071

³⁴⁵ Day 143/58/13

³⁴⁶ M101.001 paragraphs 3 to 4; AM397.073 is the Time Out article, published in 26th May to 1st June 1972 issue.

³⁴⁷ Day 143/61/9

³⁴⁸ AM397.008 paragraph 77

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A. No, I simply cannot remember. At the time I believed him to be a member, whoever he was, of the Provisional IRA; I can remember that, but I honestly and sincerely cannot remember his name.³⁴⁹

2C-317 He was further asked:

Q. Could I come to paragraphs 77 to 79. In these paragraphs you describe an incident when two members of Sinn Fein came up uninvited and listened in when you were talking about a friend and showing him photographs that you had taken on Bloody Sunday. Is this the same incident you have been describing where the man?

A. I think it is, I am fairly certain it is, yes.

Q. You are referring earlier to one man who you understood to be a Provisional; is it in fact two men you understood to be Provisionals?

A. I honestly cannot remember. I know for certain it was one guy.³⁵⁰

2C-318 Certain people, whether they were members of Sinn Fein, the Provisional IRA or acting on their own initiative were obtaining important photographs from local photographers in the wake of Bloody Sunday. Mr. Melaugh is not the only photographer to have experienced this. Another, Robert White, suggests that photographs were destroyed as part of a deliberate attempt to suppress evidence of certain types of civilian activity on Bloody Sunday. It is therefore interesting to note Mr. Melaugh's response to the following question:

Q. So any photographs that you took that show marchers, save for those showing some injury, are now missing?

A. Yeah.³⁵¹

³⁴⁹ Day 143/52/16

³⁵⁰ Day 143/62/13

³⁵¹ Day 143/113/22

Sam Gillespie

2C-319 We learn more about the activities of the Provisional IRA from an amateur photographer from the Creggan, Sam Gillespie. He took photographs on Bloody Sunday including, at a relatively late stage in the proceedings, a photograph in the area of the rubble barricade.³⁵² He does not suggest that any of the photographs he took on Bloody Sunday have gone missing, but he does recall a visit he received soon afterwards:

...shortly after Bloody Sunday a person who I knew to be a member of the IRA personally asked me for the photographs which I refused to give. I will not disclose his name.³⁵³

2C-320 Mr. Gillespie gave some further information during the course of his oral evidence to the Tribunal:

Well, the day after Bloody Sunday this person come to me and said they were collecting up all the films that people had -- they wanted to see the photographs that people had taken the day prior to it and they asked me for the film, and I would not give it to him.

Q. Did he say why he wanted them?

A. He did not say why he wanted them, I did not ask him why he wanted them. I just would not give him the film for the photographs.

Q. Do you know which wing of the IRA he was a member of?

A. He was in the Provisional IRA at the time, I think.³⁵⁴

2C-321 The Provisional IRA had good intelligence about who had taken photographs on the day:

³⁵² P426

³⁵³ AG36.7 paragraph 32

³⁵⁴ Day 142/67/4

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Q. Would I be right in thinking, Mr Gillespie, that as a well-known keen amateur photographer --

A. No, I am not a well-known, I just like playing with a camera --

Q. People know a lot about what everybody does in this city, but you were quite well-known as a keen photographer in this city, were you not?

A. No, no, I was not.

Q. How would anybody, let alone a Provisional IRA man, know that you had been taking photographs at all or do you think that maybe it had just come out in the information after Bloody Sunday?

A. Like I say, I gave the film to my brother to be developed. My brother gave it to his friend, his name escapes me --

Q. A number of people knew?

A. A number of people knew I had this film, right.

Q. And a very short time people knew he had been taking photographs, you get a visit from a Provisional IRA man who wants to get his hands on your film?

A. The words the man said to me, "we are trying to get the photographs" -- anybody who had taken any photographs on that day of Bloody Sunday and he asked me would I give him the film, and I said "no". That was the end of that and I have never seen that man since.³⁵⁵

Robert White

2C-322 Mr. White is quite clear about why certain of the photographs he took on Bloody Sunday are now missing. His BSI statement includes this account:

Photographs numbered 14, 15, 19 and 23 are not attached to this statement. When these negatives were developed, I was asked to destroy these photos because they showed

³⁵⁵ Day 142/99/3

*people rioting and could be used as evidence against them. I have kept no copies of these negatives.*³⁵⁶

2C-323 He did not know who had asked him to destroy the photographs:

*At the time there was many people coming to my house and there was photographers, other photographers, relatives, now only a few relatives of the people concerned, the people who had been killed, there was reporters and somebody, somebody came -- now I do not recall who it was -- somebody came and asked me to destroy two negatives. Now there is four -- I destroyed four because there was people rioting. You could see the faces and they had stones in their hands.*³⁵⁷

2C-324 Mr. White has given no further information as to the identity of the "somebody" who requested or required him to destroy this evidence. White was present in Sector 3 from the arrival of the military vehicles in Rossville Street to the shooting of Hugh Gilmore. It is a real possibility that amongst the destroyed photographs was one or more taken in that area.

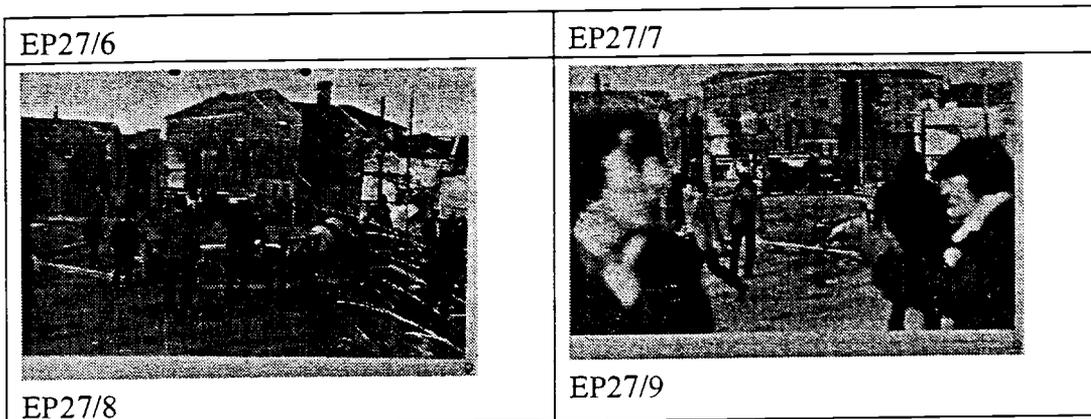
Ciaran Donnelly

2C-325 Only four of Ciaran Donnelly's photographs of the rubble barricade have reached the Tribunal, two of which appear to have been deliberately damaged:



³⁵⁶ AW11.003 paragraph 14; White's contact sheet is at P233.055

³⁵⁷ Day 137/98/5



2C-326 Important photographs are missing. Mr. Donnelly explained to Christopher Clarke QC:

Well, the main pictures, I would think, that are missing, are the pictures taken from a pram ramp looking back. I was trying to get the standard Bogside rioting picture, taken from behind the rioters, the backs of their heads looking towards the army and the army vehicles were in the background with the rioters in the foreground. Two of the men who were on the rubble barrier were shot while I was taking those pictures. So there would be pictures, or there were pictures of the men on the barrier before they had fallen.³⁵⁸

2C-327 He was asked by Edwin Glasgow to confirm this:

Q. The photographs that are missing, the ones you can remember, are photographs taken at the very time when two men were being shot on the barricade?

A. That is what appears to be missing.³⁵⁹

2C-328 The missing photographs were taken after EP27/9:

A. There were pictures taken between those two times.

Q. Between which two times?

A. Between frames 16 and 17.

³⁵⁸ Day 71/3/14

³⁵⁹ Day 71/75/13

Q. Those are the ones that had not survived?

*A. It must have been the other camera body with the other film.*³⁶⁰

Q. But the films you took after this, which to your recollection involve films taken of people on the barricade?

A. Yes, yes.

Q. When the shooting has started?

*A. Yes.*³⁶¹

2C-329 The photographs corresponding to frames 16 and 17 are EP27/9 and EP27/11.³⁶² The latter was taken after Mr. Donnelly had moved into Glenfada Park North.

2C-330 Only two photographs taken by Mr. Donnelly during the time he was at ground level behind the barricade survive; they are partially damaged.³⁶³ The negatives have been deliberately scratched. It is unknown when this took place. EP27/8 has a series of scratches on its right hand side, over the area corresponding to the eastern portion of the rubble barricade. The area that is partially obscured includes, according to Arthur Harvey QC, Kevin McElhinney standing on the rubble barricade.³⁶⁴ The left hand side of EP27/9 is similarly scratched in an apparent attempt to hide the identity of the person shown there.

2C-331 Mr. Donnelly drove straight to Dublin after the day's events and handed over his negatives to the Irish Times. He explains:

³⁶⁰ Day 71/34/17

³⁶¹ Day 71/78/12

³⁶² Exposures 16 and 17 on Contact Print P233.040

³⁶³ Day 71/77/4

³⁶⁴ Day 47/60/24

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Unfortunately only a small proportion of these survived as a flood damaged the Irish Times photographic library.³⁶⁵

2C-332 It must be assumed that amongst the negatives destroyed by the flood were those of the missing barricade photographs.

Missing Photographers

2C-333 Fulvio Grimaldi took approximately three photographs from the window of 12 Garvan Place in Block 1 of the Rossville Flats of the events in and around Rossville Street below him.³⁶⁶ Only one of the photographs survives, so far as we are aware, which means that photographs taken by Mr. Grimaldi of potential importance to the events of Sector 3 are missing.³⁶⁷

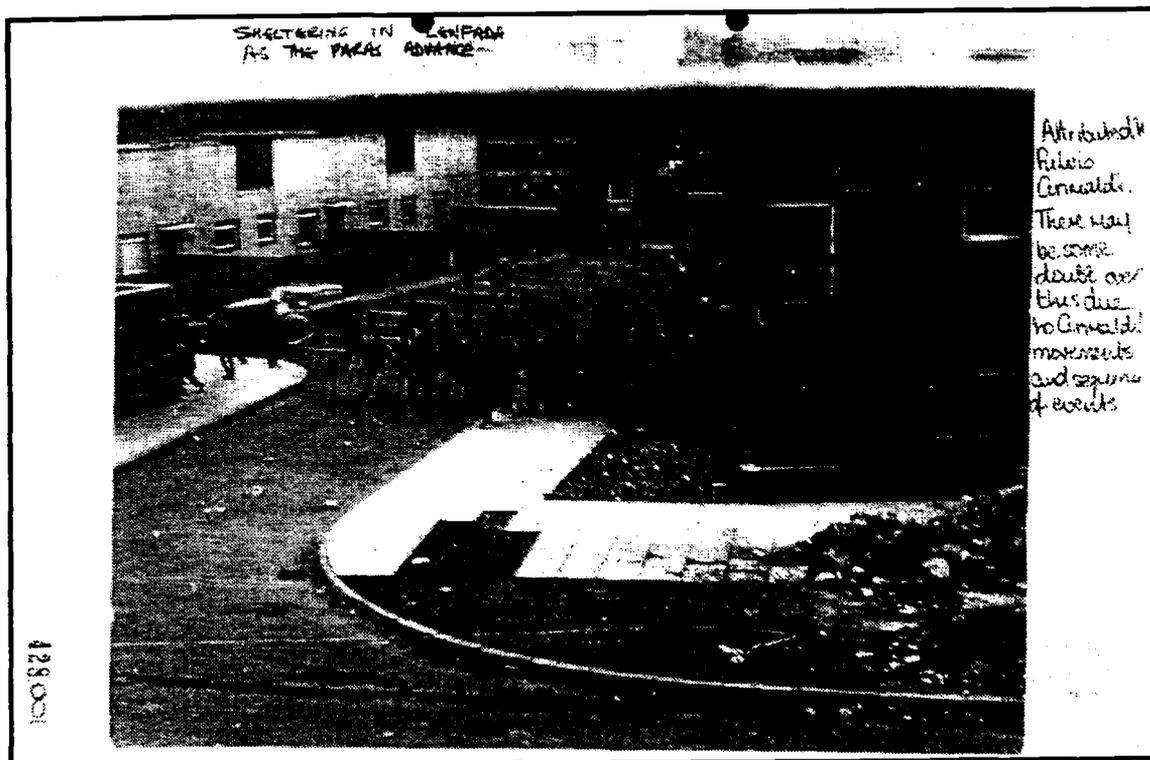
2C-334 P428 was also taken by a photographer based in the Rossville Flats. It was initially attributed to Mr. Grimaldi.

³⁶⁵ M22.022 paragraph 12

³⁶⁶ M34.45 paragraph A; Day 131/73/6

³⁶⁷ P520

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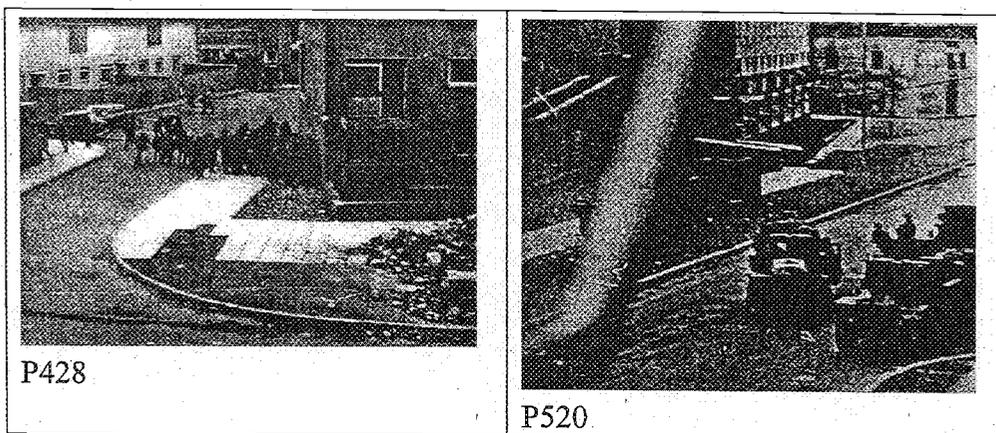


2C-335 There can be no doubt that it captures a significant moment in the events of Sector 3 (and Sector 4). It was taken before the military shooting in Glenfada Park North and before members of the Anti Tank Platoon reached the gable wall there. Yet, it was not taken by Fulvio Grimaldi, who had not arrived in Block 1 by that stage. He arrived at 12, Garvan Place only after the shooting of Patrick Doherty, Bernard McGuigan, Hugh Gilmore and Kevin McElhinney.³⁶⁸ Furthermore, as Mr. Grimaldi commented himself, P428 was taken from a different location within Block 1 from his own.³⁶⁹

³⁶⁸ M34.2 paragraphs 8-10

³⁶⁹ Day 131/187/6

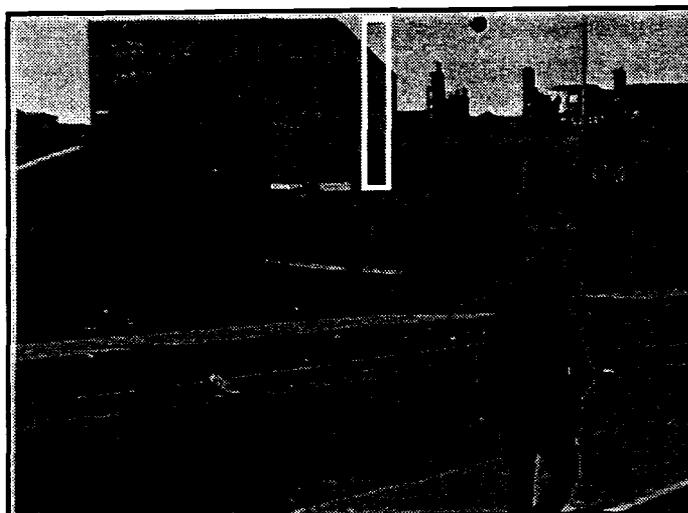
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2C-336 It must follow that P428 was taken by another photographer, who was present at a different location in Block 1 from Mr. Grimaldi's. The photographer's identity is unknown, as is the fate which met any other photographs he or she may have taken. We suggest that events such as those disclosed in P428 make it very unlikely that only one photograph was taken at this time.

2C-337 This is not the only "missing photographer". Those present in 2 Kells Walk, overlooking the rubble barricade, speak of a photographer who was taking pictures from that location of the events below. The flat in question is indicated on the photograph below.³⁷⁰

³⁷⁰ EP23/9; see also AB80.4 paragraph 21 and AB80.6.



2C-338 Brian Power clearly recalled the photographer being in 2 Kells Walk:

He was beside me some of the time and certainly took photographs inside the flat and I think he worked for The Daily Mail. I bought the Daily Mail the next day to see if his photographs were there, but I never saw any.³⁷¹

2C-339 Mary Breslin also remembered the photographer:

I just remember that he was difficult to understand, had long blond hair and was carrying a square camera with a long lens. He spent the time in the flat at the other window overlooking Rossville Street with Brian [Power].³⁷²

2C-340 Damien Friel, whose account has been discredited in other respects, had no reason to lie about the presence at 2 Kells Walk of a “cameraman”, who stepped outside the door onto the balcony facing Rossville Street, presumably to take photographs or to film.³⁷³

2C-341 The identity of this photographer is unknown. None of the photographs he took (or the footage he filmed) from the vantage point of 2 Kells Walk has reached the Tribunal.

³⁷¹ AR18.3 paragraph 16; confirmed Day 425/26/2

³⁷² AB80.3 paragraph 20

³⁷³ AF30.14; AF30.4 paragraphs 17 to 18.

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2C-342 Many Sector 3 photographs are now missing, particularly those taken of events in the area of the rubble barricade. There is now strong evidence that photographers were approached shortly after Bloody Sunday by members of the Provisional IRA and that photographs may have been suppressed at this stage. Other photographs have, apparently, suffered a variety of fates. Some were loaned to a journalist but never returned, others were destroyed in a flood. There is also now compelling evidence that two further photographers were active in Sector 3. They have yet to be identified and only one of their photographs has reached the Tribunal. The fate of the rest of their work is unknown. It is now clear that the Tribunal cannot assume that the photographs which remain tell the whole story of what took place in this part of the Bogside on Bloody Sunday.

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CHAPTER 2D

THE IRA AND THE EVIDENCE BEFORE THE PRESENT INQUIRY

2D-1 ATTEMPTS BY THE IRA TO INFLUENCE JOURNALISTS' ACCOUNTS

2D-1 In 1972 both wings of the IRA sought to influence and control reporting in the media of the events of Bloody Sunday.

2D-2 The Provisional IRA, in particular, moved swiftly to take control of the Press. They took steps to control access to the Bogside by the media and approached photographers to confiscate their images.

2D-3 The following article, to which Mr. Martin McGuinness was referred by Christopher Clarke Q.C. appeared in the *Derry Journal* on 14th April 1972:

This is a report in the Derry Journal three days later, on 14th April. Could we highlight the columns that begin, "Provos to issue Bogside press cards." The article records:

"Derry command of the Provisional IRA announced on Tuesday that they are to place strict sanctions on access to the Free Derry area of certain pressmen operating in the Derry area.

"The command said that they had for some time given pressmen a free hand in the barricaded areas, but they had become increasingly disturbed at certain press reports ..."

...

"Mr Martin McGuinness, O/C Derry battalion of the Provisional IRA, said he would like to make it known that he took particular exception to a story about himself

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headed 'The boy who rules Free Derry,' which appeared in Tuesday's edition of the Daily Express."¹

2D-4 Brian Cashinella gave the following evidence:

If we look at O2.2, the next page, you were asked this question:

"Question: So how much authority did the British forces have in free Derry?"

And you described how they had not got any, the only writ that ran in free Derry was the writ of the IRA.

You went on to say this:

"They even had their own mayor, the mayor of free Derry who was a big Orwellian-type figure with a big slouched hat. He used to issue passports to Free Derry which he had to sign."

A. Vincent Coyle.

Q. This is Vincent Coyle?

A. Vinny Coyle, yes.²

2D-5 Sam Gillespie, a photographer, was approached by a PIRA man and asked for photographs.

Q. Can we go to paragraphs 32 on AG36.7: you say that shortly after Bloody Sunday a person that you knew to be a member of the IRA personally asked you for photographs, which you refused to give.

When you say "the photographs", what photographs did he ask for; all your photographs or some specific photographs?

A. Well, the day after Bloody Sunday this person come to me and said they were collecting up all the films that people had -- they wanted to see the photographs that

¹ Day 390/12/4-22

² Day 110/34/22-35/11

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people had taken the day prior to it and they asked me for the film, and I would not give it to him.

Q. Did he say why he wanted them?

A. He did not say why he wanted them, I did not ask him why he wanted them. I just would not give him the film for the photographs.

Q. Do you know which wing of the IRA he was a member of?

A. He was in the Provisional IRA at the time, I think.

Q. You say you will not disclose his name?

A. No, I will not disclose it, no.

Q. Sorry?

A. I will not disclose his name.

Q. Would you be prepared without disclosing his name publicly to do what a number of other witnesses have done, and to write down what his name is?

A. No. I will not write his name down.

Q. Why is that?

A. Well, just what I said, on the statement: I will not disclose his name.

Q. That is just a statement; is there any particular reason?

A. No, well, I thought perhaps -- people did not know this man was in the IRA or was a member of the Provisional wing, I believed him to be a member of the Provisional wing of the IRA.

Q. You knew him to be according to this paragraph?

A. Yes, yes, I had reason to believe that he was a member of the Provisional wing of the IRA.³

³ Day 142/66/22-68/13

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2D-6 Robert White gave evidence to this Inquiry that he had been asked to destroy negatives, but could no longer recall who had made this request.⁴ He destroyed four negatives showing people rioting, because it was possible to see their faces and stones in their hands.⁵

2D-7 John Cooke of the Press Association gave evidence to this Inquiry that he was taken blindfolded to a house where he arrived at about midnight on Bloody Sunday. A crowd of people, including "the unofficial mayor of the Bogside", Vinny Coyle, were present. Mr. Cooke believes the photographer was also present.⁶ By this time the Provisional IRA were already in possession of photographs including P6/666, a photograph of Hugh Gilmore attributed to Eamon Melaugh. Mr. Cooke was shown upwards of twenty photographs which were

*almost without exception ... all of shooting victims,... Even after 30 years I recall the one thing that struck me with some force was that, almost without exception, where you could see the wounds on people's bodies, the exit wounds appeared to be on the front of their bodies, typically the chest area."*⁷

2D-8 The Tribunal may conclude that it is inherently unlikely that Mr. Cooke invented that account or that it is other than essentially accurate. If that be right, it must follow that either a number of the photographs he was shown were of unidentified casualties - because his very vivid descriptions can fit very few of the known casualties and none who, it would appear, could have been photographed for the IRA on the evening of Bloody Sunday - or photographs which had no immediate relevance to Bloody Sunday were being produced to mislead journalists. In either case, they have not been produced to this Inquiry.

⁴ Day 137/98/7-16

⁵ Day 137/98/7-16

⁶ Day 199/48/4-10

⁷ M16.6 paragraph 9

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2D-9 Mr. Cooke also stated that he had contacted PIRA in order to get photographs because

at that time they were the - more or less the authority in the Bogside.⁸

2D-10 Peter Stewart, a BBC journalist, gave evidence of threats made to him by both the Provisional and Official IRA following a bulletin on the Six O'Clock News. As a result of these threats Mr Stewart was granted anonymity for the purposes of the Widgery Inquiry where he was referred to as 'Observer A'. A letter written by his solicitors to the Treasury Solicitor's Department in February 1972 indicated that the IRA had approached him whilst he was still in Northern Ireland, that threats against his life had been made by both wings of the IRA and that he had received anonymous telephone calls at his home on his ex-directory number.⁹

2D-11 Mr Stewart had written a piece that was broadcast on the BBC Six O'Clock News on the evening of Bloody Sunday which included the report that the soldiers had met a fusillade of terrorist fire.¹⁰ It is significant that his statement to Lord Widgery does not include any reference at all to shots fired at soldiers.¹¹ In his BSI statement he qualified the word "*fusillade*",¹² and in oral evidence to the present Inquiry he said he was prepared to stand by his contemporaneous reference to "*a fusillade of terrorist fire*" although he thought "*a fusillade of fire*" would be more accurate.¹³ He now attributes the IRA threats to the fact that his

⁸ Day 199/36/02-06.

⁹ Day 113/68/24 -70/21

¹⁰ M88.11

¹¹ M88.8-10

¹² M88.6 paragraph 17

¹³ Day 113/83-4

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initial report, in the time available, referred to there being only two or three casualties.¹⁴

- 2D-12 The danger to members of the press was also referred to by John Barry who spoke of the likely consequences of a journalist disclosing the identity of a particular gunman:

we were journalists working in what was still a no-go area where there were gunmen who killed people and my worry was that if we learnt too much about the identities of particular gunmen and if, let us say, the Army were the next day or next week to come in and raid a house and pick them all up, then my worry was we might well be suspected of being the sources, in which case we would be killed.¹⁵

- 2D-13 Simon Winchester gave evidence that shortly after Bloody Sunday he had been 'warned' by members of the Provisional IRA about having made the 'foolish mistake' that the IRA had fired first.

I should think it was more like the summertime now, we have moved on. But they arrested me and I was interrogated outside the dance hall, a rather bizarre scene. And then finally a more senior member of the group was brought from a house nearby, who identified me, and he said "He is the fellow that reported for the Guardian on Bloody Sunday. He is all right, except he made the foolish mistake of saying we fired the first shot; we did not. So let that be a warning to you and go back to the dance". I did not.¹⁶

- 2D-14 The fact that both the Provisional and Official IRA were capable of threatening independent journalists connected to major news organisations is an indication of their power and self-confidence. It is clear that they would have had no hesitation in intimidating local civilians who showed

¹⁴ Day 113/89-90

¹⁵ Day 194/129/10-17

¹⁶ Day 116/72/13-23

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any sign of stepping out of line so far as the para-militaries' official account of Bloody Sunday is concerned.

2D-II THREATS BY THE IRA TO WITNESSES BEFORE THIS INQUIRY.

2D-15 We have considered at length above the climate of fear which still prevails in Derry and its impact on the willingness of civilians to give a true account of what they witnessed on Bloody Sunday.¹⁷ However, this is not the full extent of the problem faced by this Inquiry. There is clear evidence that witnesses before this Tribunal have been intimidated.

2D-16 It has been alleged by witnesses before this Inquiry that senior current members of the Provisional IRA have "visited" potential witnesses. In their book Clarke and Johnston state (at page 261);

There are persistent rumours that other senior IRA figures, including the OC, were "visited" by current senior IRA men after McGuinness's announcement, in an attempt to prevent them giving their own version of events.

2D-17 In his article in the Sunday Times on 6th May 2001 Liam Clarke stated:

The visits were from IRA men of such reputation that as one man put it: "It is the next best thing to sending round the grim reaper".

Sources suggest that McGuinness' boss at the time, the actual officer commanding the IRA, is among those who have been warned off giving evidence.¹⁸

2D-18 This is, of course, highly relevant in the light of the statement made by PIRA 24 to the agent of the Inquiry. This matter is considered further at paragraph 2D-24 and Chapter 4, below.

2D-19 In a BSI statement dated 30th May 2003 Kathryn Johnston states:

¹⁷ Section 2C-III, above.

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*I have been asked what I know about the persistent rumours that former senior IRA figures including the OC were "visited" by current senior IRA men after McGuinness' announcement that he was going to give evidence to the Bloody Sunday Inquiry in an attempt to prevent them giving their own version of events. I have also been asked about the reference to the "grim reaper". There have been various articles in the Sunday Times referring to this. We have good evidence that McGuinness tried to attack the army on several occasions, e.g. the incident at the bookmakers and the one shot which was heard at the time and the attempts to get the guns from the cars early in the day. There is also the evidence of the Fianna being given nail bombs and the volley of shots at the Walls. I have been told (though will not say specifically by whom other than commenting that I have also heard this from sources in Derry) that the visits to prevent people giving evidence were carried out by Willie McGuinness, Martin McGuinness' younger brother, and by Raymond McCartney. I have also evidence that a senior IRA man in 1972 was asked recently, after McGuinness announced that he was going to give evidence, to meet a third party. He was then questioned by Raymond McCartney about his intentions and basically told to keep quiet. I will not disclose my source for this.*¹⁹

2D-20 Liam Clarke in a statement also made on 30th May 2003 states:

I confirm that I wrote the section about persistent rumours that former senior IRA figures were visited by current senior IRA men after McGuinness' announcement that he was going to give evidence to the Inquiry in an attempt to prevent them giving their own version of events. It also came to our attention through people telling us, directly or via a third person, that this had happened to a friend. One person who I will not name confirmed this to us as having happened to him. These were people who were in the Provos at the time. I confirm that Martin McGuinness' brother, Willie McGuinness, is the Grim Reaper and that the other "visitor" is Raymond McCartney. The gist of their message was "do not get involved, Martin will deal with it."

²⁰

¹⁸ KM3.77

¹⁹ M112.7 paragraph 53

²⁰ M111.21 paragraph 179.

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2D-21 In the course of her oral evidence to the Inquiry Kathryn Johnston declined to state whether any of their informants was someone who claimed himself to have been visited on the ground that:

*...the IRA are well aware of the people that they have visited and were I either to confirm or deny it, it would identify them.*²¹

2D-22 Ms Johnston did confirm however that more than one person had told her of threats that were being made in relation to individuals who might otherwise have come forward to this Inquiry.²² She refused to give information about her sources on the grounds that they believed disclosure of their identities would result in their lives being at risk.²³

2D-23 Raymond McCartney gave evidence on Day 228. He avoided giving a direct answer to the question posed by Lord Saville as to whether or not he had any knowledge of threats made to individuals in connection with their giving evidence to the inquiry:

LORD SAVILLE: You were shown a newspaper article which suggested that somebody might have put the frighteners on somebody; but you do not know anything about that at all?

A. Well as a Republican, any article by Liam Clarke has to be taken with a large dose of scepticism.

LORD SAVILLE: That may be, I am not going to make any comment on that at all. Are you personally in a position to – you would be like to know if there was any good reason why these people should not come forward.

A. No.

LORD SAVILLE: You cannot think of one yourself.

²¹ Day 387/74/15 -75/07.

²² Day 387/79/5-15

²³ Day 387/72/10-73/3

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*A. I cannot think of one, no.*²⁴

2D-24 In the closing moments of its hearings of evidence the Tribunal witnessed a dramatic demonstration of the forces at work in Derry and the attempts which have been made to obstruct the Inquiry's search for the truth by suppressing evidence. In the course of his evidence PIRA 24 accepted that he had told "the man who came with the subpoena" that he had been discouraged from giving evidence and that a couple of boys had come and told him that he would not be giving evidence, but sought to deny that what he had told him was true.²⁵ In addition he denied that there had been any reference to houses being burnt. In our submission the Tribunal can be left in no doubt that PIRA 24 did in fact tell "the man who came with the subpoena" that he had been threatened to prevent him from giving his evidence and that this statement of his, at least, was true.²⁶ Given the central importance of the highly contentious and well reported issue as to threats to the Inquiry's witnesses, it is unfortunate that a detailed note of what PIRA 24 had said was not immediately made available to the Tribunal.

2D-III THE NON-DISCLOSURE OF THE NAMES OF GUNMEN AND MEMBERS OF THE IRA

2D-25 From the outset of its search for the truth of the events of Bloody Sunday, the Inquiry has stated that it attaches the greatest importance to discovering the identity of gunmen and members of both wings of the IRA who played a part that day so that it could obtain their evidence. On the first day of his opening statement Christopher Clarke QC observed:

Mr McGuinness is not alone in not replying to the Inquiry's invitations to give evidence. We have written to a number of

²⁴ Day 228/29/3-14

²⁵ Day 427/115/14

²⁶ Day 427/115/14

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people, something of the order of 40, whom we have reason to think may have been members of, or connected with the IRA in this city on 30th January 1972, with some honourable exceptions they have not replied.

One can, of course, readily understand a reluctance to assist. But this is the year 2000, not the year 1972. As I have already indicated, no one need fear in the light of the Attorney General's undertaking that by giving evidence to this Tribunal they will incriminate themselves. If any of the relevant persons believe that they have a claim to anonymity they can apply to this Tribunal. As I said yesterday, now is the time to speak, not least because if people will remain silent it may be said by some that silent they were because they had something to hide.²⁷

2D-26 On Day 87 the Tribunal heard a submission by Arthur Harvey QC that:

where there are reasonable prospects of obtaining the information from the former IRA members themselves, then until all other avenues have been exhausted, Counsel should refrain from pressing witnesses to reveal what they merely suspect or believe.²⁸

2D-27 Lord Saville observed:

The reason, which you will appreciate, which I hope everyone appreciates, as to why our Counsel has been asking the sort of question he has, is that until recently there has been -- we have had no other avenues open to us to try and find those people who we think, on reasonable grounds, should be able to help us with Bloody Sunday. We have said over and over again that, we would like those people to come forward.

Mr Harvey QC has said the same. We hope that those appeals will bear fruit, but you will appreciate our basic duty is, acting as fairly and properly as we can, to discover the whole truth about Bloody Sunday. I repeat our appeal to all concerned to come forward. If they have a genuine basis for seeking anonymity, we will consider and deal with it as fairly as we can. But it is our basic duty to discover the

²⁷ Day 8/45/19 -Day 8/46/12.

²⁸ Day 87/5/15

whole truth. If the only way we can do that, unsatisfactory though it is, is to ask questions about rumours and who knew who and so on, we are forced to adopt that method.

It is not a satisfactory method, for, among other things, the reasons you have expressed, but we have a duty to do it, we cannot just let that slide away because people are not prepared to help us. If they are not prepared to help us we must do what we can ourselves to discover who they are and whether they have information which leads to the whole truth about Bloody Sunday.

...

I repeat, it is not a satisfactory way, that is why I would like all concerned to listen to the appeal of the Tribunal and indeed to listen to the appeal made by Mr Harvey QC the other day to come forward. They are protected by the Attorney General's undertaking and they will be protected by us, as I said in the opening statement now nearly three years ago, if they have genuine fears for their safety.

But it is the fact we are now three years into this Inquiry and these people have not yet come forward. That concerns us, because this Inquiry cannot last forever and it is only fair to all concerned that we have as much information as early as possible.

Therefore we are, I repeat, on occasion driven to adopting this unsatisfactory method because there is nothing else we can do.

Once again I repeat the appeal that the Tribunal has made and that Mr Harvey made a couple of weeks ago, and we hope that bears fruit, and if people come forward we will do our utmost to treat them fairly and properly.²⁹

2D-28 Many witnesses before this Inquiry have admitted knowing the names of individual gunmen or members of the IRA but have refused to name them, even privately, to the Tribunal. On each occasion of a refusal by a witness to provide such information, the Chairman, in an attempt to persuade the witness, has emphasized the vital importance of the withheld information

²⁹ Day 87/6/22

to the Inquiry's search for the truth. However, the Inquiry, which has been granted the powers to compel testimony contained in the Tribunals of Inquiry (Evidence) Act 1921, has declined to compel them to do so. In consequence the Tribunal has been deprived of the opportunity to make inquiries about these individuals and to obtain their evidence.

2D-29 It is likely, given the environment in which the Inquiry has had to operate, that a further consequence of the Tribunal's failure to order disclosure of names has been to send a message to those witnesses who had not at that stage given evidence that there would be no sanction or consequences for their refusal to do so.

2D-30 It is undoubtedly the case that in some cases fear of the consequences has prevented some civilians from giving evidence about particular gunmen and members of the IRA. However, in other cases the refusal to "name names" or to refer to gunmen stems from a misguided sense that to reveal this information would be a distraction from what the witnesses regard as the 'real issue', namely, what the Army did wrong on Bloody Sunday. An example of a witness who expressed these sentiments was Father McLaughlin who claimed to have no idea who was in charge of the Provisionals or Officials in his area, or in Derry as a whole.³⁰ He was clearly irritated that he had even been asked about this:

You see, I think you are -- I came in here to help the Tribunal and I -- somehow I feel that your questions are away from the reason for my being here. I am not holding - - coming in with a lot of knowledge or information about the IRA, Official or Provisional, and I think that your questions really do not fit in with my motive of coming here to help the Tribunal to get to the basis of what happened on the day when a number of people, of Derry people, were shot in the streets.³¹

³⁰ Day 57/134/19-135/19

³¹ Day 57/135/4-13

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2D-31 In our submission, in cases in which there was no legal basis for the refusal to answer questions the Tribunal should have used its powers to require answers.

CIVILIANS

2D-32 One of the most telling examples of the wholesale reluctance on the part of civilians to give evidence about members of the IRA is the discovery, at a very late stage in the proceedings and only after the great majority of civilians had given evidence, that the OIRA gunman, "Red Mickey" Doherty, was working on a market stall opposite the Guildhall up until his death in 2003. It is clear that Mr. Doherty fired shots on Bloody Sunday and was injured by the military returning fire. It was accepted by Martin McGuinness that this fact was widely known:

To tell you the truth, when I spoke to Eversheds I had no thoughts in my head whatsoever about Red Mickey Doherty, but it is true to say that in the course of the last 30 years, it did become widespread knowledge that Red Mickey Doherty, as he is described, was wounded in the aftermath of the murders of 14 people and the wounding of 13 others by soldiers on Bloody Sunday.³²

2D-33 Hugh Deehan, who assisted in the treatment of Mr Doherty, sought to suggest that he had all but disappeared. He claimed, "I said I only seen him once in the market and never afterwards."³³

2D-34 The circumstances surrounding the discovery of Mr Doherty's whereabouts are fully considered in Chapter 4.

2D-35 Denis Bradley attempted to justify his refusal to give evidence about members of the Provisionals on the basis that he was known, and spoken

³² Day 391/228/1-8

³³ Day 182/85/5-6

to, in his capacity as a Roman Catholic priest. He was asked by Christopher Clarke QC:

Q. Leaving aside for a moment anything that you may have been told either in the confessional or in circumstances that amount to that, would I be right in thinking that in and around January 1972 there were some people, apart from Mr McGuinness, who were known or widely reputed to be members of the Provisionals?

A. There would have been some, yes.

Q. Are you able to tell us who they were?

A. No, I am not, but I mean, I do not think it is necessary for me to. You can -- I mean, I think it is appropriate that you ask them. I presume that the Republican movement --

Q. We have to find out who they are first?

A. I obviously believe that there are people coming forward to tell you that.

Q. The wall of silence, apart from Mr McGuinness, in relation to the Provisionals is remarkably strong. The Officials --

A. You must understand I am in a very difficult position vis-a-vis this. I find these lines very difficult to know and I am genuinely -- I am very conscious if there is any kind of wall of silence it should not be there and I am very, very strong and have been strong over the years that when this Tribunal sat all bodies, and that included the various branches of the IRA, must come forward and give evidence and tell what they knew because that was certainly the position that the group of priests, of whom I was a member at the time, took from the very first day after Bloody Sunday and we never changed that line of moving forward, and I believe that if they have not come forward, should come forward. But I walk a very difficult line here and I am very uncomfortable in it.

Q. I am sure you are and I do not want to make life any more uncomfortable than necessary, but the Tribunal does want to know whether your position is that you know the identities of a number of people, but do not wish to say either because the information was given to you in confidence or for reasons -- or that you do not know because insofar as you do know, the position may come that

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if the wall of silence remains impenetrable, the Tribunal may have to ask you to come back; do you follow?

A. Yes, but even when it asks me to come back, it does not shift my uncomfortableness. I know the Tribunal has a job to do and has a certain remit and I support fully 100 per cent that remit, but my difficulty is that I took very seriously, obviously wearing a Roman collar and that all that period of time that was the position in which I talked and negotiated at times with people and as I have already said, that was not always just the Provisional IRA, sometimes it would have been members of the British Army and the difficulty was that sometimes, without stating it, the assumption in those people's heads was that they were talking to a priest.

Q. I follow that and that may have to be addressed hereafter. As I understand it, there are also people who, regardless of anything that was said to you by them, you know to have been or very strongly reputed to have been Provisionals at the time whose identities you know?

A. I am not too sure that is true. That is the difficult line I walk because I think that most of the people who would have been involved in the IRA -- in my parish I refer to -- at that time would have been known to me as a priest and would have spoken to me as a priest.

Q. With the warning that we may have to come back to this at a later date, I am going to move now from the Provisionals to what you say about the Officials.³⁴

2D-36 Bernadette McAliskey (nee Devlin) also refused to answer questions from Counsel to the Tribunal. She refused to reveal the name of Person Y on Video 25, or assist with identifying any other individual apart from herself.

But you know who is being talked about as Y?

A. Yes, and before -- that is what I am just going to say, that -- I am not even going to deal with the rights or wrongs of it and I think it is better to say it before I see it so that it has no impact on the position. I am not getting into

³⁴ Day 140/103/15-106/11

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identifying persons, whether they are – at any level if you show me a picture of John Hume, I will not be identifying him either, I will be identifying myself.

... A. It makes absolutely no difference. The point of principle is that I am not identifying anybody other than myself, whether it is to say: is it them? Did they win the lottery? Because once I identify anybody I then have to come to a position as to why I may not identify the next person and inferences may be drawn from why I may or may not identify persons and so I am best to do it before I look at anybody, to tell you that in principle I have never assisted Her Majesty's Government in identifying a citizen of this country other than myself. I do not propose to start now.

Q. That is because there are some people who you do not want to identify?

A. There may be people, yes, that I do not want to identify, there may be people -- there may be a million reasons for it and if I proceed beyond this point, we narrow down the potential of what they may be. So it is, I think fairer to everybody, before I see anything to point out that that I think is my position.

Q. We will see if we can approach it if you are not prepared to help us in that respect, in another way. Thank you.³⁵

2D-37 Mrs McAliskey was referred by Christopher Clarke Q.C. to a summary of an interview she had given to Praxis:

Q. May we have a look at KD4.31? ...This is another Praxis document...It purports or appears to be a summary of what they thought they had learnt from speaking to you ...it has an additional paragraph that follows, which reads this:

"IRA was raw then and everyone knew who was in, and their business. Crack about it then, not now. So it would have come out if they had started it, and they would have

³⁵ Day 112/72/21-74/10

*been blamed and lynched. Ostracised and not able to live here any more at the very least.*³⁶

...

Q. On one reading of the document, if it is a reliable summary of at least part of the interview, you were telling the Channel 4 people, in relation to what must pretty clearly be this city:

"Everyone knew who was in the IRA and their business"; is that something that you knew?

A. I do not think that, at any point, I might have said with any -- taking it back to the document in terms of what I would say to reporters and what I would not, I might at some point have made -- which has now become legendary in this country, courtesy of Mr Mitchel -- reference to what the dogs on the street might know, and it is in that context that one might say the dogs in the street might have known at that point who was or who was not in anything.

The reality would be that the only people who know who are in the IRA are the IRA and, to the best of my knowledge, not everybody in the IRA knows who else is in it. So if you are asking me as a factual statement: would everybody have known who was in the IRA? No, they would not. Would anybody have cared? Probably not.

Q. I was asking you a more specific question, which was whether you knew who was in the IRA in this city in 1972?

*A. No, I would not have had any knowledge that was reliable of who was in the IRA. I may have had my own personal opinions, but, like most other people, it was not a matter of significant importance to me at that time whether people were or were not in the IRA.*³⁷

2D-38 Many civilians have insisted that they did not know the name of a single member of the IRA in Londonderry at the time of Bloody Sunday. In some cases this was demonstrably untrue.

³⁶ Day 112/57/21 - 112/58/09.

³⁷ Day 112/59/17-60/21

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2D-39 Dr. McClean was also questioned by Christopher Clarke QC:

A. I did not know anybody was in the IRA at that time.

Q. You did not know anybody?

A. No.

Q. You could not have identified or named a soul, could you?

*A. No.*³⁸

2D-40 Christopher Clarke Q.C. pointed out to Dr. McClean that this answer appears to contradict what he told Peter Taylor for *Remember Bloody Sunday*:

MR CLARKE: ...Dr McClean, I wanted to show you this in the light of some answers you gave a moment ago about not knowing anybody in the IRA...it is a transcript we have received of an interview of you and your wife by Peter Taylor for the "Remember Bloody Sunday" documentary that he made for the 20th anniversary

...

"Raymond: No, I mean we knew at the time who to talk to. I would not now, quite frankly, I just would not know now, I would not know how to contact any of the paramilitary movements now but at the time, as I say, we were so recently divorced from the civil rights movement, we all knew each other."

On one reading of that passage you appear to have been saying: "Whatever may have been the position 20 years later I knew the people in the IRA at the time, or perhaps their political representatives, and I went and talked to them."³⁹

³⁸ Day 175/101/18-24

³⁹ Day 175/105/04 -105/09.

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2D-41 Dr. McClean did not accept that. However, his evidence on this point is also difficult to reconcile with statements he made when interviewed by Paul Mahon.⁴⁰

2D-42 James Ferry was a member of Provisional Sinn Fein in 1972, and had up until October 1971 been living in Derry. His conviction, following a raid on his home in May 1976, for having in his possession bomb making equipment and a firearm and ammunition suggests that, by that time at least, he had himself joined the Provisional IRA, although he denied this.⁴¹ Despite these credentials his response to Mr Rawat's questions was that he had no knowledge at all of members of the Provisional IRA:

Q. And a member of Provisional Sinn Fein in Derry. As a member of Provisional Sinn Fein at the time of Bloody Sunday, were you aware of who the senior commanders of the Derry Brigade of the Provisional IRA were at the time of Bloody Sunday?

A. No, I would not have been privy to that.

Q. Did you know Martin McGuinness in 1972?

A. Yes.

Q. Were you aware in 1972 of the position that he held in the Derry IRA?

A. No, totally unaware.

Q. At the time of Bloody Sunday did you know anyone who was in the Provisional IRA in Derry?

A. No.

Q. Were you aware, on 30th January 1972, what were the orders of the Provisional IRA in relation to Bloody Sunday?

⁴⁰ X.4.20.43-44 (This matter is considered at Section 2C, above, at paragraphs 2C-257-9.)

⁴¹ Day 179/02/7-24 Day 179/11/15-12/23

A. No, I was totally unaware of any orders or anything like that.

Q. I am sorry, I did not catch your last answer?

A. No, I was totally unaware of any orders that were being given to the IRA, to anybody.

Q. Did you subsequently learn after Bloody Sunday what the orders of the Provisionals were in relation to 30th January 1972?

A. No.

Q. Can you assist in any way at all as to what position was being taken by the Provisionals towards the march that was held on 30th January 1972?

A. No, I would not be aware of any orders that were given.

Q. Can you help at all as to what activities they did or did not take part in on Bloody Sunday?

A. No.

Q. Mr Ferry, thank you, those are all my questions.⁴²

2D-43 Peter McGrisken claimed,

"I did not know anybody, I did not know any IRA men by name, I did not want to know any IRA men by name."⁴³

2D-44 This led Mr Roxburgh to put to him his earlier evidence to the Inquiry:

Q. I just wondered what you meant when you said -- I do not want to read too much into it for the Tribunal -- your words were:

"We knew who was who and what was what."

Did you intend there to say that it was generally known who were the leaders of the IRA in this city? If not, what

⁴² Day 179/12/24 - 179/14/10.

⁴³ Day 106/113/20-22

does the phrase "we knew who was who and what was what" mean?

A. You seen people driving about Creggan, Creggan area and rumour would have it, "he is a Sticky", "he is a Provo", so ...

Q. Is it just that you did not know their names?

A. No, I did not know their names, no.

Q. You knew, for example, Martin McGuinness's name?

A. I knew Martin McGuinness's name, yes.⁴⁴

2D-45 Mr. McGrisken denied that he would have known what position Martin McGuinness held.⁴⁵

2D-46 John Barrett refers in his BSI statement to seeing a man sheltering in the alleyway between Blocks 1 and 2 of the Rossville Flats. He recognised the man as a member of the Official IRA:

Q. I am not going to ask you to say his name out loud, but are you prepared to write down the name of this man?

A. I have no idea what you call him even.

Q. You have no idea of his name?

A. No.

Q. How did you recognise him as a member of the Official IRA?

A. Well, he was, everybody knew, but they did not know people by name.

Q. Everybody knew?

A. People within the IRA, the Official IRA, but they did not know them by name.

⁴⁴ Day 106/113/23-106/114/13

⁴⁵ Day 106/114/14 -106/114/18

Q. Had someone pointed him out to you as a member of the Official IRA prior to Bloody Sunday?

A. No, no, no, just everybody sorta knew but they had no names.

...

Q. Do you know whether this man is still in Derry?

A. I have not a clue, I have not seen him from that day.

Q. So after that day you did not see him at all?

A. No, never seen him.

Q. How long before Bloody Sunday had you known that this stranger was a member of the Official IRA?

A. Well, you see, the way it was everybody knew one another as such, but, like, I know a lot of people in Derry, I know them to see, but I do not know their names, that is just the way it is.⁴⁶

2D-47 The inherent improbability of a universally recognisable member of the IRA disappearing from Derry was explored with Mr Barratt by Peter Clarke QC:

Q. Because it was a small community, the Bogside and the Creggan, was it not?

A. That is right.

Q. Virtually everyone on the march could almost name everyone else?

A. Not really, no. I know a lot of people in Derry, right, a know of a hell of a lot and I do not know their names.

Q. You know a hell of a lot?

A. I do not know what you call them, but.

⁴⁶ Day 141/20/6-22/5

Q. If, as we were told yesterday, they go missing from the Creggan or the Bogside, people realise within days, do they not?

A. I dare say if a photo came up and the name had come up, I knew that fella, but I never ever knew his name.

Q. The initial IRA member, the Sticky you saw in the alleyway, disappeared after that day?

A. Never seen him since.

Q. Never saw him again?

A. No.

Q. Did you ever hear anyone saying in the Creggan: "have you seen that Sticky? He seems to have disappeared"?

A. I have no knowledge, I have no idea.

Q. Nobody spoke about it at all?

A. No.

Q. You certainly had not the faintest idea what his identity?

A. No idea, I have no knowledge of it.

Q. How did you know he was a Sticky?

A. I heard everybody on about -- everybody sort of knew him, but I did not know the name.

Q. When was it talked about?

A. I have no idea.

Q. Try to help us, would you?

A. I am only telling you what I know, I do not know, I do not know the fella's name.

Q. You knew he was a Sticky?

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A. Well, everybody knew, like. How can I explain it, um, everybody knew, but they did not know his name. I did not know his name anyway.⁴⁷

2D-48 Charles McDaid refused to give any details about members of the IRA:

Q. We will hear evidence in this Tribunal from Mr McGlinchey -- he was a Provisional -- from Mr Tester who said that he was the Command Quartermaster of the Officials. Was he one of the known Stickies?

A. Not to me.

Q. Are you prepared to tell us who the other known Stickies were?

A. No.

Q. Are you prepared to tell us who the other known Provisionals were?

A. No.

Q. Why is that?

A. I prefer not to. I did not see them on the march, why should I express names?

Q. Unfortunately we have very little means of finding out directly from the IRA what they did or did not do without knowing who they are, and our knowledge in that respect is very limited, and they alone are the people who can tell us what they planned and what they did or did not do, but you do not wish to say who they are?

That is right...

MR CLARKE: Yes, my question was whether you are prepared to tell us, if necessary only to the Tribunal in the first instance, who the people were whom you on 30th January 1972 knew to be either Stickies or IRA Provisionals?

⁴⁷ Day 140/33/24-35/16

*A. That would not be right for me as it was hearsay to me who they may have been and what they were in. They were secret organisations, nobody can tell that.*⁴⁸

2D-49 He was asked by Gerard Elias Q.C. about the reasons for his refusal:

MR ELLIAS: Can I ask one further matter so we are clear about it, and I shall not pursue that, sir: you have no fear of the IRA or any element of it, do you, in declining to name names at this stage?

A. No.

Q. So it is nothing to do with fear?

*A. No.*⁴⁹

2D-50 Eugene Lafferty's brother, Eamonn, was shot dead by the army on 18th August 1971. He is described at entry 107 in *Lost Lives* as being "an adjutant on the IRA's Derry brigade and OC of the Creggan Unit". Mr Lafferty refused to talk about his brother or give any information at all about members of the IRA. He was asked by Christopher Clarke QC about whether Martin McGuinness had attended a commemoration ceremony for his brother:

Did Mr McGuinness appear at the commemoration ceremony?

A. I have no comment to make, sir.

Q. Was he the Provisional IRA leader?

A. I could not tell you.

Q. Would you tell us if you knew?

*A. No.*⁵⁰

⁴⁸ Day 060/131/13 -133/10

⁴⁹ Day 060/203/11-17

⁵⁰ Day 064/105/01-07

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2D-51 Mr Lafferty was asked generally about his knowledge of the IRA. His claim not to have known any members of the IRA is particularly incredible given that he and his brother lived in the same house.⁵¹

Q. You are not prepared to give any evidence at all, whether you know of it, about who had any position in the IRA as of the date of Bloody Sunday?

A. I have already told you I did not know anybody in the IRA, sir. I have already stated – you mentioned adjutants and that, I did not know.

Q. You knew your brother?

A. Yes, knew my brother, but only as my brother.

Q. Are you saying you did not know he was in the IRA?

A. I am making no comment, sir.

Q. If you will not tell us, you will not tell us.⁵²

2D-52 John Mitchell McLaughlin denied that he knew whether his political colleague Martin McGuinness was or ever had been a member of the IRA. He was pressed by Christopher Clarke in re-examination:

Q. Are you saying that in 1972, when you knew Mr McGuinness went with others to see the British Government, you did not think he went as a representative of the IRA; is that really your evidence?

A. Well, let me speak for myself. I have been as part of a delegation meeting with the British Government and I was not there representing the IRA, I was representing Sinn Fein.

Q. Could you answer my question: in 1972, did you really think that Mr McGuinness was visiting the British Government otherwise than as a representative than of the IRA?

⁵¹ Day 064/105/14-25

⁵² Day 064/107/22-108/8

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A. It is not a matter that I have any information on or opinion on.

Q. No information or opinion, right. When you saw the programme "Provos", which I think came out in 1997 or 1998, these two clips, the one you saw this morning and this one, were new to you, were they?

A. No, I certainly was aware -- I was very much aware of the events of 1972.

Q. It is apparent from the first clip and indeed the second, the press conference, that Mr McGuinness is described in terms as "the Commander of the Provisionals in Derry"; you have seen that, we can see from looking at the programme. Did you ever discuss that with Mr McGuinness?

A. No.

Q. He was then your close political colleague?

A. Yes.

Q. Are you really saying that you never asked him whether that was true?

A. Yes, that is my position, yeah.

Q. Never at all?

A. Martin McGuinness has never discussed IRA membership with me, never.

Q. You have never asked?

A. No.

Q. Although you have known him for many years?

A. Indeed.

Q. And you work with him daily?

A. Indeed.

Q. And you ask this Tribunal to believe that you do not know to this day whether Mr McGuinness ever is or ever has been a member of the IRA?

A. I have already said, and I will repeat for your benefit: it was my practice throughout my political career not to

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invite myself or not to interest myself in issues that were outside my field of activity. I was involved in Sinn Fein and I simply did not want to know that information because it was dangerous information.

Q. Can I have a clear answer to my question: you do not know to this day whether Mr McGuinness is, or ever has been, a member of the Provisional IRA; is that your evidence?

A. That is my evidence and I have made it clear: I never once, and I would not ask any individual if they were members of the IRA. Indeed anyone who would confirm that to me, I would regard as being in some way suspect or unreliable.

Q. Your answer to me about Mr McGuinness is a truthful answer, is it?

A. Absolutely.⁵³

2D-53 Thomas Barr refused to give names of paramilitaries even privately to the Tribunal.⁵⁴ He was asked by Edwin Glasgow Q.C. about the reason for this refusal:

A. The only thing I could ever say at that time or now would be based on rumour and speculation, and I am not prepared to do that. I had no definite knowledge of who any of the individuals were.

Q. The truth is there would be an element of assumption on your part, there would be an element of guesswork and you are not prepared to do that?

A. Exactly, yes.⁵⁵

2D-54 Christopher Clarke QC asked John Radcliffe about the general level of awareness in relation to the identity of those in the Provisional IRA. As

⁵³ Day 080/119/24-122/12

⁵⁴ Day 180/161/14-23

⁵⁵ Day 180/161/6-13

Mr Clarke suggested, Mr. Radcliffe's evidence no doubt represents the view of many civilians:

A. As far as I am concerned what people did was their own business, it was no concern of mine and as long as my family and anyone concerned with me was not involved in any violence whatsoever, I was quite happy with that.

Q. Mr Radcliffe, please understand, I am not seeking by these questions to criticise you for that attitude because I suggest it was widespread, but it did mean that quite a lot of blind eyes were turned, were they not?

A. Again, I can only speak for myself, I cannot speak for other people, I am just saying that as I see it, I speak as I see and, as far as I was concerned, I made no efforts whatsoever to find out anybody else's business, either legal or illegal.⁵⁶

2D-55 The level of reluctance to give even apparently innocuous information about others is demonstrated by William Smyth's reaction to being asked by Mr Topolski about who had been involved in the NICRA statement taking progress.

Can you help the Tribunal with the kind of people that were doing the statement-taking apart from teachers?

A. Well, there were some people unemployed, there were some people in other employment other than teachers. I do remember some of them, but I am not going to spout out names here because my name was spouted out and I did not know it was happening and here I am today trying to answer something that I was not guilty of.⁵⁷

2D-56 Seamus Carlin reacted in a similar fashion to Mr. Rawat's request for assistance in identifying people in the same photograph which had been shown to Mr Bradley:

⁵⁶ Day 220/71/22-72/10

⁵⁷ Day 083/159/9-21

We know it is a photograph taken on Bloody Sunday and what assistance you have been able to give us today is that the gentleman marked with the blue arrow is Alex Bradley?

A. I resent the fact that you point a blue arrow at Alex Bradley. Alex Bradley was a peaceful, normal person, that I have known all my life to be a good and respectable person who would have no part in any kind of behaviour that is untoward and you should not be -- you are implicating Alex Bradley in this.

Q. If it is some comfort, Mr Carlin, Mr Bradley was shown this photograph himself and if my recollection is correct, an arrow, possibly not in blue, was pointed at him and he was able to say that that was him shown in the photograph.

A. Alex Bradley is not a terrorist; he had nothing to do with it, and I know and I can guarantee he had nothing to do with it and I was an Irish soldier. Alex Bradley had nothing to do with anything that went wrong that day.

Q. The reason for my questions is simply to identify the names of people shown in the photograph, I am not --

A. Your reason was to establish a photograph which is out of date, chronologically wrong, you will accept that, it is wrong, it was taken three hours --

LORD SAVILLE: Mr Carlin, could you look at me, please, I am the Chairman. I think you are a bit at crossed purposes. What we are trying to do is find out as much as we can about what happened on the day.

The fact we are pointing arrows at somebody is not casting any imputations on them at all. What we are trying to do is to identify people who were there, that is all that Mr Rawat is doing with you.

Now, we have identified this individual. Are you able to help us with the names of any other of the civilians that you can see in this picture?

A. I realise, I realise that you are trying to get to the truth and I will assist you. Yes, I know Alex Bradley; I know no other people in this photograph.

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LORD SAVILLE: You do know, did you say, or you do not know?

A. I do not know anyone in this picture.⁵⁸

2D-57 Paul McDaid claims not to have been a member of any paramilitary organisation at the time of Bloody Sunday. It is apparent from the fact of his conviction on 11th December, 1973 for causing an explosion and possession of a bomb in Londonderry on 31st August 1972, that fairly shortly after Bloody Sunday Mr. McDaid was a member of the IRA and took a major part in the activities of that organisation.⁵⁹ Despite this Mr. McDaid claimed he could not help the Tribunal identify any members of either branch of the IRA who had been present in Londonderry on Bloody Sunday.⁶⁰

JOURNALISTS

2D-58 A number of journalists are particularly well placed to give evidence about the IRA's activities on Bloody Sunday. However, the journalists who have given evidence to the Inquiry have, almost without exception, refused to name their sources.

Kathryn Johnston

2D-59 Miss Johnston refused to identify to the Tribunal any of her sources who had provided information about events in the Bookies.⁶¹ She was asked by Christopher Clarke Q.C. about notes of an interview conducted in Spring 2001 with Peter Doherty (a pseudonym). Miss Johnston claimed that she and Mr. Clarke had disposed of much of the material which they had amassed:

⁵⁸ Day 163/158/2-159/23

⁵⁹ Day 204/5/10-6/4

⁶⁰ Day 204/7/22-8/15

⁶¹ Day 387/47/22 -48/9

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*Prior to publication of the book we had amassed a great deal of material and quite simply got rid of it. We were also aware that some of these people are fearful for their lives if their identity were to be publicly known.*⁶²

2D-60 Miss Johnston refused to confirm whether or not the man with the assumed name, Peter Doherty, had given evidence to the Inquiry or whether he had been present on Bloody Sunday, on the grounds that it would potentially lead to his being identified.⁶³ This refusal was curious given that she claims to have read and agreed with the contents of Liam Clarke's statement in which he states that the man known as Peter Doherty was not present on Bloody Sunday.⁶⁴

2D-61 At the conclusion of her evidence Lord Saville told Miss Johnston:

LORD SAVILLE: Ms Johnston, thank you very much indeed. Of course, you appreciate the problem that both you and I have, which is that you have your confidentiality agreements that you made with these individuals. We have the public duty of trying to find out everything we can about Bloody Sunday. I think what we will do at the moment is we will have to leave over the question as to whether or not we should reach the conclusion that in some or all instances we would have to make an order that you disclose us that information. Of course, before we did that, we would have a proper legal argument from your counsel. I will have to leave it like that for the time being and I hope you appreciate why.

*A. I appreciate that.*⁶⁵

Liam Clarke

⁶² Day 387/153/09 - 153/23

⁶³ Day 387/54/9-55/25

⁶⁴ M112.2 paragraph 11

⁶⁵ Day 387/53/3-7

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2D-62 Liam Clarke made his position equally clear in respect of naming his sources when asked by Christopher Clarke Q.C. to confirm whether he had ever spoken to the OC of the Official IRA:

A. I am not going to comment on anybody who is not named in the book on whether we spoke to him or not, certainly anybody from Derry.⁶⁶

Kieran Gill

2D-63 Kieran Gill declined to give the name of the man who he recalled had been the OC of the Official IRA in Derry on the basis that his memory may not be reliable:

It would be as useful as pub talk is. I do not think it would be of any use to the Tribunal.⁶⁷

2D-64 Lord Saville at the conclusion of Gill's evidence outlined areas which Gill had refused to give information:

LORD SAVILLE: ... I think there are three instances in which you are not prepared voluntarily to disclose your source: the one we have just been talking about, which is the OIRA man?

A. Yes.

LORD SAVILLE: The man concerned with the loading of weapons into a car in the Creggan; is that right?

A. That is correct. I do not know the name --

LORD SAVILLE: That is what I was going to ask.

A. I know who the Provisional IRA officer in charge of him is -- was, I think that is -- sorry for the confusion --

⁶⁶ Day 387/165/17-19

⁶⁷ Day 203/116/16-117/6

LORD SAVILLE: It is almost certainly my fault, Mr Gill. You know who the Provisional officer in charge of him was but are you declining to identify him?

A. He would be the one I would be declining to identify.

LORD SAVILLE: I follow, yes. Then the third one is the, am I right, PIRA man who, if I may put it like this, put you on to the OIRA man; is that right?

A. That is correct.

LORD SAVILLE: Those are the three cases. As I understand it, you take the view that your duty of confidence as a journalist means that you cannot voluntarily give us the names of those three?

*A. That is correct.*⁶⁸

Mary Holland

2D-65 Ms Holland confirmed that she knew, but was not prepared to reveal, the name of the Official IRA sniper she interviewed shortly after Bloody Sunday; she would not say either if he was Mickey Doherty, referred to in the Sunday Times notes as "*Mary Holland's lad*".⁶⁹ She was not ordered to disclose the identity of her source:

LORD SAVILLE: Ms Holland, the Chairman again. We are not minded at this moment to require you to identify your source. If the situation changes then of course we would notify you and in the circumstances of course you would be entitled to have legal advice and representation.

Thank you for coming to give evidence today. There is that possible prospect, that we will ask you to come back to identify the source and what you said you would refuse and there would then be a debate about the clash between the confidentiality of journalists and the duty of this Tribunal to try and seek the truth.

⁶⁸ Day 206/127/17-128/15

⁶⁹ Day 200/54/17-55/5 Day 200/67/7-15

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I will have to leave you with that prospect, but if it arose then I repeat, you would be entitled to have legal advice and representation here.

A. Thank you very much.⁷⁰

Simon Winchester

2D-66 Simon Winchester described an occasion on which he was arrested and spoken to by Provisionals:

This talk that you had, where did this take place?

A. The first one -- there were several -- it was at a dance hall in Rathmullan, County Donegal, where I was with another colleague of mine from The Guardian, and we were both arrested by the Provos and taken outside with a view to being roughed up, I think, because it was assumed, I think once again from my dress, that I was not a reporter or a civilian, I was a member of the British Army going over to dance in County Donegal, which was obviously not a prudent thing to do.

... they arrested me and I was interrogated outside the dance hall, a rather bizarre scene. And then finally a more senior member of the group was brought from a house nearby, who identified me, and he said "He is the fellow that reported for the Guardian on Bloody Sunday. He is all right, except he made the foolish mistake of saying we fired the first shot; we did not. So let that be a warning to you and go back to the dance". I did not.⁷¹

2D-67 Mr. Winchester confirmed that although he did not know the identity of the individuals who had spoken to him he had later spoken to other more senior members of the IRA. Christopher Clarke Q.C. asked:

Q. Do you know the identity of these people?

A. I did. I am sure I have them in my notebook, yes.

⁷⁰ Day 200/92/21-92/11

⁷¹ Day 116/72/2-23

Q. Do you still have your notebook?

A. Well, it is in -- I live in the United States, as you know. It is somewhere buried in the garage. I produced them to Widgery, though. But if you are asking me to say precisely who they were now, I really cannot.

Q. But if we had a look at your notebook, would it reveal it?

A. It might. I am not sure that I would be content. I do not know what the rules of the Inquiry are about confidential sources, but I would certainly regard my IRA contacts as confidential.

Q. Your notebook, was it shown to the Widgery Tribunal?

A. I believe it was.⁷²

John Cooke

2D-68 John Cooke refused to name a member of staff at the City Hotel in Londonderry whom he suspected of having links to the Provisional IRA:

...What I was meaning to say was that I did not recall his name with any certainty, but even if I did I would feel constrained in giving that name without his permission.

Q. Is there anything you can tell us about this person?

A. I have given it a lot of thought since then and I really cannot put a name to this person with any certainty. If I was 100 per cent certain I would -- I would be, I would be happy to try and pursue it, but I cannot recall that with any certainty. But even if I did, without his permission as a source even though it has been a long time, I would not be comfortable in giving that name.⁷³

2D-69 Mr Cooke was not pressed for the details of this individual.

⁷² Day 116/73/9-74/1

⁷³ Day 199/33/15-34/10

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Peter Taylor

2D-70 Peter Taylor confirmed that he had approached some of his sources in the Official IRA to discuss his obligation of confidentiality.

A. I did approach those involved with the Official IRA sources and indicated to them what my position was on the revelation of their names and I got the answer that I expected to get, which is "you are quite right in not revealing the names because the meeting and the information that was given to you was given to you in the strictest confidence and we expect you to abide by that."⁷⁴

Eamon McCann

2D-71 Eamon McCann refused to name members of either branch of the IRA.⁷⁵ He justified this refusal in terms of his journalistic position:

A. My position in regard to this question in general is that all and any information of that kind which came to me and which I have subsequently used -- and I have used all of it, I think, over the years in my journalistic work -- is confidential and it would be unprincipled of me as a journalist to take any step which would reveal the identities of those people and I shall not do so."⁷⁶

2D-72 He was asked by Lord Saville to reflect on his position overnight, but Mr. McCann confirmed his stance the following day. He was asked by Arthur Harvey Q.C.:

Q. Finally, Mr McCann, your attitude at the moment appears to be that as a journalist you are not prepared to reveal the sources of the information that you have?

A. Yes, that is correct.

⁷⁴ Day 218/26/18-27/2

⁷⁵ Day 086/185-7

⁷⁶ Day 086/190/17-24

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Q. You are not prepared at the moment to name anyone whom you actually of your own knowledge now know was involved in the shooting?

A. That is correct.⁷⁷

2D-73 He was not ordered to disclose the names of members of IRA but warned by Lord Saville that it may be necessary to recall him:

As everybody I hope appreciates, we are obviously anxious to trace and talk to anyone who might reasonably be supposed to be able to give us relevant information about Bloody Sunday. At the same time we are concerned not to prejudice genuine claims for anonymity and we understood you yesterday, Mr McCann, to express the same concern.

In those circumstances, and having considered the matter, we have decided that, for the time being at least, we should not seek to obtain from Mr McCann the names of those who might have been involved with the IRA on Bloody Sunday. Mr McCann, you will appreciate that if other avenues of inquiry prove fruitless, it may be necessary to recall you to question you further on those matters, but we will not do that today.

A. I understand.⁷⁸

The Tribunal's Ruling of 13th February 2004.

2D-74 In its Ruling of 13th February 2004 the Tribunal explained why it did not propose to take any further action to compel the disclosure of the information withheld.

2D-75 As a result of witnesses withholding relevant information from the Tribunal, the evidence of IRA membership and activity on Bloody Sunday is materially incomplete.

⁷⁷ Day 087/70/15-23

⁷⁸ Day 087/01/12- 02/01

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2D-IV THE REFUSAL OF FORMER MEMBERS OF IRA TO ASSIST THIS INQUIRY

2D-76 Notwithstanding the importance attached by this Inquiry to identifying the members of the Official and Provisional IRA in Londonderry on Bloody Sunday, it appears that a substantial number have not been traced and of those who have been traced, a number have not given evidence.

2D-77 Former members of both wings of the IRA who have given evidence have maintained the stance that they remain bound by the Republican code of honour forbidding them from naming those who were members of the IRA, or non-members who assisted them. Thus the first draft statement to the Inquiry of Martin McGuinness concludes:

I wish to make it clear that I will not provide the Inquiry with the identities of other members of the IRA on 30 January 1972 or confirm the roles played by such persons whose names are written down and shown to me. I have been advised by my lawyers that the undertaking given by the Attorney General does not extend to such persons nor am I confident that their identities would be protected. As a Republican I am simply not prepared to give such information.⁷⁹

2D-78 Throughout the course of his evidence Mr McGuinness invoked the Republican Code of Honour to defend his refusal to provide relevant information about the IRA. He was questioned on this by Andrew Nichol QC:

Q. It is part of the code of honour, is it not, not to become an informer?

A. Absolutely.

Q. Or betray your comrades?

⁷⁹ KM3.7

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A. Absolutely.⁸⁰

and again by Gerard Elias Q.C:

The code of honour of which I speak applies to me and other IRA members can make up their own mind, their own judgment about that. I do believe that it is a common thread running through membership of the IRA; that there is a code of honour that you do not disclose information about other IRA volunteers or about people who help the struggle for freedom in Ireland.⁸¹

2D-79 The following exchange during Mr. McGuinness's evidence is particularly significant:

MR CLARKE: ... One of the questions that I asked you was where the dump was into which the arms were placed. Are you prepared to answer that question and if not, why not?

A. Well, I feel I cannot answer that question because there is a Republican code of honour. The people who would have allowed us to use their houses, such as the two occasions that you have identified to me, are people who would have placed great faith in those IRA members who were using the house. For me to identify who these people are would be a betrayal, in my view. On many occasions over the course of the last three decades I have been in interrogation centre after interrogation centre, sometimes for a week at a time, and I have never ever, on any occasion, given the name of a single person who was associated with me or with the IRA. To do so would have been a gross act of betrayal and I just could not do that. I do understand that we are in a different situation; I am not in an interrogation centre, at least I think I am not in an interrogation centre, but I have a duty, in my view, stretching back 30 years, to those people and I am not prepared to break my word to them under any circumstances.⁸²

⁸⁰ Day 391/87/01 -88/24

⁸¹ Day 391/238/18

⁸² Day 390/50/17 - 390/51/13

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- 2D-80 Lord Saville requested Mr. McGuinness later that day to seek permission from the occupiers of houses in which arms were dumped and where the IRA met to reveal their location.⁸³ However, the next day Mr. McGuinness informed the Tribunal that he had requested such permission and been refused and he stressed that responsibility for the need to "*clarify*" matters lay with Lord Saville who had "*given the impression that I was referring to two different houses*".⁸⁴
- 2D-81 It will not have escaped the attention of the Tribunal that in answer to a grossly leading question put by counsel who represented both PIRA 24 and Mr. McGuinness, PIRA 24 assented to the suggestion that the "*difference of recollection*" between himself and Mr. McGuinness could be explained by the fact that there were two different premises⁸⁵, the very point on which Mr. McGuinness had sought to correct Lord Saville.
- 2D-82 The falsity of the account given by Mr. McGuinness was confirmed when PIRA 24 revealed in his evidence that the building in which the meeting had taken place was derelict on Bloody Sunday,⁸⁶ a fact which had also been confirmed by PIRA 8 in his unchallenged testimony.⁸⁷
- 2D-83 Mr. McGuinness was, of course, one of the most prominent of those who called for this Inquiry to be created in order that the full truth of Bloody Sunday might be established.
- 2D-84 A similar stance was adopted by the OIRA witnesses who followed the example of their then commanding officer OIRA 3 who stated that:

⁸³ Day 390/166/10

⁸⁴ Day 391/1/9

⁸⁵ Day 427/112/23

⁸⁶ Day 427/32/10

⁸⁷ Day 418/80/20

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I am not prepared to discuss issues which relate to the organisation of the Official I.R.A. prior to or after the events of Bloody Sunday. I will not identify the number or names of any volunteers who were members of the Official I.R.A.. I will not discuss the nature of the armoury available to the Official IRA at or around this time⁸⁸.

2D-85 The Tribunal will find similar sentiments expressed by OIRA1⁸⁹, OIRA2⁹⁰, OIRA4⁹¹ and OIRA 5⁹². Each has also made clear that such reluctance is based not on Article 2 considerations but, as expressed here by OIRA 3 and echoed by each of his former colleagues, on

... my Republican duties and beliefs⁹³.

2D-86 Such a position has been, in part, abandoned by OIRA witnesses as they have succumbed to pressure from the Tribunal to respond to questions about OIRA structure and weaponry in 1972. However, as the Tribunal is aware, these witnesses have not co-operated to the extent of revealing crucial information about the identity of other members of the organisation.

2D-87 In the light of the uncompromising position adopted by former members of both wings of the IRA, it is hardly surprising that civilian witnesses feel genuinely fearful of the consequences of giving evidence about the IRA.

2D-V THE CREDIBILITY OF FORMER MEMBERS OF THE IRA.

2D-88 Membership of or association with either of the wings of the IRA would be highly relevant to the willingness of a witness to tell the truth about the events of Bloody Sunday.

⁸⁸ AOIRA3.1 paragraph 4

⁸⁹ AOIRA1.8 paragraph 27

⁹⁰ AOIRA2.1 paragraph 3

⁹¹ AOIRA4.1 paragraph 5

⁹² AOIRA5.1 paragraph 5

⁹³ AOIRA3.1 paragraph 4

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2D-89 The Provisional IRA's "Green Book" makes clear that a member's overriding loyalty is to the IRA and the achievement of its aims.

The Irish Republican Army, as the legal representatives of the Irish people, are morally justified in carrying out a campaign of resistance against foreign occupation forces and domestic collaborators. (Page 5)

Volunteers are expected to wage a military war of liberation against a numerically superior force. This involves the use of arms and explosives. (Page 5)

The Army as an organization claims and expects your total allegiance without reservation. It enters into every aspect of your life. (Page 6)

The position of the Irish Republican Army since its foundation in 1916 has been one of sustained resistance and implacable hostility to the forces of imperialism,(Page 12)

2D-90 Members of the IRA regard the United Kingdom institutions as an occupying force in Ireland and refuse to recognise the legitimacy of courts in the United Kingdom:

The Irish Republican Army, its Leadership, is the lawful government of the Irish Republic, all other parliaments or assemblies claiming the right to speak for and to pass laws on behalf of the Irish people are illegal assemblies, puppet governments of a foreign power, and willing tools of a occupying force. (Page 4)

2D-91 They can be expected to have no higher regard for a Tribunal established by the resolution of both Houses of the United Kingdom Parliament.

2D-92 Similarly, General Order No. 1 (as amended by the Army Council October 1973), according to its preamble:

Deals with the attitude of Volunteers towards Courts, Parliaments and Institutions of Government in occupied Ireland and in the 26 county state. These were established by the British Imperial Government to maintain control in Ireland. In effect, they are still imposed on the Irish people by the British Imperial Government.

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2D-93 The Green Book identifies the judiciary as an element of the enemy in the following passage:

The enemy, generally speaking, are all those opposed to our short-term or long-term objectives....

Some examples: We have enemies through ignorance, through our own fault or default and of course the main enemy is the establishment....

The establishment is all those who have a vested interest in maintaining the present status quo in politicians, media, judiciary, certain business elements and the Brit war machine comprising, the Brit army, the UDR, RUC(r) [reserve], Screws, Civilian Searchers. The cure for these armed branches of the establishment is well known and documented. But with the possible exceptions of the Brit Ministers in the 'Northern Ireland Office' and certain members of the judiciary, the overtly unarmed branches of the establishment are not so clearly identifiable to the people as our enemies as say armed Brits or RUC.

It is our task therefore to clearly identify them to the people as such and again depending on the existing conditions and our ability to get our defensive before our offensive, effect a cure. Execution, as earlier stated, is not the only way of making this category of establishment enemy ineffective: we can variously expose them as liars, hypocrites, collaborators, make them subject of ridicule etc.... (Page 20)

2D-94 Members of the IRA are trained in resisting interrogation and in lying. (The Green Book, Lecture 4(a)). General Order No. 1 (5) states:

Interrogation: If arrest or interrogated a Volunteer shall:

(a) Refuse to give any account of his movements, activities or associates, when any of these have any relation to the organisation or personnel of Oglaiigh na hEireann.

(b) Refuse to make or sign any statements.

(c) Any volunteer committed to prison forfeits all rank.

Minimum penalty for a breach of any of these orders: Dismissal with ignominy.

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(SPECIAL NOTE) This general order does not cover a charge of treachery which might arise following interrogation as noted in Par. 5 above.

2D-95 It is submitted that General Order No.1(5) is of particular relevance to the present issue.

The Army expects that volunteers won't disclose information on themselves or on others. That is what is expected from you, and this is no easy task. (Green Book, Page 6)

2D-96 It appears that there are no inactive members of the IRA. General Order No.10 provides:

(a) Membership of the army is only possible through being an active member of any Army Unit or directly attached to General Headquarters. Any man who ceases to be an active member of a Unit or working directly with General Headquarters, automatically ceases to be a member of the Army. There is no reserve in the Army. All volunteers must be active.

2D-97 The fact that a witness is or has been a member of a terrorist organisation pledged to bring to an end by the use of violence the British presence in Northern Ireland is bound to be relevant to the weight which the Tribunal can properly give to the evidence of that witness.

2D-98 Association with the IRA falling short of membership is also relevant to a witness's credibility. As the Green Book states:

SUPPORT: Basically we have two types of support, Active and Passive.

1. ACTIVE SUPPORT: We as members of the movement are active supporters as are the people who billet us, hold our dumps, provide transport, contribute to our collections etc.

2. PASSIVE SUPPORTERS: are those who condone our activities by not informing, when they see an IRA operation being set up, know of IRA Billets, Call Houses etc, who attend Republican funerals even if only in an observer capacity. (Page 19)

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2D-99 As regards the relevance of participation in terrorist activities, it is submitted that it is self-evident that witnesses who are or have been prepared to kill British soldiers would have no compunction about lying about the conduct of British soldiers on Bloody Sunday in order to incriminate them.

2D-VI INTELLIGENCE MATERIAL ON CIVILIAN WITNESSES.

2D-100 This has been addressed at Section 2C I above.

2D-VII LACK OF TRANSPARENCY OF THE IRA EVIDENCE AND ITS EFFECT ON THE SEARCH FOR THE TRUTH.

2D-101 The fact that intelligence material became available at a late stage in the proceedings in conjunction with the fact that former members of the IRA were very slow in coming forward to assist the Inquiry has led to one particularly acute difficulty.

2D-102 The Tribunal held that these individuals were entitled to anonymity. Accordingly, the Inquiry allocated ciphers to a number of persons who were said to have been members of the IRA in 1972 in Londonderry. However, the actual names of those persons were likely to have appeared already in a number of ways in proceedings before the Inquiry:

- (1) It was likely that a number of these individuals had already given evidence to the Tribunal under their own names.
- (2) A number of these individuals may have been referred to in oral evidence by other witnesses.
- (3) A number of these individuals may have been referred to in documents – contemporaneous documents, notes or statements – which are before the Inquiry.

2D-103 In each of these cases it is now impossible for those representing the soldiers, to connect the ciphers it has allocated (or further ciphers as

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necessary) to the evidence which has been given (whether oral or documentary).

2D-104 It is therefore likely that a number of witnesses have given evidence, or been referred to, who are known to the Tribunal to be persons who are said by others to have been members of the IRA in 1972 and possibly active in that capacity on Bloody Sunday. It is now very difficult for the Tribunal publicly to investigate those claims without defeating the anonymity of the individuals concerned. It is also, of course, impossible for those representing the soldiers to connect the ciphered individuals to persons who have given evidence or who have been referred to in evidence or in documents under their own names. The result is that the soldiers' representatives are denied access to potentially very important information.

2D-105 The result has been that the Tribunal's investigation of the IRA could not be conducted wholly in public and there has been a loss of transparency. More fundamentally there has been a loss of information to the interested parties which causes them prejudice in making their submissions.

2D-106 In these circumstances it is submitted that the Inquiry is under a particularly onerous duty to ensure that it is itself provided with all information and is in a position to make the connections which the interested parties and the public are not.

2D-VIII THE ATTEMPTED MANIPULATION OF THE INQUIRY BY THE IRA

2D-107 This subject is considered in detail in Chapter 4.

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CHAPTER 2E

OTHER MISSING EVIDENCE

2E-I MISSING ARMY PHOTOGRAPHS

2E-1 On this topic we adopt the submissions of the Aitken team which we have seen in draft.

2E-2 In particular, we submit that it is not open to the Inquiry to draw any adverse inference from the fact that these photographs have gone missing, inter alia for the following reasons:

- (1) The Widgery Inquiry was aware that the Army had taken these photographs and that they were in the possession of the Army.¹
- (2) There is almost contemporaneous evidence that photographs were produced "on demand" for the use of the Widgery Tribunal and counsel for the Army.²
- (3) From the evidence available to this Inquiry, it seems likely that the Army photographs covered the march and were of doubtful quality. See in particular the evidence of Mr. Harding³ and INQ 2030⁴.
- (4) The Inquiry and the Ministry of Defence have undertaken extensive searches for the photographs.
- (5) There was no systematic policy for the preservation of such material. Following the conclusion of the Widgery Inquiry there

¹ Overbury, Memorandum, 1st March 1972. CO1.274

² Overbury, Report of the Army Tribunal Team, 23rd March 1972, paragraph 21. CO1.5 - CO 1.9

³ Day 275/22/7

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would have been no particular reason to preserve this material. In these circumstances, Mr. Harding is probably correct in his conclusion that the material was probably destroyed not long after the Widgery Inquiry was completed on the grounds that it was of no further use.

2E-II MISSING CIVILIAN PHOTOGRAPHS AND CINE FILM.

2E-3 On this topic we adopt the submissions of the Aitken team which we have seen in draft.

2E-4 With regard to the missing photographs of the eastern side of Rossville Street we also rely on the matters set out at Section 2C IV, above.

2E-III MISSING NICRA MATERIALS.

2E-5 On this topic we adopt the submissions of the Aitken team which we have seen in draft.

2E-IV MISSING MAHON MATERIALS.

2E-6 This topic is addressed at Section 2C III, above.

2E-V INFLICTION

2E-7 The Security Service has disclosed to the Inquiry documents relating to the debriefing in 1984 of an agent known as "Infliction". As in the case of Observer B, these documents strongly support the conclusion that there were terrorist gunmen operating in the Bogside on the afternoon of Bloody Sunday and that the IRA opened fire on the Army first. The

⁴ Day 275/92/16

importance of this evidence to the Inquiry's search for the truth is obvious.

2E-8 It is apparent from the documents disclosed to the interested parties and from the statement of Officer A that Infliction had been "a former prominent member" of the Provisional IRA. According to this evidence, Infliction claimed that Mr. Martin McGuinness admitted to him on a number of occasions that he had personally fired the shot (from a Thompson machine gun on single shot) from the Rossville Flats which precipitated the Bloody Sunday episode. It also appears from this evidence that that information was disseminated within the Government of the United Kingdom shortly after it was obtained.

2E-9 The significance of these allegations cannot be doubted. Mr. Christopher Clarke QC, Counsel to the Inquiry, observed on Day 8 of his opening statement:

The importance of this evidence [of Infliction], if it is true, is obvious.⁵

Similarly, Mr. Treacy QC stated on Day 57:

If one takes "Infliction" and Observer B, the allegations that are contained in that material, we respectfully submit, are of crucial significance.⁶

2E-10 Mr. Mansfield QC, Mr. Coyle and Mr. Mallon observed in their Written Submissions dated 23rd May 2002;

The Security Service suggestion that the evidence of A and B is "unlikely to assist" ... because Infliction is not an eyewitness is a gross misevaluation. Infliction is claiming that Martin McGuinness confessed on more than one occasion, shortly after Bloody Sunday, to firing the first

⁵ Day 8/47

⁶ Day 57/21

shot, and Officer A is supporting him by endorsing his material in retrospect as reliable ... Should the Tribunal also assess the material as reliable it can hardly be regarded as [of] "low probative value".⁷

2E-11 The Secretary of State for the Home Department claimed public interest immunity in respect of certain documents and parts of documents relating to Infliction. The relevance of the material for which public interest immunity was claimed and the fact that it was likely to assist the soldiers before the Inquiry is apparent from the following statement of Mr. Philip Sales, on behalf of the Secretary of State, at the oral hearing on 27th May 2002. Mr. Sales observed;

"Indeed, we go so far as to say that the risk of disclosure posed by the questioning envisaged here in relation to these witnesses would be so great that if this were a criminal trial – and I refer to the example given by Mr. Lloyd Jones - the prosecution would have to be dropped and that is how serious the risk to Infliction is assessed to be."⁸

The claim for public interest immunity was upheld.

2E-12 In the course of the hearing on 27th May 2002, the following exchange took place;

Mr. Clarke: So far as the practicalities are concerned, I think it is appropriate to observe that whatever decision the Tribunal reaches will produce an unsatisfactory result because, at any rate from the Inquiry's point of view the only wholly satisfactory result would be for the Inquiry to call "Infliction" to give evidence before it.

Lord Saville: Of course, we have thought about this, Mr. Clarke, and I think it is appropriate at this moment to say we are satisfied that to call or indeed to make any attempt to call the individual known as "Infliction", who is

⁷ At paragraph 5(e)

⁸ Day 214/95 - Day 214/96

overseas, would be in breach of the rights of that individual under Article 2 of the Convention on Human Rights.

Accordingly, we shall proceed upon the basis that "Infliction" will not be called to give evidence at this Inquiry.⁹ We considered that this was a matter of such great importance to this Inquiry's search for the truth and the restoration of public confidence, that we lodged written submissions dated 31st May 2002 on this issue and requested that the Tribunal hear argument on whether it was possible for Infliction to give evidence to the Inquiry by any means. We accepted that Infliction could not give evidence in person in the usual way. Moreover, we accepted that even the use of devices such as an audio link with voice distortion might give rise to an insuperable risk to his life, because the answers to some of the questions he was likely to be asked might tend to reveal his identity. Nevertheless, we submitted that the Tribunal could take the following steps without any infringement of Infliction's Article 2 rights.

- (1) Infliction could be interviewed on behalf of the Inquiry and a statement relating to these allegations could be taken. Alternatively, Infliction could be asked to produce a short written statement for the benefit of the Inquiry dealing with these allegations. Redactions could then be agreed by the Inquiry, legal representatives of Infliction and the Security Service.
- (2) The Tribunal could hear Infliction's evidence at an *in camera* hearing at which only Counsel to the Inquiry was present and permitted to ask questions. If necessary or appropriate, Infliction's evidence could be given by a video or audio link from a remote location anywhere in the world and not necessarily from the State in which he is now living. The Tribunal is expressly authorised by

⁹ Day 214/2

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statute to hear evidence in private in cases where it is of the opinion that it is in the public interest expedient to do so.¹⁰

- (3) It might even have been possible for the Tribunal to take Infliction's evidence by employing a delayed action technique.

2E-13 The Tribunal did not accede to this request, nor did it hear argument on the point. On Day 220 (13th June 2002) the Chairman announced:

We have also considered a written submission on behalf of a number of the soldiers in relation to "Infliction". In essence this submission is that the Tribunal should consider, if it has not already done so, other ways of taking evidence from this witness.

The position is before I made the announcement a few days ago that we would not be calling "Infliction", we had considered whether there were any ways at all in which we could take evidence from him, including those suggested in the submission to which I have referred.

*We are satisfied that the position is such that there are no means that we could employ without breaching the human rights of this individual.*¹¹

2E-14 We are not in a position to gainsay the Tribunal's conclusion. However, we respectfully submit that, as a result, the Tribunal has been denied access to highly relevant evidence concerning what actually occurred on Bloody Sunday and which was likely to assist individual soldiers facing allegations of murder. We would respectfully ask the Tribunal to bear this in mind when, as we expect, we are met by submissions that no weight

¹⁰ Section 2, Tribunals of Inquiry (Evidence) Act 1921 provides;

"A Tribunal to which this Act is so applied as aforesaid-

(a) shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the Tribunal unless in the opinion of the Tribunal it is in the public interest expedient to do so for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given."

¹¹ Day 220/79 - Day 220/80

can be attached to material relating to Infliction because he has not made a statement and his account has not been tested before the Inquiry.

2E-VI OBSERVER B

2E-15 The documents disclosed by the Government to the Inquiry included documents relating to the activities of Observer B. In due course the Inquiry obtained a statement from Observer B. The documents and the statement were served on the interested parties in a heavily redacted form.¹² This evidence supports a vital part of the soldiers' case, that is that there were terrorist gunmen operating in the Bogside on the afternoon of Bloody Sunday and that the IRA opened fire on the Army first.

2E-16 In his statement Observer B provides a first-hand account of IRA auxiliaries drilling in the area of Rossville Street on the Tuesday and the Thursday prior to Bloody Sunday, a process which included concealing themselves on the landings of Block 2. He provides a second-hand account from A and B of events on Bloody Sunday: of men running from the Rossville Flats to a car and throwing two Thompson sub-machine guns, a rifle and a pistol into the boot before driving off, and it is said that the back of the car was full of Thompsons. He provides a second-hand account from X that the Fianna were planning to attack the Army to draw them into the area and then fall back leaving the soldiers vulnerable to sniper fire. He provides a second-hand account, again from X, that when the shooting started he saw the IRA auxiliaries firing from the balconies, presumably from the Rossville flats; that the soldiers reached the flats faster than the rioters had expected, causing them to run; that the auxiliaries also panicked when the soldiers reached the flats and they stashed their weapons in the dry risers. He provides a second-hand account, again from X, that the first shot he heard was the thud of a

¹² KO 2.1-KO 2.15.1

Thompson and the statement that X was convinced that the IRA had fired first that day.

2E-17 According to James, his handler in the Security Service, Observer B was the source of a lot of very useful information.

"He pinpointed just about everything we knew about Londonderry"¹³

2E-18 The significance of the evidence of Observer B has to be considered in a context where there is a considerable quantity of indirect evidence before this Inquiry that the Security Forces had received intelligence as to the intentions of the IRA prior to 30th January 1972. For example, the Headquarters Northern Ireland Operational Summary for the week ending 28th January 1972 included the statement that:

"Intelligence reports indicate that the IRA are determined to produce a major confrontation by one means or another during the march."¹⁴

2E-19 Similarly, the weekly Intelligence Report for the week ending 29th January 1972 included the statement:

"Apart from the hard core of professional hooligans who will certainly be seeking to exploit the situation as the rally disperses, if not before, gunmen may be present."¹⁵

2E-20 However it appears that the Inquiry may not have discovered any primary record of the intelligence referred to in these reports. (In this regard we draw attention to the observations of Mr. Clarke in his opening statement.¹⁶ The oral evidence of Observer B would therefore have

¹³ KJ 2.1, paragraph 5

¹⁴ G83.526

¹⁵ G85.529

¹⁶ Day 3/115 Whether the material relating to Observer B in respect of which a claim to public interest immunity was upheld provides such a primary record of the intelligence referred to is a matter within the knowledge of the Inquiry but not of the interested parties.

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provided a vital opportunity to test his evidence so as to enable the Tribunal to assess the veracity of his account and the likelihood that he was the source of the intelligence referred to.

2E-21 The importance of Observer B's evidence was all the greater in the light of:

- (1) the successful claim for public interest immunity in relation to certain material relating to Observer B;
- (2) the inability of the Inquiry to trace A, B, C or X referred to in the statement of Observer B¹⁷;
- (3) the fact that the persons identified in the statement of Observer B as IO1 and IO2 are dead.

2E-22 The veracity of Observer B's evidence is fiercely contested on behalf of some of the families. Thus Ms Smyth, on behalf of the clients of Madden and Finucane pointed out that "*he must have been a man skilled in deception*" and that "*he may have been influenced by financial inducements to provide false information to the Security Service*"¹⁸ Mr. Mansfield QC goes so far as to contend that the Observer B documents are a fabrication. In a written submission he alleged that there had been:

A co-ordinated cover-up of the truth by all those most intimately concerned with the day"

and stated that "this overwhelming desire to ensure that the truth is withheld can be exemplified", inter alia:

By very late disclosure of the existence of the totally incredible allegations made by Observer B and no doubt

¹⁷ Day 34/95; Day 34/124

¹⁸ Day 34/88 - Day 34/92

*originally brought into existence as back stop justification, should any be required.*¹⁹

2E-23 In all the circumstances it is not possible to overstate the importance of the evidence of Observer B to the Inquiry's search for the truth. Ms. Smyth, counsel for the clients of Madden and Finucane, observed that

*The evidence of Observer B lies at the whole heart of the controversy that has raged over the last 28 years*²⁰

and she described the evidence of Observer B as:

*probably the single most important piece of evidence which the Tribunal may have to consider.*²¹

2E-24 By a letter dated 13th April 2000 the Inquiry notified the interested parties that it had agreed to Observer B's application to give evidence by video link "*because the state of his health would not permit him to give his evidence in person in the Guildhall.*"

2E-25 Observer B had made an application for further relief. Following oral argument Mr. Hoyt delivered the ruling of the Tribunal on Day 35 (15th June 2000). Observer B's applications for anonymity and redaction of his statement and accompanying documents were successful but his application to give evidence by audio link was refused. The Tribunal ordered that viewing of the video link should be limited. Mr. Hoyt, delivering the ruling of the Tribunal, observed:

*...there is little doubt that the evidence of Observer B is likely to be important.*²²

¹⁹ OS2.5

²⁰ Day 34/91

²¹ Day 34/93

²² Day 35/20/3 - Day 35/20/5.

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2E-26 However, it is most unfortunate that, despite the fact that he was known to be in poor health, Observer B did not give evidence by video link or by any other means.

2E-27 In its Ruling of 19th December 2002 the Tribunal announced at paragraph 55 that it had recently been informed of Observer B's death.

2E-28 Although the Inquiry has the statement of Observer B, those we represent are disadvantaged because he did not give oral evidence. His oral evidence was likely to assist the soldiers before this Inquiry. However, as matters now stand, we confidently expect that submissions will be made to the Inquiry on behalf of other interested parties that no weight can be attached to his evidence because it has not been tested during oral testimony.

2E-VII EVIDENCE IN THE POSSESSION OF THE SECURITY SERVICE

2E-29 Reference has been made in Section 2C I, above, to the Tribunal's ruling of 1st June 2001 in which it declined to seek disclosure from the security agencies of material directly relevant to the mode of operation of the IRA including their tactics, their use of vantage points and sniper positions, their use of crowds as cover, and their procedures for dealing with casualties or fatalities.²³ In our submission, information on these matters in the possession of the security agencies would have greatly assisted the Tribunal, in particular in its assessment of the evidence that wounded terrorists received treatment on Bloody Sunday in field stations in Londonderry and in hospitals in the Republic.

2E-30 As a result there is a most serious lacuna in the information before this Inquiry and the Inquiry's ability to discover the truth of what occurred on Bloody Sunday has been impeded. This matter is addressed in detail in the

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submissions by the Aitken team which we have seen in draft and which we adopt in this regard.

2E-VIII WITNESSES THE INQUIRY WISHED TO CALL BUT CONCLUDED IT COULD NOT CALL.

2E-31 By letter dated 10th February 2004 the Tribunal advised the Interested Parties that in respect of thirty one named witnesses "it will be impossible" for them to be called to give oral evidence. The reasons given included the following:

- (1) The witness was unavailable for reasons of ill health.
- (2) The witness could not be called by virtue of Article 2, ECHR.
- (3) The witness resides out of the jurisdiction and was unwilling to attend.
- (4) The Tribunal had not been able to make contact with the witness.
- (5) The witness was uncooperative but the Tribunal had decided not to subpoena him.

2E-32 The Inquiry made it clear in its letter that the Interested Parties are not to be told into which category each of these witnesses falls, because that would indicate which of the witnesses were not being called because of the operation of Article 2 ECHR and that would infringe the individual's Article 2 rights.

2E-33 The reasons why a given witness has not given evidence will, of course, be known to the Tribunal. In these circumstances there is an additional

²³ At paragraph 48

burden upon the Tribunal to bear in mind these reasons and, where appropriate, to draw proper inferences from the failure of a witness to assist the Inquiry. Equally, the Tribunal will be in a position to reject a submission that an adverse inference should be drawn if, on the basis of information available to it but not to the Interested Parties, there is a good reason for a witness not having given evidence.

**2E-IX WITNESS TRACE REQUESTS FROM THE LAWTON TEAM:
ACCEPTED BUT NOT ACTED ON.**

2E-34 From time to time, and in accordance with agreed procedures, we have invited the Tribunal to interview and obtain witness statements from a number of witnesses who, it appeared to us, may be able to provide material evidence to the Tribunal. We feel bound to observe that there appears to have been some reluctance on the part of the Inquiry to provide updated information about the progress made with these witnesses.

2E-35 In some cases, the Inquiry has been successful, an interview has taken place, a statement obtained and distributed in the usual way and the witness has either been called and has given oral evidence or has been designated to the knowledge of the Interested Parties as "read".

2E-36 There have been a number of cases where, despite the fact the Inquiry agreed that the witness was likely to be able to provide material evidence, such evidence has not been forthcoming. On some occasions this has been due to matters which are obviously outside the control of the Inquiry such as the death of the potential witness or an inability to trace him.

2E-37 In some cases, however, witnesses have been traced but have been uncooperative and yet the Tribunal has decided not to use its powers to compel attendance despite, in some cases, a very long time lapse. For example, the Tribunal accepted the justification for seeking to obtain evidence from four particular witnesses in March 2001. It was not until the 10th March 2004 that we were notified that these witnesses were uncooperative but that no subpoena would be issued.

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- 2E-38 It was with some disappointment that we learned from the same letter dated 10th March 2004 that in the case of some witnesses who were to be traced the "Inquiry has decided not to obtain a statement from this witness" with no explanation as to what had influenced the change of intention.
- 2E-39 We cannot say that as a result the Tribunal has necessarily been deprived of further evidence that may have assisted its search for the truth. However, it is surprising that, having been satisfied of the justification for obtaining evidence, there are so many examples where the Tribunal appears not to have pursued the search for that evidence as vigorously as it might.
- 2E-X THE TRIBUNAL'S FAILURE TO ORDER WITNESSES TO REVEAL THE SOURCE OF INFORMATION.
- 2E-40 This topic has been addressed at Section D3, above.

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CHAPTER 2F

SECRET EVIDENCE

- 2F-1 The Inquiry has received very large quantities of evidence which it has not been possible to disclose to the Interested Parties for a variety of reasons, including public interest immunity and the Article 2 rights of individuals. In some instances, it has been necessary to redact documents so as to withhold names or other information; in others, it has, no doubt, been necessary to withhold entire documents or groups of documents.
- 2F-2 While we have argued against the withholding of evidence from the interested parties in certain instances, we accept that in certain circumstances this has been unavoidable. In particular, we have consistently maintained that disclosure should not be made if that would give rise to a serious possibility that individuals would be subject to the risk or increased risk of attack.
- 2F-3 We have argued throughout that the Inquiry is entitled, and indeed bound, to receive all relevant evidence and to take it into account in its search for the truth, even if it cannot be disclosed to the interested parties.¹ This approach has been opposed on behalf of at least some of the families. In our submission, however, while this approach is unsatisfactory in a number of important respects, it is simply not open to an inquisitorial body charged with discovering, as best it can, the truth of what occurred to rule out of its consideration evidence which is relevant and which is available to it. Were it to have done so, the conclusions of this Inquiry would be open to challenge on the ground that proper account had not been taken of all relevant evidence, one of the criticisms made of the Widgery Inquiry.

¹ See, for example, Day 57/192 - Day 57/193

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2F-4 The disadvantages which flow from the Inquiry's inability to disclose certain evidence before it to the interested parties and their legal advisers are, nevertheless, considerable. As a result, not only has the transparency of the Inquiry's proceedings been impaired but its search for the truth has been impeded. The interested parties have inevitably been denied any opportunity to rely on this evidence, to take account of it in assessing other evidence, to use it as a basis for the questioning of witnesses or to deploy it in their final submissions. Moreover, had it been possible to disclose this evidence to interested parties, they might well have been in a position to connect it with other evidence and to draw to the Tribunal's attention such links, the significance of which might otherwise be lost.

2F-5 An example of the resulting difficulties that arise in practice is provided by the evidence contained in one of the Mahon tapes which were provided to the Interested Parties at an advanced stage of the Inquiry. In a video taped interview, Mr. Barry Liddy, who died before he was able to give a statement or oral evidence to this Inquiry, told Mr. Paul Mahon that there was a young man who had been injured on Bloody Sunday in the bed opposite him in the Altnagelvin Hospital who had a 9mm German Luger pistol under his pillow. Mr Liddy goes on to describe how, when he discharged himself from the Hospital on the 31st January 1972², the young man came out with him and was dropped off at the Bogside Inn.³ The young man who had the gun was said by Mr. Liddy to have been killed in a car accident about five or six years before the interview, i.e. in 1991 or 1992. Significantly, Mr. Michael Bradley was present during the course of this interview and participated in a discussion which also involved Mrs.

² That Mr. Liddy did, in fact, discharge himself on 31st January is evidenced by the Hospital records D1107

³ X4.49.110

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Sally Liddy where the participants were trying to recall the name of the young man in question.⁴

2F-6 Apart from what is revealed by this taped interview, the Tribunal has, so far as we are aware, received no evidence at all relating either to the injured young man or the existence of a weapon in the hospital on the night of Bloody Sunday. The hospital records obtained by the Tribunal in relation to the casualties admitted are incomplete and do not assist.⁵ It is clear that a name was given to Mr. Mahon, but it has been redacted where it appears in the transcript. The Tribunal therefore knows the name as do Mr. Bradley and Mrs. Liddy but despite the fact that the individual concerned may well have been dead now for over ten years, the Tribunal considers that the effect of Article 2 is that the Interested Parties cannot be informed of the name.

2F-7 We have no knowledge as to what, if any, enquiries have been made by the Inquiry to ascertain whether the information given to Mr. Mahon could be corroborated. The presence in the Altnagelvin Hospital that evening of a person injured on Bloody Sunday with a gun in his possession is potentially of great importance in the search for the truth. Unhappily, it is a matter on which we are left largely in the dark.

2F-8 Furthermore, this state of affairs inevitably places constraints on the Tribunal and its counsel. While the members of the Tribunal will be able to take account of this evidence in its deliberations leading to its final report, it has not been possible for counsel to the Inquiry to pursue lines of questioning with witnesses based on this material. As a result, certain avenues of investigation which may have been indicated by the undisclosed material remain unexplored. Furthermore, the Tribunal will

⁴ X4.49.128

⁵ AS17.5

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not be able to reveal in its final report any undisclosed material which has led to or supported a particular conclusion.

2F-9 We would draw particular attention to one difficulty which now confronts the Tribunal and of which, we are confident, the Tribunal is already aware. In its deliberations the Tribunal will have to take account of all the evidence before it, including redacted or undisclosed material. Because the content of the redacted and undisclosed material is not within the knowledge of the interested parties they have not been able to make submissions in relation to it or to link it to other material whether disclosed or not. Thus, for example, it will be necessary for the Tribunal to link the evidence of PIRA 24 to all other material relating to him and his activities, whether disclosed to the Interested Parties or not, including material referring to him in his true name. It will be necessary for the members of the Tribunal to be aware of precisely which material has not been made available to the Interested Parties and to make all appropriate links between that withheld material and individuals and events. While we are acutely aware of the burden this places upon the Tribunal, there is, in our submission, a particular duty of the greatest importance on the Tribunal to carry out this exercise with scrupulous care, because the interested parties are not able to do so for themselves. The analogy may be drawn with a judge in adversarial proceedings who is under a duty to keep under review the relevance of material for which public interest immunity is claimed. However, whereas the judge in that situation has merely to take decisions in relation to disclosure, the Tribunal in this Inquiry is subject to the much more onerous obligation of taking full account of that material in arriving at its conclusions.

2F-10 Another difficulty arises where information is known to some or all of the Interested Parties but they are unable to make use of it without prejudicing the position of persons who have been granted anonymity. For example, the names of some of those members of the IRA who were granted anonymity are known to us; indeed, some were granted only partial anonymity because full anonymity was impossible by the time they made

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their applications for anonymity. There is a very good example of the difficulties faced by the interested parties in these circumstances where, because the name is known, it is possible to link the individual concerned with another matter which may well have influenced the activities of the anonymous witness but it is not possible to refer to the linking material as that would lead to a loss of anonymity. The difficulty in formulating this submission highlights the problem.

2F-11 The difficulties referred to above arise in a particularly acute form where, as here, allegations of serious criminal wrongdoing are made against individuals. In the case of courts hearing adversarial proceedings different approaches to public interest immunity are adopted in civil and criminal proceedings. In civil proceedings a document which is relevant and material must be disclosed unless it is confidential and a breach of confidentiality would cause harm to the public interest which outweighs the harm to the interests of justice caused by non-disclosure.⁶ However, in criminal proceedings the determinative question is whether the documents might be of assistance to the defence.⁷ Furthermore, the criminal

⁶ *R. v. Chief Constable of West Midlands Police, ex parte Wiley* [1995] 1 A.C. 274, 281.

⁷ *The matter is addressed in the following terms in the Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions (the Scott Report)*

K6.14 Despite the weight of the judicial statements to which I have referred, it is not, in my opinion, apparent that in the cases in question the exercise performed by the judge can accurately, or usefully, be described as a "balancing exercise". Each of the cases to which I have referred, R. v. Clowes, R. v. Keane and R. v. Brown (Winston) concerned documents which might have been of assistance to the defence. The dicta of the Lord Chief Justice in R. v. Keane and of Lord Justice Steyn in R v Brown (Winston) suggest that it is not possible to have public interest factors in favour of non-disclosure which are of such weight as to tip the scale against disclosure of such documents. A document which might be of assistance to the defence would, I think, always be a document that might "prove the defendant's innocence or avoid a miscarriage of justice." If that is an accurate assessment the determinative question on a PII claim in a criminal case is whether the documents might be of assistance to the defence. If the posing of that question and the reaching of an answer are to be described as a "balancing exercise", so be it; but it is important to recognise that the exercise is, nonetheless, one of a quite different character from the "balancing exercise" performed in civil cases. (Emphasis added)

authorities establish that the interests of justice include “allowing a defendant to put forward a tenable case in the best possible light”⁸ and require that a defendant must not be deprived, by reason of public interest immunity, of the opportunity of casting doubt upon the case against him.⁹ As a result, in a criminal trial documents which might be of assistance to the accused must be disclosed or the prosecution must be abandoned.

2F-12 Abandoning the proceedings is not an option here. Accordingly, it must be left to the Tribunal to ensure that those individuals who face allegations of criminal wrongdoing are treated fairly. This places a particularly heavy responsibility on the Tribunal. In particular:

- (1) The Tribunal should act with great caution before upholding a serious allegation against an individual on the basis of evidence which has not been disclosed to that individual and to which he has had no opportunity to respond.
- (2) The Tribunal is required to take full account of evidence which may assist an individual facing allegations of criminal wrongdoing.
- (3) The Tribunal is required to keep under review the significance of undisclosed material, a matter which may change significantly during the course of the Inquiry, and to take full account of it in its deliberations and in arriving at its conclusions.

⁸ *R. v. Agar* 90 Cr. App. R. 318, 323.

⁹ *R. v. Hallett* [1986] Crim L.R. 462 referred to in *R. v. Agar* 90 Cr. App. R. 318 at p. 323.

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CHAPTER 2G

THE EVIDENCE OF SOLDIER 027

2G-I INTRODUCTION

2G-1 In this section we address the circumstances in which 027 gave his 1975 account of Bloody Sunday and compare the symbolic importance which that account came to assume with our suggestion as to its actual merit. We address the specific allegations made by 027 against our clients in his 1975 and other accounts. We also consider other matters relevant to 027's credibility.

2G-2 In brief, our submission is that 027's evidence was so tainted by exaggeration, fantasy and deceit as to be of no assistance to the Tribunal in its search for the truth. It is also unfortunate that such exaggerated and questionable accounts were given the prominence and publicity that was accorded to them, and that they had the influence which they would appear to have had.

2G-II 1975 ACCOUNT

027 IS AUTHOR OF 1975 ACCOUNT

2G-3 The Inquiry has two documents from 1975 detailing 027's experiences during the period 1971-1972. The first document is the memoire¹ which includes a description of Bloody Sunday. The second document² is entitled *Interview with 027 dtd 9 November 1975* and deals with the period from 4th November 1972.

¹ B1554 - 1565.013

² B1565.015 - 1565.025

The 1975 memoire

2G-4 It is now beyond doubt that the 1975 memoire was written by 027. In 1998, his solicitor told the Solicitor to the Inquiry:

*"The statement referred to in the Irish Government's Assessment of New Material dated June 1997 was a summary of a diary kept by my client. It was prepared for his own purposes and was not intended for publication. He informs me that he believes it to be substantially accurate though he has discovered some relatively minor errors in it."*³

2G-5 Shortly thereafter, 027 gave a statement containing a similar acknowledgement to his solicitor.⁴

2G-6 In 2000, 027 told Eversheds:

*It subsequently transpired that amongst that material [sent to Sean Patrick McShane] was an account in statement form, of my memory of Bloody Sunday. Probably in 1975, I spent some time trying to make a coherent whole out of the contemporaneous notes that I had, in my field book, my diary and the scraps of paper on which I had written my experiences. It was very much a personal record and was never meant for dissemination. As far as I recall, it was not specifically produced with BS in mind.*⁵

He confirmed this in his oral evidence in 2002.⁶

The 1975 interview

2G-7 We suggest that this is a transcript of answers given by 027 in a taped interview with the man who called himself Sean Patrick McShane.

³ Letter from Geoffrey Bindman to Philip Ridd, then Solicitor to the Inquiry, dated 21.07.98, B1565.124

⁴ Four page statement given to Geoffrey Bindman on 27th July 1998, B1565.371-2

⁵ B1565.055 paragraph 173

⁶ Day 249/71/11

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References in the document to “tape distortion” and the like certainly support this contention.⁷

2G-8 We adopt Christopher Clarke QC’s questioning on Day 247 in this regard:

Q. Could we have B1565.015. This appears to be a transcript of an interview with you, dated 9th November 1975, New York. Did you give an interview which was taped when you were in New York and met this journalist [McShane]?

A. We certainly engaged in lengthy conversation. I do not have a recollection of being interviewed in the form that it was recorded in some way.

Q. ...Are you simply saying you do not recollect giving an interview, or that this is not an interview of you?

A. I remember having a long conversation with this guy, but I do not recall it being taped.

Q. Can we take it that, whether you recall that or not, this represents what you would have told him?

A. From what I have seen of it in recent times, it would appear to be so.⁸

2G-9 Continuity between the 1975 memoire and interview reflects the fact that they come from the same source. For instance, one sees at **B1565.012** a reference in the memoire to the incident in which Robert McKinney was killed:

“I...can honestly say that the shooting of Mr McKinnie (sic) on Thursday 7th September during the ambush which I later describe was an enjoyable experience...”

2G-10 That incident is then described in some detail in his interview, commencing at **B1565.021**.

⁷ See, for example, **B1565.024**

⁸ **Day 247/51/19**

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SYMBOLIC IMPORTANCE OF 027'S 1975 ACCOUNT

2G-11 In our submission, the symbolic importance which 027's 1975 account came to assume was out of all proportion to its actual merit or credibility.

The establishment of the Bloody Sunday Inquiry

2G-12 The 1975 memoire was one of the major factors leading to the establishment of the Bloody Sunday Inquiry.

2G-13 Tom McGurk's article, Soldier A eyewitness file handed over to Irish Government, was published in the Sunday Business Post on 16th March 1997.⁹ Referring to 027 as "Soldier A", McGurk summarised his sensational claims about Bloody Sunday:

Soldier A's testimony is likely to provide compelling grounds for a new inquiry into the events of Bloody Sunday. Among the many startling new allegations made in the soldier's statement are that:

the Paras were briefed by a senior officer the day before they went to Derry "to get some kills";

a ceasefire order was given during the shooting on Rossville Street after some of the first victims had been killed;

the Glenfada Park shootings (the second wave of killings) took place after and in direct contravention of this order;

the testimony suggests that those shot in Glenfada were standing with their hands in the air and that one was shot by a soldier shooting from the hip;

the soldiers made widespread use of non-issue dum dum bullets (banned under the Geneva Convention Rules);

⁹ Sean O Mahony had received a copy of the 1975 memoire about Bloody Sunday from Sean Patrick McShane and had, in turn, passed it on to McGurk (BSI statement M92.1 paragraph 4).

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Widgery's notion that the army fired only 108 bullets was based on efforts by soldiers to conceal the use of such rounds;

perhaps most significant of all is the claim in the soldier's testimony that the evidence he was prepared to give to the tribunal was destroyed and he was given an altered version written for him. The tribunal was sitting before the Lord Chief Justice of England and enjoyed the equivalent legal status of the High Court.¹⁰

- 2G-14 The memoire was subsequently referred to in the Irish Government report, Bloody Sunday and the Report of the Widgery Tribunal. An Assessment of the New Material¹¹, which suggested:

"If the [1975] transcript is authenticated, then it represents the most significant new evidence yet to come to light regarding the actions of soldiers on the ground during Bloody Sunday, particularly what happened in the Glenfada Park, and the nature of the Widgery Tribunal. The allegation that Counsel for the Tribunal fabricated evidence, if verified, would represent a fatal blow to the tribunal's credibility."¹²

- 2G-15 The 1975 memoire was one of the important pieces of "new material" that led the Prime Minister to announce the establishment of the Bloody Sunday Inquiry in 1998.¹³

- 2G-16 Referring to the whole of 027's 1975 account, the present Solicitor to the Inquiry's Memorandum to all Interested Parties of 14th August 2000 states:

The allegations contained in these documents are a central part of the subject matter of this Inquiry. It was apparent to the Tribunal at the outset that if Private 027 were either to

¹⁰ B1565.072

¹¹ Mr. McGurk had passed a copy of the memoire to the Irish Government (M56.4 paragraph 17).

¹² U218

¹³ House of Commons Official Report Parliamentary Debates (Hansard) 29th January 1998.

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give evidence voluntarily or be compelled to do so, his was likely to be evidence of the utmost importance. If he were to confirm the account attributed to him in the documents submitted to the Irish Government, his evidence would implicate a number of other individuals in grave wrongdoing. If on the other hand he were to withdraw the earlier account or deny its authenticity, the allegations based upon that account might be exposed as false.¹⁴ 027's 1975 account was tested during his oral evidence to this Inquiry. Very little of it survived. Important allegations were withdrawn, placed "in context", overtaken by inconsistent accounts or otherwise left unsubstantiated.

Influence on subsequent evidence

2G-17 We further suggest that, inevitably, 027's widely reported, but unfounded, allegations have influenced the evidence of others. We take by way of example one part of his description of events in Glenfada Park from the 1975 memoire:

"H fired from the hip at a range of 10 yards. The bullet passed through one man and into another and they both fell, one dead and one wounded. He then moved forward and fired again, killing the wounded man."¹⁵

2G-18 It now transpires that 027, on his own admission, does not recall seeing any rounds fired in Glenfada Park and may not even have been there at this time¹⁶. Nevertheless, we submit that the accounts of at least seven witnesses may have been influenced by this passage¹⁷. None had mentioned an incident of this type in 1972. All subsequently gave

¹⁴ **B1565.097, paragraph 5**

¹⁵ **B1565.006**

¹⁶ **B1565.373, paragraph 5** (Four page statement to Geoffrey Bindman 27th July 1998); **Day 246/85/4** and **Day 249/136/20**. See the section entitled *Lance Corporal F: shooting in Glenfada Park*, below, where this is dealt with in greater detail.

¹⁷ Joseph Mahon (**AM18**), Paddy McCauley (**AM97**), Pearse McCaul (**AM93**), John O'Kane (**AO48**), Benn Keaveney (**AK2**), Vincent Harkin (**AH34**) and Frances Lyttle (**AL36**).

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statements to Eversheds incorporating an allegation of a similar nature to that of 027¹⁸.

2G-III ALLEGATIONS INVOLVING CLIENTS OF MR ANTHONY LAWTON

LIEUTENANT 119: "WE WANT SOME KILLS"

2G-19 027's 1975 account of Bloody Sunday begins with his description of an informal briefing given to 027 and his "muckers" in the Anti-Tank Platoon by Lt 119 at barracks the night before their deployment to Londonderry:

We were all in high spirits and when our Lt. said "lets teach those buggers a lesson – we want some kills tomorrow" to the mentality of the blokes to whom he was speaking, this was tantamount to an order (i.e. an exoneration of all responsibility).¹⁹

2G-20 The claim carries with it the clear implication that Lt 119 exhorted his men to commit murder: to kill for no justifiable reason. It is refuted by 119 in its entirety.²⁰ Recent attempts by 027 to place the allegation "in context" have effectively amounted to its withdrawal. 027 has claimed that talk of "getting kills" must be seen in the context of an expectation that the Paras would be engaged by gunmen in Londonderry. He told Christopher Clarke QC in oral evidence:

"Specifically it means if a gunman engages you, you shoot the gunman."²¹

2G-21 A fuller explanation can be found in his draft book:

¹⁸ This was raised with 027 by Edwin Glasgow QC in oral evidence at Day 249/51/16

¹⁹ B1565.003

²⁰ BSI statement, B1752.012 paragraph 15

²¹ Day 246/25/5

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The Paras were coming and we were not going to be messed about, we would assert ourselves if the IRA, the enemy decided to take us on and this seemed unavoidable, after all we were going into their own back yard. ²²

2G-22 A further explanation is contained in his Eversheds statement

"The comment "we want some kills tomorrow" needs to be put into the context in which it was made. We were going into the Bogside, a no go area, a piece of British territory that had been taken over by terrorists. We were told to be prepared for any eventuality and there was a strong impression that we would encounter gunmen. Until that time , we had been facing the IRA in Belfast who were always illusive and hidden from view. The following day, we were to go in strength into their stronghold, the Bogside, and for once they would have to come out and face us. They would have nowhere else to go. We were sure that a confrontation was going to occur and that we were about to face gunmen. On the one hand there was an element of bravado, but on the other there was the natural apprehension of going into a situation, which led to a heightened sense of emotion and tension." ²³

2G-23 In fact, by the time he spoke to Eversheds, 027 could no longer even be sure that the remarks had first come from 119. ²⁴

2G-24 027's original claim has therefore turned into a description of an informal discussion, which may not have been commenced by 119, about returning fire at gunmen. No allegation of impropriety can be maintained against 119 in these circumstances.

LIEUTENANT 119: GUN PITS INCIDENT

2G-25 027 has also described an incident after Bloody Sunday in which his platoon had been digging gun pits. He and his colleagues decided to teach

²² B1565.306

²³ B1565.036 paragraph 65

²⁴ B1565.035 paragraph 58

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their new lieutenant a lesson for refusing to release them from their duties. The lieutenant was tied to a vehicle and driven through gorse bushes.

He had learnt his lesson; he did not report it. For a Lieutenant to keep running to a Captain with problems all the time would not have helped his cause.²⁵

2G-26 It transpired in oral evidence that the lieutenant in question was 119, not a new man, and that the circumstances leading to the incident were quite different from those described by 027.

Edwin Glasgow QC: "You see, 119 will tell this Tribunal that he did indeed get engaged in some horseplay, as he puts it with you, in a digging incident, the night when he took you all for a drink in the local pub when, after a long tour of duty, he left your company. And you, true to your nature, have simply exaggerated that incident out of all recognition, even forgetting that this was the Lieutenant who had commanded your platoon for so many months. Do you want to comment on that? Have you really forgotten that, 027?"

A. I accept what you say, sir.²⁶

2G-27 027's initial description of the incident provides a further example of his propensity to distort the truth by exaggerating aspects of an innocuous event. By coincidence, the description again concerned 119 and an allegation of teaching someone a lesson.

LANCE CORPORAL F: FIRED IMMEDIATELY FROM KELLS WALK WALL AT NO DISCERNIBLE TARGET.

2G-28 In his 1975 memoire 027 described the deployment of Anti-Tank Platoon to the Kells Walk wall, north of the Rossville Street rubble barricade:

²⁵ BSI statement, B1565.032 paragraph 41

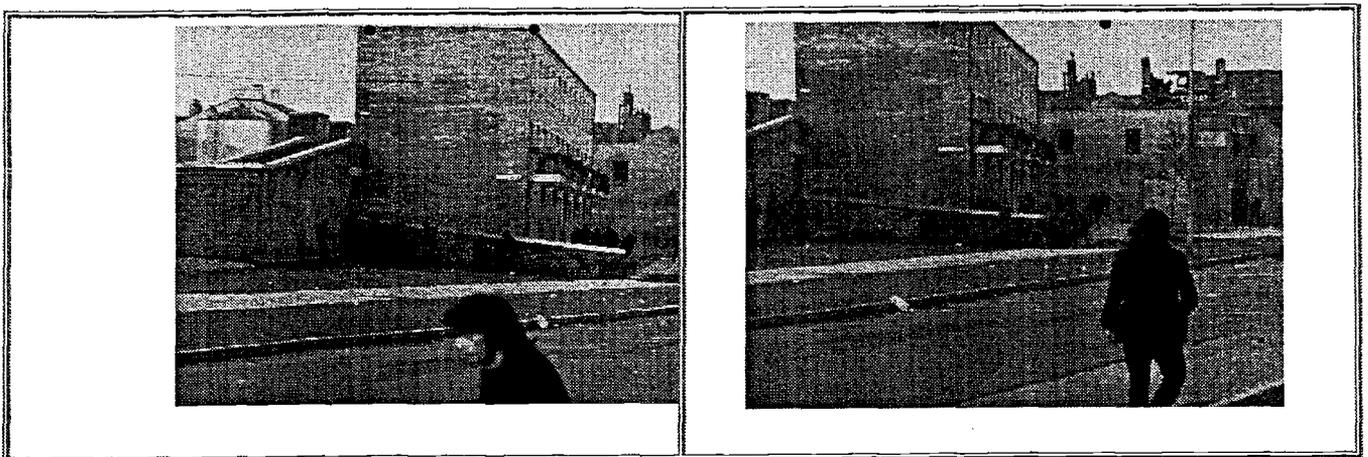
²⁶ Day 249/36/6

"I was with the leading group of half a dozen as we reached a small garden at the corner of Kells Walk. At this point approx 100 yds short of the crowd F went into the kneeling position and fired at the centre of the crowd from behind a low wall... I raised my rifle and aimed but on tracking across the people in front of me could see women and children although the majority were men, all wildly shouting, but could see no one with a weapon, so I lowered my rifle".²⁷

2G-29 The allegation was repeated in 027's Eversheds statement. 027 further explained there that F arrived at the wall and started to fire at the crowd "without pause or hesitation"²⁸ However, in this account 027 suggested that F fired from beside and not behind the wall.

Immediate firing from the wall

2G-30 The photographic evidence gives the lie to the allegation that F fired immediately in the way 027 described. We suggest that 23/8 and 23/9, below, depict Anti-Tank Platoon soldiers deploying to the Kells Walk wall. Christopher Clarke QC has made a similar observation²⁹.



²⁷ B1565.005

²⁸ B1565.039 paragraph 83

²⁹ Day 46/52/22

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EP23 photographs showing deployment of Anti-Tank Platoon.

2G-32 027 accepted in oral evidence that it was likely he was among the group of soldiers shown running towards the camera³⁰. Yet those same photographs show that none of the leading group of soldiers fired immediately upon reaching the wall. Instead they ran past it and had to double back before taking up positions.

Firing at no discernable target

2G-33 027 has recently made a number of comments that explain why he would not necessarily have seen what F was firing at (if, indeed, 027 spoke the truth when he claimed not to have seen F's target). He has acknowledged that he was describing matters from his own, limited perspective³¹ and described in his draft book how:

"Even when you see an action unfold right in front of your face, what you see will differ from what the men standing beside you see."³²

2G-34 Crucially, he has now also accepted that he never actually directed his attention specifically to what F was firing at.³³ Indeed, for part of the relevant time he was adjusting his own position and therefore not carefully observing the area of the rubble barricade.³⁴

2G-35 F's evidence in 1972 was that he observed a number of people behind the rubble barricade and fired at a man who "was attempting to throw what looked like a bomb".³⁵ Tragically, his shot killed Michael Kelly. It is our submission that the Tribunal will learn nothing about the circumstances of

³⁰ Day 249/45/1

³¹ Day 249/162/2

³² B1565.314

³³ Day 246/55/24

³⁴ Day 246/55/3

³⁵ "SA" statement, B137 paragraph 4

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the shooting from the evidence of 027, which, for the reasons given above, is wholly unreliable.

PRIVATE INQ 0635: FIRED FROM KELLS WALK WALL

2G-36 027's 1975 memoire included an allegation that Pte INQ 0635 also fired from the area of the Kells Walk wall:

G immediately jumped down beside [F] and also opened fire just beyond the wall on the pavement. INQ 635 also commenced firing.³⁶

2G-37 027's recent evidence about INQ 0635's activities at the Kells Walk wall has been quite different. He told Eversheds:

I cannot now be sure and it may be that he did not fire at all.³⁷

2G-38 In oral evidence, he commented on the above passage in his Eversheds statement to Christopher Clarke QC:

there is a good deal of doubt expressed in what I am saying there.³⁸

2G-39 We submit the Inquiry should disregard what 027 said on this topic in 1975. He has now expressed serious doubt about an allegation that is denied by INQ 0635 and totally uncorroborated by other evidence.

³⁶ **B156.005.**

³⁷ **B1565.040 paragraph 91**

³⁸ **Day 249/41/10**

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CEASE FIRE ORDER OVER RADIO AND MOVE INTO GLENFADA PARK NORTH

Timing and means of communication of cease fire order

2G-40 027 maintains that he received a cease fire order by radio from Major Loden, which he passed on to those around him in the vicinity of the Kells Walk wall. We submit that no such order was given at this time.

2G-41 027 wrote in his 1975 memoire:

After an eternity of timeless moments and sights Loden's voice came over the radio and ordered a cease-fire...I shouted the order "cease-fire" and ran along the line tapping them on their shoulders. The firing slacked and died as the crowd dispersed. H, E, G and F and myself then leapt the wall, turned right and ran down Kells Walk into Glenfada Park...³⁹

2G-42 027's earliest remaining account of the incident, the statement he gave to the SIB on 5th February 1972, was quite different:

Then came a shout from our rear to "cease fire". I cannot say who gave the original order because it was repeated by those near me.⁴⁰

2G-43 It therefore referred to a shouted order that was passed on to 027, rather than a radio message he passed on to others. 027 was unable to explain the discrepancies between the 1972 and 1975 accounts to Mr. Clarke in oral evidence⁴¹.

³⁹ B1565.006

⁴⁰ B1565.083

⁴¹ Day 247/20/17

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2G-44 Major, now Lt. Colonel, Loden's evidence is of a shouted order given at a later stage, after members of the Anti-Tank Platoon had entered Glenfada Park⁴². He has explained:

*A shouted order like this allowed me to give an instantaneous command...No previous order to stop firing had been given out by me over the radio.*⁴³

2G-45 The shouted command can be heard on Video 3 at 05:54. 027's suggestion of an earlier command, be it shouted or by radio, is wholly uncorroborated and, we submit, incorrect.

Reason for entry into Glenfada Park

2G-46 027's allegation about the cease fire order creates a false impression about the background against which elements of the Anti-Tank platoon deployed into Glenfada Park North and opened fire there.

2G-47 In our submission, the soldiers entered Glenfada Park North for legitimate reasons. Their reasons for doing so are set out in Chapter 9.

2G-48 It would appear that 027 does now accept there was a legitimate reason for the deployment, albeit not exactly as described by 119 or F. He wrote in his draft book:

*A group of soldiers then moved quickly down Kells Walk to intercept those from the crowd who had dispersed to their left into the complex of flats ahead of us.*⁴⁴

He confirmed in oral evidence that the draft book accurately reflected his current state of knowledge.⁴⁵

⁴² BSI statement, **B2283.008, paragraph 48**

⁴³ **paragraph 49**

⁴⁴ **B1565.311**

⁴⁵ **Day 249/49/1**

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LANCE CORPORAL F: SHOOTING IN GLENFADA PARK NORTH

2G-49 027's description of events in Glenfada Park is amongst the most sensational of the claims made in the 1975 memoire. He gave a graphic description of leaping the Kells Walk wall and following E, F, G and H into Glenfada Park North. He claimed to have observed that:

H fired from the hip at a range of 10 yds. The bullet passed through one man and into another and they both fell, one dead and one wounded.⁴⁶

2G-50 According to 027, H then fired again into the wounded man, E shot at one man and a fourth man was killed by either G or F.⁴⁷ The circumstances of the Glenfada Park shootings were that:

When we first appeared, darkened faces, sweat and aggression, brandishing rifles, the crowd stopped immediately in their tracks, turned to face us and raised their hands. This is the way they were standing when they were shot.⁴⁸

2G-51 It now transpires that 027, on his own admission, may not actually have seen any of this. He was certainly unable to substantiate these claims in any way:

It is inappropriate after 26 years for me to claim with any degree of certainty that any particular individual behaved in the way described... All I can say with any assurance is that the troops mentioned in the document were amongst those who entered Glenfada Park at the time of the shootings.⁴⁹

027 made a similar concession in his Eversheds statement.⁵⁰

⁴⁶ **B1565.006**

⁴⁷ **B1565.00**

⁴⁸ **B1565.007**

⁴⁹ Four page statement to Geoffrey Bindman 27th July 1998, **B1565.373, paragraph 5**

⁵⁰ **B1565.044, paragraph 114**

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2G-52 He went further in his oral evidence to admit that he did not recall seeing any rounds fired in Glenfada Park⁵¹ and, significantly, that he may not have been there at the material time at all:

Sir Allan Green QC: "027, I have to ask you this: I accept that you were in Glenfada Park at some stage, but could you have been there at a time when the shooting had stopped and you did not actually see any of it; is that a possibility?"

A. (Pause). My current memory of the events in Glenfada Park (or lack of memory) does allow for that possibility, yes.⁵²

2G-53 Further, the suggestion that those in Glenfada Park North were shot with their hands in the air is demonstrably false and contradicts all civilian eyewitness evidence. Sir Allan Green summarised the pathology evidence to 027 and added:

When you say in your 1975 memoir, "This is the way they were standing when they were shot," that does not apply to any single one of the three people that I have listed for you, does it, if the pathological evidence is accurate?"

A. That would appear to be the case, sir, yes.⁵³

2G-54 F's evidence to the Widgery inquiry was that he fired twice at a nail bomber in Glenfada Park and that he subsequently fired a further two rounds from the south east corner at a gunman positioned at the far end of the Rossville Flats⁵⁴ It is clear from his recent concessions that 027 cannot help the Tribunal with what took place at this time in Glenfada Park North.

⁵¹ Day 246/85/4

⁵² Day 249/136/20

⁵³ Day 249/125/3

⁵⁴ "SA" statement, B137, paragraphs 5-6

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MAJOR LODEN: ASSAULTED PRISONER

2G-55 027 claimed in 1975 that Major Loden assaulted a civilian detainee. We submit this is a further example of an incident with some basis in fact that was exaggerated by 027 for dramatic effect. 027 may agree.

2G-56 He said in his 1975 memoire:

I remember seeing one [prisoner] marched to Major Loden's APC and then to my astonishment the Major leaning out of the back of the vehicle and smacking the character on top of the head with a baton.⁵⁵

2G-57 027 was unable to substantiate the account in oral evidence. He was asked by Christopher Clarke QC:

Q. Do you have any recollection now of that incident?

A: No, I do not

Q. Again, should we suppose this to be what you recalled in 1975 as something that you yourself had seen, or is it something else?

A. I am afraid I cannot offer an explanation for why it is there.⁵⁶

2G-58 He was later questioned by Edwin Glasgow QC:

Q. Major Loden has told this Inquiry that in the early stages of the arrest, at a time when I suggest you could not see, he did indeed get involved in a physical arrest with a man, and indeed struck him with his baton, and that may have been something that you were told had happened. Do you think that is also something that you have simply, at some stage, elevated into something that you saw in very much more dramatic circumstances, and have been

⁵⁵ B1565.008

⁵⁶ Day 246/108/19

prepared to tell about your officer, although you had no knowledge of it? Is that a possible explanation?

A. That seems possible, yes, sir.⁵⁷

LT COLONEL WILFORD: "SEND F AND G TO SAS"

2G-59 027 has suggested that Lt Colonel Wilford and Sergeant Major 202 discussed Soldiers F and G on Bloody Sunday, almost as soon as the main action had subsided. According to 027, they acknowledged that "there was a problem with these two soldiers" and Col Wilford said "they had better be packed off to the SAS"⁵⁸

2G-60 We submit this is an inherently unlikely account and is pure invention. 027 well knew that selection for the SAS was not by a CO nominating troublesome soldiers to serve with the Regiment. Furthermore, why, if the allegation is true, did 027 fail to mention it in his otherwise forthcoming 1975 memoire? He first mentioned it in his 2000 Eversheds statement. Confusingly, he there described his recollection of events as both "vague" and "distinct"⁵⁹.

2G-61 The allegation should now be disregarded in light of 027's concession in oral evidence that it may only be his "inaccurate interpretation" of "what I believe I heard"⁶⁰

DUM DUM BULLETS PASSED AROUND PRIOR TO DEPLOYMENT INTO BOGSIDE

2G-62 027 described to Eversheds how his section waited in their pig after arriving in Londonderry. He alleged that:

⁵⁷ Day 249/55/22

⁵⁸ B1565.046, paragraph 124

⁵⁹ "I have a memory, which although vague is still distinct..." (B1565.046 paragraph 124)

⁶⁰ Day 249/112/20

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During the course of our wait "dum dum bullets" were passed around the back of our section pig⁶¹

He added:

I remember holding one of the dum dums in my hand and looking at it. It was the first time I had handled such a thing.⁶²

2G-63 We submit this is complete fabrication. The claim is wholly uncorroborated. Indeed, 027 himself failed to mention it in his 1975 memoire, where he was otherwise prepared to detail the presence and use of dum dum rounds on Bloody Sunday.

2G-64 He was singularly unable to assist with any further detail about the incident in oral evidence and there contradicted his evidence to Eversheds by suggesting he could only remember a single round being circulated:

Christopher Clarke QC: "Can you recollect approximately how many of these bullets were passed round?"

A. No, I cannot.

Q. Can you give us no idea? Are we talking about somewhere between 1 and 5 or are we talking about a large number or something in between?

A. I can only say that I personally handled one.

Q. Did you see others?

A. I do not now recall.

Q. Are you saying that you can only now recall seeing one dumdum bullet being passed around?

A. I can only remember the one that I held, it was passed to me and I looked at it and passed it on.

⁶¹ B1565.037, paragraph 71

⁶² paragraph 72

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Q. Why was it being passed on; why was it being circulated?

A. I do not know.

Q. Did nobody say something about it?

A. Not that I recall, no.

Q. Did it appear to be part of somebody's supply for use on that day? A. I cannot speculate on that.

Q. Do you know whose bullet it was?

A. No, I do not.⁶³

2G-65 027's claim also needs to be considered in the light of his acknowledgement that there would have been no "functional" reason for using a dum dum bullet:

A 7.62 round, without being tweaked, causes a very substantial exit wound and a fair shock to the system, wherever it hits. It can go through a brick wall. From a functional point of view there was no need to tamper with rounds.⁶⁴

2G-66 In fact, there would have been a functional reason *not* to use a dum dum. It would be less accurate, its tip having been gouged with a knife.

⁶³ Day 246/36/16

⁶⁴ BSI statement, B1565.037, paragraph 73

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PRIVATE INQ 0635, DUM DUM BULLETS AND THE EARLY FABRICATION OF
AMMUNITION RETURNS.

Use of dum dum bullets on Bloody Sunday

2G-67 027 alleged that INQ 0635 fired a large number of dum dum bullets into the crowd on Bloody Sunday and that several colleagues acted in a similar way. 027 wrote in his 1975 memoire:

When we finally got back into the "pig", everyone, including myself, was laughing and joking on an intense wave of excitement as we worked out how many rounds we had fired. Several of the blokes had fired their own personal supply of dum dums. INQ 635 for one fired 10 dum dums into the crowd but as he still had his official quota he got away with saying he never fired a shot in the subsequent investigations. This happened with several people in my vehicle.⁶⁵

2G-68 027 has effectively withdrawn these claims in evidence to this Inquiry. He acknowledged in his Eversheds statement that:

I could not have known that at the time. I do not know what that part of the statement was based on, to what degree it was anecdotal, or what was in my head at the time that I wrote it.⁶⁶

2G-69 When Mr Clarke QC asked him whether this was an invented account, 027 could only say: "I have no reason to doubt it or to believe it, I just have no memory of it now."⁶⁷ The questioning continued:

Q. How could you have learned that INQ635 had fired 10 bullets into the crowd and that they were dum dum bullets?

A. That is a valid point, I could not have known that, so I accept your comment.

⁶⁵ B1565.008

⁶⁶ B1565.057, paragraph 177.15

⁶⁷ Day 247/7/5

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Q. You could not have known it from your own eyes, the only other method in which you could have known it in one sense, is if somebody told you, which could have been either INQ635 or somebody else or simply regimental or battalion talk. Are you able to tell us now which, if any, of those it might have been?

A. No, I have no recollection relating to this particular comment.⁶⁸

2G-70 This is one of two serious allegations levelled against INQ 0635 by 027 in 1975⁶⁹. 027 is unable to substantiate either allegation now. Both are denied by INQ 0635 and we submit are evidence only of 027's antipathy towards INQ 0635 in 1975.

Fabrication of ammunition returns

2G-71 In his Eversheds statement, 027 developed the suggestion that members of his platoon fabricated ammunition returns. His evidence on this point is marred by self-contradiction.

2G-72 He told Eversheds that he and his colleagues returned to their vehicle:

The mood in the back of the pig was not so much euphoria as a release of tension. There was almost a silence...⁷⁰

2G-73 That contrasts with his 1975 description of "*laughing and joking on an intense wave of excitement*" in the pig.

2G-74 The Eversheds statement continues with 027's explanation that, before the ammunition check, they recognised "*there was a problem that had to be explained away*":

⁶⁸ Day 247/7/8

⁶⁹ See above for the allegation that INQ 0635 opened fire from the Kells Walk wall.

⁷⁰ B.1565.047, paragraph 27

...there was therefore some sorting going on. It gave us a period to discuss alibis and ammunition. The topic of conversation was who had fired what, what number of rounds we thought would be acceptable and justifiable, and how to account for the rounds that were fired.⁷¹

2G-75 That is in direct contradiction with the account 027 gave in his draft book, where he suggested the men became concerned about the number of rounds fired only when they were making their returns to their sergeant – and then only in relation to a single soldier. There is no allegation in the book that returns were fabricated:

As things settled our Platoon Sergeant called for an ammunition check, which was part of our normal procedure. The tally was noted as each man stated in turn how many rounds he had expended, it became apparent that one soldier had fired twenty two...From that moment it was obvious that that particular tally was going to cause us problems to explain.⁷²

2G-76 This may explain why, when he gave oral evidence, 027 could not “precisely” remember why there was any need to discuss what number of rounds fired would be justifiable⁷³. He had no recollection of any talk in the pig of why or how colleagues had fired their weapons⁷⁴. Most importantly, leaving aside the question of H, he had no “detailed” recollection of anybody getting away with saying that they had never fired a shot when in fact they had.⁷⁵

2G-77 027’s self-contradictory and uncorroborated evidence about the fabrication of ammunition returns should therefore now be disregarded.

⁷¹ B.1565.047, paragraph 128

⁷² B1565.313

⁷³ Day 247/4/24

⁷⁴ Day 248/44/7

⁷⁵ Day 247/8/5

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2G-IV OTHER MATTERS RELEVANT TO CREDIT

2G-78 In this section we deal with other matters we suggest are relevant to the issue of 027's credibility although they do not specifically relate to our clients.

WIDGERY INQUIRY: FABRICATION OF STATEMENT

2G-79 Two statements were produced in 027's name in 1972. He gave the first in February to the Royal Military Police. The second was made in March for the Widgery Inquiry. He claimed that both contained largely fabricated accounts. Although he was responsible for the lies in the first, he had decided to tell the truth by the time of the second. He described in his 1975 memoir what happened when he tried to do so:

I rattled off everything I had seen and done. The only thing I omitted were names and the manner in which people had been shot apart from that I told the truth, which I wanted to convey. Then to my utter surprise one of these doddering old gentlemen said "dear me Private 027, you make it sound as though shots were being fired at the crowd, we can't have that can we?" And then proceeded to tear up my statement. He left the room and returned ten minutes later with another statement which bore no relation in fact and [I] was told with a smile that this is the statement I would use when going on the stand.

"What a situation! The Lord Chief Justice of Great Britain, the symbol of all moral standings and justice having his minions suppress and twist evidence, with or without his knowledge who can tell?"⁷⁶

2G-80 There are several problems with this account.

⁷⁶ B1565.011

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027's wish to convey the truth to the Widgery Inquiry

2G-81 There are serious inconsistencies in 027's evidence on this score. His first action on arriving at Coleraine, apparently intent on telling the truth, was to lie:

...we spent some time pouring over photographs along with the SIB trying to establish which shots had been fired by whom and from where – what a farce, we were all grinning at each other and drawing lines haphazardly all over the place with the result that the authorities finished up with a series of sophisticated looking spiders webs, which bore no relation to fact.⁷⁷

2G-82 He was never intent on telling the *whole* truth. What new information did he try to give to the Widgery lawyers? None, according to his evidence to the Bloody Sunday Inquiry, where he referred to having given a “*watered down*”⁷⁸ account:

“It was an attempt to justify the soldiers’ actions as far as they were known, without being specific about connecting particular individuals with incidents.”⁷⁹

2G-83 He told Christopher Clarke QC in oral evidence:

I wished to avoid doing anything which would reflect badly on the Army.⁸⁰

2G-84 027 could therefore have said nothing to the Widgery lawyers that required suppression.⁸¹

⁷⁷ 1975 memoire, **B1565.010-011**

⁷⁸ BSI statement, **B1565.053, paragraph 164**

⁷⁹ **B1565.053, paragraph 163**

⁸⁰ **Day 247/28/19**

⁸¹ 027 conceded this in response to a question from Hugo Keith (**Day 249/159/20**)

The "Supplementary Statement" of 8th March 1972.

- 2G-85 The statement at B1565.114 is the key to understanding what actually took place at Coleraine. It provides the missing link between 027's RMP and "SA" statements. 027 had forgotten about its existence, remaining unaware of it even when he spoke to Eversheds.
- 2G-86 027 went to Coleraine only once, on 8th March 1972⁸². We now know that he gave two statements to Widgery Inquiry lawyers on that day, both of which survive. Far from withdrawing his evidence to the RMP, the signed "Supplementary Statement" clarified and augmented it. He was then asked to sign a composite "SA" statement that simply brought together the RMP and supplementary statements. 027 did so with no complaint⁸³. There had been no impropriety on the part of the Widgery lawyers.
- 2G-87 027 had taken an innocent event, the production of the composite statement and, by a process of exaggeration and deceit, turned it into an allegation of high-level malfeasance.

FANTASY AND 1975 MEMOIRE

- 2G-88 In our submission, many of the allegations levelled by 027 against our clients and others are the product of exaggeration or invention. An insight into the state of his mind when he made many of the more sensational allegations comes, surprisingly, from 027 himself. He spoke to Edwin Glasgow QC about the 1975 memoire:

I appreciate now that it is couched in language and terminology which seems perhaps – perhaps it reflects a slightly unhinged mind at the time.⁸⁴

⁸² Day 247/30/25

⁸³ Day 249/155/21

⁸⁴ Day 248/101/11

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2G-89 He told Sir Allan Green QC:

From my current standpoint, sir, I can see that it does not stand up as a rigorous piece of accurate reporting. It stands for what it is, it is an account of someone who had had experiences which had influenced his thinking and I cannot account for it from my present standpoint, sir.⁸⁵

2G-90 Nor did he deny the suggestion also put to him by Sir Allan that he was a “fantasy merchant”:

I believe, sir, I was living in an environment where there is -- an element of fantasy was par for the course, it was in the nature of a large number of men in an unusual situation.⁸⁶

DEALINGS WITH SEAN PATRICK MCSHANE

2G-91 The many inconsistencies in 027's evidence about his dealings with Sean Patrick McShane further undermine his credibility.

2G-92 027 has repeatedly claimed that he wrote his 1975 memoir for purely personal reasons and that it was never meant for dissemination.⁸⁷ Yet he forwarded that document to Mr. McShane.⁸⁸

2G-93 He further claimed that there was never any agreement between the two of them that they would in any way collaborate in the production of a book.⁸⁹ That denial seems hard to maintain in the face of a letter from 027 to Mr. McShane dated 24th November 1975 in which 027 wrote:

...My documents and so forth, which I mentioned have been posted from England and should arrive within a week, I anticipate that you will be in receipt of a weighty parcel from me in approximately three weeks.

⁸⁵ Day 249/131/6

⁸⁶ Day 249/153/2.

⁸⁷ e.g. BSI statement B1565.055, paragraph 173

⁸⁸ B1565.055, paragraph 173

⁸⁹ Day 249/81/9

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"I must say if you can extricate anything from what I write and set it down in legible form, for me it will be a half dormant ambition fulfilled. The more I write the more I seem to remember to write about.

"As far as 25% goes that is something, which I never anticipated, what can I say, but terrific, I shall do my best to earn it. In fact the whole affair could not have happened at a more expedient time, as I am in the process of losing my job. However, I shall keep you posted of any developments or change of address."⁹⁰

2G-94 The Tribunal also has the evidence of Sean O Mahony⁹¹ and Tomas Mac Ruairi⁹² of the publishing company FDR Teoranta. They were approached by Mr. McShane in late 1975 or early 1976 with a view to publishing a book on Bloody Sunday:

The author was to be the soldier ghosted by McShane...as far as I am concerned the narrative document [027's 1975 memoire] was to be the basis for the book."⁹³

2G-95 027 claimed in oral evidence that money had not been the motivation for his dealings with McShane.⁹⁴ Such a statement was at odds with his account to Channel 4, where he revealed that he had considered the financial element of their agreement to be a matter of some importance. He spoke to Lena Ferguson about Mr. McShane:

He disappeared completely. I was unable to get in touch with him, had no further contact and I was irritated for a while because it was a collaborative thing and there was money involved..."⁹⁵

⁹⁰ M92.9

⁹¹ M92

⁹² M93

⁹³ M92.1, paragraph 2; Day 247/59/2

⁹⁴ Day 247/59/2

⁹⁵ B1565.254

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DESTRUCTION OF DIARY

2G-96 In 1997, 027 destroyed the field notebook that contained his contemporaneous or near contemporaneous record of the events of Bloody Sunday. The notebook would arguably have provided 027's most compelling account of Bloody Sunday because of its proximity in time to the events recorded in it. 027's reasons for destroying it are not convincing.

2G-97 He told Eversheds that he did so out of alarm over where the press and media interest in his story was going⁹⁶. Yet he was the one who first sought contact with the media⁹⁷, who agreed to be interviewed by Radio Ulster⁹⁸ and who gave a televised interview to Channel 4.

2G-98 He told the Tribunal in reply to questions from Edwin Glasgow QC:

*I realised, sir, that it was a contentious document which was potentially -- ramifications might spring from it, and I was in an agitated, concerned state of mind; and I did not wish the thing to go out of my hands, so I destroyed it.*⁹⁹

2G-99 It is difficult to reconcile the explanation that he did not want the notebook to get out of his hands with his claim that he had already disclosed much of its contents on television during his interview with Channel 4.

2G-100 He told Lord Saville:

The destroying the notebook was just in a state of apprehension and anxiety, just a generalised feeling. It was

⁹⁶ **B1565.059, paragraph 186**

⁹⁷ See his letter to the *Newsletter* **B1565.088**

⁹⁸ On *Talkback* **B1565.089**

⁹⁹ **Day 249/63/16**

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*an impulsive moment which I actually regret at this point...*¹⁰⁰

- 2G-101 It defies logic, when in a state of generalised apprehension, to destroy the one document that would corroborate one's version of events.
- 2G-102 We suggest that the real reason for the destruction of the notebook was that it contained material that was significantly inconsistent with his 1975 memoire and with subsequent accounts.
- 2G-103 027 claimed that it was a coincidence that his other diary from the period was also no longer in his possession. His explanation of how that came to be lost was even less credible than the reasons given for the destruction of the notebook:

*I did have a second diary which was other events which was part of the tackle that was stolen in Paris, on the metro by a bunch of transvestites.*¹⁰¹

2G-V 027'S DEALINGS WITH THE INQUIRY.

- 2G-104 On 14th August 2000 Mr. Tate, the Solicitor to the Inquiry, published a Memorandum concerning 027 and his dealings with the Inquiry.
- 2G-105 On 11th September 2000 Mr. Anthony Lawton wrote to the Inquiry requesting disclosure of documents relating to the dealings of 027 with the Inquiry and the Northern Ireland Office. Despite repeated requests over a period of two years, the Inquiry failed to disclose any of the documents sought at that time. On 22nd June 2002 the Tribunal dismissed an application for disclosure on behalf of the clients of Mr. Anthony Lawton

¹⁰⁰ Day 249/100:18

¹⁰¹ Interview with Lena Ferguson, B1565.255

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made on the ground that the documents were relevant to 027's pending application for screening.¹⁰²

2G-106 The documents were, however, eventually disclosed by the Inquiry to interested parties on 12th September 2002, shortly before 027 gave his oral evidence. As the following paragraphs show, they provide a wealth of relevant information as to 027's conduct and the course of dealings by which he extracted from the Northern Ireland Office, acting on behalf of the Inquiry, the benefits he demanded.

2G-107 The documents demonstrate 027's intent to extract the maximum pecuniary advantage from the authorities concerned. He demanded payments for his evidence which were far in excess of those which would have been justified as necessary for his protection, on any view as to the threat to which he claimed to be exposed. His attempted explanation of his conduct, made in the course of his oral evidence;

All of these -- the financial aspects which we are talking about are in fact irrelevant. They were a means to an end to achieve a situation in which I was able to come to this Inquiry to give my evidence.¹⁰³

is impossible to reconcile with the documentary evidence.

2G-108 027 approached negotiations with the Northern Ireland Office and the Metropolitan Police in the hope of obtaining a large cash payment to spend as he pleased in return for his evidence.

- (1) A memorandum of 24th November 1999 relating to the initial contact between the Metropolitan Police and 027 records:

The subject was very nervous throughout. He clearly had no idea what he actually wanted or what we could do. He

¹⁰² Day 224/147 et seq

¹⁰³ Day 249/11/9

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was asked directly what we could do for him to satisfy his fears for his safety. He then danced and prevaricated around what he wanted without actually stating what this was.

....

It became apparent that he was very embarrassed about asking for financial assistance as he had clearly assumed he could ask for a large sum of money from the NIO, which he would be left to spend as he wished.

....

We then explained our procedures. He seemed surprised that he wasn't going to get any cash but eventually accepted this was the case.¹⁰⁴

- (2) A Northern Ireland Office memorandum dated 25th January 2000 records 027's dissatisfaction with the Metropolitan Police's proposal:

...the Met were not living up to the agreement which Bindman had reached with the NIO. [027] was alleging that after our meeting with Bindman, Bindman told him that he could have whatever he wanted. He was not satisfied with what was being offered, so he was going to put the pressure on by speaking to Bindman himself.

...

[027] was obviously playing hard ball.¹⁰⁵

- (3) A Northern Ireland Office memorandum dated 26th January 2000 records a conversation with the Metropolitan Police;

[Metropolitan Police Officer] said that things were going well and that everything was agreed except [027] wanted a big bundle of money up front. [---] made it clear that the Met were standing firm against this; it would torpedo his

¹⁰⁴ B1565.147-8

¹⁰⁵ B1565.176

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credibility as a witness and was not how they went about things.

...

He said that the elements of the package were all in place but [027] was insisting on having a lump sum up front and a house bought for him. The Met were resisting and that would be their advice to us.¹⁰⁶

2G-109 According to a Detective Inspector in the Metropolitan Police, 027 sought to increase the sums to be paid for the acquisition of a car without any attempt to justify the increase on grounds of security.

It was agreed with the [] that a ceiling of [] would be put on the purchase of a motor vehicle. That [027] should identify a motor vehicle over the next three weeks to be ready on our return when we would be in a position to make a purchase. [027] agreed to do this.

On the journey home as if premeditated but out of context [027] announced that it was now obvious that in order to get the vehicle [] required [] would need substantially more than the [] we were offering. I was a little surprised and reiterated that to [027] that the figure originally set would not be changed.¹⁰⁷

2G-110 In his oral evidence 027 denied having made that request.¹⁰⁸ However, it is submitted that the Detective Inspector's account is likely to be accurate in view of his recall of the precise circumstances of the request and his reaction.

2G-111 027's demands considerably exceeded the sums which the Metropolitan Police and the Northern Ireland Office regarded as justifiable given the level of threat which they had identified.

¹⁰⁶ B1565.178-9

¹⁰⁷ B1565.173

¹⁰⁸ Day 249/7/7

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(1) 027 demanded a lump sum payment to enable him to buy a house outright.

(a) The Metropolitan Police memorandum of their meeting with 027 on 20th January 2000 records the following:

The subject kept repeating his desire to have a lump sum with which to purchase a house. There is no doubt that he has already planned to purchase his own property. He stated that [] had seen a property valued at [] which was suitable to [] needs. Even this we found to be excessive having seen that day brand new houses for []. When we reiterated again that we would only rent, he intimated that we could give him 'Rental money' which he could then use to pay a mortgage. We explained that we would require to see a rental agreement for a suitable property and that the payments would be monthly. He said at this stage "Well perhaps I should give them one page of my statement each month".¹⁰⁹

In his oral evidence 027 stated that this had not been a serious suggestion¹¹⁰ However, the fact remains that the Inquiry did not secure 027's statement until after it had been forced to accept 027's terms.

(b) On 21st January 2000 the Detective Chief Inspector's note records

At about 7.45 pm, we received a call from the subject who stated that he had spoken to his solicitor that day and had been advised not to discuss the matter any further until certain conditions were met. He therefore was calling to cancel the meeting. He then stated that the offer was not sufficient, quoting £4,200 for accommodation just did not do it.¹¹¹

In his oral evidence 027 stated that he did not recall that specifically.

¹⁰⁹ B1565.166

¹¹⁰ Day 249/6/15

¹¹¹ B1565.174

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I just make the point again that this was a negotiation. ¹¹²

- (c) A Northern Ireland Office memorandum dated 25th January 2000, at which date 027 was not satisfied with what was being offered, records:

[Met Police Officer] said that the stumbling block had been the lump sum. The Met were refusing to get in the business of buying him a property, not least because he had never owned one in the UK. [----] thought that this was probably brinkmanship. [027] is trying to get as much as possible out of the deal – which is no more than to be expected. ¹¹³

- (d) A Northern Ireland Office memorandum dated 26th January 2000¹¹⁴ records 027's position that he had not been offered enough money up front for accommodation. He was offered £4,000 and he wanted £20,000. In the event, of course, he got the £20,000 he demanded.

- (e) A letter from the Northern Ireland Office to the Inquiry dated 29th February 2000, records that 027 regarded the package offered by the Metropolitan Police and the Northern Ireland Office as totally unacceptable.

He had no resources and needed a lump sum payment up-front to help him buy a house. ¹¹⁵

- (f) A Northern Ireland Office e-mail of 7th March 2000 states:

"He wants £20k up front to put down a deposit on a house. He has seen one he wants to buy for £40k. In effect the £20k isn't negotiable.

¹¹² Day 249/7/24

¹¹³ B1565.176

¹¹⁴ B1565.180

¹¹⁵ B1565.201

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...

Nothing other than an up front payment and extended payments will be acceptable to him.

...

[027] was asking for £20k up front as a deposit but we had it on good authority for our experts that he could buy a new two bedroom house or flat for £25-30k.¹¹⁶

In his oral evidence 027 stated that he had not specified the figure of £20,000.

That was not a figure which emanated from me. Naturally my solicitor was representing me in attempting to achieve the aims which I was after, which ultimately were the security of my family.¹¹⁷

(2) 027 demanded that the monthly payment *in lieu* of earnings be for more than 1 year.

(a) The Metropolitan Police considered that 027's demands for payments in lieu of earnings were unjustified. In particular they considered that his demands conflicted with paragraph 10, Witness Protection Principles which states;

"The time period of one year is deemed by experience to be a sufficient respite to allow a [----] to seek suitable employment and to integrate [----] into the local society."¹¹⁸

Initially 027 wanted to be paid for 5 years.¹¹⁹

(b) A Northern Ireland Office memorandum dated 26th January 2000 records 027's demand that he be paid for much

¹¹⁶ **B1565.206**. See also **B1565.207**

¹¹⁷ **Day 249/10/8**

¹¹⁸ Witness Protection Principles, paragraph 10, **B1565.187**

¹¹⁹ **B1565.191**. See also **B1565.201**

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longer than a year because the Inquiry would go on for much longer than that.¹²⁰

- (c) A Northern Ireland Office e-mail of 7th March 2000 states;

He wants the terms of the monthly payments extended to cover the life of the Inquiry 'and a bit after that'.

Nothing other than an up front payment and extended payments will be acceptable to him.¹²¹

- (3) 027 demanded £100 per month to pay for life insurance when the Metropolitan Police regarded such a payment as unjustified.

- (a) At a meeting with representatives of the Northern Ireland Office on 17th November 1999 027's demand for life insurance was rejected as without precedent and unnecessary.¹²²

- (b) At a meeting with representatives of the Metropolitan Police in November 1999 027 was insistent that he be provided with life insurance. He was told that this was not normal. The whole idea was to keep him alive.¹²³

- (c) A Northern Ireland Office memorandum dated 26th January 2000 records a further demand for life insurance.¹²⁴

¹²⁰ **B1565.180**

¹²¹ **B1565.206**. See also **B1565.207**

¹²² **B1565.146**

¹²³ **B1565.148**

¹²⁴ **B1565.180**

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2G-112 The payments which the Tribunal agreed to make to 027 were in excess of those necessary to protect him. Furthermore, they infringed paragraph 5 of the Witness Protection Principles (the "like for like" principle);

*The witness should not suffer as a result of being in the witness protection programme. Every effort is made to replicate the living conditions previously enjoyed without any financial burden to the witness. ("like for like") The converse is that the witness's situation should not be physically or financially enhanced.*¹²⁵

2G-113 This is apparent from a comparison of 027's financial position at the time of the Agreement and the sums paid to 027.

(1) 027's financial position at the time of the Agreement:

(a) In receipt of income support between August 1997 and October 1998 at a rate of approx £180 per month.¹²⁶

(b) Living in council accommodation.

(c) 027 reported to the Northern Ireland Office that he had only £400 in his bank account.¹²⁷

(d) In November 1999 Mr. Bindman stated he did not think that 027 had anything to put to his name. He was "scraping along trying to earn some money by writing".¹²⁸

(2) Sums paid by Northern Ireland Office to 027 up to his giving evidence:

(a) In lieu of earnings 28 x £1,400 = £39,200.

¹²⁵ **B1565.185-6**

¹²⁶ **B1565.132-3**

¹²⁷ **B1565.148**

¹²⁸ **B1565.130**

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- (b) Life insurance 28 x £100 = £2,800.
- (c) 'Loan' for property £20,000 (not repayable if he gives evidence).
- (d) Payment for car £6,000.
- (e) Total : £68,000 (tax free).

(3) Further sums due following his evidence: £4,500.

(4) In addition he has been resettled abroad, with a new identity, at public expense.

2G-114 027 has made a clear capital gain: a house in return of his evidence.

2G-115 027 has received monthly payments "in lieu of earnings" which are far in excess of what he was "earning" or would have "earned".¹²⁹ Between 22nd August 1997 and 29th January 1998 and 18th April 1998 and 9th October 1998 027 was in receipt of benefit (approximately £180 / month). This should be contrasted with the sum of £1,400 per month he received pursuant to Clause 3(a) of the Agreement.

2G-116 Furthermore, 027 had received £100 per month in respect of life insurance where:

- (a) The purpose of all other payments was to keep him alive.
- (b) The Northern Ireland Office indicated that they would not require to see a policy.

¹²⁹ See benefit schedules B1565.132-3

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2G-117 The agencies recognised that the payments to 027 were excessive.

2G-118 Early in the negotiations the Northern Ireland Office doubted that a security package could be justified in 027's case. The Northern Ireland Office agreed to continue to press 027 to give proper grounds for his concerns about the threat to him.

It was important from HMG's perspective that we were seen to press as hard as possible on this. In the final analysis it may be impossible to devise a threat assessment which, in itself, would justify giving a security package to the individual concerned; there may have to be an element of political judgement in this as well.¹³⁰

2G-119 In January 2000 when 027 contended that the proposals of the Northern Ireland Office and the Metropolitan Police were insufficient he was firmly told by the Metropolitan Police

....that [---] would only be entitled to council accommodation and that the salary which was tax free was very generous. I went on to say that the Like for Like principle had not been adhered to as he did not have property [----] nor employment. He stated that this was a subjective opinion. I reminded him that the impression we were given all along was that [----] only had £400 in a bank account [---] and no other financial means. Was he now saying that that was false. He immediately said that his situation [----] was brought about by his involvement with the enquiry.(sic)¹³¹

2G-120 It should be noted that this passage refers to the proposal originally made by the Northern Ireland Office and the Metropolitan Police. The Tribunal ultimately agreed to 027's demand, departing yet further from the "like for like" principle.

¹³⁰ B1565.136-7

¹³¹ B1565.174

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2G-121 A Metropolitan Police memorandum dated 26th January 2000 concerning a meeting with the Northern Ireland Office records

We made it clear to [---] that the package was more than generous. We also recommended that we stand firm and do not give in to any demands made by the subject or his solicitor on his behalf.¹³²

2G-122 The Tribunal sought an explicit assurance that the package proposed by the Metropolitan Police and the Northern Ireland Office fully complied with principle 3 of the Witness Protection Principles (i.e. that it did not amount to an inducement).¹³³ The Northern Ireland Office was able to give such an assurance in relation to the package which it and the Metropolitan Police had proposed but was not able to give such an assurance in relation to that demanded by 027. Nevertheless, the Inquiry ultimately agreed to the package demanded by 027.

2G-123 A letter from the Northern Ireland Office to the Inquiry dated 29th February 2000 makes clear that the Northern Ireland Office and the Metropolitan Police regarded 027's demands (which the Inquiry ultimately met in full) as excessive and unacceptable.

We have discussed the latest position with the Met. Their advice, reflected in the comments below, is that we should not accept [027's] demands. We agree with that position...

On the first point, the lump sum payment up-front to buy a house, we believe there is a real risk that this could be perceived as HMG 'buying' his evidence. He would be making a clear capital gain – a house in exchange for his evidence. ...

I am sure that the Inquiry will want to give its own consideration to this issue. When we outlined the package to you earlier this month, you asked for a written assurance that it did not involve the acquisition of evidence through

¹³² **B1565.183**

¹³³ **B1565.188**

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coercion by financial gain or promise of gain. We were confident of giving that assurance, on the basis of the Met's proposals. Were we to accept [027's] demand for a lump sum, however, we no longer believe that such an assurance could be given.

[027] also wants the one-year term of the package extended. Again, we believe it will be difficult to do this because it would go against the purpose for which the package of measures is provided; it is intended simply to allow [027] to establish himself during a short, transitional period. The Met are quite clear that it is not their practice to get into the business of underwriting individual's long term financial security; that is something for the individual's themselves. We would not feel comfortable departing from their advice.

[027's] reaction to the Met's proposals leaves us in a difficult situation. We are fully prepared to underwrite a package of security measures for him but this must be done in a way which not only meets the requirements of his safety but also takes proper account of the legal principles in Section 78 of PACE as well as the NIO's responsibility to justify the necessary expenditure. I fear that [027's] demands do not meet these tests.¹³⁴

2G-124 027 and those representing his interests were very conscious of the importance of his evidence to the Inquiry.

2G-125 On 26th August 1999 Mr. Bindman, 027's solicitor, met representatives of the Home Office. He took with him Jane Winter of British Irish Rights Watch. A Home Office letter of 13th September 1999 records that Jane Winter said that her organisation took the view that the Inquiry would be pointless if 027 did not give evidence because his evidence was unique as far as they were aware.¹³⁵

¹³⁴ **B1565.202-3**, emphasis added.

¹³⁵ **B1565.134**

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2G-126 A letter from Mr. Bindman to the Northern Ireland Office dated 3 May 2000 states

...he is an important witness without whose evidence the Inquiry cannot but be prejudiced.¹³⁶

2G-127 Against this background, and that of 027's many attempts to tell his story, his statement in oral evidence that ;

My significance in this to the Inquiry I could not estimate, and I was reacting to what others were telling me.¹³⁷

is less than convincing.

2G-128 027 repeatedly threatened to refuse to give evidence to the Inquiry unless his demands were met in full.

2G-129 Mr. Ridd, who was then the solicitor to the Inquiry, recorded of the meeting of 1st June 1998,

...it seemed well nigh certain that showing any shortage of sympathy would have resulted in an instant close down of cooperation followed by disappearance.¹³⁸

2G-130 Mr. Ridd's memorandum of the meeting on 1st June 1998 states:

Soldier 027 said that he did not understand the mechanics of the system, but that it was up to the Inquiry to present an acceptable solution to him. He made it clear that he would cooperate only on agreed terms and that he would walk away if the Inquiry could not accommodate him and that the Inquiry would get nowhere without his cooperation.¹³⁹

2G-131 In his oral evidence 027 attempted to justify his attitude towards the Inquiry in the following way;

¹³⁶ B1565.211

¹³⁷ Day 249/17/7

¹³⁸ B1565.117

¹³⁹ B1565.118

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It is not a threat, sir. I was being realistic about the situation I found myself in. I was on my own. The Inquiry was sitting in Derry and, naturally, I could not have, as an individual, gone to Derry and made my own arrangements to give my evidence.¹⁴⁰

2G-132 It is submitted that the suggestion that 027 was compelled to drive such a hard bargain with the Northern Ireland Office, in order to enable him to give evidence to the Inquiry is transparently false.

2G-133 At a meeting at the Home Office on 26th August 1999 Mr. Bindman stated that 027 was "*fed up at the length of time it is taking to resolve the matter of his personal safety and if the matter is not concluded to his satisfaction in the next 6-8 weeks he is likely to change his mind about giving evidence and go into permanent hiding*".¹⁴¹

2G-134 A Northern Ireland Office memorandum of 26th November 1999 refers to a meeting between the Northern Ireland Office and the Metropolitan Police on 24th November 1999. The Metropolitan Police reported of their meeting with 027 on the previous evening:

...he appeared to think that he would be able to leave with a briefcase of money. He had said that unless the security measures had been put in place, he would not allow his solicitor to release a lengthy statement which he said he had made.¹⁴²

2G-135 The Metropolitan Police's memorandum of their meeting with 027 on 20th January 2000 (quoted at paragraph 2G-111 above, but repeated here for convenience) records the following:

¹⁴⁰ Day 149/14/5

¹⁴¹ B1565.135

¹⁴² B1565.154

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The subject kept repeating his desire to have a lump sum in which to purchase a house. There is no doubt that he has already planned to purchase his own property. He stated that [] had seen a property valued at [] which was suitable to [] needs. Even this we found to be excessive having seen that day brand new houses for []. When we reiterated again that we would only rent, he intimated that we could give him 'Rental money' which he could then use to pay a mortgage. We explained that we would require to see a rental agreement for a suitable property and that the payments would be monthly. He said at this stage "Well perhaps I should give them one page of my statement each month".¹⁴³

2G-136 A letter from the Northern Ireland Office to the Inquiry dated 29th February 2000 records that 027 has rejected the proposal. He was demanding a five year package and a lump sum of £20,000.

Bindman made it clear that if we did not improve the package to meet his client's requirements then his evidence would be lost to the Inquiry.¹⁴⁴

2G-137 In his oral evidence 027 confirmed that he believed that the threat to walk away from the Inquiry was made with his authority and on his instructions.¹⁴⁵

2G-138 A Northern Ireland Office e-mail of 7th March 2000 records a meeting with Mr. Bindman.

Soldier A is angry and fed up it is taking so long to sort out his 'reasonable' demands.

...

If his two demands are not met by Friday he will walk away from the Inquiry.¹⁴⁶

¹⁴³ B1565.166

¹⁴⁴ B1565.201

¹⁴⁵ Day 249/12/11

¹⁴⁶ B1565.206 and see also B1565.207

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2G-139 In a letter from Mr. Bindman to the Northern Ireland Office dated 4th May 2000, Mr. Bindman states

Further delay which might be caused by the need for reconsideration by the Secretary of State could well result in his evidence not being available to the Inquiry.¹⁴⁷

2G-140 027 did, in fact, go to earth. During the period between August 1998 and September 1999 he deliberately placed himself beyond the reach of the Inquiry. Despite the most strenuous efforts, the Inquiry failed to trace 027. Mr. Tate, the Solicitor to the Inquiry, stated in his Memorandum of August 2000;

The Inquiry therefore made extensive efforts over a period of many months during 1999 to locate Private 027. The services of an experienced tracing agent were employed, summonses were served on a number of utility companies and other organisations for the production of records that might have shown where he was to be found. After exhaustive researches it proved impossible to discover his current address.¹⁴⁸

2G-141 In his oral evidence to the Inquiry, 027 said that he had not known anything about this.

I was always contactable through my solicitor throughout this period, so I do not understand that.¹⁴⁹

2G-142 In his new book 027 states;

The Inquiry had inexplicably failed to take up the offer of looking at my evidence by January 1999, that is after it had been available to them for six months. Neither Jane Winter nor my solicitor could understand why this should be the case; in fact they were mystified. As a result I decided the only way forward was to do something myself, so I decided to write this book instead.

¹⁴⁷ B1565.212

¹⁴⁸ B1565.098

¹⁴⁹ Day 249/18/14

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2G-143 The Tribunal is perhaps uniquely placed to judge the truth of these assertions.

2G-144 027 was anxious to prevent details of the payments he was to receive being made public. At the meeting between Mr. Bindman and Ms. Winter and representatives of the Northern Ireland Office on 17th November 1999, Ms Winter told the Northern Ireland Office that 027 "*was particularly concerned that the details of any package should not be made known to MoD*".¹⁵⁰ It is submitted that this was intended to be a reference to the lawyers representing the clients of Mr. Anthony Lawton.¹⁵¹

2G-VI THE THREAT TO WHICH 027 CLAIMED HE WAS EXPOSED.

2G-145 In a letter of 21st January 2000 to a Metropolitan Police Chief Inspector, one of his colleagues, whose name has been redacted, reported that he and another senior police officer had met with Soldier 027 "*with the purpose of establishing his background and exploring the threat*".¹⁵² Minute 16C attached to the letter recorded what Soldier 027 had told the officers about his involvement with the Inquiry, including about alleged potential or actual threats to his physical safety or that of his acquaintances. Soldier 027 referred to three specific alleged incidents.

FIRST INCIDENT

2G-146 The first incident was said to have taken place in March 1997.

He states that on the day of the [Channel 4] broadcast he stayed in London. When he returned back to [redacted] where he had only been for about three weeks a neighbour allegedly approached him and explained the following;

¹⁵⁰ B1565.144

¹⁵¹ See the reference to "MoD barrister Edwin Glasgow" at B1565.166

¹⁵² B1565.167

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They had observed three men in a van outside his property for about two days.

He states that he immediately left his possessions in the accommodation and returned back to [redacted].¹⁵³

2G-147 The officers receiving the information commented about it:

...The subject stated that neither he nor the neighbour reported the matter to the police.

The subject was asked for information that might enable us to further investigate this incident.

He was unable to remember the address where he was staying or the property management agency from which he rented it. Despite the fact this was only three years ago.

He states he did not give his address to the [redacted]. How did these men find him?

There is no other information, nor is there any further enquiries that can be taken to corroborated this incident.

There is therefore no credible information to substantiate this incident.¹⁵⁴

SECOND INCIDENT

2G-148 Soldier 027 reported to the officers that a further incident had taken place in November/December 1997. He subsequently accepted this incident could be innocently explained.¹⁵⁵

THIRD INCIDENT

2G-149 The officers were told of an incident, said to have taken place in January 1998:

¹⁵³ **B1565.170**

¹⁵⁴ **B1565.170**, original emphasis.

¹⁵⁵ **B1565.170 - B1565.171**

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The subject stated that his friend from [redacted] whom he had previously stayed with was attacked and assaulted.

The subject stated that his friend was attacked by two men and beaten up because of the Bloody Sunday enquiry.

When asked why he thought this he stated initially that the friend "looked like me".

When pressed as to why this meant they were connected to the enquiry he then said that one of the men said "Keep your mouth shut".

The subject refused to give any details of the male.

He did say the male went to hospital for treatment but could not name the hospital.

When asked how the connection was made or the address known the subject was not able to answer. Later he stated that he had applied for housing benefit from the house and that he could have been traced from that.¹⁵⁶

2G-150 Soldier 027 had apparently given a more lurid version of events to Jane Winter of British Irish Rights Watch. Her attendance note of a conversation with him on 14th January 1998 suggested that his friend had been dragged out of his car, beaten up, thrown through the front door, and then dragged back outside. He added:

They offered him a block of concrete and said, "That's your one chance. Give it your best shot, because afterwards we're going to kill you." They mentioned Bloody Sunday, blood money, the SAS, that friends of theirs had been killed, and people who dealt with the media...¹⁵⁷

2G-151 Soldier 027 had on another occasion taken matters a stage further by suggesting that he had also been beaten up during this incident and that the assailants were "former colleagues". This was the information provided to a representative of the Home Office Organised and

¹⁵⁶ B1565.171

¹⁵⁷ B1565.114.1

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International Crime Directorate during a meeting on 26th August 1999 with Miss Winter and Geoffrey Bindman, Soldier O27's solicitor.¹⁵⁸ Mr Bindman had previously accepted on his client's behalf that "*The assault was not reported to the police.*"¹⁵⁹

2G-152 In relation to this third incident, the officers commented:

There is no other information, nor is there any further enquiries that can be undertaken to corroborate this incident.

*There is therefore no credible information/evidence to substantiate this incident.*¹⁶⁰

2G-153 In our submission, these accounts are totally incredible.

2G-VII SUMMARY OF SUBMISSIONS AND CONCLUSIONS

2G-154 It is now beyond doubt that O27 is the author of the 1975 memoire at B1554-1565.013, which includes an account of Bloody Sunday. We suggest the *Interview with O27 dtd 9 November 1975* at B1565.015 – 1565.025 is a transcript of answers given by O27 in a taped interview with Sean Patrick McShane.

2G-155 O27's 1975 account contains many sensational claims that were picked up by journalist Tom McGurk in 1997¹⁶¹, were further considered in the Irish Government Report¹⁶² and which constituted one of the important pieces of "new material" that led the Prime Minister to announce the establishment of the Bloody Sunday Inquiry. We have submitted that the

¹⁵⁸ B1565.134; Letter from The Central Unit to W J Tate, dated 13th September 1999.

¹⁵⁹ B1565.128; Letter from Geoffrey Bindman to Philip Ridd, dated 10th August 1998. Soldier O27 denied having given such information to his solicitor at Day 249/21/10

¹⁶⁰ B1565.171, original emphasis.

¹⁶¹ B1565.072

¹⁶² U218

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symbolic importance this account has assumed is out of all proportion to its actual merit.

2G-156 027 has made many allegations, some of the most serious nature, against our clients. He has been unable to substantiate any of them.

2G-157 He alleged first in 1975 that Lieutenant 119 incited his men the night before Bloody Sunday to get some kills¹⁶³. Recent attempts by 027 to place the allegation "in context" have effectively amounted to its withdrawal. His explanation now is that any talk of "getting kills" was made during an informal discussion and must be seen in the context of an expectation that the Paras would be engaged by gunmen in Londonderry. As he said to Christopher Clarke QC:

*Specifically it means if a gunman engages you, you shoot the gunman.*¹⁶⁴

027 is now unable even to maintain that the remarks were first made by his lieutenant¹⁶⁵ Lt. 119, is therefore exonerated of any suggestion of impropriety.

2G-158 The suggestion that Lance Corporal F fired immediately upon reaching Kells Walk wall and at no discernible target¹⁶⁶ has similarly not been maintained with any credibility. Photographs taken on the day prove that *none* of the leading group of Anti Tank Platoon soldiers, in whose number were both F and 027, stopped and fired immediately from the wall in the way 027 had described. EP23/8 – 9 show that instead they ran past it and had to double back before taking up positions. In any event, 027 now accepts he would not necessarily have seen F's target. He has recently

¹⁶³ **B1565.003**

¹⁶⁴ **Day 246/25/5**

¹⁶⁵ **B1565.035, paragraph 58**

¹⁶⁶ A claim made both in the 1975 memoire and his BSI statement (**B1565.005; B1565.039, paragraph 83**)

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admitted that he never actually directed his attention specifically to what F was firing at¹⁶⁷

2G-159 027 has made two grave allegations against Private INQ 0635. We have suggested that both claims are groundless and are evidence only of his antipathy towards our client in 1975. The 1975 memoire included an allegation that INQ 0635 fired from the Kells Walk wall ¹⁶⁸It follows from the fact 0635 made no such declaration in 1972 that the claim brings with it an allegation that 0635 suppressed relevant information in his ammunition return and in his dealings with the SIB. 027's recent evidence has been quite different. He told Eversheds that he could not now be sure he was correct in his claim "*and it may be that [INQ 0635] did not fire at all*"¹⁶⁹ 027 confessed in oral evidence that there was "a good deal of doubt" in his mind about this allegation.¹⁷⁰

2G-160 027 maintains that he received a cease fire order from Major Loden whilst he and his colleagues were still at the Kells Wall. However, his 1975 account, that he received a radio message and passed it onto his colleagues, is in direct contradiction with the version in his RMP statement, which referred to a shouted order that was passed on to 027. The 1975 account is further undermined by a total lack of corroboration of any such order being made at this stage. On the other hand, Major Loden's evidence, of giving a shouted order *after* elements of Anti Tank Platoon had deployed into Glenfada Park North, can be verified by reference to the actuality footage of the day; he can be heard on video 3 at 05:54.

¹⁶⁷ Day 246/55/24

¹⁶⁸ B156.005

¹⁶⁹ B1565.040, paragraph 91

¹⁷⁰ Day 249/41/10. 027's second allegation concerning 0635, that he fired dum dum bullets on Bloody Sunday, is referred to below.

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- 2G-161 027's claim about the cease fire order, if true, would have included a claim that the order was contravened by the Glenfada Park deployment. His recent acceptance that there was a legitimate reason for that movement undermines any claim to the contrary. He now states that he and his colleagues moved quickly to intercept some members of the crowd who were dispersing into that area.¹⁷¹
- 2G-162 027 gave a graphic description in 1975 of the way in which F and others opened fire in Glenfada Park North. His description of events in this area is amongst the most sensational of the claims contained in the 1975 memoire and yet his recent evidence is characterised by a complete inability to substantiate it - quite the reverse. Typical of his written accounts in recent years is this: "*It is inappropriate after 26 years for me to claim with any degree of certainty that any individual behaved in the way described*"¹⁷² It transpired in oral evidence that 027, on his own admission, may not actually have seen any of the shooting in Glenfada Park North – and may not even have been in that location at this time.¹⁷³ If he was behaving as Soldier 119's radio operator should have acted, he should have been behind Soldier 119 and would have entered Glenfada Park North after all shooting had ended. This was 119's recollection.¹⁷⁴ The pathology and eyewitness evidence further gives the lie to 027's claim that those who were shot in Glenfada Park North had their hands in the air.¹⁷⁵
- 2G-163 The claim made in 1975 that Major Loden assaulted a civilian detainee on Bloody Sunday needs now to be seen in the light of 027's surprising

¹⁷¹ Draft book of 1998/1999 at B1565.311, verified in oral evidence at Day 249/49/1

¹⁷² B1565.373, paragraph 5 Statement to Geoffrey Bindman

¹⁷³ Day 246/85/4 and Day 249/136/20

¹⁷⁴ See Chapter 9

¹⁷⁵ Day 249/125/3

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admission in oral evidence that it may suffer from exaggeration¹⁷⁶ We have submitted that 027 took an incident that he probably had not seen himself, in which Major Loden quite properly became involved in an individual's arrest, and spun it into an allegation of misconduct by his company commander.

2G-164 027 also made allegations against his commanding officer. Lieutenant Colonel Wilford and Sergeant Major 202 were said to have acknowledged, at an early stage after Bloody Sunday's main action, that there was a problem with Soldiers F and G. Colonel Wilford is alleged to have said that they should be sent off to the SAS.¹⁷⁷ In our submission this is an inherently unlikely account, which had not been made in the 1975 memoire because it had not been invented by then.

2G-165 The claim that dum dum bullets were passed around his pig prior to the deployment into the Bogside was made by 027 in his Eversheds statement.¹⁷⁸ We have submitted this allegation is complete fabrication. 027 failed to mention it in his 1975 memoire, where he was otherwise prepared to detail the presence and use of dum dum rounds on Bloody Sunday. By the time he came to give oral evidence, he claimed to be able to remember only a single such round being circulated, he did not know why it was being passed round, he did not recall any conversation about it and he did not know to whom it belonged.¹⁷⁹

2G-166 027's second allegation from 1975 involving INQ0635 was that he fired a large number of dum dum rounds into the crowd on Bloody Sunday and that several of his colleagues acted in a similar way. This claim has effectively been withdrawn. 027 volunteered to Eversheds that he could

¹⁷⁶ Day 249/55/22

¹⁷⁷ BSI statement, B1565.046, paragraph 124

¹⁷⁸ B1565.037, paragraphs 71-72

¹⁷⁹ Day 246/36/16.

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not have known that at the time¹⁸⁰ and added to Christopher Clarke QC in oral evidence that he also could not now say that he had been given the information by others.¹⁸¹

2G-167 Ammunition returns were not fabricated, contrary to another claim made by 027 in 1975. This allegation is undermined by the account he subsequently gave in his draft book. He suggested there that his colleagues became concerned about the number of rounds fired only when they were actually making their returns to their sergeant – not before – and then in relation to Soldier H only¹⁸² The draft book contains no allegation that returns were fabricated and 027's oral evidence was that he had no "detailed" recollection of anybody concealing the use of rounds¹⁸³

2G-168 Other allegations and matters raised by 027 do not directly affect our clients but are generally relevant to the issue of 027's credit.

2G-169 027's claims in relation to his evidence to the Widgery Inquiry provide an excellent example of his propensity to distort and exaggerate an incident for dramatic effect. This became apparent when 027 accepted that the original account he gave to Widgery lawyers, the one he claimed had been destroyed and replaced, was "watered down"¹⁸⁴, "*an attempt to justify the soldiers' actions...without being specific about connecting particular individuals with incidents*"¹⁸⁵ and avoided "*anything which would reflect badly on the Army*"¹⁸⁶ In other words, it was an account that there could have been no reason to suppress.

¹⁸⁰ B1565.057, paragraph 177.15

¹⁸¹ Day 247/7/8

¹⁸² B1565.313

¹⁸³ Day 247/8/5

¹⁸⁴ B1565.053, paragraph 164

¹⁸⁵ B1565.053, paragraph 163

¹⁸⁶ Day 247/28/19

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2G-170 027 was right to claim that two statements had been prepared in his name whilst he was at Coleraine. What he had not realised was that both survived. Far from withdrawing his evidence to the RMP, the signed "Supplementary Statement"¹⁸⁷ clarified and augmented it. He was then asked to sign a composite "SA" statement that simply brought together the RMP and supplementary statements, which he did with no complaint¹⁸⁸ There had been no impropriety on the part of the Widgery lawyers.

2G-171 The many inconsistencies in 027's evidence about his dealings with Sean Patrick McShane further undermine his credibility. He maintained that the 1975 memoire was never meant for dissemination¹⁸⁹ yet he forwarded precisely that document to McShane. He claimed there was never any agreement between the two of them to collaborate in the production of a book¹⁹⁰, yet a letter of his to McShane has survived¹⁹¹ and suggests exactly the contrary. 027 claimed in oral evidence that money had not been his motivation for his dealings with McShane, yet the same letter spoke of 027's pleasure to be receiving 25% at an otherwise difficult time for him financially.

2G-172 The Tribunal is left to consider why 027 destroyed the field notebook that contained his contemporaneous record of the events of Bloody Sunday. He has claimed that he did so out of alarm over where press and media interest in his story would go¹⁹² yet he was the one who established contact with the press and who cooperated in various media interviews. He said also that he had destroyed it because he did not wish it to get out of his

¹⁸⁷ B1565.114

¹⁸⁸ Day 249/155/21

¹⁸⁹ B1565.055, paragraph 173

¹⁹⁰ Day 249/81/9

¹⁹¹ M92.9

¹⁹² B1565.059, paragraph 186

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hands¹⁹³, yet on his own account he had just disclosed large parts of it in an extensive interview with Channel 4. He told Lord Saville he destroyed it in a state of generalised apprehension¹⁹⁴ yet he had previously suggested it was the one document that would corroborate his version of events. We have submitted that the real reason for doing away with the notebook was that it contained material inconsistent with 027's 1975 memoire and subsequent accounts.

2G-173 027 has extracted from the Inquiry very substantial sums of money as a pre-condition to his giving evidence.

2G-174 027 is a witness whose evidence is so generally tainted that it would be unsafe – and unfair – to rely on anything he has said on any subject.

¹⁹³ Day 249/63/16

¹⁹⁴ Day 249/100/18

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CHAPTER 3

THE RELEVANT LAW

CHAPTER 3A - THE RELEVANT LAW

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CHAPTER 3

THE RELEVANT LAW

3A-1 THE TRIBUNAL'S TERMS OF REFERENCE AND THE RELEVANCE OF THE CRIMINAL LAW

3A-1 The terms of reference of this Inquiry are to "inquire into a definite matter of urgent public importance, namely the events on Sunday, 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to the events on that day."

3A-2 This is an inquisitorial Inquiry which is charged with the task of trying to discover the truth about what occurred on Bloody Sunday. In performing that function it will, no doubt, be appropriate for the Tribunal to address questions of responsibility for what it finds occurred where it considers it may fairly do so.

3A-3 Very grave, albeit largely unparticularised, allegations of criminal conduct are made against many of the soldiers we represent. For example, the following submission was made on behalf of the family of James Wray;

The second matter to be weighed in the balance, sir, is the importance of the subject matter of the proceedings, and the Ministry of Defence says in the skeleton argument at page 6 that this is a public Inquiry, not a criminal trial, and that perhaps reveals the ultimate fallacy, the underlying shortcoming in the Ministry's argument, because the tone of that proposition really betrays a fundamental failure to grasp the enormity of the event which is being considered by this Inquiry and the gravity of the burden on this Inquiry. This Inquiry concerns a massacre of innocent civil rights protesters by a highly disciplined unit of the British Army under the eyes of its commanding officer with the Commander Land Forces in close attendance and it was

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committed during the course of a planned operation that was sanctioned at the highest levels of Government, both at Stormont and Westminster.¹

3A-4 While these are not criminal proceedings, many of the issues before the Tribunal necessarily touch on questions of criminal responsibility. This is apparent, for example, from the analysis in Counsel's Report No. 1;

13.9 ... I use the expression "justified" to cover justification both under the general law and under the Yellow Card i.e. the standing instructions to soldiers as to the circumstances in which they could open fire. As to the former, it is not, of course, for the Tribunal to determine any criminal charge. If, however, the Tribunal were to conclude that any particular shot was both aimed and unjustified under the general law certain consequences would, in all probability, follow. Having regard to the lethal character of a 7.62mm bullet fired from an SLR there seems little room for doubt that anyone, who fired an aimed shot from such a weapon at someone, intended to cause either death or serious injury; and, in the light of the decision of the House of Lords in R. v. Clegg [1995] 1 A.C. 482, unless firing with such intent was justified (being in self defence or in defence of another person or in effecting or assisting in the lawful arrest of offenders or suspected offenders), then, absent any other defence, the firer of any such shots which killed somebody would be guilty of murder; and the firer of any such shot which seriously wounded someone would be guilty of wounding or causing grievous bodily harm with intent to do so.

3A-5 Counsel to the Inquiry are correct in their view that it is not for the Tribunal to determine any criminal charge. This Tribunal has no power to do so. It is no part of the function of a public inquiry to determine questions of the guilt or innocence of individuals on criminal charges.

3A-6 However, there will clearly be circumstances in which it will be appropriate for the Tribunal to come to a conclusion as to whether conduct

¹ Mr MacDonald, T/S 30th September 1999, p.52/2-9. See also the submissions of Mr Harvey: Days 44:28, 44:133, 46:57, 47:3, 47:44, 47:105, 47:112, and 47:113; Ms MacDermott Day 49:5-6; and Lord Gifford Day 49:23. 33 and 134.

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was or was not justified. That is an important part of its function. Before it could properly criticise conduct it would have to be sufficiently confident of its factual findings. In the case of the subject matter of the present Inquiry, any conclusion as to whether conduct was or was not justified would have to be informed by the application of principles of the criminal law. Moreover, counsel to the Inquiry in the passage quoted above are correct, in our submission, to point out that certain consequences may, with varying degrees of likelihood, follow from a finding that conduct was not justified. It will be our submission that it is for precisely this reason that the Tribunal would have to be confident to the highest degree of the factual basis for its criticism of conduct as unjustified.

3A-7

Furthermore, it would not be appropriate for this or any similar Inquiry to determine the guilt or innocence of any individual on a criminal charge because, there having been no criminal trial with the safeguards that that entails, it would not be fair to do so. The procedure followed before a public inquiry differs fundamentally from that of a criminal trial. This reflects their different functions and the differences in their outcomes. In the proceedings before this Inquiry individual soldiers have not enjoyed many of the protections considered essential in a criminal trial. We refer to the following matters by way of example.

- (1) They have not been given advance notice of allegations against them.
- (2) They have been required to give evidence and have done so as witnesses of the Inquiry.
- (3) They have not enjoyed the protection of the rules of evidence
- (4) They have been denied their right to remain silent.
- (5) They have not been afforded any opportunity to call evidence in their defence.

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- (6) They have been denied access to evidence which might have assisted them in resisting the allegations made against them.

3A-8 To the extent that this Tribunal may be required to apply principles of criminal law, these are to be found in the common law and statute law in force in Northern Ireland in January 1972. Subsequent judgments of the courts of Northern Ireland and the House of Lords on appeals from Northern Ireland are binding on this Tribunal to the extent that they are declaratory of the common law and the meaning and effect of legislation in force at the relevant time. Decisions of the courts of England and Wales and other common law jurisdictions will be of considerable persuasive authority, as they are before the courts of Northern Ireland.

3A-II THE TRIBUNAL'S APPROACH TO EVIDENCE

THE BURDEN OF PROOF

3A-9 Even in the case of inquisitorial proceedings, such as those before the present Inquiry, there is a burden on the Tribunal when making an allegation of wrongdoing to make that allegation good. Moreover, this Inquiry has a clear adversarial aspect. Interested parties have been permitted to make allegations against other interested parties. As a result, some of the soldiers we represent face very serious allegations made by other interested parties. Here again it is for those making such allegations to make them good.

3A-10 The Inquiry should approach such allegations, whether made by the Inquiry, interested parties or witnesses on the basis that it is for those who allege wrongdoing to prove their allegations to the required standard. In particular, in the case of allegations of unlawful killing there is a burden on those making the allegations to prove to the required standard that the conduct in question was not justified, for example on grounds of self-defence, defence of another, the prevention of crime or effecting a lawful arrest.

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THE STANDARD OF PROOF

3A-11 In our submission, while it may be appropriate for the Tribunal to arrive at conclusions in certain areas by applying the civil test of balance of probabilities, any allegation of serious misconduct must be proved to the criminal standard. In this Inquiry serious allegations implying criminal conduct are made. This alone necessitates the application of the criminal standard of proof in the consideration of such issues.

3A-12 Furthermore, as has often been said, it is the function of this Inquiry to try to discover the truth about what occurred on Bloody Sunday. In this regard the function of this Inquiry differs fundamentally from that of a court in litigation.

In a contest purely between one litigant and another, such as the present, the task of the court is to do, and be seen to be doing, justice between the parties - a duty reflected by the word "fairly" in the rule. There is no higher or additional duty to ascertain some independent truth. It often happens, from the imperfection of evidence, or the withholding of it, sometimes by the party in whose favour it would tell if presented, that an adjudication has to be made which is not, and is known not to be, the whole truth of the matter: yet if the decision has been in accordance with the available evidence and with the law, justice will have been fairly done.²

3A-13 This Inquiry is subject to a higher duty. In reporting its findings to Parliament the Inquiry will have to be confident to a high degree of the accuracy of those findings, in particular if it makes adverse findings of serious wrongdoing. Having regard to the importance of the subject matter of the Inquiry, the duration of its investigative process, and the nature of the allegations made, it is unthinkable that the Inquiry could pronounce on the very grave allegations made against individuals unless the Tribunal were sure. If, after such a prolonged and intense inquiry into the events of

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Bloody Sunday, the members of the Tribunal were able to say no more than that they think it more likely than not that the conduct of a given soldier was unjustified but they cannot be sure, such a conclusion would be pointless. Moreover, such a finding would be so immensely damaging to the soldier concerned as to be unjust.

3A-14 There is a further reason why it would be unfair to apply any standard other than the criminal standard in considering allegations of wrongdoing. The individuals facing such allegations have not been afforded the safeguards which protect a Defendant in a criminal trial, or indeed in civil proceedings.³ In these circumstances it is all the more important that the criminal standard is satisfied.

3A-15 In any event, even if the Tribunal were to conclude that the balance of probabilities was an appropriate standard to apply, it would be compelled in the fair application of that standard to adopt an approach which would, in its result, be virtually indistinguishable from the application of the criminal standard. The more serious the allegation, the more cogent the evidence which is required to overcome the unlikelihood of what is alleged and thus to prove it.⁴ In *Re H (Minors)*⁵ Lord Nicholls explained the matter as follows;

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes

² *Air Canada v. Secretary of State for Trade* [1983] AC 394 per Lord Wilberforce at p.438.

³ See, for example, the matters mentioned in paragraph 3A-7, above.

⁴ *Re Dellow's Will Trusts* [1964] 1 W.L.R. 455; *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247.

⁵ [1996] A.C. 563.

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that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

- 3A-16 On a strict analysis, this does not mean that where a serious allegation is in issue the standard of proof required is higher. However, it does mean that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungood-Thomas J. expressed this neatly in *In re Dellow's Will Trusts* [1964] 1 W.L.R. 451, 455:

"The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."

However, as Lord Nicholls observed in *In Re H (Minors)* the result is in reality much the same as the imposition of a higher standard of proof.⁶ The House of Lords has now acknowledged this reality in *R. (McCann) v. Crown Court at Manchester*⁷.

- 3A-17 This substantially accords with the approach adopted in authorities such as the well known judgment of Morris L.J. in *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247, 266. This approach also provides a means by

⁶ *In Re H (Minors)* [1996] A.C. 563 per Lord Nicholls of Birkenhead at pp. 586. See, to similar effect, *R. (McCann) v. Crown Court at Manchester* [2003] 1 AC 787 per Lord Steyn at p. 812.

⁷ [2003] 1 AC 787, considered below.

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which the balance of probability standard can "accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters."⁸

3A-18 In approaching the evidence the Tribunal would also be required to be mindful of the consequences which would follow if any allegation of serious wrongdoing were upheld. In *Gough v. Chief Constable of the Derbyshire Constabulary*⁹ the Court of Appeal considered what standard of proof applied when the court was asked to make a football banning order under section 14B, Football Spectators Act 1989. Lord Phillips MR, delivering the judgment of the Court of Appeal, rejected the submission that the proceedings were criminal in character. They neither required proof that a criminal offence had been committed, nor involved the imposition of a penalty. The proceedings were civil in character. However, he continued;

*"90 It does not follow from this that a mere balance of probabilities suffices to justify the making of an order. Banning orders under section 14(B) fall into the same category as antisocial behaviour orders and sex offender orders. While made in civil proceedings they impose serious restraints on freedoms that the citizen normally enjoys. While technically the civil standard of proof applies, that standard is flexible and must reflect the consequences that will follow if the case for a banning order is made out. This should lead the justices to apply an exacting standard of proof that will, in practice, be hard to distinguish from the criminal standard: see B v Chief Constable of Avon and Somerset Constabulary [2001] 1 WLR 340, 354 and R (McCann) v Crown Court at Manchester [2001] 1 WLR 1084, 1102."*¹⁰

⁸ *In Re H (Minors)* [1996] A.C. 563 per Lord Nicholls of Birkenhead at pp. 586-7.

⁹ [2002] QB 1213.

¹⁰ [2002] QB 1213 at pp.1242-3.

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3A-19 Similarly, in *R. (McCann) v. Crown Court at Manchester*¹¹ the House of Lords held that although applications for anti-social behaviour orders under section 1, Crime and Disorder Act 1998 were civil in domestic law and although they could not be classified as criminal for the purposes of Article 6 ECHR, given the seriousness of the matter involved the court must be satisfied to the criminal standard of proof that a defendant had acted in an anti-social manner before making such an order.

3A-20 Lord Steyn observed;

Having concluded that the relevant proceedings are civil, in principle it follows that the standard of proof ordinarily applicable in civil proceedings, namely the balance of probabilities, should apply. However, I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary: In re H (Minors)(Sexual Abuse: Standard of Proof) [1996] AC 563, 586D-H, per Lord Nicholls of Birkenhead. For essentially practical reasons, the Recorder of Manchester decided to apply the criminal standard. The Court of Appeal said that would usually be the right course to adopt. Lord Bingham of Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of these views. But in my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 apply the criminal standard. If the House takes this view it will be sufficient for the magistrates, when applying section 1(1)(a) to be sure that the defendant has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself. The inquiry under section 1(1)(b), namely that such an order is necessary to protect persons from further anti-social acts by him, does not involve a standard of proof: it is an exercise of judgment or evaluation. This approach should facilitate correct decision-making and should ensure consistency and predictability in this corner of the law. In coming to this conclusion I bear in mind that the use of

¹¹ [2003] 1 AC 787

*hearsay evidence will often be of crucial importance. For my part, hearsay evidence depending on its logical probativeness is quite capable of satisfying the requirements of section 1(1).*¹²

3A-21 Lord Hope of Craighead observed;

81 As Lord Phillips of Worth Matravers MR observed in the Court of Appeal in the McCann case [2001] 1 WLR 1084, 1101, para 65, anti-social behaviour orders have serious consequences. It was with this point in mind that, at p 1102, para 67, he commended the course which the Recorder of Manchester followed in the Crown Court when he said that, without intending to lay down any form of precedent, the court had decided to apply the standard of being satisfied so that they were sure that the statutory conditions were fulfilled before they would consider the making of an order in the case of each defendant. I too would endorse this approach, for the following reasons.

82 Mr Crow for the Secretary of State said that his preferred position was that the standard to be applied in these proceedings should be the civil standard. His submission, as it was put in his written case, was that although the civil standard was a single, inflexible test, the inherent probability or improbability of an event was a matter to be taken into account when the evidence was being assessed. He maintained that this view was consistent with the position for which he contended, that these were civil proceedings which should be decided according to the civil evidence rules. But it is not an invariable rule that the lower standard of proof must be applied in civil proceedings. I think that there are good reasons, in the interests of fairness, for applying the higher standard when allegations are made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made.

83 This, as I have already mentioned, was the view which the Court of Session took in Constanda v M 1997 SC 217 when it decided that proof to the criminal standard was required of allegations that a child had engaged in criminal conduct although the ground of referral to a children's hearing was not that he had committed an offence but that

¹² [2003] 1 AC 787 at p. 812.

*he was exposed to moral danger. There is now a substantial body of opinion that, if the case for an order such as a banning order or a sex offender order is to be made out, account should be taken of the seriousness of the matters to be proved and the implications of proving them. It has also been recognised that if this is done the civil standard of proof will for all practical purposes be indistinguishable from the criminal standard: see **B v Chief Constable of Avon and Somerset Constabulary** [2001] 1 WLR 340, 354, para 31, per Lord Bingham of Cornhill CJ; **Gough v Chief Constable of the Derbyshire Constabulary** [2002] 3 WLR 289, 313, para 90, per Lord Phillips of Worth Matravers MR. As Mr Crow pointed out, the condition in section 1(1)(b) of the Crime and Disorder Act 1998 that a prohibition order is necessary to protect persons in the local government area from further anti-social acts raises a question which is a matter for evaluation and assessment. But the condition in section 1(1)(a) that the defendant has acted in an anti-social manner raises serious questions of fact, and the implications for him of proving that he has acted in this way are also serious. I would hold that the standard of proof that ought to be applied in these cases to allegations about the defendant's conduct is the criminal standard.*¹³

3A-22 In the present proceedings, there is no question of the Tribunal applying any sanction or imposing any restriction on the freedom of any person. Nevertheless, the findings of the Tribunal may well be highly significant. As Lord Denning M.R. observed in *Re Pergamon Press*:

*But this should not lead us to minimise the significance of their task. They have to make a report which may have wide repercussions. They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers. Their report may lead to judicial proceedings. It may expose persons to criminal prosecutions or to civil actions.*¹⁴

¹³ [2003] 1 AC 787 at pp. 825-6.

¹⁴ [1971] Ch 388 at p. 399.

3A-23 The consequences of a finding by this Tribunal of serious wrongdoing could not be more grave. A finding by this Tribunal that a soldier had by his unjustified act killed one of the deceased on Bloody Sunday would be likely to bring with it all the opprobrium and ruin which a finding of guilt of a grave criminal offence would bring. Employing the words of Lord Hope of Craighead, cited above, this Inquiry provides an outstanding example of a situation in which there are good reasons, in the interests of fairness, for applying the higher standard when allegations are made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made¹⁵.

3A-24 We draw particular attention to the approach adopted by Sir William Macpherson in the Stephen Lawrence Inquiry. That was "an inquiry into every aspect of the policing of the murder [of Stephen Lawrence]".¹⁶ One area of the inquiry concerned allegations of collusion or corruption by police officers. The Chairman was in no doubt that in considering such allegations the appropriate standard was the criminal standard and that any other approach would be "wholly unfair".

Furthermore in this area of the Inquiry it is necessary to indicate that the standard of proof to be applied must be the criminal standard. That is to say we can only reach a conclusion adverse to the MPS or individual officers if we are satisfied beyond reasonable doubt that collusion or corruption is established. In other areas of the case we are entitled to reach conclusions upon a balance of probability; and we are entitled also to voice suspicions should they be found validly to exist. The standard of proof is not so rigid that we cannot make findings or indicate that a situation may exist otherwise than by applying the well known principles which govern litigation. But where such a serious allegation as collusion with criminals or corruption is made it would be wholly unfair to reach any adverse

¹⁵ [2003] 1 AC 787 at para. 82.

¹⁶ Report of the Macpherson Inquiry, para. 7.40.

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conclusion without being sure that such a conclusion was justified as a matter of evidence and proper inference.¹⁷

3A-25 A similar approach had been employed by Lord Justice Scarman in 1972 in his Report into certain shootings and riots in Northern Ireland. The Report states:

It will be observed that on some, but not all, of the matters referred to us we have made findings. We would emphasise that we have considered ourselves entitled to make findings only in those instances in which we have felt sure that we know the truth. We have been at pains to indicate those matters on which we have made positive findings.¹⁸

3A-26 Accordingly it is submitted that, in addressing the allegations which lie at the heart of this Inquiry, the Tribunal should apply an exacting standard of proof which is or is indistinguishable from the criminal standard of proof beyond a reasonable doubt. If the Tribunal is to make an adverse finding of serious misconduct, it must be sure.

CIRCUMSTANTIAL EVIDENCE.

3A-27 In circumstances where there exists no direct evidence of a matter, it may nevertheless be permissible to draw an inference from the existing evidence which is accepted as reliable, i.e. to come to a conclusion which may logically be drawn from the primary facts. However, if the primary facts cannot be established, one cannot begin to draw inferences.

3A-28 Inference is to be distinguished from conjecture or speculation, i.e. guessing or making up theories without reliable evidence to support them, neither of which is permissible. Thus in *Caswell v. Powell Duffryn Associated Collieries* [1940] AC 152 Lord Wright observed:

¹⁷ Report of the Macpherson Inquiry, para. 8.5.

¹⁸ At paragraph 8.

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*My Lords, the precise manner in which the accident occurred cannot be ascertained as the unfortunate young man was alone when he was killed. The Court therefore is left to inference or circumstantial evidence. Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.*¹⁹

- 3A-29 In considering whether such an inference may be drawn, it is essential to consider all the relevant surrounding evidence. In *DPP v. Kilbourne* [1973] AC 729 Lord Simon of Glaisdale observed:

*Circumstantial evidence is evidence of facts from which, taken with all the other evidence, a reasonable inference is a fact directly in issue. It works by cumulatively, in geometrical progression, eliminating other possibilities.*²⁰

- 3A-30 Before a fact finding body could properly make a finding implying criminal misconduct it would have to be able reasonably to dismiss the possibility of any alternative version of events which did not involve the individual's guilt and it would have to be sure that any such alternative explanation was untrue. Where the allegation is of criminal wrongdoing, the circumstances must exclude any reasonable hypothesis consistent with innocence. In *Chamberlain v. R.* (1984) 51 ALR 225 Gibbs C.J. and Mason J. in the High Court of Australia expressed the matter in the following terms:

It follows from what we have said that the jury should decide whether they accept the evidence of a particular fact, not by considering the evidence directly relating to

¹⁹ At pp. 169-70.

²⁰ At p. 758 A-B.

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*that fact in isolation, but in the light of the whole evidence, and that they can draw an inference of guilt from a combination of facts, none of which viewed alone would support that inference. Nevertheless the jury cannot view a fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond reasonable doubt. When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in a civil case the circumstances must raise a more probable inference in favour of what is alleged, and in a criminal case the circumstances must exclude any reasonable hypothesis consistent with innocence (see *Luxton v Vines* (1952) 85 CLR 352 at 358; and ; *Barca v R* (1975) 7 ALR 78; 133 CLR 82 at 104). The statement by Lord Wright in ; *Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152 at 169, that "there can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish" is obviously as true of criminal as of civil cases. The process of reasoning in a case of circumstantial evidence gives rise to two chances of error: "first from the chances of error in each fact or consideration forming the steps and second from the chance of error in reasoning to the conclusion": ; *Morrison v Jenkins* (1949) 80 CLR 626 at 644. It seems to us an inescapable consequence that in a criminal case the circumstances from which the inference should be drawn must be established beyond reasonable doubt. We agree with the statement in ; *R v Van Beelen*, supra (at 379), that it is "an obvious proposition in logic, that you cannot be satisfied beyond reasonable doubt of the truth of an inference drawn from facts about the existence of which you are in doubt".*

3A-31 One aspect of the passage cited above was explained by the High Court of Australia in *Shepherd v. The Queen* (1990) 170 CLR 573. Dawson J., with whom Toohy J. and Gaudron J. concurred, and with whom Mason C.J. concurred in a separate judgment, observed:

"It is, I think, quite plain that, in saying that a "fact as a basis for an inference of guilt" must be proved beyond reasonable doubt, their Honours are referring to an intermediate fact which is a necessary basis for the ultimate inference. They must be doing so, for it is otherwise not possible to say, as they do previously, that the jury can draw an inference of guilt from a combination of facts, none of which viewed alone would support the inference. And of course it is quite correct to say that an intermediate

*fact which is an indispensable step upon the way to an inference of guilt, whether it be a fact derived from a single piece of evidence or a conclusion of fact drawn from a body of evidence, must be proved beyond reasonable doubt if the ultimate inference is to be the only reasonable hypothesis.*²¹

He also observed:

*It will generally be sufficient to tell the jury that the guilt of the accused must be established beyond reasonable doubt and, where it is helpful to do so, to tell them that they must entertain such a doubt where any other inference consistent with innocence is reasonably open on the evidence.*²²

3A-32 Different formulations express the same essential notion. Unless the only rational hypothesis²³ is one of criminal misconduct or, in other words, a possible innocent explanation can be "wholly rejected and excluded"²⁴, the party making an allegation of criminal wrongdoing will have failed to prove to the required standard his case based on adverse inference

3A-III THE LAW OF SELF DEFENCE, SECTION 3, CRIMINAL LAW (NORTHERN IRELAND) ACT 1967 AND THE YELLOW CARD

SELF -DEFENCE AND DEFENCE OF ANOTHER.

3A-33 The principles governing self-defence and defence of another are rules of the common law. The principles set out in the following paragraphs in relation to self-defence apply *mutatis mutandis* in the case of defence of another.²⁵

3A-34 The great majority of the authorities referred to in this section are criminal cases but reference is also made to civil authorities on self-defence.

²¹ At paragraph 8.

²² At paragraph 5.

²³ *R. v. Onufrejczyk* [1955] 1 All ER 247.

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3A-35 In a criminal prosecution, once the issue is raised, it is for the prosecution to prove to the criminal standard that a use of force resulting in death or injury was unlawful i.e. that the Defendant did not act in lawful defence of himself or another. Similarly, in the present proceedings it is for those making allegations to prove that the conduct in question was not justified on grounds of self-defence or defence of another. The standard of proof applicable in the present proceedings has been considered at paragraphs 3A-11 -3A-26, above.

3A-36 A person who is attacked or believes that he is about to be attacked is entitled to use such force as is reasonably necessary to defend himself. However, a person only acts in lawful self-defence if in all the circumstances he believes that it is necessary for him to defend himself and if the amount of force which he uses in doing so is reasonable.

3A-37 Force used in self-defence is unreasonable and unlawful if it is out of all proportion to the nature of the attack, or is in excess of what is really required of the defendant to defend himself. When deciding whether or not the force used by an individual was reasonable it is necessary to have regard to all the circumstances of the case including the nature of the attack, the number of attackers and whether the attackers were armed. However, it is particularly important to bear in mind the following observation of Lord Oaksey in *Turner v. MGM Pictures Ltd.*:

*If you are attacked with a deadly weapon you can defend yourself with a deadly weapon or with any other weapon which may protect your life. The law does not concern itself with niceties in such matters. If you are attacked by a prize-fighter you are not bound to adhere to the Queensbury rules in your defence.*²⁶

²⁴ *McGreevy v. DPP* [1973] 1 WLR 276.

²⁵ See generally, *R v Dufty* 50 Cr App R 68 and *R v Chisam* 47 Cr App R 130.

²⁶ [1950] 1 All E R 449 at p. 471.

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3A-38 Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive. It is simply a factor to be taken into account in deciding whether it was necessary for the person attacked to use force and whether the force used was reasonable. It is not necessary that he should demonstrate by his actions that he does not want to fight.²⁷

3A-39 However, an individual faced with an attack cannot be expected to weigh with precision the exact degree of force which would be reasonable in the circumstances.

If there has been an attack so that defence is reasonably necessary it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken. A jury will be told that the defence of self-defence, where the evidence makes its raising possible, will only fail if the prosecution show beyond doubt that what the accused did was not by way of self-defence."²⁸

As Holmes J. observed in the United States Supreme Court, "detached reflection cannot be demanded in the presence of an uplifted knife."²⁹ This observation is all the more apposite in circumstances where individuals are confronted or believe they are confronted by highly skilled terrorists who have provided abundant evidence of their murderous capacity and intent. In this regard we draw particular attention to the admitted policy of the Official IRA to shoot to kill any British soldier seen on the streets of Derry.

²⁷ *R v Bird* 81 Cr App R 110.

²⁸ *Palmer v. The Queen* [1971] AC 814, per Lord Morris of Borth y Gest at p. 832.

²⁹ *Brown v. United States* (1921) 256 U.S. 335.

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3A-40 In Northern Ireland, Kelly LJ, sitting as a judge of the Crown Court, observed in *R. v. Fisher and Wright*³⁰:

In assessing the credibility of the elements of the defences of self-defence and the prevention of crime, the court should endeavour to put itself in the situation of the accused at the material time including the length of time he had for decision and resist reaching conclusions on hindsight.

3A-41 It is now clearly established that an individual who has or may have made a mistake as to the relevant facts is entitled to be judged by the facts as he honestly believed them to be. Moreover, this is so even if his mistaken belief was unreasonably held. Thus in *Gladstone Williams*³¹, where the Defendant's defence to a charge of an assault occasioning actual bodily harm was that he was preventing the complainant from attacking a third party, the Criminal Division of the Court of Appeal held that it had been a misdirection to instruct the jury that the defendant had a defence only if he believed on reasonable grounds that the complainant was acting unlawfully. Referring to *Kimber*,³² a case of indecent assault, the Court stated:

The reasonableness or unreasonableness of the defendant's belief is material to the question of whether the belief was held by the defendant at all. If the belief was in fact held, its unreasonableness, so far as guilt or innocence is concerned, is neither here nor there. It is irrelevant. Were it otherwise, the defendant would be convicted because he was negligent in failing to recognise that the victim was not consenting or that a crime was not being committed and so on. In other words the jury should have been directed first of all that the prosecution have the burden or duty of proving the unlawfulness of the defendant's actions: secondly, if the defendant may have been labouring under

³⁰ 10th February 1995.

³¹ (1983) 78 Cr App R 276, Lord Lane LCJ, Skinner and McCowan JJ.

³² [1983] 1 WLR 1118; (1983) 77 Cr App R 225. *Kimber* was in turn an application of the principle stated in *Morgan* [1976] AC 182, see Lawton LJ in *Kimber* at p. 1122 or p. 229.

a mistake as to the facts, he must be judged according to his mistaken view of the facts; thirdly, that is so whether the mistake was, on an objective view, a reasonable mistake or not.

In a case of self-defence, where self-defence or the prevention of crime is concerned, if the jury came to the conclusion that the defendant believed, or may have believed, that he was being attacked or that a crime was being committed and that force was necessary to protect himself or to prevent the crime, then the prosecution have not proved their case. If however the defendant's alleged belief was mistaken and if the mistake was an unreasonable one, that may be a powerful reason for coming to the conclusion that the belief was not honestly held and should be rejected.

Even if the jury come to the conclusion that the mistake was an unreasonable one, if the defendant may genuinely have been labouring under it, he is entitled to rely upon it.³³

3A-42 This authority has been repeatedly applied by the Court of Appeal³⁴ and by the Privy Council³⁵. In *Beckford v. R* Lord Griffiths, delivering the judgment of the Privy Council, accepted that prior to the decision of the House of Lords in *DPP v. Morgan*³⁶ the whole weight of authority supported the view that it was an essential element of self-defence not only that the accused believed that he was being attacked or in imminent danger of being attacked but also that such belief was based on reasonable grounds.³⁷ The question was therefore whether the Court of Appeal in *Gladstone Williams* was right to depart from the law as declared by his predecessors in the light of the decision of the House of Lords in *Morgan*. He considered that it was.

³³ At p; 281.

³⁴ *Jackson* [1985] RTR 257; *Asbury* [1986] Crim LR 258, CA; *Fisher* [1987] Crim LR 334, CA.

³⁵ *Beckford v. R.* [1988] AC 130. The position would be different in a civil claim for negligence. See e.g. Carswell CJ in *Fitzsimmons v. The Chief Constable of the RUC*, 14th October 1994.

³⁶ [1976] AC 182.

³⁷ See e.g. *Fennell* (1970) 54 Cr. App. R. 451 per Widgery LJ.

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The common law recognises that there are many circumstances in which one person may inflict violence upon another without committing a crime, as for instance, in sporting contests, surgical operations or in the most extreme example judicial execution. The common law has always recognised as one of these circumstances the right of a person to protect himself from attack and to act in the defence of others and if necessary to inflict violence on another in so doing. If no more force is used than is reasonable to repel the attack such force is not unlawful and no crime is committed. Furthermore a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.

It is because it is an essential element of all crimes of violence that the violence or the threat of violence should be unlawful that self-defence, if raised as an issue in a criminal trial, must be disproved by the prosecution. If the prosecution fail to do so that accused is entitled to be acquitted because the prosecution will have failed to prove an essential element of the crime namely that the violence used by the accused was unlawful.

If then a genuine belief, albeit without reasonable grounds, is a defence to rape because it negatives the necessary intention, so also must a genuine belief in facts which if true would justify self-defence be a defence to a crime of personal violence because the belief negatives the intent to act unlawfully.³⁸

The Privy Council therefore expressly approved the passage from the judgment of the Court of Appeal in *Gladstone Williams* cited above.³⁹

3A-43 These developments have now received the approval of the House of Lords in *B(A Minor) v. DPP*.⁴⁰ Lord Nicholls, with whom Lord Irvine L.C. and Lord Mackay concurred, expressed the position as follows:

³⁸ [1988] AC at p. 144.

³⁹ At pp. 144-5. In *Blackburn v. Bowering* [1994] 1 W.L.R. 1324, the Court of Appeal, presided over by Sir Thomas Bingham M.R., applied the same approach to the exercise by the court of its contempt jurisdiction in respect of an alleged assault on officers of the court while in the execution of their duty.

*The existence of the presumption [that a mental element is an essential ingredient of an offence unless Parliament has indicated a contrary intention either expressly or by necessary implication] is beyond dispute, but in one respect the traditional formulation of the presumption calls for re-examination. This respect concerns the position of a defendant who acted under a mistaken view of the facts. In this regard, the presumption is expressed traditionally to the effect that an honest mistake by a defendant does not avail him, unless the mistake was made on reasonable grounds. Thus, in *Reg v. Tolson* (1889) 23 Q.B.D. 168, 181, Cave J. observed:*

"At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim 'actus non facit reum, nisi mens sit rea.' Honest and reasonable mistake stands on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy ... So far as I am aware it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication."

*The other judges in that case expressed themselves to a similar effect. In *Bank of New South Wales v. Piper* [1897] A.C. 383, 389-390, the Privy Council likewise espoused the "reasonable belief" approach:*

"the absence of mens rea really consists in an honest and reasonable belief entertained by the accused of facts which, if true, would make the act charged against him innocent."

*In *Sweet v. Parsley* Lord Diplock referred, at p. 163, to a general principle of construction of statutes creating criminal offences, in similar terms:*

"a general principle of construction of any enactment, which creates a criminal offence, [is] that, even where the words used to describe the prohibited conduct would not in any other context connote the necessity for any particular mental element, they are nevertheless to be read as subject

⁴⁰ [2002] 2 AC 428.

to the implication that a necessary element in the offence is the absence of a belief, held honestly and upon reasonable grounds, in the existence of facts which, if true, would make the act innocent."

*The "reasonable belief" school of thought held unchallenged sway for many years. But over the last quarter of a century there have been several important cases where a defence of honest but mistaken belief was raised. In deciding these cases the courts have placed new, or renewed, emphasis on the subjective nature of the mental element in criminal offences. The courts have rejected the reasonable belief approach and preferred the honest belief approach. When mens rea is ousted by a mistaken belief, it is as well ousted by an unreasonable belief as by a reasonable belief. In the pithy phrase of Lawton L.J. in *Reg. v. Kimber* [1983] 1 W.L.R. 1118, 1122, it is the defendant's belief, not the grounds on which it is based, which goes to negative the intent. This approach is well encapsulated in a passage in the judgment of Lord Lane C.J. in *Reg. v. Williams (Gladstone)* [1987] 3 All E.R. 411, 415:*

"The reasonableness or unreasonableness of the defendant's belief is material to the question of whether the belief was held by the defendant at all. If the belief was in fact held, its unreasonableness, so far as guilt or innocence is concerned, is neither here nor there. It is irrelevant. Were it otherwise, the defendant would be convicted because he was negligent in failing to recognise that the victim was not consenting ... and so on."

Considered as a matter of principle, the honest belief approach must be preferable. By definition the mental element in a crime is concerned with a subjective state of mind, such as intent or belief. To the extent that an overriding objective limit ("on reasonable grounds") is introduced, the subjective element is displaced. To that extent a person who lacks the necessary intent or belief may nevertheless commit the offence. When that occurs the defendant's "fault" lies exclusively in falling short of an objective standard. His crime lies in his negligence. A statute may so provide expressly or by necessary implication. But this can have no place in a common law principle, of general application, which is concerned with the need for a mental element as an essential ingredient of a criminal offence.

*The traditional formulation of the common law presumption, exemplified in Lord Diplock's famous exposition in *Sweet v. Parsley*, cited above, is out of step*

*with this recent line of authority, in so far as it envisages that a mistaken belief must be based on reasonable grounds. This seems to be a relic from the days before a defendant in a criminal case could give evidence in his own defence. It is not surprising that in those times juries judged a defendant's state of mind by the conduct to be expected of a reasonable person.*⁴¹

3A-44 Similarly, Lord Steyn, with whom Lord Hutton concurred on this issue, rejected the possibility of holding that the *mens rea* of the statutory offence there under consideration was made out if the Defendant's mistaken belief were unreasonable:

*Counsel for the Crown did not argue, in the alternative, that the belief must be held on reasonable grounds. Nevertheless, I initially regarded such a requirement as an acceptable solution. A basis for this view would be Lord Diplock's observation in **Sweet v. Parsley** [1970] A.C. 132, 163. This view is however contrary to the way in which our criminal law has subsequently developed. In **Reg. v. Morgan** [1976] A.C. 182 the House of Lords held by a majority of three to two that when a defendant had sexual intercourse with a woman without her consent, genuinely believing that she did consent, he was not guilty of rape, even if he had no reasonable grounds for his belief. The importance of this decision for the coherent development of English law was not immediately appreciated. The next stage in the development was the decision of the Court of Appeal in **Reg. v. Williams (Gladstone)** [1987] 3 All E.R. 411. The charge was assault. The defendant argued that he used force in the honest belief that he was protecting somebody else from an unlawful assault. Holding that the jury had been materially misdirected, the Court of Appeal, applying the logic of **Morgan's** case, held that if the defendant believed, reasonably or not, in the existence of facts which would justify the force used in self-defence, he did not intend to use unlawful force. The decision in **Williams's** case was followed and approved and applied by the Privy Council in **Beckford v. The Queen** [1988] A.C. 130. It was held that if the defendant honestly believed the circumstances to be such as would, if true, justify his use of force to defend himself from attack and the force was no*

⁴¹ At pp. 461-2.

more than reasonable to resist the attack, he was entitled to be acquitted of murder, since the intent to act unlawfully would be negated by his belief, however mistaken or unreasonable. Morgan's case was described, at p. 145, as "a landmark decision in the development of the common law." There has been a general shift from objectivism to subjectivism in this branch of the law. It is now settled as a matter of general principle that mistake, whether reasonable or not, is a defence where it prevents the defendant from having the mens rea which the law requires for the crime with which he is charged. It would be in disharmony with this development now to rule that in respect of a defence under section 1(1) of the Act of 1960 the belief must be based on reasonable grounds. Moreover, if such a special solution were to be adopted, it would almost certainly create uncertainty in other parts of the criminal law. It would be difficult to confine it on a principled basis to section 1(1).⁴²

3A-45 Similarly in *R v Oatridge*⁴³ the Court of Appeal emphasised that in cases where a defendant was not under actual or threatened attack, but honestly believed that he was, the jury should be directed to consider whether the degree of force used by the defendant was commensurate with the degree of risk which he believed to be created by the attack under which he believed himself to be.

3A-46 In Northern Ireland, Lord Lowry observed in *Thain*⁴⁴:

...even where the deceased was completely unarmed and was not about to attack the accused in any way, the accused is entitled to succeed on the defence of self-defence and to be acquitted if he honestly believed that the deceased was about to attack him and endanger his life, although, of course, if the accused's belief that the deceased was armed and was about to attack him was unreasonable, this would be an argument for rejecting the evidence that he honestly

⁴² At pp. 477-8.

⁴³ 94 Cr App R 367

⁴⁴ *Thain* [1985] N.I. 457.

*believed that the deceased was armed and was about to fire at him.*⁴⁵

3A-47 In *R. v. Fisher and Wright* Kelly LJ, sitting as a judge of the Crown Court referred to this passage and commented:

*I do not think that Lord Lowry in the foregoing intended to imply that an unreasonable belief inevitably meant a dishonest belief. What Lord Lowry said was that it would be an argument for rejecting honest belief and he did adopt the familiar passage of Lord Lane CJ in *Gladstone Williams* 78 Cr App Rep 276 at p. 281...*

3A-48 Kelly LJ had observed earlier in his judgment:

...when the issue is the basic one as to whether an accused was in fact acting in self-defence or in the prevention of crime or in effecting an arrest the fact that he honestly believed he was can be relied on by him unless and until the Crown establishes beyond reasonable doubt that he held no such belief. It follows that if the facts reveal that he was not under attack or threatened attack at the material time but he honestly believed he was then the same burden falls on the Crown...

3A-49 The principle is helpfully stated by Sir John Smith:

*"The general principle, however, is that the law allows such force to be used as is reasonable in the circumstances as the accused believed them to be, whether reasonably or not. For example, if D believed that he was being attacked with a deadly weapon and he used only such force as was reasonable to repel such an attack, he has a defence to any charge of an offence arising out of his use of that force. It is immaterial that he was mistaken and unreasonably mistaken."*⁴⁶

3A-50 The critical question is therefore: Taking the circumstances and the danger as the individual honestly believed them to be, was the amount of force which he used reasonable? Where the criminal standard of proof applies,

⁴⁵ At p. 462D.

if it was or might have been, the unlawfulness of the conduct is not established.

3A-51 Where the criminal standard of proof applies, whether the plea is self-defence or defence of another, if the defendant may have been honestly mistaken as to the facts, he must be judged according to his mistaken belief of the facts: that is so whether the mistake was, on an objective view, a reasonable mistake or not. The position was summarised by Hutton LCJ in *R. v. Elkington*⁴⁷ as follows:

A number of decisions of the highest courts, the House of Lords, the Privy Council and the Court of Appeal in England, have made it clear that where an accused raises the defence that he killed or injured a person in self-defence or in defence of a third person, the Crown must prove beyond a reasonable doubt that he was not acting in defence of himself or another person or that the force which he used was unreasonable. And these decisions also make it clear that in deciding whether the Crown has proved that the force used was unreasonable beyond a reasonable doubt the tribunal of fact must have regard not to what actually happened, but to what the accused at the relevant time honestly believed was happening. Moreover the courts have made it clear that the tribunal of fact must assess this, not retrospectively in the calm of the courtroom, but by putting itself in the positions of the accused and deciding the question taking account of the situation which the accused was in and of the pressures to which he was subjected and of the time in which he had to act.

SECTION 3 CRIMINAL LAW (NORTHERN IRELAND) ACT 1967

3A-52 At all times material to this Inquiry, defences relating specifically to the prevention of crime or the arrest of offenders have been regulated by statute. Section 3, Criminal Law (Northern Ireland) Act 1967 provides:

⁴⁶ Smith and Hogan, *Criminal Law*, 10th Ed., 276.

⁴⁷ 21st January 1993, Hutton LCJ sitting as a judge of the Crown Court.

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A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

Subsection (1) shall replace the rules of the common law as to the matters dealt with by that subsection.

3A-53 Subsection (1) is identical to subsection 3(1), Criminal Law Act 1967, which applies to England and Wales and subsection (2) is to the same effect as subsection 3(2), Criminal Law Act 1967.

3A-54 There is inevitably a considerable overlap of the justifications on grounds of self-defence, defence of another, the prevention of crime and lawful arrest. A single situation may involve a number of these justifications. Thus, a person who is under attack and defends himself is also acting in prevention of crime. On the other hand there will be situations in which self-defence and defence of another will not be available but the statutory defences will be available.

When a person has two defences (private defence and public authority; private defence and provocation, etc.), he is allowed the benefit of whichever is the more favourable to him on the facts.⁴⁸

3A-55 However, although section 3, Criminal Law (Northern Ireland) Act 1967 makes no reference to the defence of self-defence or defence of another, there is a compelling case for concluding that to the extent that those common law defences may have differed in effect from the statutory defence, they have been modified by that section.

Private defence and the prevention of crime are sometimes indistinguishable. If D goes to the defence of E whom P is trying to murder, he is exercising the right of private defence but he is also seeking to prevent the commission of a crime. It would be absurd to ask D whether he was acting

⁴⁸ Glanville Williams, Textbook of Criminal Law, 2nd Ed. (1983) 505.

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*in defence of E or to prevent murder being committed and preposterous that the law should differ according to the answer. He was doing both. The law cannot have two sets of criteria governing the same situation and it is submitted that s 3 of the Criminal Law Act is applicable.*⁴⁹

This passage was expressly approved by Hutton LCJ in *R. v. Elkington*.⁵⁰

- 3A-56 Section 3 is a rule of both civil and criminal law. When the use of force is reasonable in the circumstances it is justified in every sense and gives rise to neither civil nor criminal liability.⁵¹
- 3A-57 As in the case of self-defence and defence of another, it is for those alleging that killings or woundings were criminal to prove that the conduct in question was unlawful and in particular that it was not justified on grounds of the prevention of crime or effecting an arrest. The standard of proof applicable in the present proceedings has been considered at paragraphs 3A-11 -3A-26, above.
- 3A-58 The Northern Ireland courts have held that the objectives of the use of force are to be determined by the court applying an objective test. *Kelly v Ministry of Defence*⁵² was a civil claim arising from an incident in which the second and third plaintiffs had been passengers in a car driven by K whose estate was the first plaintiff. The vehicle was driven through an Army checkpoint hitting two soldiers. The patrol fired into the car killing the driver and causing the car to crash. The two passengers were ordered out of the car. One ran away and members of the patrol shot and wounded him before arresting him. The soldiers maintained that they believed the

⁴⁹ Smith and Hogan, *Criminal Law*, 10th Ed., 280, referring to Criminal Law Act 1967 applicable in England and Wales. See also the observations of Lord Lloyd of Berwick in *R. v. Clegg* [1995] 1AC 482, at p. 496 E-H. c.f. Glanville Williams, *Textbook of Criminal Law*, 2nd Ed. (1983) 505.

⁵⁰ Hutton LCJ sitting as a judge of the Crown Court, 21st January 1993.

⁵¹ Smith and Hogan, *Criminal Law*, 10th Ed., 278.

⁵² [1989] NI 341

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occupants of the car to be terrorists and relied on section 3, Criminal Law (Northern Ireland) Act 1967.

3A-59 Carswell J., the trial judge, approached the defence under section 3, Criminal Law Act (Northern Ireland), 1967 in two stages. First he addressed the issue of what were the facts and circumstances each soldier honestly and reasonably believed existed at the time. (This issue is addressed below. For the reasons set out below, the reasonableness of an honestly held belief is irrelevant to questions of criminal liability. The position is different in a civil claim for negligence.) Secondly, he addressed the question whether, given that belief, it was reasonable to fire in the prevention of crime or to effect arrest. In addressing this second issue the judge first referred to the subjective evidence of the soldiers. The sergeant had given evidence that his reason for firing was to effect the arrest of the driver. Some of the other soldiers had said their reason was to apprehend the occupants. The judge found that the object of their firing was to stop the escape of the occupants of the car. However, notwithstanding the stated objectives of some of the soldiers, Carswell J. applied an objective test and held that the reasonableness of the force was truly to be based in the prevention of crime and not in effecting arrest.

The justification for the shooting accordingly has to be found in the prevention of crime or the arrest of offenders. I consider that on the evidence the intention of the soldiers in shooting at the car covered both these objectives. Although some of them expressed it in terms only of arresting the occupants of the car, I think that consideration of the soldiers' evidence as a whole shows that they intended to stop the car, with the object of apprehending the occupants and preventing them from escaping and carrying out further terrorist missions. The one act of stopping the car might readily have achieved both objectives, on the facts which the soldiers believed to be correct, and can be regarded as directed towards both. In any event, it seems to me to be correct in principle that the justification should be judged objectively. Section 3(1) of the Criminal Law (Northern Ireland) Act 1967 appears to be objective in its terms, and to refer to the actual justification for the use of force, rather than that which the user himself considers to be the justification. Accordingly, if a person using force intends to do so for one of the

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objects referred to in section 3(1), and the court holds that the force was not reasonable in the circumstances if one has regard only to that object, but was reasonable for achieving one of the other objects, then I think that that use of force comes within the section.

3A-60 On appeal the Court of Appeal of Northern Ireland upheld the judge's approach. O'Donnell L.J. observed:

It is clear that he held, and in my opinion rightly held, that the objectives in the section, that is, the prevention of crime or the effecting of an arrest, are not to be determined on the perpetrator of the force's evidence but by the court using an objective test.

He then cited the passage from the judgment of Carswell J. set out above and continued:

Before this court, Mr Kerr for the respondent underlined the correctness of this passage and its implications in this way. He submitted that in the trial judge's second stage, the perpetrator of force need not in evidence select one or more of the objectives in section 3(1), that is, the objectives of the prevention of crime or effecting arrest. The reasonableness of the force cannot be challenged for example on the ground that a soldier is unable to articulate either of these objectives. Nor, he submitted, need a soldier before or at the time of using force, have in his own mind either of them. The presence or absence of an objective or either of them is a matter for the court to be arrived at objectively.

That the court or jury alone should be the arbitrator in this way seems to me to be in the best interests of justice. They need not be bothered with the assertions of unscrupulous users of force as to their motives. Instead they would seek to apply the judgment of the reasonable man. It also appeals to common sense when one realises that the same rights under section 3(1) are given to a civilian who will be quite unaware of the section not to speak of its stated objectives.

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3A-61 O'Donnell L.J. also considered that the correctness of this objective approach was confirmed by the speech of Lord Diplock in *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁵³

3A-62 To the extent that *Kelly* may be considered inconsistent with the earlier decision of the Court of Appeal of Northern Ireland in *Thain*⁵⁴, it is submitted that the reasoning in *Kelly* is to be preferred. *Kelly* accords with Glanville Williams' principle of unknown necessity.⁵⁵ Sir John Smith makes the following observation on *Kelly*:

*It has been held in a civil action in Northern Ireland that for the purpose of an identical provision [i.e. section 3, Criminal Law (Northern Ireland) Act 1967], the objectives of the use of force are to be determined, not by the evidence of the user of the force, but by the court, applying an objective test. D, a soldier, said that his purpose in shooting was to arrest the occupants of a vehicle whom he believed on reasonable grounds to be determined terrorists who would probably continue to commit terrorist offences if they got away; but the court held that the use of force was not reasonable to make an arrest but was justified because it was reasonable to prevent crime. If this is right (and it is a persuasive opinion) in a civil action, it is also right in criminal law. The only difference is that in the criminal case, D need not have reasonable grounds for his honest belief in the circumstances.*⁵⁶

3A-63 There are also compelling practical considerations in support of the application of an objective test in determining the purpose of the use of force. A soldier confronted by terrorists or persons he believes to be terrorists has no time to analyse the inter-relationship between self-defence, defence of another, effecting an arrest and the prevention of crime. In many situations a number of these justifications are likely to be in play simultaneously. The soldier needs to deal with the situation with

⁵³ [1977] AC 105 at p. 138.

⁵⁴ [1985] N.I. 457.

⁵⁵ Glanville Williams, *Textbook on Criminal Law*, 1st Ed. (1978) 457.

which he is confronted. On many occasions, his response will be purely intuitive. It would be wrong to require him to have undertaken a nice analysis of the applicability of possibly overlapping justifications. More fundamentally, it would be wrong to determine the question by reference to his subjective view, formed *in extremis*, as to the purpose he was intending to achieve by the use of force.

3A-64 Accordingly it is submitted that the defence under section 3, Criminal Law Act (Northern Ireland), 1967 is not dependent upon the user of force having formed a subjective intention to use force for a particular purpose. Nor is it necessary that the use of force should be justified for any given purpose which he had in mind. It is sufficient if the use of force was objectively justified for one of the purposes identified in the provision.

3A-65 Whether it was necessary in any given situation to use force for one of these purposes and, if so, whether the degree of force used was reasonable in the circumstances are in a criminal trial essentially jury questions. However, Sir John Smith provides assistance as to the correct approach and appropriate standard:

It cannot be reasonable to cause harm unless (i) it was necessary to do so in order to prevent the crime or effect the arrest and (ii) the evil which would follow from failure to prevent the crime or effect the arrest is so great that a reasonable man might think himself justified in causing that harm to avert that evil. It is likely, therefore, that even killing will be justifiable to prevent unlawful killing or grievous bodily harm, or to arrest a man where there is an imminent risk of his causing death or grievous bodily harm if left at liberty.⁵⁷

⁵⁶ Smith and Hogan, Criminal Law, 10th Ed., 278.

⁵⁷ Smith and Hogan, Criminal Law, 10th Ed., 279, original emphasis.

3A-66 As in the case of self-defence and defence of another, the standard of reasonableness requires one to have regard to all the circumstances of the incident.

*The standard of reasonableness should, ..., take account of the nature of the crisis in which the necessity to use force arises for, in circumstances of great stress, even the reasonable man cannot be expected to judge the minimum degree of force required to a nicety.*⁵⁸

Thus in *Reed v. Wastie*⁵⁹ Lord Lane observed:

In the circumstances one did not use jewellers' scales to measure reasonable force.

3A-67 In *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁶⁰ Lord Diplock stated:

What amount of force is "reasonable in the circumstances" for the purpose of preventing crime is, in my view, always a question for the jury in a jury trial, never a "point of law" for the judge.

The form in which the jury would have to ask themselves the question in a trial for an offence against the person in which this defence was raised by the accused, would be: Are we satisfied that no reasonable man (a) with knowledge of such facts as were known to the accused or reasonably believed by him to exist (b) in the circumstances and time available to him for reflection (c) could be of opinion that the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justified exposing the suspect to the risk of harm to him that might result from the kind of force that the accused contemplated using?

To answer this the jury would have first to decide what were the facts that did exist and were known to the accused to do so and what were mistakenly believed by the accused

⁵⁸ Smith and Hogan, *Criminal Law*, 10th Ed., 279.

⁵⁹ [1972] Crim LR 221.

⁶⁰ [1977] AC 105.

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to be facts. In respect of the latter the jury would have had to decide whether any reasonable man on the material available to the accused could have shared that belief...

The jury would have also to consider how the circumstances in which the accused had to make his decision whether or not to use force and the shortness of the time available to him for reflection, might affect the judgment of a reasonable man. In the facts that are to be assumed for the purposes of the reference there is material upon which a jury might take the view that the accused had reasonable grounds for apprehension of imminent danger to himself and other members of the patrol if the deceased were allowed to get away and join armed fellow-members of the Provisional I.R.A. who might be lurking in the neighbourhood, and that the time available to the accused to make up his mind what to do was so short that even a reasonable man could only act intuitively. This being so, the jury in approaching the final part of the question should remind themselves that the postulated balancing of risk against risk, harm against harm, by the reasonable man is not undertaken in the calm analytical atmosphere of the court-room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind and degree of force that was used by the accused: but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed.

In many cases where force is used in the prevention of crime or in effecting an arrest there is a choice as to the degree of force to use. On the facts that are to be assumed for the purposes of the reference the only options open to the accused were either to let the deceased escape or to shoot at him with a service rifle. A reasonable man would know that a bullet from a self-loading rifle if it hit a human being, at any rate at the range at which the accused fired, would be likely to kill him or to injure him seriously. So in one scale of the balance the harm to which the deceased would be exposed if the accused aimed to hit him was predictable and grave and the risk of its occurrence high. In the other scale of the balance it would be open to the jury to take the view that it would not be unreasonable to assess the kind of harm to be averted by preventing the accused's escape as even graver - the killing or wounding of members of the patrol by terrorists in ambush, and the effect of this success by members of the Provisional I.R.A. in encouraging the continuance of the armed insurrection and all the misery and destruction of life and property that terrorist activity in Northern Ireland has entailed. The jury

would have to consider too what was the highest degree at which a reasonable man could have assessed the likelihood that such consequences might follow the escape of the deceased if the facts had been as the accused knew or believed them reasonably to be."⁶¹

3A-68 It will be apparent that Lord Diplock's formulation of the issues of law addresses the question of a mistaken understanding of the facts on the basis that a Defendant should be judged by his mistaken understanding of the facts only if his mistake is reasonable. In other words, a genuine but negligent mistake as to the facts would not afford a defence. This approach accorded with the widely held view in 1976 when that case was decided in the House of Lords. However, since that decision a subjective approach to criminal liability has prevailed.⁶² The reasoning which led the Court of Appeal and the Judicial Committee of the Privy Council to accept, in *Gladstone Williams*⁶³ and *Beckford*⁶⁴ respectively, that in cases of self-defence a Defendant must be judged by his mistaken understanding of the facts even if that understanding was unreasonable, applies equally to cases of acts in the prevention of crime or effecting lawful arrest. Similarly, the reasoning of the House of Lords in *B (A Minor) v. DPP*⁶⁵ applies equally here. Furthermore, issues in relation to self-defence and the prevention of crime frequently arise from a single factual situation. It is unthinkable that the two defences could impose different approaches to questions of mistaken belief. It is submitted therefore that Sir John Smith is clearly correct in his view that the second paragraph of the above passage must now be read as if "reasonably" were omitted.⁶⁶ Accordingly, a genuine but unreasonable mistake may afford a defence to a criminal charge not only on grounds of self-defence or defence of another but also

⁶¹ At p. 137-8. Emphasis added.

⁶² See, in particular, *Morgan* [1976] AC 182.

⁶³ (1983) 78 Cr App R 276.

⁶⁴ [1988] AC 130.

⁶⁵ [2002] 2 AC 428.

⁶⁶ Smith and Hogan, *Criminal Law*, 10th Ed., 279.

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on grounds of the prevention of crime or effecting or assisting in the lawful arrest of offenders or suspected offenders. Moreover, section 3, Criminal Law (Northern Ireland) Act 1967 is required to be interpreted in this way in its application to events which occurred in Northern Ireland in 1972.

3A-69 However, when read subject to this important qualification, the speech of Lord Diplock in *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁶⁷ provides valuable guidance. In particular we would draw attention to the following features:

- (1) The essential question is whether a person in that situation might reasonably conclude that the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justified exposing the suspect to the risk of harm to him that might result from the kind of force that the actor contemplated using.
- (2) It is essential to have regard to the precise opportunity - "the circumstances and time available to him for reflection" - available to the actor to assess the situation with which he was confronted and to balance the nature of the threat with available courses of conduct. In particular, it is essential to have regard to how the circumstances in which the accused had to make his decision whether or not to use force and the shortness of the time available to him for reflection, might affect the judgment of a reasonable man.
- (3) The tribunal of fact has to assess the highest degree at which a reasonable man could have assessed the likelihood that consequences such as the killing or wounding of soldiers by

⁶⁷ [1977] AC 105.

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terrorists might follow the escape of the deceased if the facts had been as the accused knew or believed them to be.

THE YELLOW CARD.

3A-70 With regard to the use of force in self-defence, in defence of another, in the prevention of crime and the effecting of a lawful arrest, soldiers are subject to the same rules as any other citizen.

3A-71 The Yellow Card gives instructions to soldiers. It is also intended to provide guidance to soldiers on questions of acute difficulty which, when they arise, are likely to call for instantaneous decisions. Its contents are not immutable. It went through a number of editions. The version current on Bloody Sunday was the fourth edition which had been revised and published in November 1971.

3A-72 The Yellow Card distinguishes between troops operating individually and collectively. In opening Mr. Christopher Clarke QC observed:

The Tribunal may think that if the circumstances were that soldiers making arrests or protecting those who were, were fired on from various sources and had to defend themselves, they were not acting collectively for the purposes of these instructions since, having to make an instantaneous response to fire against them, they were not and could not be under the immediate control of a superior officer for the purposes of taking collective action as a group. (Day 4: 91)

3A-73 As Mr. Clarke QC observed in his opening:

The card was not and is not a source of law. It was an attempt to provide in a manner intelligible to those who might have to decide whether or not to have to fire lethal weapons a guide as to whether they could do so. It could not and did not legislate for every circumstance. (Day 4: 82-83.)

3A-74 The Yellow Card is not and does not purport to be a comprehensive statement of the circumstances in which the use of force by soldiers would be justified in law. It is submitted that a soldier who uses force in

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conformity with the Yellow Card would act in a manner which is justified in law. However, conduct which does not accord with the requirements in the Yellow Card may nevertheless be legally justified. The use of force in circumstances other than those identified in the Yellow Card may well be justified on grounds of self-defence or defence of another. Thus, the Yellow Card does not expressly permit the use of force against an acid bomber but there would be many circumstances in which a soldier would be justified in firing to defend himself or another from such an attack. Similarly, the Yellow Card barely addresses questions of the justifiable use of force in the prevention of crime or in effecting arrests, although it is touched on in paragraphs 10, 11 and 18.

3A-75 It follows therefore that the assessment of conduct by reference to the Yellow Card is likely to prove a fruitless exercise. The central issues in this Inquiry must be determined by reference to the legal principles identified above and not by reference to the guidance in the Yellow Card.

SPECIAL FEATURES OF THE PRESENT CASE.

3A-76 The situations which this Inquiry is investigating give rise to particular questions in relation to the application of these principles of justification on grounds of self-defence, defence of another, prevention of crime and effecting lawful arrest in the circumstances prevailing in Londonderry on Bloody Sunday.

- (1) Soldiers on duty in Londonderry on Bloody Sunday were under a legally enforceable duty to prevent crime and to arrest offenders. The matter was expressed as follows by Lord Diplock in *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁶⁸:

⁶⁸ [1977] AC 105, at pp. 136-7.

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There is little authority in English law concerning the rights and duties of a member of the armed forces of the Crown when acting in aid of the civil power; and what little authority there is relates almost entirely to the duties of soldiers when troops are called upon to assist in controlling a riotous assembly. Where used for such temporary purposes it may not be inaccurate to describe the legal rights and duties of a soldier as being no more than those of an ordinary citizen in uniform. But such a description is in my view misleading in the circumstances in which the army is currently employed in aid of the civil power in Northern Ireland. In some parts of the province there has existed for some years now a state of armed and clandestinely organised insurrection against the lawful government of Her Majesty by persons seeking to gain political ends by violent means - that is, by committing murder and other crimes of violence against persons and property. Due to the efforts of the army and police to suppress it the insurrection has been sporadic in its manifestations but, as events have repeatedly shown, if vigilance is relaxed the violence erupts again. In theory it may be the duty of every citizen when an arrestable offence is about to be committed in his presence to take whatever reasonable measures are available to him to prevent the commission of the crime; but the duty is one of imperfect obligation and does not place him under any obligation to do anything by which he would expose himself to risk of personal injury, nor is he under any duty to search for criminals or seek out crime. In contrast to this a soldier who is employed in aid of the civil power in Northern Ireland is under a duty, enforceable under military law, to search for criminals if so ordered by his superior officer and to risk his own life should this be necessary in preventing terrorist acts. For the performance of this duty he is armed with a firearm, a self-loading rifle, from which a bullet, if it hits the human body, is almost certain to cause serious injury if not death.

- (2) In the case of self-defence it is often appropriate to consider whether the actor had the opportunity to withdraw to a place of safety, thereby avoiding the attack. It may be appropriate to direct a jury that while the Defendant need not show by his actions that he does not want to fight, the possibility of retreat, if it was safe for him to do so, is a factor - but only one factor - which may be taken into account in deciding whether it was necessary to use force and if so whether the amount of force used was reasonable. There can be no

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sensible application of this principle to soldiers who are acting under orders to move into a particular area and there come under attack or believe that they have come under attack. Furthermore this principle cannot apply where a soldier is seeking to prevent the commission of crime or to arrest a resisting suspect.

- (3) In considering the use of force to arrest an individual, a distinction falls to be drawn between a fleeing suspect and a resisting suspect. Where the suspect flees, the justification for the use of force rests on section 3. Where, however, the suspect resists arrest both section 3 and self-defence come into play. Glanville Williams provides the following analysis:

Where the suspect forcibly resists lawful arrest, Hale lays it down as clear law that the officer may in the last resort use fatal force, irrespective of the crime for which he is arresting. This legal result is achieved by combining the law of arrest with the right of self-defence. An officer who is endeavouring to effect an arrest is not obliged to give back, but may press forward against resistance, meeting the resistance with self-defence according to the usual rules, except that he is clearly under no duty to retreat. As the struggle gains in ferocity, and the offender is obliged to use more and more extreme measures against the officer if he is to avoid being disabled, the point is reached at which the officer comes to fear that he will himself suffer death or grave harm unless he retreats or uses extreme violence, and in such circumstances he may use that violence. The fact that section 3 and the right of self-defence act together in this way shows that the right of defence remains separate from section 3.

Where the offender is armed with a lethal weapon, the fatal point in the struggle may be reached quickly, the legal analysis of the situation being in no way affected. Nor is the legal position any different in theory where both parties are armed with firearms. In such circumstances, the officer must, for his own protection, shoot first if the other shows any sign of reaching for his gun. If the suspect is being besieged and is armed, the police are frank that when they decide to shoot, they shoot to kill. Presumably the law allows this, even though the result is that the police bring back not a suspect but a corpse. Their duty is not merely to arrest but, if they cannot arrest a dangerous offender, to prevent him from continuing at liberty. However, we have

no explicit authority on the question since the Act of 1967; and the police have to recognise that public opinion is sensitive on the use of guns by the police.

These rules apply whether the suspect is presenting his face to the officer or is engaged in a "running fight", firing perhaps from the rear of a car. American authorities apply them where an arrest is validly made by a private person, and on principle this is clearly right.

Since the right to kill a resisting criminal depends upon the law of self-defence combined with the rule that an arrester need not attempt to withdraw, it applies to all manner of lawful arrests and not merely to arrest for serious crimes. If a desperado, wanted on any ground, barricades himself with arms in a house he may be deliberately shot if that is the only way to quell his dangerous resistance. Under section 18 Offences against the Person Act it is a crime to wound to resist arrest ... and where this crime is committed or attempted, an additional ground is furnished for shooting the resisting criminal, even when his original crime was not of a character to justify the use of fatal force in arrest apart from resistance. The arrester, as soon as the weapon is used against him, may ignore the original charge and proceed to use force on the basis that he is arresting for the crime of attempting to wound to resist arrest.⁶⁹

- (4) In considering the application of section 3, the belief of the actor as to whether the person he fires at is or is not a terrorist will be of great importance. Thus in *Clegg*⁷⁰ the Court of Appeal of Northern Ireland having concluded that there was evidence to raise the defence under section 3, went on to consider whether there had been any miscarriage of justice by reason of the judge's decision to the contrary. The Court of Appeal pointed out that there was no suggestion in Private Clegg's evidence that he thought that the driver of the vehicle was a terrorist or that if the driver escaped he would carry out any terrorist offences in the future. In those circumstances,

⁶⁹ Glanville Williams, *Textbook of Criminal Law*, 2nd Ed. (1983) 510-511.

⁷⁰ *R v. Clegg* [1995] AC 482.

the use of lethal force to arrest the driver of the car was in the view of the Court of Appeal "so grossly disproportionate to the mischief to be averted" that any tribunal of fact would have been bound to find that the force used was unreasonable.⁷¹ On the other hand, very different considerations apply where force is used against a person who is or is believed to be a terrorist. It is particularly significant that Lord Diplock in *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁷² considered that harm to be averted which would justify the use of lethal force to prevent the escape of a terrorist would include the killing or wounding of members of a patrol by terrorists in ambush, and the effect of this success by members of the Provisional I.R.A. in encouraging the continuance of the armed insurrection.

- (5) When acting in prevention of crime it is not necessary to apprehend that the crime will be committed immediately. However, the force used must be immediately necessary.

Need it be apprehended that the crime will be committed immediately?

*No. But the force used must be immediately necessary. You may use force if it is immediately necessary to disarm a man who is running off to commit a crime elsewhere.*⁷³

In this regard we draw attention, once again, to Lord Diplock's formulation referred to in the previous sub-paragraph:

On the facts that are to be assumed for the purposes of the reference there is material upon which a jury might take the view that the accused had reasonable grounds for apprehension of imminent danger to himself and

⁷¹ See the speech of Lord Lloyd of Berwick in the House of Lords at pp. 490-1.

⁷² [1977] AC 105, at p. 138.

⁷³ Glanville Williams, *Textbook of Criminal Law*, 2nd Ed. (1983) 494.

other members of the patrol if the deceased were allowed to get away and join armed fellow-members of the Provisional I.R.A. who might be lurking in the neighbourhood,...

While Lord Diplock is clearly correct in concluding, in the circumstances he postulates, that it would be sufficient that there were reasonable grounds for apprehension of imminent danger to the actor or other members of the patrol if the terrorist were allowed to get away and join fellow terrorists, he clearly considered that the defence would also be available where the use of force was immediately necessary to prevent a crime in the future.⁷⁴ This is apparent from the following passages:

...I propose to deal with the reference on the basis that the accused's honest and reasonable belief was that the deceased was a member of the Provisional IRA who, if he got away, was likely sooner or later to participate in acts of violence. (at p. 135G)

In the instant reference the relevant purpose for which it is to be assumed that force was used by the accused is the prevention of crime. (at p. 137D)

In many cases where force is used in the prevention of crime or in effecting an arrest there is a choice as to the degree of force to use. On the facts that are to be assumed for the purposes of the reference the only options open to the accused were either to let the deceased escape or to shoot at him with a service rifle. A reasonable man would know that a bullet from a self-loading rifle if it hit a human being, at any rate at the range at which the accused fired, would be likely to kill him or to injure him seriously. So in one scale of the balance the harm to which the deceased would be exposed if the accused aimed to hit him was predictable and grave and the risk of its occurrence high. In the other scale of the balance it would be open to the jury to take the view that it would not be unreasonable to assess the kind of harm to be averted by preventing the accused's escape as even graver - the killing or wounding

⁷⁴ Glanville Williams, Textbook of Criminal Law, 2nd Ed. (1983) 503.

of members of the patrol by terrorists in ambush, and the effect of this success by members of the Provisional I.R.A. in encouraging the continuance of the armed insurrection and all the misery and destruction of life and property that terrorist activity in Northern Ireland has entailed. The jury would have to consider too what was the highest degree at which a reasonable man could have assessed the likelihood that such consequences might follow the escape of the deceased if the facts had been as the accused knew or believed them reasonably to be. (at p. 138D)

The potential breadth of this principle has been criticised by Sir John Smith in (1994) NLJ 356. Similarly, in *R. v. Fisher and Wright*, 10 February 1995, Kelly LJ, sitting as a first instance judge, stated:

It is at least clear that the fear of imminent danger is an essential requisite for the defence of self-defence. ... If Lord Diplock is correct, that requisite is no longer a necessary one under section 3 of the 1967 Act for the defence of the prevention of crime. The only way, it seems to me, to hold the Diplock principle within reasonable and sensible bounds is for the courts to adopt the policy that only in the most exceptional cases can the use of force be reasonable to prevent crime that is not imminent.

Kelly LJ also stated that he knew of no criminal case in which the Diplock principle had been applied by the courts in Northern Ireland.

However, in *McCullagh v. Chief Constable of the RUC*, 27th March 1992, a civil case, Carswell J. provides an excellent example of the application of the Diplock principle:

In the present case the mischief which the police could prevent by firing at the car was the escape of a group of terrorists. They were reasonably regarded, as I have found, by the police officers as persons who were so intent on escaping capture that they were prepared to run down a policeman standing in their way and to risk killing or injuring him. Persons so determined to escape capture would be likely to be active and hardened terrorists, who would very probably continue to commit terrorist crimes if allowed to go free. They

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would then retain their liberty to engage in the type of attack upon the community practised by members of terrorist organisations. The harm to which the driver was exposed when the police officers aimed at the car was predictable and grave and the risk of its occurrence was high. But in my opinion the kind of harm to be averted (as the officers reasonably thought) by preventing their escape was even higher - the freedom conferred on dangerous terrorists to resume their activities of dealing in death and destruction and, in Lord Diplock's words, "encouraging the continuance of the armed insurrection and all the misery and destruction of life and property that terrorist activity in Northern Ireland has entailed".

While the potential breadth of the principle remains open for argument, and while, if necessary, we would contend that Lord Diplock's statement of the law should be applied, it will be submitted that in each of the situations in which a soldier we represent fired in order to prevent the commission of crime there existed an imminent threat that crime would be committed so as to justify the soldier's conduct. Accordingly, it is submitted that the Tribunal will not be required to rule on whether Lord Diplock's statement does, in this respect, represent the law.

- (6) The soldiers who entered the Bogside on Bloody Sunday had no real opportunity to use graduated force, whether to defend themselves or others, to effect arrests or to prevent crime. In particular they had no choice as to the weapons with which they were armed. Hence Lord Diplock's observations in *Attorney General for Northern Ireland's Reference No. 1 of 1975*⁷⁵:

For the performance of this duty he is armed with a firearm, a self-loading rifle, from which a bullet, if it hits the human body, is almost certain to cause serious injury if not death.

⁷⁵ [1977] AC 105, at pp. 137 and 138.

and

In many cases where force is used in the prevention of crime or in effecting an arrest there is a choice as to the degree of force to use. On the facts that are to be assumed for the purposes of the reference the only options open to the accused were either to let the deceased escape or to shoot at him with a service rifle. A reasonable man would know that a bullet from a self-loading rifle if it hit a human being, at any rate at the range at which the accused fired, would be likely to kill him or to injure him seriously.

In *Clegg* Lord Lloyd referred to the first of these passages:

*I would particularly emphasise the last sentence in the above quotation. In most cases of a person acting in self-defence, or a police officer arresting an offender, there is a choice as to the degree of force to be used, even if it is a choice which has to be exercised on the spur of the moment, without time for measured reflection. But in the case of a soldier in Northern Ireland, in the circumstances in which Private Clegg found himself, there is no scope for graduated force. The only choice lay between firing a high-velocity rifle which, if aimed accurately, was almost certain to kill or injure, and doing nothing at all.*⁷⁶

- (7) The reality of the situation was that soldiers on duty in Londonderry that day had to take a split second decision as to whether to use potentially lethal force in circumstances where they believed they were under terrorist attack. In these circumstances the expression "the agony of the moment" is entirely appropriate. These soldiers were confronted with circumstances in which even a reasonable man could only act intuitively.⁷⁷

⁷⁶ [1995] AC 482 at p. 498.

⁷⁷ See the observations of Lord Diplock in *Attorney General for Northern Ireland's Reference No. 1 of 1975* at pp. 138, 139.

- (8) Notwithstanding the nature of the weapons with which they were armed, it does not follow that those soldiers who fired live rounds on Bloody Sunday necessarily intended to kill or to inflict grievous bodily harm. In the particular circumstances in which they were placed it would be hardly surprising if they failed to foresee the likely consequences of their acts beyond the immediate consequence of preventing attack or preventing the attacker from getting away. This was the case in the legal proceedings in Northern Ireland which gave rise to *Attorney General for Northern Ireland's Reference No. 1 of 1975* where Lord Diplock commented:

*MacDermott J. was not satisfied that when he fired the fatal shot the accused had in fact formed the intention of killing or seriously injuring the deceased. So even if it be assumed that the force used by the accused was not "reasonable in the circumstances in the prevention of crime" there could be no question of his being guilty of the crime of murder rather than that of manslaughter. The learned judge's finding, which is one of fact, appears to be consistent with the view that in the agony of the moment the accused may have acted intuitively or instinctively without foreseeing the likely consequences of his act beyond preventing the deceased from getting away.*⁷⁸

- (9) If a man shoots in self-defence and by mistake kills an innocent bystander he is not guilty of murder or manslaughter.⁷⁹ Sir John Smith explains this as follows:

The intent which is transferred [in transferred malice] must be a mens rea, whether intention or recklessness. If D shoots O with intent to kill, because O is making a murderous attack on him and this is the only way in which he can preserve his own life, he does not intend an actus reus (in the broader sense,...)for to kill in these circumstances is justified. If, however, D misses O and

⁷⁸ At p. 139.

⁷⁹ Foster's Crown Cases, 1743-61, 299; Archbold, 2004, 17-24.

inadvertently kills P, an innocent bystander, he does cause an actus reus but he is not guilty of murder for there is no mens rea (in the broader sense) to transfer; the result which he intended was a perfectly lawful one.⁸⁰

3A-IV SUMMARY OF PRINCIPAL SUBMISSIONS ON SELF-DEFENCE, DEFENCE OF ANOTHER, PREVENTION OF CRIME AND EFFECTING OR ASSISTING IN LAWFUL ARREST.

3A-77 Our principal submissions on this area of the law may be summarised as follows:

- (1) In a criminal prosecution it is for the prosecution to prove to the criminal standard that a use of force resulting in death or injury was unlawful. The prosecution must prove that the use of force was not justified. The same principles should apply here.
- (2) A person who is attacked or believes that he or another is about to be attacked is entitled to use such force as is reasonably necessary to defend himself or that other.
- (3) When deciding whether or not the force used by an individual was reasonable it is necessary to have regard to all the circumstances of the case.
- (4) Even in a normal situation, failure to retreat when attacked and when it is possible and safe to do so, is not conclusive. It is simply a factor to be taken into account in deciding whether it was necessary for the person attacked to use force and whether the force used was reasonable.

⁸⁰ Smith and Hogan, Criminal Law, 10th Ed., 91-2.

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- (5) An individual faced with an attack cannot be expected to weigh with precision the exact degree of force which would be reasonable in the circumstances.
- (6) An individual acting in self-defence who has or may have made a mistake as to the relevant facts is entitled to be judged by the facts as he honestly believed them to be. Moreover, this is so even if his mistaken belief was unreasonably held. The critical question is therefore: Taking the circumstances and the danger as the individual honestly believed them to be, was the amount of force which he used reasonable?
- (7) Section 3 Criminal Law (Northern Ireland) Act 1967 is a rule of both civil and criminal law. When the use of force is reasonable in the circumstances it is justified in every sense and gives rise to neither civil nor criminal liability.
- (8) It is for those making allegations of wrongdoing by soldiers to prove that the conduct in question was not justified on grounds of self-defence or defence of another, the prevention of crime or effecting or assisting in a lawful arrest.
- (9) The defence under section 3, Criminal Law Act (Northern Ireland), 1967 is not dependent upon the user of force having formed a subjective intention to use force for a particular purpose. The objectives of the use of force are to be determined by the court applying an objective test. It is not necessary that the use of force should be justified for any given purpose which the user had in mind. It is sufficient if the use of force was objectively justified for one of the purposes identified in the provision.
- (10) Even killing will be justifiable to prevent unlawful killing or grievous bodily harm, or to arrest a man where there is an imminent risk of his causing death or grievous bodily harm if left at liberty.

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- (11) Under section 3, the standard of reasonableness requires one to have regard to all the circumstances of the incident.
- (12) A genuine but unreasonable mistake may afford a defence to a criminal charge on grounds of the prevention of crime or effecting or assisting in the lawful arrest of offenders or suspected offenders.
- (13) Under section 3, the essential question is whether a person in that situation might reasonably conclude that the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justifies exposing the suspect to the risk of harm to him that might result from the kind of force that the actor contemplates using.
- (14) It is essential to have regard to the precise opportunity available to the actor to assess the situation with which he was confronted and to balance the nature of the threat with available courses of conduct. In particular, it is essential to have regard to how the circumstances in which the accused had to make his decision whether or not to use force and the shortness of the time available to him for reflection, might affect the judgment of a reasonable man.
- (15) The tribunal of fact has to assess the highest degree at which a reasonable man could have assessed the likelihood that consequences such as the killing or wounding of soldiers by terrorists might follow the escape of the deceased if the facts had been as the accused knew or believed them to be.
- (16) The Yellow Card is not and does not purport to be a comprehensive statement of the circumstances in which the use of force by soldiers would be justified in law. A soldier who uses force in conformity with the Yellow Card would act in a manner which is justified in law. However, conduct which does not accord with the requirements in the Yellow Card may nevertheless be legally justified.

Accordingly, the assessment of conduct by reference to the Yellow Card is unlikely to be determinative.

- (17) Soldiers on duty in Londonderry on Bloody Sunday were under a legally enforceable duty to prevent crime and to arrest offenders. They were under a duty, enforceable under military law, to search for criminals if so ordered by his superior officer and to risk their own lives should this be necessary in preventing terrorist acts.
- (18) In the case of self-defence it is often appropriate to consider whether the actor had the opportunity to withdraw to a place of safety, thereby avoiding the attack. There can be no sensible application of this policy to soldiers who are acting under orders.
- (19) Where a suspect resists arrest both section 3 and self-defence come into play. A soldier who is endeavouring to effect an arrest is not obliged to withdraw, but may press forward against resistance, meeting the resistance with self-defence according to the usual rules, except that he is clearly under no duty to retreat. As the struggle gains in ferocity, and the offender is obliged to use more and more extreme measures against the soldier if he is to avoid being disabled, the point is reached at which the soldier comes to fear that he will himself suffer death or grave harm unless he retreats or uses extreme violence, and in such circumstances he may use that violence. Where the offender is armed with a lethal weapon, the fatal point in the struggle may be reached quickly, the legal analysis of the situation being in no way affected. Nor is the legal position any different in theory where both parties are armed with firearms. In such circumstances, the soldier must, for his own protection, shoot first if the other shows any sign of reaching for his gun. Their duty is not merely to arrest but, if he cannot arrest a dangerous offender, to prevent him from continuing at liberty.

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- (20) In considering the application of section 3, the understanding of the actor as to whether the person he fires at is or is not a terrorist will be of great importance.
- (21) When acting in prevention of crime it is not necessary to apprehend that the crime will be committed immediately. However, the force used must be immediately necessary. Thus, one may use force if it is immediately necessary to disarm a man who is running off to commit a crime elsewhere.
- (22) The soldiers who entered the Bogside on Bloody Sunday had no real opportunity to use graduated force, whether to defend themselves or others, to effect arrests or to prevent crime. In particular they had no choice as to the weapons with which they were armed.
- (23) The reality of the situation was that soldiers on duty in Londonderry that day had to take split second decisions as to whether to use potentially lethal force in circumstances where they believed they were under terrorist attack. These soldiers were confronted with circumstances in which even a reasonable man could only act intuitively.
- (24) Notwithstanding the nature of the weapons with which they were armed, it does not follow that those soldiers who fired live rounds on Bloody Sunday necessarily intended to kill or to inflict grievous bodily harm.
- (25) If a man shoots in self-defence and by mistake kills an innocent bystander he is not guilty of murder or manslaughter.

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CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 2

CHAPTER 4

THE IRA

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CHAPTER 4

THE PROVISIONAL AND OFFICIAL IRAS

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CHAPTER 4

THE PROVISIONAL AND OFFICIAL IRAS - INTRODUCTION

- 4A-1 The Tribunal has heard from a number of witnesses who have admitted membership of one or other wing of the IRA. It is accepted that these terrorist organisations operated largely independently at the time of Bloody Sunday and, for that reason, their evidence is dealt with separately below.
- 4A-2 There are, nonetheless, factors common to all those paramilitaries who have given evidence which the Tribunal will no doubt wish to bear in mind in considering their accounts.
- 4A-3 Members of both wings of the IRA have provided limited cooperation and only then at a very late stage. We submit that this reflects their joint objective of orchestrating and coordinating their evidence in the light of that which the Tribunal had already heard. The purpose, no doubt, was to prevent the Tribunal from finding the truth about Bloody Sunday, particularly so far as the involvement of these organisations is concerned.
- 4A-4 Both OIRA and PIRA witnesses have demonstrated their intention to withhold information from and a willingness to lie to this Tribunal. Neither tactic will come as a surprise from individuals who have long refused to recognise the legitimacy of courts of law and who continue to profess their overriding loyalty to the Republican cause above all other considerations. The Tribunal might expect witnesses, whose primary objective during their time in the IRA was to kill members of the Security Forces, to have no compunction about lying in order to condemn those soldiers who were their declared enemies.

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CHAPTER 4B

THE PROVISIONAL IRA

4B-I INTRODUCTION

4B-1 There has been a cynical attempt on the part of Provisional IRA witnesses to manipulate these proceedings and to exploit them for their own advantage. Their obstructive approach is explained by the fact it is now possible to demonstrate that Provisional IRA witnesses were very probably involved in a series of armed attacks on the Security Forces on Bloody Sunday, at least one of which took place at a very early stage indeed.

4B-II PIRA AND THE BLOODY SUNDAY INQUIRY

4B-2 PIRA witnesses have shown a marked reluctance to come forward and to provide any assistance to the Tribunal. When they have come forward, they have done so late in the day, on their own terms and with their own objectives. The Tribunal may conclude that such an approach is inconsistent with a group of witnesses who are willing to tell the whole truth and who have nothing to hide.

THE PRECEDENCE OF THE "REPUBLICAN CODE OF HONOUR"¹

4B-3 It was neither the desire nor the intention of the Provisional IRA witnesses to provide all relevant information about Bloody Sunday to the Tribunal. They made no secret of this fact. The witnesses explained that their "Republican code of honour" or their "oath of allegiance" was such that they must refuse to disclose certain categories of information, however helpful they might be to the Tribunal in its search for the truth.

¹ See also Chapter 2, above, where the refusal of former members of the IRA to assist this Inquiry is further considered.

4B-4 PIRA 14 held "a very senior position" within PIRA in the Republic at the time of Bloody Sunday.² He made it quite clear in his BSI statement where his loyalties lay:

1. I wish to make it clear that I have not come forward to this Tribunal voluntarily. I am extremely unhappy at being required to attend under subpoena...

2. I also wish to clarify my position as regards any potential conflict which may occur between my oath of allegiance as a Republican and the oath I will take to tell the truth to this Tribunal... if a question puts me in conflict with my existing oath of allegiance I will have to refuse to answer as I am not prepared to lie under oath nor am I prepared to break my oath.³

4B-5 PIRA 24 was Officer Commanding the PIRA Derry Battalion. He stated in his BSI statement:

I am not prepared to name other members of the Republican movement, unless such volunteers have already come forward and declared their names openly.⁴

4B-6 He refused to give information to the Tribunal even when its relevance and importance was explained to him. For instance, he was asked by Edwin Glasgow QC to name the Quartermasters of the five Companies of the Derry Battalion:

Q. The difference between what has been said and what you are saying is that any of the quartermasters could, without your specific authority, have authorised an operation and, for all you know, you might not have been told about it; you were just dependent upon what they tell you and you believing them?

A. You are depending on people's belief for to tell you the truth.

Q. Of course. In that case I am suggesting that it is absolutely essential that this Tribunal can check, at least with those officers, so that they may have their evidence as well as you. Will you please write down on a piece of paper the names of the quartermasters who were authorised to give authority for operations?

² Day 421/016/19

³ APIRA 14.1

⁴ APIRA 24.5 paragraph 21

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A. No.

Q. Again, I ask that you -- in view of the evidence that you have given -- be directed to give that information confidentially to the Tribunal?

A. I am not giving any names.

Q. What the Tribunal --

A. That was established before we came in here.

...

LORD SAVILLE: PIRA 24, what is being requested of you is to provide the Tribunal with those names, not to give the names in public because, of course, those individuals may have a right to anonymity just as you do. But are you prepared to provide the Tribunal, in confidence, with those names so that if indeed those people are entitled to anonymity they will not lose that right; are you prepared to do that?

A. No.⁵

4B-7 Martin McGuinness, Adjutant to the Derry Battalion, adopted precisely the same obstructive approach. Mr McGuinness had refused to give answers to several questions in the early stages of his oral evidence to the Tribunal, causing Lord Saville to intervene in the following terms:

LORD SAVILLE: Mr McGuinness, it is the Chairman speaking: you have refused to tell us whether you were in the Officials; you refused to tell us when you became O/C; you are not telling us whether Mr Keenan was in fact the explosives officer; you are not prepared to tell us the address of the house in the Bogside where you gave instructions that the volunteers were not to engage the Army on Bloody Sunday; you are not prepared to identify where the arms dump was; I fail to understand why you are not answering those questions, in view of the fact that at the beginning of your statement you express your anxiety that this Tribunal should seek to establish the full truth about the circumstances of Bloody Sunday. What we shall do now is to rise for a few moments and I would ask you to consider answering these questions, because if you do not, two things will happen: firstly, you are depriving us of the

⁵ Day 427/041/23

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*opportunity of discovering the full facts and matters relating to the events of Bloody Sunday and, secondly, of course, it will be suggested in due course that the reason you are not answering these questions is that you have something to hide?*⁶

4B-8 There was a short break during which Mr McGuinness was allowed to discuss matters with his legal advisers and after which Lord Saville explained the ambit of the Attorney General's undertaking, although it was inconceivable that Mr McGuinness had not already been fully advised on that matter. Questions were then put again to Mr McGuinness:

MR CLARKE: Let us take them, if we may, in reverse order. One of the questions that I asked you was where the dump was into which the arms were placed. Are you prepared to answer that question and if not, why not?

A. Well, I feel I cannot answer that question because there is a Republican code of honour. The people who would have allowed us to use their houses, such as the two occasions that you have identified to me, are people who would have placed great faith in those IRA members who were using the house. For me to identify who these people are would be a betrayal, in my view. On many occasions over the course of the last three decades I have been in interrogation centre after interrogation centre, sometimes for a week at a time, and I have never ever, on any occasion, given the name of a single person who was associated with me or with the IRA. To do so would have been a gross act of betrayal and I just could not do that. I do understand that we are in a different situation; I am not in an interrogation centre, at least I think I am not in an interrogation centre, but I have a duty, in my view, stretching back 30 years, to those people and I am not prepared to break my word to them under any circumstances.

LORD SAVILLE: Do I understand from that answer, Mr McGuinness, that your duty of honour overrides the desire the families have to get to the full truth of the events of Bloody Sunday.

A. No, I think getting to the full truth of the events of Bloody Sunday is very important indeed. It is my own view, and I know you differ from this view, that identifying where the building is does not in any material way assist this particular Tribunal. I understand the need for the Tribunal to have that information, but this is a deeply

⁶ Day 390/047/14

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personal thing for me. For me to give the location of these buildings and in doing so identify the people who own these buildings would be a gross act of betrayal and I just cannot do it.

LORD SAVILLE: I am bound to say I understand your answer as being that you feel that your duty of honour overrides the desire of the families for the Tribunal to discover the whole truth about the events of Bloody Sunday.

A. Can I say that is not my position.⁷

4B-9 Mr McGuinness, who had supported the call for the new Inquiry, refused to give it any real co-operation. He held that his Republican code of honour trumped any legal or moral duty he owed to the Tribunal or, indeed, towards the families of those killed on Bloody Sunday and towards the wounded. Further, he implied that he would be the arbiter of what information it was relevant for the Tribunal to receive – and what he would withhold. In other words, he dictated the limited terms of his appearance at the Inquiry.

4B-10 PIRA witnesses generally defined their own terms of reference to the Tribunal. There are, therefore, numerous examples of PIRA witnesses who held more junior positions in the organisation at the time of Bloody Sunday also refusing, on principle, to disclose information. For example:

(1) Michael Clarke:

I am not prepared to name anyone; not even those who have since died. If people want to come forward and to give evidence to the Inquiry, it is a matter for their conscience, not mine. I stress that I do not wish to stymie the Inquiry, I want the Inquiry to get to the truth. I am simply not prepared to break the oath.⁸

(2) Gerard Doherty:

⁷ Day 390/050/16

⁸ AC157.13 paragraph 14

FS 7. 402

I am not prepared to name any other people who were in the movement.⁹

(3) Sean Keenan:

I have been asked whether I met Gerry (Mad Dog) Doherty that day. It is possible that I did but I do not remember it. He was not the volunteer I was with. I will not name that volunteer, or others involved in the movement.¹⁰

THE GREEN BOOK

4B-11 The approach of these witnesses is further explained in the light of the Provisional IRA's "Green Book", which makes clear that a member's overriding loyalty is to the IRA and the achievement of its aims. The Green Book is considered in detail in chapter 2.

INTIMIDATION¹¹

4B-12 There may have been something altogether more sinister underlying the Republican "code of honour".

4B-13 Liam Clarke and Kathryn Johnston wrote in the notes to their book on Mr McGuinness:

Martin McGuinness announced in May 2001 that he would give evidence to the Bloody Sunday Inquiry...

There are persistent rumours that other former senior IRA figures, including the OC, were 'visited' by current senior IRA men after McGuinness' announcement in an attempt to prevent them giving their own version of events.¹²

⁹ **AD65.19 paragraph 4**

¹⁰ **AK46.2 paragraph 10**

¹¹ See chapter 2, above, where the threat of the IRA to witnesses before this Inquiry is further considered.

¹² **T492.15**, *From Guns to Government*.

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4B-14 There is indeed startling evidence that even the most senior member of the Provisional IRA in Derry on Bloody Sunday has been threatened in relation to his evidence to the Inquiry. He was questioned by Edwin Glasgow QC:

Q. PIRA 24, that is a question I ask you to answer on oath: you have not been discouraged by anybody from giving evidence?

A. That is correct.

Q. That would mean that you have not suggested to anybody that you have been discouraged?

A. Um.

Q. Is that true?

A. Where are you leading; are relying to the subpoena here?

Q. I am asking you the question: have you told anybody that you have been put under pressure or discouraged from giving evidence?

A. Yes, I have.

Q. You have. Who did you tell?

A. The guy that was coming with the subpoenas.

Q. And you explained one of the reasons why you did not want to give evidence was that you were being discouraged from doing so?

A. Yes.¹³

4B-15 PIRA 24 then suggested he had not in fact been intimidated at all; rather he claimed to have lied about this in order to gain information:

Q. Who was doing the discouraging or would you rather not say? I am not asking you to name him.

A. No-one was doing the discouraging, and if you let me elaborate on that, could you?

Q. What do you want to say?

¹³ Day 427/63/5

A. The guy that came with the subpoenas, right, he also had a list with him with other people's names on it, roughly about 18 names, so he came in and sat down beside me, how are you doing and all the rest, and I got into his confidence and he let me see the list of the rest of the people that was being subpoenaed. That was my intentions that was why I had the banter with him.¹⁴

4B-16 PIRA 24's explanation is inherently improbable. What is more, it is in direct conflict with the account given by the Tribunal's agent who visited PIRA 24. The agent's version of events was obtained hastily and in time to allow Christopher Clarke QC to ask PIRA 24 further questions about the incident:

Q. Is it right that you told him that you were willing to help but that a couple of boys had come and told you that you would not be giving evidence?

A. That is right, and the reason for that was to get into his confidence to find out what names was on the sheet of paper that he was going to deliver.

Q. Was there some reference to houses being burnt?

A. No.

Q. The man who came to deliver the letter says that you were his first port of call on the day, you could not have known whether that was true or not, but that the only lists that he ever had were summaries which he made at the end of each day of what he had achieved during the day and that he did not show to you any names or tell you any names of persons he was contacting?

A. I can tell you now that I saw all the names and I remembered at least half of them.

Q. Is it right that for a while thereafter you went to some lengths to avoid the successful service of a subpoena on you?

A. Yes.¹⁵

4B-17 The Solicitor to the Inquiry has informed the Mr Anthony Lawton's Team that a written report has been requested from its agent in respect of this incident. The

¹⁴ Day 427/63/24

¹⁵ Day 427/116/12

FS 7. 405

report is likely further to undermine PIRA 24's suggestion that he lied about the intimidation. It is significant that the agent's own version of events would appear to corroborate the information given by Mr Clarke and Miss Johnston in the notes to their book.

4B-18 The concern and overwhelming probability must be, if the former commander in Derry has been intimidated in this way, many others will have been too.

STAGE MANAGEMENT OF PIRA EVIDENCE

4B-19 There has been a cynical attempt on the part of certain former members of the IRA to manipulate these proceedings and to exploit them for their own advantage. This is entirely in accordance with the orders contained in the Green Book:

EXPLOIT A SITUATION OR CREATE A SITUATION AND THEN EXPLOIT IT.

Exploiting a situation simply means taking advantage of our enemy's political or military mistakes.¹⁶

4B-20 PIRA 24 was OC of the Derry Battalion and, therefore, a significant witness. Yet, he came forward only at the last minute, and only under subpoena.¹⁷ He agreed he would not have come forward at all without that element of compulsion.¹⁸ In a move unprecedented even by the low standards of co-operation set by other PIRA witnesses, PIRA 24's BSI statement was not served on the Interested Parties until 0140 hours on Day 426, 12th February 2004. This was the day on which he was to start giving oral evidence. His evidence concluded on Day 427, making PIRA 24 the final witness to give oral evidence to the Tribunal.

4B-21 By refusing his limited co-operation until the very last possible moment, PIRA 24 did not have to commit himself to any line of evidence until he had heard what all

¹⁶ G.139.944

¹⁷ APIRA24.1 paragraph 2

¹⁸ Day 427/81/7

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other relevant witnesses had said, and, indeed, how they had been questioned by counsel for the Inquiry and those representing the soldiers.

4B-22 It was not only PIRA 24 who delayed the service of his evidence on the Tribunal. In fact, the majority of PIRA witnesses who came forward to the Bloody Sunday Inquiry did so very late in the day. This is to be deprecated but was, unfortunately, the entirely predictable reaction of a secretive organisation with information to hide. Put another way, if the PIRA witnesses had nothing to hide, why did they not come forward at an early stage and with unrestricted terms of reference?

4B-23 There was an inordinate delay by Mr. McGuinness in producing a statement to this Inquiry and no satisfactory explanation was ever offered. The Solicitor to the Inquiry wrote to Mr. McGuinness on 6th April 1999 14th May 1999, 2nd July 1999 and 6th July 1999 seeking his co-operation and asking him to make a statement. None of those letters received a response. A further letter of 22nd December 1999 received no response. On 10th April 2000 the Solicitor to the Inquiry wrote once again to Mr. McGuinness, drawing his attention to the allegations made by Infliction (which had been made public by Christopher Clarke QC on Day 8, 6th April 2000). Yet again no response was received. It was not until 13th December 2000, when Mr. McGuinness applied by counsel for interested party status, that his counsel indicated for the first time that Mr. McGuinness did intend to make a statement but he wished first to be granted interested party status and to have the opportunity to examine all the relevant evidence before the Inquiry.¹⁹

4B-24 On that occasion, when Mr. McGuinness applied for interested party status, the Tribunal expressed some puzzlement as to why it was necessary for Mr. McGuinness to survey the entirety of the material before the Inquiry before giving a witness statement. Mr. Hoyt observed during the course of argument:

With all the material that is before the Tribunal, the hundreds of statements that have been given in similar circumstances, surely it is not necessary for you to review all of those for Mr McGuinness

¹⁹ Day 61/197/05 to Day 61/199/08

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*to tell us what he did on that day. Maybe I am oversimplifying it, it seems to me that is all we are asking of him now.*²⁰

4B-25 In rejecting the application that he be granted full interested party status before he produced a witness statement, the Tribunal made some particularly pertinent observations.

LORD SAVILLE: We have heard an application this afternoon by Mr McGrory, on behalf of Mr Martin McGuinness, for full interested party status in this Inquiry.

The point the Tribunal immediately raised with Mr McGrory when this application was put forward was why Mr McGuinness has been unable to, or unwilling to provide a statement to the Tribunal to date.

Mr McGrory's submission was that it would be a great injustice to his client if he was asked to give a statement before the question of full party status was settled in his favour and he sought to expand upon that submission by pointing out that Mr McGuinness would appear to be an extremely important witness, who, on one view, played a central role in the events of Bloody Sunday and that, accordingly, Mr McGuinness required the best possible legal advice and, indeed, that legal advice could not be given until the lawyers in question had read, assimilated and considered all the material which the Tribunal has collected to date and, indeed, on one view of what Mr McGrory was saying, any material that hereafter comes to light.

We are quite unconvinced that it would be any injustice at all to Mr McGuinness were he to provide to this Tribunal now a statement of his recollections of, during and concerning Bloody Sunday. It seems to us that that request, which has been made to hundreds of witnesses, can be answered as well by Mr McGuinness as it has been answered by all those witnesses.

We indicated to Mr McGrory that the Tribunal would view with great sympathy an application for represented status in front of this Inquiry in view of allegations that have been made concerning Mr McGuinness, but we disagree fundamentally with him in his suggestion that any injustice will be caused to Mr McGuinness by requiring him first to provide a statement to the Tribunal.

²⁰ Day 61/196/05-11

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Mr McGrory is aware, we reminded him during the course of the argument, that Mr McGuinness would of course be entitled to have his own lawyer present when such a statement was taken so that Mr McGuinness's interests could be properly protected.

It seems to us entirely unnecessary for his lawyers to be provided with the plethora of material, which is now before the Inquiry. If as matters proceed things come to light which require Mr McGuinness to give further information or for him further to consider, that can be done with no prejudice to him at all.

In those circumstances, we are not disposed to rule in favour of the application for full party status of Mr McGuinness unless and until he provides this Tribunal with a statement of his recollection of, during and concerning the events of Bloody Sunday.²¹

4B-26 By their delay in coming forward to assist the Inquiry, the former terrorists have earned for themselves the inestimable advantage of being able to tailor their evidence to accord with the factual situation as it emerged from the other evidence. Edwin Glasgow QC's mixed metaphor - "drip feeding of evidence to fill the holes as they appear" - is particularly apt to describe what took place before this Inquiry in the last four months of its sittings.

4B-27 The following table demonstrates that in many cases statements were given and served very late in the day - and after very shortly before the witness in question was called to give oral evidence to the Tribunal.

²¹ Day 61/197/05 to Day 61/199/08

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Witness	Statement signed	Statement distributed	Date of Oral Ev.
Clarke, Michael AC157	2.12.03	4.12.03	8.12.03 Day 402
Dobbins, Eddie AD195	16.10.03	17.10.03	20.11.03 24.11.03 Days 399, 400
Doherty, Gerry AD65	17.10.03	17.10.03	24.11.03 Day 400
Keenan, Sean AK46	16.10.03	17.10.03	None
McFeely, Denis AM7	12.1.04	13.1.04	14.1.04 Day 409
McGilloway, Daniel AM507	16.10.03	17.10.03	None
McGilloway, Vera AM506	16.10.03	17.10.03	None
McGuinness, Martin KM3	6.10.03	19.12.01 6.10.03	4.11.03 5.11.03 Days 390, 391
Moore, Patrick AM505	16.10.03	17.10.03	9.12.03 Day 403
O'hEara, Gerry AO79	17.10.03	17.10.03	16.12.03 Day 406
PIRA 1	8.1.04	12.1.04	14.1.04 Day 409
PIRA 8	Unsigned	28.1.04	29.1.04 Day 418
PIRA 12	17.4.02	21.1.04	None
PIRA 14	4.2.04	4.2.04	4.2.04 Day 421
PIRA 17	4.12.03	8.12.03	10.12.03 Day 404
PIRA 18	Unsigned	9.1.04	13.1.04 Day 408
PIRA 19	12.1.04	14.1.04	27.1.04 Day 416
PIRA 20	14.1.04	19.1.04	None
PIRA 23	4.2.04	4.2.04	5.2.04 Day 422

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Witness	Statement signed	Statement distributed	Date of Oral Ev.
PIRA 24	11.2.04	12.2.04	12.2.04 13.2.04 Days 426, 427
PIRA 25	9.2.04	9.2.04	10.2.04 Day 424
PIRA 26	10.2.04	10.2.04	11.2.04 Day 425
RM2	9.2.04	9.2.04	10.2.04 Day 424
Ward, Paddy AW8	20.8.03	5.9.03	20.10.03 21.10.03 Days 385, 386
Witness X AX1	9.2.00	28.1.04	None

4B-28 The table helps to demonstrate the level of orchestration involved in the attempt to discredit the evidence of Paddy Ward, whose statement had cast considerable doubt on the evidence of Mr McGuinness. Mr Ward started to give oral evidence on Monday, 20th October 2003. On that date Christopher Clarke QC made the following statement:

I think it might be helpful if I just said a little before Mr Ward's evidence begins ... the Tribunal received, at the end of last week, a number of statements, which are not anonymous, and without a claim to anonymity which the Tribunal, for its part, circulated as soon as it was able to do so.²²

4B-29 Mr Clarke then referred to the following eight witnesses:

- (1) Michael Clarke
- (2) Eddie Dobbins

²² Day 385/4/17

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- (3) Gerry Doherty
- (4) Sean Keenan
- (5) Daniel McGilloway
- (6) Vera McGilloway
- (7) Patrick Moore
- (8) Gerry O'hEara

4B-30 As the table reveals, all, save for Michael Clarke, signed statements on Thursday 16th or Friday 17th October. Those statements were served on Friday 17th October, that is on the Friday before the Monday on which Mr Ward's evidence was to start. Mr Clarke's solicitor, whose statement was signed and distributed at a later date, sent the Tribunal a letter, which set out what would appear in his statement.

4B-31 Mr Clarke observed:

Those eight statements contradict in whole or in part the evidence that Mr Ward is to give.²³

4B-32 Provisional IRA witnesses and others with relevant evidence to give, could, when they felt the need arose, respond rapidly to the call for evidence. The fact is that they felt the need arose only when Mr McGuinness required protection.

4B-III STRUCTURE AND DISCIPLINE

STRUCTURE

4B-33 There is confusion among the PIRA witnesses as to the terminology to be applied to the various PIRA units in Derry. Some, such as Michael Clarke, referred to the Derry "Battalion"²⁴ whereas others, like Eddie Dobbins, referred to the Derry

²³ Day 385/6/1

²⁴ AC157.6 paragraph 12

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“Brigade”.²⁵ The organisation in Derry was comprised of units to which some referred as “Companies”,²⁶ and some as “Sections”.²⁷ Others considered Sections, in fact, to be sub-divisions of Companies. For the sake of clarity we refer in our submissions to the Derry Battalion – its various Companies – and the Sections within those Companies.

- 4B-34 There was conflicting evidence from PIRA witnesses as to the number of Companies within the Derry Battalion. Its OC, PIRA 24, suggested there were five Companies at the time of Bloody Sunday, one each in Creggan, Bogside, Brandywell, Shantallow, and Waterside.²⁸ Others suggested there were rather fewer. Michael Clarke, for example, stated there were only two.²⁹
- 4B-35 There were, furthermore, inconsistent accounts about the total PIRA membership in Derry in January 1972. PIRA 24 put it as high as 60, to include active service volunteers and those in intelligence and other roles.³⁰ Martin McGuinness put it in the region of 40 to 50 volunteers.³¹ Others put it significantly lower: PIRA 26, for example, estimated it at 20 to 25 volunteers, not including himself.³² PIRA 1 claimed there were about 20 to 30 volunteers in Derry but that only about a dozen of them would have been trained and in active service at the time.³³
- 4B-36 It can be argued that these discrepancies as to terminology and structure are insignificant, and no more than the inevitable result of the passage of time on the memories of the PIRA witnesses. While some lack of recollection of detail would have been wholly understandable, that degree of contradiction on a simple matter is more consistent with a desire to mislead.

²⁵ AD195.1 paragraph 2

²⁶ For example, PIRA 24; Day 426/43/16

²⁷ For example, Eddie Dobbins; Day 399/81/7

²⁸ Day 426/43/16

²⁹ AC157.6 paragraph 12

³⁰ Day 426/43/16

³¹ KM3.22 paragraph 83(4)

³² APIRA26.1 paragraph 5

F5 7. 413

YOUTH

The Fianna

4B-37 It is not clear how defined was the role of the Fianna, or youth wing, within the Provisional IRA at the time of Bloody Sunday. The Tribunal has received divergent accounts of what, precisely, the role of the Fianna consisted. PIRA 8, for example, stated that "the Fianna was just a bunch of boy scouts. We never used the Fianna for operations..."³⁴ Martin McGuinness added:

...I had no dealings whatsoever with the Fianna. The Fianna were basically a scouting organisation. The Fianna were, were basically a youth wing of republicanism and I suppose many people who had joined the Fianna saw the Fianna as some sort of a training ground for an aspiration at a later stage to become a member of the IRA.

Q. Was it in fact a training ground for later membership of the IRA?

*A. They certainly, in my view, saw themselves as such and I have no doubt whatsoever that they engaged in, in drilling and training, although they had no access whatsoever, in the Derry area, to explosives or weapons of any description.*³⁵

4B-38 Gearoid O'hEara suggested that the role of the Fianna at the time of Bloody Sunday was:

*... gathering information, collecting intelligence, um, just being on the barricades sometimes throughout the night; being at riot scenes and sometimes involved in riots, um, and just being, just being people who could be relied on to provide information on what was happening throughout Derry.*³⁶

³³ AM508.5 paragraph 31; AM508.8 paragraph 50

³⁴ APIRA8.6 paragraph 34

³⁵ Day 390/23/20

³⁶ Day 406/108/15

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4B-39

That claim should be contrasted with the evidence of Eddie Dobbins, that members of the Fianna might, in certain circumstances, be involved in the movement of arms and explosives:

Q. How many occasions did a member of the Fianna become involved in going to a dump and picking up something in there?

A. I have no idea. Numerous occasions.

...

Q. Why did you not tell the Tribunal, when they were asking you about the Fianna and their role, that the Fianna were involved in the movement of arms or explosives?

A. They were not involved in the movement of arms and explosives.

Q. Mr Dobbins, what do you call carrying them from a safe house out to an Active Service Unit?

A. Yes, they had took them from the house and given them to us, that was it.

...

Q. Mr Dobbins, why did you not tell Eversheds what you are telling me now?

A. I was never asked.

Q. You were not asked?

A. No.

Q. You were asked about whether the Fianna had involvement with arms --

A. I was asked whether the Fianna had dumps of their own and had their own explosives and their own weapons, and I said: no, categorically no.

...

Q. But you accept that on numerous occasions they did have contact with arms and explosives?

A. Not for operational reasons.

Q. On numerous occasions they had contact with arms and explosives?

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A. Yes, but not for operational reasons.

Q. They were going to be used for operational reasons?

A. They were not going to use them.³⁷

4B-40 It would seem, therefore, that the Fianna had a more involved role than some suggest. The very existence of the Fianna signified the involvement of a group of young people in the activities of the Provisional IRA in Derry.

Youthful Volunteers

4B-41 It is clear that several of the fully-fledged volunteer members of the Provisional IRA were very young indeed.

4B-42 PIRA 19's evidence was that there were maybe thirty older volunteers in Derry and about 20 "youngsters" like himself. He was sworn in as a full volunteer on the Thursday before Bloody Sunday, aged only 17. His figures, if correct, demonstrate that about 40% of the PIRA membership in Derry at the time of Bloody Sunday consisted of junior personnel.³⁸

4B-43 There was no bar to these youthful members taking positions in active service units. James O'Hagan, a sixteen year old, was killed on 19th August 1971 on active service. *Lost Lives* includes the following description of the circumstances of his death:

He was found fatally injured after what appeared to be an accidental shooting on land at Limavady Road, which was owned by the sister of a Unionist MP...

4B-44 James O'Hagan's father was taken to the property in question:

"When I got there, I found my son dying". In a follow-up operation police and soldiers found bloodstains, a Smith and Wesson revolver, ammunition, a spent cartridge, fusewire and 25 lb of

³⁷ Day 399/143/3

³⁸ APIRA19.1 paragraph 1; APIRA19.2 paragraph 10; Day 416/149/10

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gelignite in the stable. The property was also owned by the Unionist MP's sister...

Although just 16 James O'Hagan is listed on the republican roll of honour as a full member of the IRA rather than its young wing, the Fianna. The teenager, the eldest of a family of six, had just finished his school term at St Breacan's school a few weeks earlier.³⁹

4B-45 PIRA 24 was asked about James O'Hagan by Gerard Elias QC. The OC claimed to have "inherited" young O'Hagan from the previous command:

Q. You have told us a number of times yesterday of your concern for what you described as "the wee 'uns", the youngsters?

A. That is right.

Q. You are aware, are you, of the death of James Christopher O'Hagan, a 16-year-old volunteer?

A. Yes.

Q. Who lived in Derry?

A. Yes.

Q. When you were OC?

A. I did become OC later on then.

Q. How had he become involved with the organisation in such a way that he was involved with weapons and explosives?

A. It is something that I inherited, it is something that I did not set up myself. I inherited it from the, from the previous officers.⁴⁰

4B-46 PIRA 24 ultimately accepted that some volunteers may have been sworn in who were younger than 18 and claimed that this would have been "without us realising how young they were".⁴¹ The Tribunal has heard that Gerry Doherty was also was 16 when he joined PIRA. It is claimed that he lied about his age and no checks

³⁹ *Lost Lives*, 1999 entry number 109, page 91

⁴⁰ Day 427/90/23

⁴¹ APIRA24.2 paragraph 9

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were carried out to ascertain his real age.⁴² PIRA 18 joined at the age of 17 in 1971.⁴³

4B-47 Shortly after Bloody Sunday, young volunteers made no attempt to hide their ages. PIRA 26 joined in April or May 1972 shortly after his sixteenth birthday. "No one checked my age, and I was not aware that there was a minimum age."⁴⁴ RM2 joined PIRA after Bloody Sunday, in May 1972. He was 16. He was asked by Gerard Elias QC:

When you were sworn into the Provisional IRA after Bloody Sunday, you were 16, I think.

A. That is correct, yes.

Q. Were there a number of other people of the same sort of age with you or were you exceptional in your youth?

A. Um, there would have been probably other people round about my age applying to join the IRA at that time.

Q. You did not have to conceal your age in any way?

A. Um, no.⁴⁵

4B-48 The "wee 'uns" were not kept out of the way, as the death of James O'Hagan demonstrates. On the contrary, it is clear that very young personnel indeed were used in Provisional IRA active service units at the time of Bloody Sunday.

NEWLY RECRUITED OFFICIALS

4B-49 Members of the Provisional IRA had a very low regard for those in the Official IRA. Most would apparently have shared the view of Father Bradley (as he then was) that the Officials:

⁴² Day 400/73/10; Day 400/159/19

⁴³ APIRA18.8 paragraph 34

⁴⁴ APIRA26.1 paragraph 4

⁴⁵ Day 424/68/7

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were mainly disliked in the city. It was an old Catholic thing. They were seen as Marxist left wing and were not particular about who joined them. They were inclined to be considered "gangsterish". There were some very irresponsible people in their organisation.⁴⁶

4B-50 It may, therefore, be of some concern that shortly before Bloody Sunday, a number of ex-Officials had joined the Provisional IRA. PIRA 24 stated that, following the incident in which INQ 2245 was captured - and then released - by the Official IRA in Derry:

about a third of the Official membership at the time came over to us that week. We therefore gained more support, without having to take any action.⁴⁷

4B-51 That important evidence was wholly unchallenged on behalf of the Official IRA.

4B-52 INQ 2245 was captured by the Official IRA on 17th January 1972, less than two weeks before Bloody Sunday.⁴⁸ Edwin Glasgow QC asked PIRA 24 whether he was concerned about his acquisition of so many former members of the Official IRA:

Q. You have been very candid in telling the Tribunal that your regard for the Officials had been low, you did not think of them as being an organised, disciplined organisation in the way that you were?

A. Yes, that is right. Well ...

Q. When you acquired a third of the Officials from that ill-disciplined organisation, what was done in the short time before Bloody Sunday to ensure that the ill-disciplined Officials who had joined you took on the discipline of the Provisional organisation immediately?

A. Well, we did not just let them -- we did not bring them in and give them a unit of their own, we spread them out so that we could look after them.

⁴⁶ H1.7 paragraph 18

⁴⁷ APIRA24.3 paragraph 13

⁴⁸ C2245.4 paragraph 18

FS 7. 419

Q. At the time of Bloody Sunday one-third of the original membership of the Officials were spread out among your volunteers?

*A. That is correct.*⁴⁹

4B-53 Many of the ill-disciplined Officials had become members of the Provisional IRA shortly before Bloody Sunday and certainly not sufficiently in advance of that day's events to allow for appropriate re-training.

EFFECT OF INTERNMENT

4B-54 An organisation that included a significant proportion both of very young personnel and of newly recruited ex-Officials required a firm and experienced leadership to keep it in order. The Derry Provisional IRA was commanded by PIRA 24, who, on his own admission could not devote the necessary time to the enterprise and who left office within two weeks of Bloody Sunday.⁵⁰

4B-55 In fact, PIRA 24 had himself only joined PIRA in April or May 1971. Only four months or so later, in August 1971, he took charge of the Provisionals in Derry.⁵¹ This was a rapid rise through the ranks, prompted by necessity rather than any innate skills he may have possessed. He became OC by default, when the Provisional IRA in Derry lost most of its command cadre in the months before Bloody Sunday:

*when internment happened in 1971, many of the officers who were set over me were lifted and I was left in charge.*⁵²

4B-56 His second in command in Derry, Martin McGuinness, was only 21 at the time of Bloody Sunday.⁵³ The OC was twenty-eight.⁵⁴ The Provisional IRA in Derry were

⁴⁹ Day 427/56/20

⁵⁰ APIRA24.19 paragraph 69(2); Day 390/52/24

⁵¹ Day 426/29/7 to Day 426/39/5

⁵² APIRA24.1 paragraph 4; and see Day 426/29/9.

⁵³ KM3.1

⁵⁴ APIRA24.2 paragraph 1

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therefore commanded by youthful and, in the case of the OC at least, inexperienced men. Internment had stripped it of the older, more experienced officers.

PIRA 24 AND MARTIN MCGUINNESS

4B-57 Within two weeks of Bloody Sunday Martin McGuinness, who had been Adjutant, became OC of the Derry Command of the Provisional IRA.⁵⁵ PIRA 24 gives an elaborate explanation in his BSI statement as to why Martin McGuinness took over as OC of the Derry Battalion so shortly after Bloody Sunday. PIRA 24 claimed:

I had problems at home with my wife and child being ill and my mother-in-law suffering from cancer. I was wearing myself down and felt I was going no where. I knew I had left Martin in charge more times than I should have done and consequently, I went to the Chief of Staff myself... I told him I needed a break as OC. I could not give the job 100%... I never considered [Martin McGuinness] as seeking to take over my role, or undermining my role. We are friendly up to today.⁵⁶

4B-58 PIRA 24's claim to have friendly relations "up to today" with Martin McGuinness is inconsistent with Mr McGuinness's own evidence on the point. Mr McGuinness could only say that he thought PIRA 24 was alive, that he did not know about his state of health, nor did he know why the OC had failed to come forward at that stage.⁵⁷

4B-59 Furthermore, PIRA 24's claim to have stood down to allow him to rest and spend more time with his family does not ring true when one learns of the role he took up immediately afterwards. He became Brigade Quartermaster in Dublin, a role that would have required a high level of involvement and one which, presumably, took him away from his family:

⁵⁵ Day 390/52/24

⁵⁶ APIRA24.19 paragraph 69(17)(2)

⁵⁷ Day 390/8/22

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MR CLARKE: ... you were asked some questions about why PIRA 17 should have said that there was no truth in the account apparently given by Ivan Cooper of your becoming quartermaster after Bloody Sunday and, as I understood you, you thought there might have been some confusion on his part and you said that you moved into an upper job as quartermaster.

Could you explain what you meant by "upper job"?

A. Um, I think the, the job that PIRA 17 had was local, was in the Derry command. I moved into brigade command.

Q. Brigade command means where, exactly?

A. In control of Dublin.

Q. In control of?

A. Control of Dublin.⁵⁸

4B-60 We are not in a position to suggest precisely why PIRA 24 ceased to be Derry OC. We suggest, however, that the timing of his removal from office, two weeks after Bloody Sunday, is suspicious.

DISCIPLINE

4B-61 We have already suggested that it is a matter of some concern that the Provisional IRA in Derry were constituted of a number of youthful volunteers and ex-Officials. The command structure, which should have exerted a degree of control on its membership, had been more than decimated by internment, leaving PIRA 24 in charge. These were not the circumstances in which one would expect a disciplined regime to exist. It plainly did not.

4B-62 It is, therefore, of no surprise to learn of Martin McGuinness's concern over the hotheads in the Derry Provisional IRA. In an interview with PRAXIS, he claimed that weapons were kept out of the area of the march on Bloody Sunday and he was asked why:

⁵⁸ Day 427/114/23

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Simply because people felt that if you had Republicans on the march who had arms with them and the situation did develop where soldiers would fire on either with rubber bullets or snatch bullets or things like that, that there was always a risk that somebody who was hot headed. You know cos at that time you're talking very young, the average age of volunteers would have been quite young. And you always ran a serious risk that there would be a flare-up situation and that someone would open fire on a snatch squad or on like an armoured vehicle or something like that which would have been quite useless when you consider the defences that the British had at that time...⁵⁹

4B-63 Charles Coyle was Manager of the Pop Inn on Bishop Street. His BSI statement included the following account of the concern of the local commanders of two hotheads in possession of weapons in the run up to the march:

It was ... let known through the grapevine that the IRA would be stood down on the day of the march. As manager of the pub I played a part in spreading that message by word of mouth. It was also suggested in the newspapers at the time. I am unable to name names, but I can say that I knew certain people and that my information was very accurate. In particular, I knew an IRA man from the Brandywell who had been ordered by IRA leaders in the Lisfannon area to contact all IRA members in his area and get them to hand in their weapons before Sunday. This chap was panicking because he was unable to get in touch with one or two hotheads who were lying low. He was asking around in the Pop Inn if anyone had seen them, but in the end he was able to contact these men.⁶⁰

4B-64 It is not known to which wing of the IRA these hotheads belonged. Mr Coyle's account is wholly inconsistent with evidence of *both* wings of the IRA that weapons were strictly controlled; it further suggests that weapons might be held away from arms dumps. Mr Coyle claims that the men were contacted in the end. It is not known, however, whether the hotheads did in fact return their weapons. The fact that such people existed in the organisation and had access to weapons is in itself of concern.

⁵⁹ KM3.64

⁶⁰ AC88.1 paragraph 4

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4B-65 PIRA 18 was only 18 years old. He may have been one such hothead. He was on suspension at the time of Bloody Sunday (for stealing and burning a van belonging to the Official IRA) but felt it appropriate to participate in the rioting at Barrier 14 by throwing a gas canister at the Army.⁶¹

4B-66 Eddie Dobbins was part of an armed mobile unit on Bloody Sunday. He claims to have been ordered to patrol the Creggan whilst the march was taking place in the Bogside.⁶² However, his immediate response on learning that there was shooting in the Bogside was to leave the Creggan: "we decided that we must go and check out what was going on".⁶³ Mr Dobbins explained how they arrived in the Bogside and:

After sitting in the car for a short while and talking to people who came up to us, our section leader decided that he needed to investigate further and got out of the vehicle. He had an M1 carbine concealed inside his coat...⁶⁴

4B-67 We discuss below whether his unit did in fact receive orders confining it to the Creggan. It is Mr Dobbins' evidence that he did, however; and he has admitted breaching those orders by deserting his post and making for the Bogside at the first sign of action there:

Q. ... Did anybody order you to go down into the Bogside?

A. No.

Q. In going, were you not, then, breaking the orders you had been given to stay in the Creggan?

A. Technically, you could say that, yes.

Q. Why did you do that?

A. Because, as I said, we wanted to find out what was going on.

⁶¹ APIRA18.1 paragraph 2; APIRA18.3 paragraph 11

⁶² AD195.1 paragraph 5

⁶³ AD195.2 paragraph 11

⁶⁴ AD195.1 paragraph 14

Q. Did you also, having heard that soldiers had killed people, want to take the British Army on?

A. Oh, yes.

Q. Is that why you went?

A. To find out -- to see what was happening and then take it from there.⁶⁵

4B-68 The presence in the organisation of hotheads and a potential example of the breach of the most basic of orders on Bloody Sunday show that the Provisional IRA was an organisation in which discipline was a problem. It is notable that while Martin McGuinness volunteered this problem in his interview with PRAXIS, nether he nor any of the other members of the Provisional IRA Command Staff now acknowledge it. The problem was exacerbated by matters already referred to: the presence of youthful personnel and ill-disciplined ex-Officials in the organisation, and the lack of a leadership that could or would devote sufficient time to exercising an appropriate degree of restraint and control.

4B-IV WEAPONS

IN SHORT SUPPLY

4B-69 The Provisional IRA in Derry conducted a damaging guerrilla war against the Security Forces with a relatively small number of weapons.

4B-70 Martin McGuinness stated:

I have been asked as to the nature and extent of the weapons available to the IRA on 30 January 1972. The IRA did not have a large arsenal...At the time the IRA had about ten rifles of different kinds, some of them very old, about half a dozen short arms, and perhaps two or three sub-machine guns. We are talking a very small number...⁶⁶

⁶⁵ Day 399/105/23

⁶⁶ KM3.21 paragraph 81

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4B-71 Eddie Dobbins was asked a similar question:

Q. ... Do you know, even roughly, how many weapons were available to the Derry brigade of the Provisional IRA?

A. 10, 15, at the most.

Q. Is that to the whole of the Derry brigade or to your battalion?

A. That would be the whole of the Derry brigade.

Q. How do you know that?

A. Because they were at a premium, they were always short of weapons and they always needed weapons and they were divided up equally among the battalions.⁶⁷

4B-72 PIRA 24 and PIRA 17 (the OC and Quartermaster respectively) both claimed to be able to state precisely what weapons were held at the time of Bloody Sunday; they gave accounts that were broadly consistent with each other's and with that of Mr McGuinness. PIRA 24 added that he had a private reserve dump in Donegal where some further less good weapons were held.⁶⁸

4B-73 PIRA 19 and PIRA 26 have on similar evidence, therefore, claimed that there were more volunteers than weapons.⁶⁹

4B-74 Working weapons being at a premium, it follows that every opportunity would be taken to keep them safe when they were not in use and, when they became stranded or were abandoned, to recover them.

WEAPONS DUMPS

4B-75 The evidence taken as a whole suggests that each Company had its own weapons dump.⁷⁰ Sean Keenan suggested that Sections might even have their own dumps:

⁶⁷ Day 399/99/7

⁶⁸ APIRA24.8 paragraphs 30 and 33; APIRA17.8 paragraph 44; confirmed Day 404/14/18

⁶⁹ APIRA26.2 paragraph 8; APIRA19.1 paragraph 11

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Each section⁷¹ only had a few weapons of its own. The Quartermaster was responsible for overall weaponry, including its condition. He didn't necessarily know where the dumps used by sections were as long as he was happy that the weapons used were securely dumped or looked after. The section leader was the person who knew where the weapons for the section were dumped, as he had to give them out as required. I believe the Adjutant would also have known where some of the weapons were. Therefore if anybody needed a weapon you had to find the Adjutant or the section leader.⁷²

4B-76 The normal situation would, therefore, be that weapons were distributed throughout Derry. There would be logic in this; it would be unwise to keep all weapons in one location, for the obvious reason that, if that location was compromised, the full Derry arsenal would be lost in one go. There would also be a clear advantage in maintaining a series of local weapons dumps: it avoided the need to transport valuable weapons to a central dump through areas in which they might be seized.

4B-77 PIRA witnesses, unhelpfully, refused to disclose the precise locations of weapons dumps in Derry. However, the Tribunal can assume that there was at least one in each area that had a Company. It is now clear that there were in fact two dumps in the Bogside. PIRA 24 stated that one of them was on the boundary of the Bogside and the Brandywell. It may well have been in the area of the Gasworks, as we discuss below. Another was near to Rossville Street.⁷³

4B-V MODUS OPERANDI

GENERAL

4B-78 Martin McGuinness explained the primary purpose of the Provisional IRA in Derry at the time of Bloody Sunday was to attack the Security Forces.

⁷⁰ See, for example, PIRA 17 at Day 404/78/15 and Eddie Dobbins at Day 399/99/15 and Day 399/101/10.

⁷¹ "Section" is defined by Mr Keenan as consisting four or five people; AK46.5 paragraph 25

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It is true that there was a war situation; the primary purpose of the IRA was to attack the British Army and those military forces supporting them and there was also a strategy in place in the centre of Derry to attack business premises in order to stretch the British Army and to gain maximum advantage over what were undoubtedly superior -- numerically, that is -- military forces.

Q. When you say there was a war situation and the primary purpose of the IRA was to attack the British Army, should we understand that in the absence of any specific orders to the contrary, the position was that if a volunteer could kill a member of the Security Forces, he should take the opportunity to do so?

A. It is true that -- and this obviously bears no relevance whatsoever to the events of Bloody Sunday, but it is true that volunteers at that stage were in a liberated area; they had considerable ease of movement through that liberated area and if the opportunity arose to attack members of the British forces and those who supported them, they had the right to carry out military action against them, yes.

Q. When we talk about the British forces and those who supported them that, of course, included what was then known as the RUC?

A. Yes.⁷⁴

4B-79 The organisation sought to achieve this purpose in a different ways.

THE EXPLOITATION OF RIOTS

4B-80 PIRA 24 acknowledged the relationship between rioting and terrorism:

We used to look out for likely recruits amongst the rioters to see whether they had the right attitude and spot those who were useful and then encourage them to join in.⁷⁵

4B-81 He stated that PIRA gunmen would exploit riots in order to fire at the Security Forces:

⁷² AK46.6 paragraph 29

⁷³ APIRA24.8 paragraphs 31 to 33; Day 426/93/8

⁷⁴ Day 390/34/14

⁷⁵ APIRA24.2 paragraph 5

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I have been asked about whether marches or riots were used by the Provisional IRA as shooting opportunities. Marches were never used by us for those sorts of purposes, although it was possible that riots or their aftermath might be so used. What we used to do was to send a well known volunteer down to a riot in order to clear the rioters from the street. There were a couple of our volunteers who were so well known so that you only had to see them on the streets for people to get off sides so an operation could commence.⁷⁶

4B-82 PIRA 24 was questioned further by Christopher Clarke QC about this:

Q. ... Do we understand from that that a technique that was used was to send a well-known volunteer down when there was a riot going on; his appearance would make people get off-sides and he would then be able to shoot at the Security Forces, if he got the opportunity?

A. Yes, not necessarily the fella that was sent down, the fella was sent down would be only to clear the streets.

Q. To clear the streets for what purpose?

A. For the purpose of an operation.

Q. What do you mean by "an op" "ration"?

...

A. "ell, operations were operations that were carried out against the British Army.

Q. That means shooting them, does it?

A. Yes.

Q. And on occasion – we've heard some evidence to this effect, that the crowd would part; a gunman would appear; he would fire and then the crowd would come together again and the gunman would escape; is that something that happened?

A. I do not think the crowd would have come back for a while.⁷⁷

⁷⁶ APIRA24.3 paragraph 12

⁷⁷ Day 426/48/18

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4B-83 PIRA 24 was not the only witness to deny that gunmen would exploit *marches*. The distinction between marches and riots loses much of its significance when it is recognised that marches at the time would inevitably result in riots. Bloody Sunday demonstrates that riots could repeatedly flare up during the currency of a march. They could well take place in close proximity to those who were continuing to march or to gather for the purposes of a mainly peaceful demonstration. As PIRA 24 commented:

*there would always have been rioting. Any march that ended up down at Free Derry Corner, there would always have been rioting, even a Saturday there would have been rioting. So we just assumed that there would have been rioting.*⁷⁸

4B-84 The Tribunal has received a great deal of evidence about PIRA gunmen's exploitation of riots. PIRA 8 explained that:

*... a riot would go through 3 stages until only the hard core were left. This would involve several of the young Derry guys who did not know the meaning of fear. At the end of a riot, there was the possibility of the army and the Provisional IRA getting involved in the gunfire...*⁷⁹

4B-85 He was asked to explain the three stages in oral evidence to the Tribunal:

The first stage was usually where everybody that was rioting was there just (sic). The second stage was where people thought it was getting a bit too dangerous and they would leave and then you were left then with a third stage, which was the hardcore rioters.

Q. Is it your evidence that it was during the third stage when only the hardcore were present that there might be firing between the IRA and the Army?

*A. Yes.*⁸⁰

4B-86 He was also asked to confirm the normal way in which the gunmen would operate during riots:

⁷⁸ Day 426/88/13

⁷⁹ APIRA8.1 paragraph 5

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Q. In the months leading up to January 1972, it is right, is it not, that the Provisional IRA had used riots as cover from which to shoot at the British Army?

A. I have known of occasions when that has happened, yes.

Q. On occasion an IRA sniper would take up a sniping position first of all; is that right?

A. I have known occasions when this has happened, yes.

Q. And then somebody within the crowd would part the rioters to give him a clear line of sight; is that right?

A. I would agree with that, yes.⁸¹

4B-87 PIRA 19 gave further information on the same topic:

Q. Were you ever involved in a riot where the IRA opened fire on the Security Forces?

A. Yes, I was.

Q. Was that in the Bogside?

A. In the Bogside, yes.

Q. Do you remember any occasions, for example, when a crowd of rioters was told to make way so that a gunman had a clear line of fire?

A. Yes, I do.

Q. Was that in the Bogside as well?

A. In the Bogside, yes.

Q. So in those kind of situations, would it be right to understand that the IRA was in some way controlling the rioters?

A. Not really controlling them. When they arrived to maybe take some shots, they would tell you to get out of the road.

Q. Did you know in advance that the IRA were going to do this or did they just appear on the scene without warning?

⁸⁰ Day 418/6/20

⁸¹ Day 418/7/13

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*A. They usually turned up without warning.*⁸²

4B-88 Gerry Doherty's BSI statement contained the following:

*It was the case that if there was a riot going on, the IRA may have sought targets and used the riot as an opportunity to lodge an attack. A riot, after all, was a confrontation, and there would be troops working on the periphery. The rioters would be aware that they may be told to get offsites so that an attack could be made.*⁸³

4B-89 He was asked in oral evidence to the Tribunal:

Q. Would a soldier working on the periphery of a riot situation be regarded as fare game as a target to be shot if possible:

*A. Yes.*⁸⁴

4B-90 Major Robin Alers-Hankey of the Royal Green Jackets was shot in such circumstances. The corresponding entry in *Lost Lives* records that:

*... he died in a London hospital four months after he had been shot by the IRA during disturbances near [Londonderry] city centre. He was shot in the stomach as he deployed his troops to protect firemen who had been attacked by stone throwers when they were dealing with a blaze at a timber yard, at the junction of Abbey Street and Frederick Street.*⁸⁵

4B-91 He died on Bloody Sunday.

"Scatter"

4B-92 There is evidence about one of the gunmen who would fire in these circumstances. He was nicknamed "Scatter". Edwin Glasgow Q.C. elicited the following information about him from PIRA 19:

⁸² Day 416/140/8

⁸³ AD65.22 paragraph 25

⁸⁴ Day 400/140/12

⁸⁵ *Lost Lives*, item number 256, page 149.

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Q. May I ask you one question, please, lower down the page, about "Scatter", paragraph 19. You have referred to him. He was a young man who you say often turned up with his Thompson; that is right, is it?

A. As far as I am aware, yes.

Q. You have been told, I have no reason to doubt it, that he was interned actually at Bloody Sunday and do you recall that now, or do you just accept it because it is told to you?

A. No, I just accept it.

Q. Very well. He was quite a recognisable character who was well-known at riots, was he not?

A. Yes, that is right.

Q. Am I right in thinking he is referred to by one person -- we do not want to know his name, of course -- as being noticeable by quite powerful glasses, he had dark-rimmed, quite heavy glasses?

A. Yes, that is right.

Q. The suggestion being perhaps his eyesight was not perhaps terribly good and not perhaps the best marksman?

A. That is correct, yes.

Q. That is all right, is it? But he would quite often turn up with a gun that was recognised as his, in that he always used it?

A. Yes.

Q. And a Thompson, as we know, is notoriously unreliable and makes an unforgettable noise; that is right, is it not?

A. Yes, that is right.

Q. But it was quite often used, even by just that one man at riots, even if those riots followed marches?

A. As far as I could understand, yes.⁸⁶

⁸⁶ Day 416/167/5

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4B-93 Whether or not "Scatter" was operational on Bloody Sunday, PIRA 19's information provides an insight into the lack of care that might be exercised by and expected of PIRA gunmen when exploiting a riot situation.

4B-94 Many other witnesses gave evidence of the ways in which PIRA gunmen would exploit riots.⁸⁷

4B-95 Michael Clarke gave evidence that PIRA volunteers might also throw nail bombs at riots:

*Nail bombs were usually thrown towards the end of a riot. In fact, when they were thrown, they usually ended a riot as people did not stand around waiting for a response from the Army. The rioters were given a "Republican nod" before any bombs were thrown.*⁸⁸

4B-96 It cannot be doubted that nail bombs were often thrown at soldiers in Derry. Father Daly's evidence to Lord Widgery was that it was "a very frequent occurrence".⁸⁹ Frank McCarron, who knew a great deal about rioting in Londonderry, confirmed to the Tribunal that Father Daly was correct. He was asked:

Q. This Inquiry has heard evidence from Father Daly and others that in the weeks and months preceding Bloody Sunday, it was a very frequent occurrence in Derry for nail bombs to be thrown; that was your experience as well?

A. Yes, you would have heard them.

Q. How often would you hear nail bombs going off in Derry at about the time of Bloody Sunday?

A. I would not be too sure. Probably you could say regularly.

Q. Regularly?

⁸⁷ PIRA 18 at APIRA18.8 paragraph 36; PIRA 20 at AD196.8 paragraph 42; and Eddie Dobbins at AD195.5 paragraph 19.17.

⁸⁸ AC157.7 paragraph 20

⁸⁹ H5.041 paragraph A; confirmed at Day 075/61/5

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A. Yes.⁹⁰

4B-97 In January 1972, the primary purpose of the Provisional IRA was to attack the Security Forces. An important method of attack was the exploitation of riots by gunmen and nail bombers. The claim that the gunmen and bombers were absent from the riots accompanying the Derry march should therefore be viewed with suspicion. There would have been a firm expectation that they would be present.

AMBUSH

4B-98 The ambush was another method employed by the Provisional IRA in pursuance of its primary purpose to attack the Security Forces. One example demonstrates the brutal and bloody determination with which this policy was pursued. Two RUC officers were murdered by PIRA just three days before Bloody Sunday, as they drove to the Rosemount police station.

4B-99 The Irish News of Friday 28th January 1972 reported how:

Two Derry policemen died yesterday when an RUC patrol car in which they were passengers was riddled with bullets.

They were Sergeant Peter Gilgunn (26) and Constable David John Montgomery (20). Sergeant Gilgunn...was a Catholic. Constable Montgomery... was a Protestant.

...

A third policeman in the car... was wounded in the arm and leg but his condition is not serious... The driver of the car and another policeman escaped injury...

The shooting took place at 8.25 am when the police car, a blue Cortina, was on its way up Creggan Road from the central police station in Strand Road to the Rosemount police station...

As the car passed an alleyway below Helen Street, a man opened fire. At Helen Street two more men opened up with a burst of automatic fire. Seventeen of the 30 bullets fired struck the car and

⁹⁰ Day 389/182/11

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Sergeant Gilgun[n] and Constable Montgomery were hit in the chest and face...

The men who attacked the car were all armed with automatic weapons. One with a Thompson sub-machine gun and the other two with Sterlings. Two of them were spotted by British troops on duty at Rosemount barracks and a soldier fired four rounds at one of them but missed.

It is believed that the men who fired the shots had studied the routine of police and police cars which went to Rosemount every morning. The cars used alternate routes – the one used yesterday and another up through Rosemount.⁹¹

4B-100 It is not disputed that this was a PIRA operation.⁹²

4B-101 The successful completion of the operation was a source of satisfaction for the members of the Provisional IRA. PIRA 19, who was sworn in on the day of the murders, recalls how:

People were in good spirits because there had been two successful hits on the RUC that day.⁹³

4B-102 These must be the very people who claim to have fired no rounds on Bloody Sunday, save, perhaps, for some fired later on “symbolically” at the City Walls.

SNIPER ATTACK

4B-103 We consider below the shots fired both at the Echo Observation Post on the Embassy Ballroom and at the Presbyterian Church, suggesting they may part of a pattern of early rounds fired at military targets by the Provisional IRA. The sniper attack was certainly another aspect of the PIRA modus operandi.

⁹¹ **L18**

⁹² **PIRA 24; Day 427/37/1**

⁹³ **PIRA19.2 paragraph 8**

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4B-VI PIRA/OIRA RELATIONS

- 4B-104 There is clear evidence of the very poor relations that existed between the Provisional and Official IRA at the time of Bloody Sunday.
- 4B-105 No one incident demonstrates the differing approaches of the two organisations better than the capture by the Officials of INQ 2245. He was a private in The 1st Battalion, The Royal Scots Regiment, who had met a Derry girl during his posting in the City in 1971. He had returned to visit her in Derry in January 1972, claiming to her family that he was a sailor. The Derry Officials clearly worked out that this was not the case and kidnapped him. He was interrogated but the decision was ultimately taken to release him. This was on 17th January 1972.⁹⁴
- 4B-106 Such a decision was unacceptable to the Provisionals, who apparently learnt of it, or were perhaps able to guess it would be the likely outcome. As INQ 2245 was being taken out of the building at the Creggan Heights shops where he had been interrogated, Martin McGuinness and a number of PIRA men appeared in an attempt to capture him for themselves. Reg Tester was called as back up and the Officials were able successfully to get INQ 2245 away.⁹⁵
- 4B-107 The decision by the Officials to let the soldier go, and not to kill him, was hugely unpopular with the Provisionals. PIRA 8 was asked about the incident:

Q. And in a nutshell, the Officials had let a soldier go and the Provisionals had felt, bluntly, that he should have been executed?

*A. That is correct, yes.*⁹⁶

- 4B-108 Even PIRA 24 (who made the unlikely claim that he had stage managed the whole situation to make it *look* as if the Provisionals wanted to capture the soldier but

⁹⁴ The statement of INQ 2245 is at C2245.1 *et seq.*

⁹⁵ C2245.7 paragraphs 39 to 42

⁹⁶ Day 418/76/5

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had in fact deliberately held his men back so that INQ 2245 could escape)⁹⁷ agreed that some had wanted him shot.⁹⁸

4B-109 The Sunday Times learnt of an incident on Bloody Sunday that reflected the anger of the Provisionals caused by the soldier's release:

The following incidents are hard to place timewise but are authenticated by staff officers:

...

Towards the end of the action, about when our M1 man was heading home, an Official who had taken no part in the action and was not, therefore, carrying was attacked by 3 or 4 Provos walking down Westland St towards the Bogside Inn. The Provos threw him to the ground and said "You're the bastard that let the soldier go". This referred to an incident some days earlier when the Officials had captured a British soldier stupid enough to be visiting his Creggan fiancée. After interrogation, the soldier was allowed to go free, a decision which infuriated the Provos, and some of the Officials too we understand." ⁹⁹

4B-110 As the journalists' note records, it was not just the Provisionals who were angered by the conduct of INQ 2245's captors. PIRA 24 has told the Tribunal that about a third of the Official membership in Derry defected to the Provisional in the week following the release of the soldier.¹⁰⁰

4B-111 The Provisionals therefore distinguished themselves from their Official rivals by their more aggressive and murderous stance against the Security Forces.

4B-VII THE DECISION TO TAKE NO ACTION

4B-112 The Tribunal has not been given the truth about PIRA plans and preparations prior to the Bloody Sunday march.

⁹⁷ APIRA24.3 paragraph 13

⁹⁸ APIRA14.6 paragraph 38

⁹⁹ and see Jacobson at Day 191/203

¹⁰⁰ APIRA24.3 paragraph 13

FS7. 438

4B-113 PIRA 24 and the other senior PIRA officers have claimed that a decision was expressly taken before Bloody Sunday that no action was to be taken for the duration of the march, other than the manning of two patrols in areas outside the Bogside. Indeed, orders were issued to the men to refrain from any action. This raises the question why it was necessary to give such orders to a force of supposedly disciplined and restrained men, who would not be inclined to take action against the Security Forces during a march and would in any event not do so without specific orders. The difficulties in the PIRA case are nicely demonstrated by the inconsistent evidence given by PIRA witnesses about assurances sought prior to Bloody Sunday by the Northern Ireland Civil Rights Association and others.

4B-114 PIRA 24 claimed in his BSI statement:

My memory is that my "inner circle" talked about the intended march on the Thursday before Bloody Sunday. The consensus was that we would do nothing on the Sunday, but that we would think on it, and decide what to do the following day. On the Friday there was a further meeting in the evening. I decided that there should be no action. Everybody present agreed... I decided that we would not be taking any action on Sunday...¹⁰¹

4B-115 Edwin Glasgow QC asked him why it was necessary to order his men to refrain from action:

Q. Why was it necessary to give people an order, effectively to do nothing?

A. (Pause). The people that was, that was doing nothing was not given an order to do nothing. The people that was doing something was given an order to do nothing.

Q. But you say you went to the lengths of ensuring that all volunteers knew that nothing was to be done, save those who were given specific instructions, as to which we will come back later. In addition to that, you even stopped people in the street and told them. What I am asking you is, if people were effectively being told

¹⁰¹ APIRA24.11 paragraph 46

FS7. 439

to do nothing, what was the point of telling people that they were to do nothing?

A. It sounded a good idea at the time.

Q. It sounded a good idea at the time?

*A. Yes.*¹⁰²

4B-116 Martin McGuinness raised the associated issue of the request by NICRA for an assurance that the Provisional IRA would take no action during the Bloody Sunday march:

On Thursday the 27th January 1972 I was told that an approach had been made to the OC by people representing the Civil Rights movement proposing that the IRA accept that Derry City should be peaceful in order to facilitate what was expected to be a huge, peaceful demonstration against the introduction of internment.

*The following day, Friday evening, I was asked by the OC for my opinion on this request. By this stage I was aware of the ongoing reports of a substantial military build-up in the City. Taking everything into consideration I expressed a view in favour of the suggestion... On Saturday morning I again met the OC. At this meeting I was instructed to issue orders to all Volunteers that the IRA would not engage militarily with British Forces to ensure that the Civil Rights march passed off peacefully.*¹⁰³

4B-117 Mr McGuinness was asked whether the assurance was given:

Q. Were the representatives of the civil rights people told, so far as you were aware, of what decision the Army had made?

A. Yes, I believe they were.

Q. Do you know how and by whom that decision was told them?

A. I have always presumed that it was the O/C who told them.

Q. But you do not know whether it is or not?

A. Well, I am almost certain that it was.

¹⁰² Day 427/12/7

¹⁰³ KM3.1

FS7. 440

Q. Do you know who he told?

*A. I do not, no. I always presumed that he told the people who made the first approach.*¹⁰⁴

4B-118 PIRA 8 gave evidence confirming that of Mr McGuinness:

*I was aware that an assurance had been given that we would have no activity in the area of the march. I think I became aware of that a couple of days before Sunday when a senior member of the movement told me that this assurance had been given.*¹⁰⁵

4B-119 Ivan Cooper MP claims to have been concerned that the Provisionals could not be trusted during the march and claims personally to have requested assurances from PIRA 24 and other high-ranking members if the Provisional IRA:

12. I was concerned that the IRA would view the march by the dynamic and powerful civil rights movement as an opportunity to create a confrontation with the military and the security forces. Therefore, a few days prior to the march, I approached an intermediary and asked him to make arrangements, on my behalf, for me to meet a representative of the IRA. I met four members of the RA, three of whom I already knew. I made it absolutely clear that the march would have to be a non-violent march with no involvement by the IRA, failing which I would use my influence to seek to have the march cancelled. I sought an assurance to this effect.

*13. I received confirmation 48 hours after my meeting with the IRA that the IRA would locate itself on the Creggan Estate and would confine itself to the Creggan Estate whilst the march proceeded...*¹⁰⁶

4B-120 Mr Cooper was asked in oral evidence to the Tribunal:

Q ... When you use the expression "to create a confrontation," what sort of confrontation were you apprehending?

A. I was not apprehending any confrontation, I was concerned that the IRA would endeavour to use the civil rights march as an opportunity to fire shots or something else at the military. In other

¹⁰⁴ Day 390/36/4

¹⁰⁵ APIRA8.2 paragraph 8

¹⁰⁶ KC12.2.1

F57. 441

*words, I was concerned that they would use the civil rights march.*¹⁰⁷

4B-121 He added that the intermediary to whom he referred in his statement was Paddy Devlin MP.¹⁰⁸ Amongst the four members of the Provisional IRA that he met were PIRA 24, PIRA 17 and one of either PIRA 9 or 10.¹⁰⁹

4B-122 Interestingly, Mr Cooper is said to have given a different account to Sunday Times journalist John Barry, in 1972, about the seeking of assurances. He disputes the journalist's note of their conversation.¹¹⁰

4B-123 Father McIvor was asked by Christopher Clarke QC about a television programme in which he had participated:

Q. ... I wonder if we could have up on the screen 09.1. What is about to appear on the screen, I hope, is a transcription, if one sees at the top, of an interview that appears to have taken place with you in relation to a television programme "Remember Bloody Sunday"...

If we go to 09.3, there is a passage in it -- if we could highlight the bottom of the page -- which is an answer of yours in which you are recorded as saying this:

"Well, to put the whole thing in context, it has to be said the Creggan people had a great reliance on their clergy. They looked to them for everything practically. You were not just a priest, you were everything that they thought they needed, so every sort of inquiry, advice was sought from the clergy from the priest and at the time of the march a lot of apprehension was being brought my way by parishioners about whether they should in fact attend the march on Sunday, and one of their worries was that the march would be used that an organisation, the Official IRA and the Provisional IRA at the time might see an opportunity to cause trouble and I think that that was the biggest thing I remember about most of the people I talked to."

¹⁰⁷ 419/10/15

¹⁰⁸ 419/12/16

¹⁰⁹ 419/13/1

¹¹⁰ KC12.68

FS7 . 442

Is that correct; were your parishioners concerned that one or other wing of the IRA might seek an opportunity to cause trouble on the march?

A. That is correct.

Q. You go on to say: "That there was this soul-searching going on as to whether they should attend or not. They wanted to -- I mean civil rights was something that they wanted to be involved in, but in the back of their minds was this worry, this fear, and I remember talking to a considerable number of people who were just thinking the thing through, whether they should go or not, but the big worry was trouble, was there going to be trouble."

It looks from that as if this was a real, sizeable concern at the time?

A. Yes, it was.

Q. You were asked this: "And how did you respond to that? -- the top of the next page:

"Answer: Well, as best I could. We did not work in isolation in the parish; the city was divided into four or five parishes, but really it was all one parish and everybody was -- the priests at that time, everybody was very friendly with each other and I remember having a discussion with two of my other colleagues, one from the Long Tower parish and one from Pennyburn about the particular issue, about the apprehensions and so on, and a decision was made by us and others to go and see if we could come up with any news for our people and my colleague in the Pennyburn parish did come back a few days later and say that he said quite categorically that he had been given guarantees, bona fide guarantees that neither the Provisional IRA nor the Official IRA, who were very active at that time, would become involved in the march."

Can you recall who your colleague was in the Pennyburn parish about whom you appear to have been speaking there?

A. I can recall who the gentleman was and he is no longer with us; he has passed on.

Q. Who was he?

A. His name was Father Tom O'Garragh (sic).

Q. Did you understand from him who had given him the bona fide guarantees?

FS 7. 443

A. No.¹¹¹

4B-124 However, the Tribunal is faced with a body of evidence which directly contradicts that given by Mr McGuinness, Mr Cooper, Father McIvor and others. PIRA 24, one of those with whom Mr Cooper claims to have met, stated:

I have been referred to the evidence given to this Inquiry by Ivan Cooper in relation to assurances which he says were given by the Provisional IRA to the organisers of the march. To be frank, it did not happen. There were other people such as Hugh Logue who would have been the sort of person I would have expected to have approached me in relation to the march if any such approach were to be made, or Brigid Bond who might have asked for some sort of assurance. However, I cannot remember any time that anyone came and asked me for assurances. Neither did anybody else.¹¹²

4B-125 Similarly, it is PIRA23's evidence that:

I am not aware of any promises being made. I am not sure that there was any need to give assurances.¹¹³

4B-126 The Tribunal may feel that the combined evidence relating to the worries of civil rights workers, politicians, priests and their parishioners is the more compelling. That would mean that those in the know (be they local politicians, local priests or members of NICRA) had real misgivings about the Provisional IRA's powers of self-restraint during the Derry march.

4B-VIII THE MOVEMENT OF WEAPONS

4B-127 A variety of conflicting claims have been made about the removal and storage of PIRA weapons in preparation for the Derry march. Each of the following suggestions has been put forward over the years:

- (1) "Arms were not withdrawn";

¹¹¹ Day 055/39/8

¹¹² APIRA24.10 paragraph 44

¹¹³ APIRA23.2 paragraph 15

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- (2) "We took all our weapons out to the Creggan Estate";
- (3) "They were brought to a central location...Creggan was too vulnerable";
and
- (4) Weapons were rejected at Creggan and so were returned to Bogside.

"ARMS WERE NOT WITHDRAWN"

4B-128 Philip Jacobson interviewed a "senior member of the Provisionals" in 1972, whom Mr Jacobson identified as Martin McGuinness.¹¹⁴ Mr McGuinness told him that weapons were not withdrawn from volunteers in advance of the Derry march:

He told me that on the Saturday evening before the march, the Provisional command staff sent out firm verbal orders forbidding members to carry arms on the march. Many Provisionals did attend the march, some we believe, as stewards. Arms were not withdrawn, but this senior Provisional officer told us he had been present all the time and was confident that none of his men had defied the ban.¹¹⁵

4B-129 Mr McGuinness made a similar suggestion in a further interview, this time with PRAXIS. The interviewer put the following scenario to him:

Q. ... after the march there would be a riot and then a build-up to a situation. The explosives or guns for that build-up to some sort of operation would have been way out of the area until after the march had cleared?

A. Absolutely. I am not saying that there wasn't guns in the Bogside area or the ? area or in close vicinity to the march, there probably was, but I would say they were in houses, a few like dumps and things like that there, but there was no way you had units of the IRA marching through the crowd, you know, armed to the teeth to attack the British Army, that just did not happen.¹¹⁶

4B-130 Christopher Clarke QC sought an explanation from Mr McGuinness:

¹¹⁴ Day 191/112/4

¹¹⁵ KM3.5

FS7. 445

Q. That passage is not terribly clear, but it appears to be an indication that although there were not, as you put it, IRA marching armed to the teeth to attack the British Army, there were guns around in houses or dumps in close vicinity to the march; do you follow?

A. Oh, I do indeed, yes.

Q. How did you come to say that?

A. Well, I do not recall even doing the interview, but I presume from what you have said that it can be shown that this was an interview that I gave. I would appreciate more information about that, if that is possible, but I actually also think that it is important to make the point that in the course of interviews over the years many things were said; it is not like appearing before a Tribunal where you have to be absolutely meticulous and accurate or as meticulous and accurate as you can be about what particularly happened.

On this occasion there is no conflict whatsoever in relation to the intentions of -- or the disposition, indeed, of the IRA on the day. What is in question here is this business about weapons being in dumps, so obviously there is a difference between this interview and the testimony that I have given to the Tribunal, the accurate testimony is the testimony to the Tribunal.¹¹⁷

4B-131 Edwin Glasgow QC raised with Mr McGuinness the fact that, prior to his BSI statement, he had never claimed that weapons were withdrawn on Bloody Sunday and enclosed in a dump:

Q. It is right to say you had never given any account of that -- I do not say that critically, just as a matter of historical record -- you had never told anybody about weapons being withdrawn and put in a dump, until you made statements for this Inquiry?

A. Well, as I say, I have done many interviews down the years. There can be no comparison whatsoever between doing television or print interviews for journalists and the type of inquiry which we are engaged in at the moment. This obviously has to be a much more considered situation and obviously down the years I did not

¹¹⁶ KM3.67

¹¹⁷ Day 390/60/8

FS 7. 446

*relate to the people that I done interviews every exact detail of what happened in regard to the IRA on Bloody Sunday.*¹¹⁸

4B-132 Mr McGuinness's explanation that he "did not relate...every exact detail" might be more convincing if he had made no mention of weapons in the early interviews. That, however, was not the case. He expressly stated that "arms were not withdrawn" and that there "probably were" weapons in different locations in the close vicinity of the march. It is impossible to reconcile those interviews with accounts given later by Mr McGuinness and his PIRA colleagues. The early McGuinness interviews totally undermine later suggestions that weapons were removed to a single, closed dump.

"WE TOOK ALL OUR WEAPONS OUT TO THE CREGGAN ESTATE"

4B-133 The Tribunal is in possession of the galley proofs of an Observer article that was pulled from the newspaper pending the Widgery Tribunal. The article included information suggesting that PIRA weapons were withdrawn to the Creggan:

The section leader of the Provisional IRA covering the Bogside, says:

*"Our volunteers were under the strictest orders not to take any weapons into the area. It could have been far too dangerous for the community. We took all our weapons out to the Creggan estate where members of the Provisionals guarded them. Most of our members, at least 50, took part in the march, unarmed."*¹¹⁹

4B-134 PIRA 24 has certainly suggested it was his intention that weapons should be taken to the Creggan. In his BSI statement, he claimed:

*My instructions for the day, which I deal with later, were that the weapons should be taken out of the Bog and taken up to the Creggan.*¹²⁰

¹¹⁸ Day 391/190/19

¹¹⁹ ED24.9

¹²⁰ APIRA24.8 paragraph 31

FS 7. 447

4B-135 That is at least partially consistent with information PIRA 24 gave in an interview with Peter Taylor:

Peter Taylor: You ordered weapons to be taken out of the Bogside?

A: Most of the weapons were taken out of the Bogside and the rest of the weapons were taken away from the route of the march.

Peter Taylor: Why was that necessary?

A: So that there would not be any weapons there and that it would continue to be a peaceful demonstration, [a]s what was planned.¹²¹

4B-136 One of the major difficulties with this claim is that PIRA 24 now suggests that weapons were not, in fact, stored at the Creggan dump on Bloody Sunday. We deal with PIRA 24's latest account, below.

"THEY WERE BROUGHT TO A CENTRAL LOCATION...CREGGAN WAS TOO VULNERABLE"

4B-137 PIRA 17, the Quartermaster, and Martin McGuinness both undermine any suggestion that weapons were removed to and kept in the Creggan. PIRA 17 does so in no uncertain terms, questioning his OC's logic in the process. PIRA 17 explained in his BSI statement that the dump to which arms was taken was not in the Creggan:

Creggan was too vulnerable an area. It bordered the city and there was access along the Buncrana Road to heavy army vehicles if they wanted to use it...¹²²

4B-138 It was PIRA 17's evidence that all PIRA weapons were gathered at an undisclosed location. Some were allocated to the cars that were to patrol in the Creggan and Brandywell and the rest were taken to a central dump. PIRA 17 was present at each stage of the process. Christopher Clarke QC asked

Q. ... You have made it clear that what happened in the early morning of Bloody Sunday was that weapons were brought to a

¹²¹ X1.74.1; PIRA 24 does not dispute that he is the interviewee: Day 426/148/2; Day 427/1/10.

¹²² APIRA17.9 paragraph 47

FS 7. 448

central location; that some were designated for to be used by Active Service Units and the remainder were designated to go to the central dump.

A. Yes.

Q. You have said that on a number of occasions. I want to be clear as to which operations you yourself were physically present at, taking first the central location. Were you physically present there when the weapons arrived at that place?

A. Yes.

Q. Were you there at the central location when the weapons that had been designated to go to the Active Service Units left that central location?

A. Yes.

Q. So far as the dump is concerned, were you physically present when the remainder of the weapons were received into the dump?

*A. Yes.*¹²³

4B-139 In contradiction of his earlier accounts, Martin McGuinness now also claims that weapons were moved to a central dump.¹²⁴ He claimed in oral evidence to the Tribunal that he was "instrumental" in the process:

Q. ... Did you yourself organise that or did somebody else?

A. I believe that I was instrumental in organising that, yes.

Q. Is what happened that a car went round to the various units and picked the weapons up or what happened?

A. Well, I really cannot remember that. I think what would have happened was that the weapons would have been brought to a place where I was and I would then have, with assistance, moved those weapons to the closed dump.

Q. When you say that the dump to which they were moved was a closed dump, what exactly do you mean by "closed"?

¹²³ Day 404/167/21

¹²⁴ KM3.21 Paragraph 81

FS7. 449

A. It was closed in such a fashion that no-one could get at it.

Q. Was it a house, a building, a store; what sort of a dump was it?

A. Well, it was a building in the Bogside area.¹²⁵

4B-140 We consider the Bogside location of the central dump in further detail below.

WEAPONS REJECTED AT CREGGAN SO RETURNED TO BOGSIDE

4B-141 There is finally the attempt by PIRA 24 to reconcile two earlier, conflicting suggestions made in relation to PIRA weapons. He now suggests that he did order that they be removed to the Creggan - and that they were taken there. The added twist in the new account is a claim that they were rejected by the local commander in the Creggan and had to be returned to the Bogside for storage there.

4B-142 The logic of removing weapons from the Bogside to the Creggan has been called into question by PIRA 17, as we have discussed above. PIRA 24 has sought to justify such a move:

My main reason for making the decision that no action would be taken was the actions of the Paratroopers at Magilligan.¹²⁶

4B-143 The logic there may not be immediately apparent. PIRA 24 was asked to explain what he meant. He did so by suggesting that, having learnt of the Paras' approach at Magilligan, he was concerned that they might find any weapons left in the Bogside:

... I assumed what would have happened, that the Paras might have rushed because they would have been maybe a bit gamer than the ordinary, regular soldiers and if we had had guns in that area, they might have found them. They might have took over the area for a day or two and searched, I do not know. I just wanted them out, okay?

¹²⁵ Day 390/46/4

¹²⁶ APIRA24.12 paragraph 50

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Q. Firstly, you did not need the guns for the march, but was the concern that if you left them in the Bogside, one event might lead to another and the Paras might come in and find them?

A. Yes, there might have been a search afterwards and they might have found them.¹²⁷

4B-144 It is, therefore, surprising that on PIRA 24's own account, *all* of the PIRA arsenal, bar the weapons in the patrolling cars, was ultimately gathered together in the one area that was most at threat on Bloody Sunday: the Bogside. PIRA 24 claimed in his BSI statement that:

My instructions for the day ... were that the weapons should be taken out of the Bog and taken up to the Creggan. This was something which Martin McGuinness, as Adjutant, and the Quartermaster would have dealt with. I found out later on the Saturday night that they did this, but when they got to the Creggan, the OC of the Creggan told them that they did not want to touch his closed dump up there. He did not want to open it up. I understand that the weapons were transported back down again to the Bog. I knew that the only place they would be able to put them was the dump on the perimeter of the Brandywell and the Bog...¹²⁸

4B-145 PIRA 24's latest account therefore entails a procession of vehicles from the Bogside to the Creggan, the rejection of the weapons by a Creggan commander in breach of his orders and the unseemly and risky return of the weapons to the Bogside. Neither the Creggan OC, nor Martin McGuinness nor PIRA 17, all of whom would have been involved, mention anything of the sort taking place.

4B-146 A finding that there is, in fact, truth in the story would suggest that the OC's orders were deliberately breached, and would raise the possibility that volunteers who advocated a more proactive approach on Bloody Sunday wished to have weapons available in the Bogside.

4B-147 However, PIRA 24, Martin McGuinness and PIRA 17 do now all claim that weapons were ultimately gathered together and stored centrally on Bloody

¹²⁷ Day 426/88/18

¹²⁸ APIRA24.8 paragraph 31

FS 7. 451

Sunday. PIRA 24 and Mr McGuinness make it clear that the central location was in the Bogside. The Tribunal is accordingly seriously being asked to contemplate a situation in which weapons were removed from volunteers to be kept in the one place where:

- (1) the march would reach its height and where marchers would gather to make their protest;
- (2) the Army was sure to be present at its periphery; and
- (3) all weapons, save for those with the patrol cars, would be lost if the dump were compromised.

4B-148 Martin McGuinness's earliest accounts made it clear that weapons were not withdrawn to a single, closed dump on Bloody Sunday. Nonetheless, inconsistent and unconvincing attempts have been made to suggest that they were. The Tribunal may wonder why senior PIRA witnesses have felt it necessary to invent such a web of lies, unless they have important issues to conceal.

4B-IX THE CREGGAN AND BRANDYWELL MOBILE PATROL UNITS

4B-149 PIRA 24 claims to have made the following decisions:

I decided that there would not be any action on Sunday, the arms were to be taken out of the Bog, and there would be a car in each of the Brandywell and the Creggan on normal patrol duty.¹²⁹

4B-150 We consider in this section the evidence relating to the Brandywell and Creggan cars. We accept that Provisional IRA "active service units" were patrolling in cars at the time of the march on 30th January 1972 and even that those cars patrolled in the Creggan and Brandywell. However, we do not accept that the two cars marked the limit of armed PIRA activity during the march and we call into question the

¹²⁹ APIRA24.11 paragraph 46

FS7. 452

suggestion that the cars were confined to a roving defensive role in the Creggan and the Brandywell at all relevant times.

THE MYTH OF THE MILITARY THREAT TO THE CREGGAN AND THE BRANDYWELL

4B-151 It has been suggested by some that there was a need for an armed Provisional IRA presence in the Creggan and the Brandywell because both areas were vulnerable to military incursion whilst many of their inhabitants were away at the march. However, the risk of a military incursion has now been shown to be a myth.

4B-152 It was Martin McGuinness's evidence that:

Following the meeting [on Friday 28th January] I spoke with the command staff and all active service volunteers. I relayed the decision taken by the OC. Without exception everyone I spoke to accepted that our approach to the march was sensible. A little concern was expressed that against the back-drop of such a large demonstration which would see a large number of people from the Creggan and Brandywell areas marching to the city centre, that the British Army might attempt incursions into these two areas. Instructions were issued that a small number of volunteers, which from memory numbered eight people in the form of two units, should remain armed and vigilant as a contingency in these two areas.¹³⁰

4B-153 Eddie Dobbins was a member of the Creggan Company. He claims that he was told at a meeting on Bloody Sunday that:

I was to be on patrol in the Creggan in a car in case the British army decided to come in and take over the no go areas. I was told I was there with my section to ensure they did not. The Creggan was likely to be a ghost town with everybody on the march and I recall that the streets were deserted...¹³¹

¹³⁰ KM3.2; confirmed Day 390/37/20

¹³¹ AD195.1 paragraph 5

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4B-154 PIRA 8 was in the Brandywell active service unit. It is his evidence that he was given his orders for Bloody Sunday by Martin McGuinness, probably two days beforehand.¹³² His BSI statement includes the following account:

2. .. I was told to get together a unit and to patrol around the Brandywell in case there was a raiding party sent into the back of the Brandywell whilst the march was going on.

...

4. I can recall that the possibility of the army seeking to reclaim the no go areas of the Creggan, Bogside and Brandywell had been discussed at the time...I think that what I was expecting was that there might be some sort of snatch squad or raiding party sent in through the back; there were interfaces where the army often used to try and raid in to the area such as [Bishop¹³³] Street or Foyle Street. When this happened, the army never came in with more than twenty people or so and a patrolling car would be able to slow down any such incursion and maybe put off the raiding party from proceeding with its operation. I therefore expected that if there was any armed confrontation on Bloody Sunday, it would be me and my unit that would be involved in it.¹³⁴

4B-155 PIRA 8's claim that he "expected" his unit would be involved in an armed confrontation with invading soldiers should be contrasted with what the Creggan Company's Michael Clarke had to say about the analogous situation in the Creggan. He denied that a single armed unit would take on the might of the Army.¹³⁵ He stated:

It was thought that the Army was planning an incursion into the Creggan on the day of the march. I was told i[t] had therefore been decided to suspend operations for the duration of the march. I was to remain however in the Creggan as a member of an Active Service Unit ("ASU"). This meant staying in the area to patrol and look our for, and report on, Army activities. It was not the intention to take on the Army if they decided to enter the Creggan... As far as

¹³² Day 418/87/10

¹³³ "Ship Street" in the BSI Statement was corrected to Bishop Street in oral evidence, Day 418/59/12.

¹³⁴ APIRA8.1

¹³⁵ AC157.6 paragraph 12

FS7. 454

*I can recall, this involved around 6-7 volunteers who used two cars, possibly three.*¹³⁶

4B-156 The simple truth is that there was no immediate threat to the Creggan or the Brandywell; the cars were not patrolling to defend those areas from invasion.

4B-157 PIRA24 debunks the myth in unequivocal terms:

*I had seen the Army was not coming up to the Creggan, but on Saturday evening were massing in the town itself and I told the OC of the Creggan this. They were positioned around the Cathedral and at the top of the Bog Road, on the Walls and on the Embassy building. There seemed to be nothing threatening the Creggan. Also, I knew that Paisley's march would be coming to the Guildhall on the Sunday and all this pointed to that being the likely area of operation of the security forces, and not the Creggan and the Brandywell. I therefore was sure that no invasion was planned on the day to re-take the no-go area.*¹³⁷

4B-158 Edwin Glasgow QC raised with PIRA 24 the inconsistencies between his and Martin McGuinness's evidence on this issue, with surprising responses from the Derry OC:

Q. Can we move to the second topic regarding the Creggan: that, too, the Tribunal has learnt, after six years, in the last but one day of the sitting, that there was no truth at all in the story that the Creggan needed guarding, indeed that was a black propaganda myth put out by the British authorities. Is that seriously your evidence, on oath?

A. Yes.

...

Q. And any volunteer who was driving around the Creggan or the Brandywell in the belief that they were there to defend those areas against possible attack, was completely mistaken?

A. They would not have been so foolish as to take on the British Army in a confrontation with a couple of old guns in a car.

¹³⁶ AC157.13 paragraph 43

¹³⁷ APIRA24.10 paragraph 41

FS7. 455

Q. I ask you again: the story about a possible invasion was black propaganda by the British Government?

A. Yes.

Q. So if any volunteers give this Tribunal evidence that they were driving around with guns in the Creggan or the Brandywell in the belief that they were defending it against a possible attack from the British Army, they are mistaken?

*A. That is right.*¹³⁸

4B-159 PIRA 23 similarly debunks the myth. Significantly, he was OC of Creggan Company:

5. I have been asked whether there was any mention of a possible incursion by the Army into the "no-go" areas on the afternoon of the march. I would have known from our intelligence sources if this was going to happen. There was no such intelligence...

*6. As I have said, we were just expecting a normal day in the Creggan.*¹³⁹

4B-160 During his oral evidence, PIRA 23 was asked by Lord Saville:

... Again, I want to make sure I understand your evidence correctly: if I have got it right what I am understanding is this, that you had a very good source of intelligence, so good that if there had been any plans by the Army to invade the Creggan, you are sure you would have known about it; is that right?

A. Yes.

LORD SAVILLE: Of course, am I right in thinking it would not just be you who would know that, this would be something that would be known to the command staff of the whole of the Provos in Derry; is that right?

*A. Yes.*¹⁴⁰

4B-161 PIRA23 had spoken with PIRA24 about this:

¹³⁸ Day 427/16/15

¹³⁹ APIRA23.1

¹⁴⁰ Day 422/10/11

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Q. Do you remember a discussion with the command staff OC about any intelligence that had been received relating to 30th January?

A. Yes.

Q. When did that discussion take place?

A. The day before.

Q. What do you remember being told?

A. I asked would the Army possibly come into the Creggan. They said no.¹⁴¹

4B-162 The claims made by Martin McGuinness and others that there was a need to patrol the Creggan and the Brandywell to protect those areas from invasion by the Army have, therefore, been exposed as false. They were probably made in a further attempt to demonstrate that armed members of PIRA were anywhere but in the Bogside at the time that the Army fired its rounds.

THE SIZE OF THE CREGGAN AND BRANDYWELL PATROLS

4B-163 PIRA 24 and Martin McGuinness have both claimed that they ordered a small number of volunteers, in the form of two units, to patrol in the Creggan and Brandywell. The Tribunal is now in receipt of information that suggests a far greater number of volunteers were on active service on Bloody Sunday.

4B-164 The Commander of the Creggan Company, PIRA 23, has revealed that there were *three* cars involved in the Creggan patrol. One carried four volunteers together with their weapons. The Quartermaster's car was also in use together with a spare car that was parked in the Creggan. That was not the full extent of the Creggan patrol. There were also approximately four volunteers patrolling on foot.¹⁴²

¹⁴¹ Day 422/12/25

¹⁴² APIRA23.1 paragraph 2; 422/6/6 to 422/7/4

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4B-165 It was also Michael Clarke's recollection that the Creggan patrol was greater than just one car; he suggested it:

*... involved around 6-7 volunteers who used two cars, possibly three.*¹⁴³

4B-166 Mr Clarke stated that he was not patrolling in one of the cars.¹⁴⁴ He was therefore undertaking his duties in some other way, perhaps as part of a foot patrol.

4B-167 There is also evidence, which would tend to suggest that the Brandywell patrol was larger than a single car; that of the freelance photographer, Michael Sheil, is that:

*The thing that I remember seeing there that afternoon was that there were two or three cars containing men that I knew to be members of the Provisional IRA stationary in a side street lined by terraced housing near the Brandywell recreation ground. One of the cars had what I presumed to be weapons on the back seat covered by a rug. I also remember seeing Martin McGuinness near one of the cars at one point. He later got into a car driven by someone else and left the area.*¹⁴⁵

4B-168 He, therefore, saw two to three PIRA cars in the Brandywell on the afternoon of the march.

4B-169 The Tribunal will, therefore, wish to consider whether PIRA 24 and Martin McGuinness have deliberately attempted to underplay the nature of the PIRA armed presence in Derry on the afternoon of the Bloody Sunday march and, if so, to what purpose. For reasons we give below, we suggest that members of the Provisional IRA were involved in a number of exchanges with the military that afternoon. We further suggest that the claim that a limited number of volunteers were on duty, safely away from the Bogside, is merely a ruse to hide this fact.

¹⁴³ AC157.13 paragraph 43

¹⁴⁴ Day 402/36/7

¹⁴⁵ M74.1 paragraph 3

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CREGGAN AND BRANDYWELL CARS DEPLOY TO THE BOGSIDE

4B-170 It is, therefore, not surprising to discover that active service units from both the Creggan and the Brandywell made for the Bogside on Bloody Sunday.

4B-171 As soon as Eddie Dobbins and the crew of the Creggan patrol car heard that there was shooting in the Bogside: "we decided that we must go and check out what was going on".¹⁴⁶ In so doing, he and his armed colleagues were entering an area in which there was meant to be no PIRA armed presence, or so we have been led to believe. Mr Dobbins explained how they arrived in the Bogside and:

After sitting in the car for a short while and talking to people who came up to us, our section leader decided that he needed to investigate further and got out of the vehicle. He had an M1 carbine concealed inside his coat...¹⁴⁷

4B-172 PIRA 8 describes a similar scenario with the Brandywell car. "Bad news travels quick" as he put it in his BSI statement,¹⁴⁸ and he soon learnt what was taking place in the Bogside:

22. I then decided to go down and find out what had happened. No one summoned us or sent for us. I drove the car down Stanley's Walk and parked it up by Elmwood Terrace...

23. ...I told one of the volunteers to stay with the car... The three of us made our way down Blucher Street...¹⁴⁹

4B-173 The Tribunal has received the record of an interview conducted by the RUC in the early 1970s with a person whose name has been blanked out. It includes this account about PIRA 8 on Bloody Sunday:

After the shooting started, we ran along the Lecky Road towards the Brandywell. I saw PIRA 8 on Lecky Road at Stanley's Walk with a rifle. There was another man with him who had a rifle as well.¹⁵⁰

¹⁴⁶ AD195.2 paragraph 11

¹⁴⁷ AD195.1 paragraph 14

¹⁴⁸ APIRA8.4 paragraph 21

¹⁴⁹ APIRA8.4

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4B-174 PIRA 8 denies that he was in the location of Stanley's Walk with a rifle after the shooting had started.¹⁵¹ There is therefore a direct conflict between the information contained in the intelligence document and PIRA 8's evidence.

4B-175 We are not in a position to determine whether the Creggan and Brandywell cars were indeed under orders confining them to those respective areas, or whether the units were, in truth, permitted to pass where they wished. If the former situation applied, Mr Dobbins, PIRA 8 and their colleagues were in gross breach of their orders. However, if the latter applied, heavily armed PIRA volunteers operating as mobile Active Service Units were at liberty to enter the Bogside on Bloody Sunday, in addition to the gunmen already there.

THE ATTACK ON THE OLD DAIRY

4B-176 We have referred above to PIRA 8's claim that there was the threat of military incursion into the Brandywell, which called for the deployment of an armed patrol to guard that area. More precisely, PIRA 8 was apparently concerned about:

... some sort of snatch squad or raiding party sent in through the back; there were interfaces where the army often used to try and raid in to the area such as [Bishop¹⁵²] Street or Foyle Street.¹⁵³

4B-177 It is, therefore, surprising that he also claims to have taken his active service unit to the area of the old City Dairy, to the south west of the Brandywell recreation grounds. Mr Glasgow asked PIRA 8 why he had not taken his unit to the area where he perceived the actual threat:

Q. Incidentally, if the risk was of the Army coming in from the area that you have identified as Bishop Street and Foyle Street which are off the extreme top right-hand corner of this map, about three-quarters of a mile away, why did you choose to spend the entire time that you were there in directly the opposite direction, about

¹⁵⁰ INT1.285

¹⁵¹ Day 418/52/2

¹⁵² "Ship Street" in the BSI Statement was corrected to Bishop Street in oral evidence, Day 418/59/12.

¹⁵³ APIRA8.1 paragraph 4

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three-quarters of a mile down to the southwest from the area of which you have told the Inquiry, on oath, you anticipated the risk of insurgence?

A. It is quite simple. At that time, when we were in that area, we were not aware of any shots or any Army activity whatsoever.

Q. But why were you there if you told the Inquiry the truth and that the risk that you had foreseen was of soldiers coming through one or more of the barriers about three-quarters of a mile away to the northeast?

A. Well, we were there, we were watching the Army who had a sangar near the garage. That is the reason why we were there, we were watching a sangar.¹⁵⁴

4B-178 This statement that he was watching soldiers at the Old Dairy location does not answer the question raised by Mr Glasgow. Why was he doing this, if the purpose of his patrol was to guard against an invasion that he believed would occur in the Bishop Street / Foyle Street area?

4B-179 There is an even more perplexing question to be answered: how, if PIRA 8 is telling the truth about observing the Old Dairy, did he miss an attack on that location which must have taken place right under his nose?

4B-180 PIRA 8 took his active service unit to the area of the Old City Dairy, at a leisurely pace:

17. As the march was disappearing around the corner of the Bogside Inn, and with no particular urgency as the mood of the day was reasonable and relaxed and laid back, I drove the car and the volunteers up to the Brandywell and parked outside McCann's chippy which was on the Lecky Road. This road was out towards Letterkenny Road. At the end of the road, the army used to occupy the old City Dairy which was behind the Shell Mex Garage.

18. The four of us got out of the car and I locked the car and kept the key. None of us got any weapons out of the boot.¹⁵⁵

¹⁵⁴ Day 418/67/19

¹⁵⁵ APIRA8.3

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4B-181 He and his men spent half to three quarters of an hour “going up to see what they could see going on in the area of the old City Dairy”.¹⁵⁶ They arrived some time between 3.00 or 4.00 pm and went up to within 25 metres of the Dairy.¹⁵⁷

4B-182 “Nothing was happening” but, instead of moving off to the area of Bishop Street and Foyle Street, PIRA 8 and his men simply moved to the other side of the Old City Dairy. They drove to Southway, parked up and spent a further half to three quarters of an hour observing the Sangar at the Dairy through binoculars. “Again, nothing was happening in this area as far as we could see.”¹⁵⁸ In oral evidence, PIRA 8 accepted they might even have been in that position for longer than 45 minutes.¹⁵⁹

4B-183 We extract below entries from the transcripts of two different radio logs:

(1) 1 Royal Anglian Log;¹⁶⁰ and

(2) 8 Infantry Brigade Log.¹⁶¹

4B-184 The logs record four incidents of gunfire at the Old City Dairy location, which we have listed as 1 to 4 in the table. Each incident was recorded in both logs and, accordingly, we reproduce below two entries per incident. The shorter, first entry comes from the Royal Anglian log and the fuller second version comes from the transcript of Mr Porter’s tape.

¹⁵⁶ APIRA8.4 paragraph 18

¹⁵⁷ Day 418/25/21

¹⁵⁸ APIRA8.4 paragraph 19

¹⁵⁹ Day 418/27/5

¹⁶⁰ Transcript of 1 Royal Anglian Radio Log

¹⁶¹ Transcript of Mr Porter’s Tapes of Army Radio Transmissions on 30 January 1972 with 8 Infantry Brigade Log Entries

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Incident No.	Serial	Time	To	From	Event	Page Ref
1	65	1550	+	H3	2 shots fired at this loc from Kildrum Gds. ¹⁶² No cas strike was seen off grd no fire returned	W102
	324	1549 ¹⁶³	0	54A	Hello, Zero, this is 54 Alpha. We've just had two shots fired at call sign Hotel 3 from the area of Kildrum Gardens. Strikes seen on the ground in front of their location. No casualties and no fire returned. Over.	W125
2	78	1625	+	H3	At 1623 1 shot at this loc no strike no cas from prefabs no fire returned.	W102
	447	1627 ¹⁶⁴	0	54A	...re one shot fired from the prefabs, right in front of their location. No casualties. The gunman not seen. Over.	W133
3	80	1630	+	H3	3 more shots at 12 loc 1 rd returned no hit claimed	W103
	462	1630 ¹⁶⁵	0	54A	Hello, Zero, this is 54 Alpha. A further 3 shots at 16:29 again at Hotel 3's location have come from somewhere half way up the hill to their front, i.e. towards Kildrum Gardens. One round was returned. We'll give you further details but no ca...no hits claimed. Over.	W134
4	90	1649	+	H3	at 1645 short burst from prefabs one rd returned no hit claimed. 42531589	W103

¹⁶² Kildrum Gardens is between Rathlin Drive and Southway, north west of the old City Dairy.

¹⁶³ Timing of corresponding entry in 8 Inf Bde Log, serial 136.

¹⁶⁴ Timing of corresponding entry in 8 Inf Bde Log, serial 178.

¹⁶⁵ Timing of corresponding entry in 8 Inf Bde Log, serial 180.

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Incident No.	Serial	Time	To	From	Event	Page Ref
	525	1647 ¹⁶⁶	0	54A	Hello, Zero, this is 54 Alpha. A burst of fire from a machine gun located at grid 42531589 at 1645 hours...wait...one round returned at the gunman spotted there but no hit claimed. Over.	W138

4B-185 Between approximately 1549 and 1645, the logs record that a total of 6 rounds and a burst from a machine gun were fired at the soldiers at the old City Dairy; they returned 2 rounds. As we have seen, PIRA 8 has told the Tribunal that he arrived in the area of the Dairy at some time between 3.00 and 4.00 pm and remained there, to one side of the Dairy or the other, for an hour to an hour and a half, or more. On his evidence, he somehow managed to miss this gunfire in its entirety.

4B-186 The Tribunal has received evidence from the soldiers involved in the exchanges. They were members of the 22nd Light Air Defence Regiment posted at the Regiment's Brandywell location at the old City Dairy/Mex Garage complex.

4B-187 Gunner Y of that Regiment was posted there. It is probable that incident 3 refers to his exchange with a gunman.¹⁶⁷ He recorded in a 1972 statement that he heard incoming gunfire and that his colleagues pointed out to him the location of the sniper who had fired:

It was the middle of the pathway which runs from the south of the Coach Road to the south east corner of the city cemetery. The pathway is fenced by bushes about 3 feet in height.

4B-188 Gunner Y saw the gunman reappear:

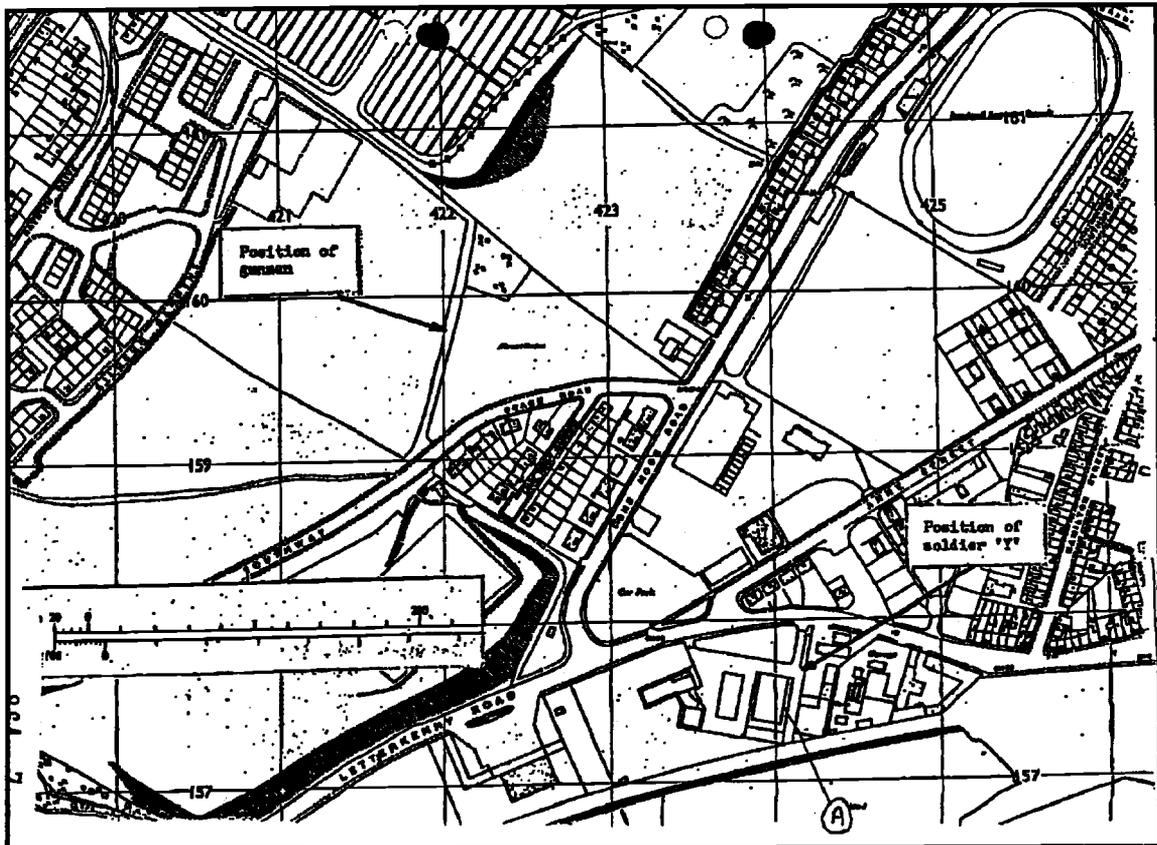
¹⁶⁶ Timing of corresponding entry in 8 Inf Bde Log, serial 199.

¹⁶⁷ Day 382/17/10

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He was young and clean shaven with shoulder length dark hair, dressed in a light blue jumper and a dark jacket.¹⁶⁸

4B-189 The gunman raised a weapon to his shoulder and fired two shots. Gunner Y returned a single aimed round. The map which accompanied Gunner Y's RMP statement marked the relevant positions in this way:



4B-190 Hugh Kelly lived at [REDACTED] at this time. He certainly was aware that the 22 LAD RA's Brandywell location was under fire on Bloody Sunday. His BSI statement describes an attack that took place at approximately 4.45 pm:¹⁶⁹

Behind our house was a thick hedge which gave a good view of the army posts ... On the day in question I believe the fire was directed at ... an army post on top of the Mex filling station... I do not think

¹⁶⁸ **B859**

¹⁶⁹ **Day 174/141/6**

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*that there were many shots fired, or that the army retaliated or returned fire.*¹⁷⁰

4B-191 It is probable that incident 4 in the table refers to Bombardier X's exchange with a gunman.¹⁷¹ Bombardier X was also based at 22 LAD RA's Brandywell location. He explained in 1972 how:

... a burst of automatic fire which I would say was about 8 or 10 shots went overhead in the direction of the river. I could see the direction from where these shots had come between two derelict buildings to my left on the opposite side of the Letterkenny Road. The corrugated iron had been placed over what was left of the roof and formed a sort of tunnel...I could see the profile of a man leaning against the side of the tunnel. I am positive that this was the direction from which the shots had come.

*Immediately after the firing had taken place I saw this man run down the tunnel away from my direction and I fired one shot after him.*¹⁷²

4B-192 Sergeant 020 was positioned with X. His RMP statement recorded that:

At about 1645 hours I heard a burst of automatic fire directed at my section. The rounds hit the roof of the garage above our heads. The burst was low velocity. As the burst was fired myself and X saw the muzzle flash, from the burst about 100 metres to our right.

The gunman was in an old building between Foyle Road and Anne Street...we saw the man in the centre of the building where there was a hole in the wall.

*I ordered X to fire at the gunman. He fired one aimed shot at the gunman...*¹⁷³

4B-193 The map accompanying Sergeant 020's RMP statement was marked to show the relevant locations. We reproduce it below. He has amended it and recalls now that his men were spread out between A-B and that he was with Bombardier X in the

¹⁷⁰ AK10.3 paragraph 19

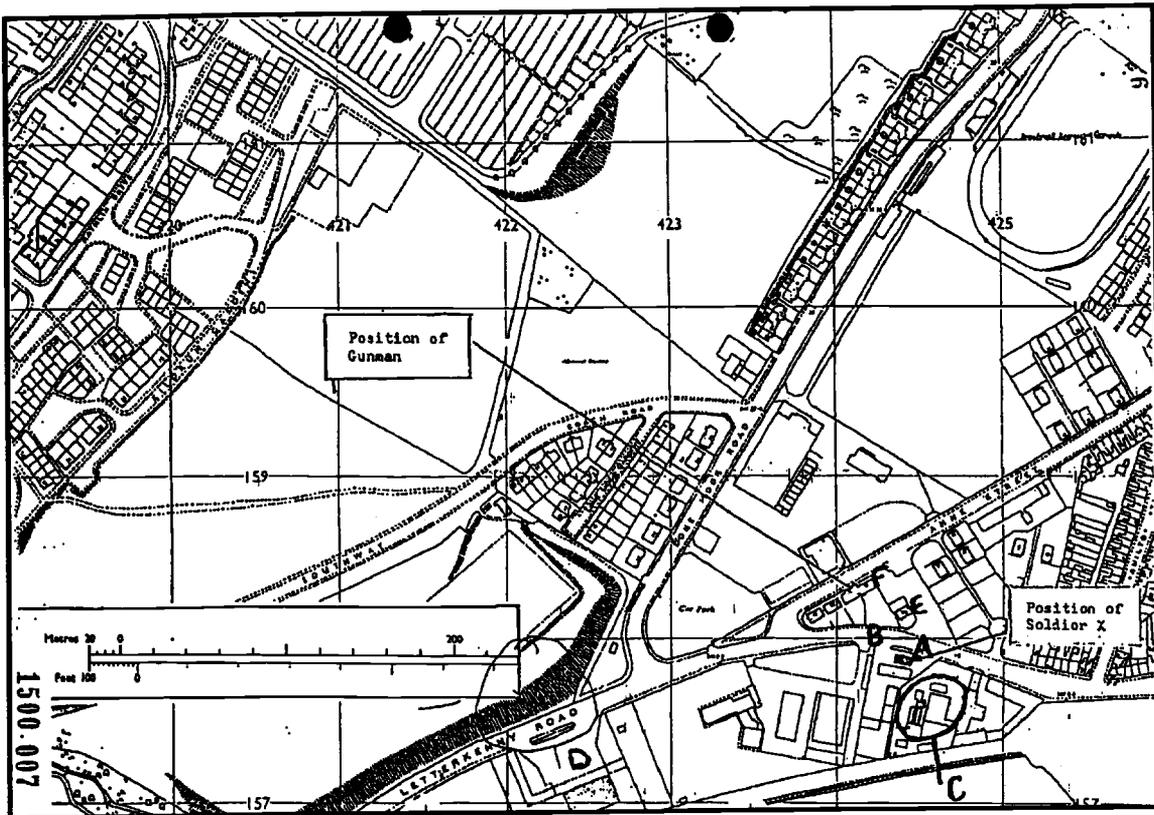
¹⁷¹ Day 380/115/14

¹⁷² B841

¹⁷³ B1500.010

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sangar in the circle marked C. The gunman was located in one of the buildings between E and F.¹⁷⁴



4B-194 It is inconceivable that PIRA 8 could have remained oblivious to the attack on the 22 LAD RA location if, as he claims, he was in position watching it at the time. There are only two possibilities.

4B-195 The first is that PIRA 8 was present during and, possibly, participated in the attack. The logs show that the first shots were fired at the Army no later than 1549. This was approximately twenty minutes *before* the 1 PARA passed into the Bogside. Further shots were fired at 1623, 1629 and 1645. A finding that this is what in fact occurred would have important implications for the PIRA case generally because it would give the lie to the suggestion that Provisional gunmen were operating defensively on Bloody Sunday. It would mean that, from an early

¹⁷⁴ B1500.002 paragraph 10; B1500.003 paragraph 18

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stage in the afternoon, they were searching out military targets and trying to kill soldiers.

4B-196 The only other possibility is that PIRA 8 was not where he said he was. In other words, he has lied about being close to the old City Dairy and he was actually engaged in other activities in a different location. If so, why did he feel the need to lie, and what was he really up to?

4B-X PROVISIONAL IRA SHOTS FROM THE BOGSIDE INN

THE DECISION TO TAKE NO ACTION

4B-197 Several high-ranking officers in Derry Provisional IRA have told the Tribunal of the organisation's decision to take no action following the Army shooting in the Bogside. They have suggested that an armed response was not appropriate in the circumstances.

4B-198 PIRA 24 made it clear in his BSI statement that:

I then decided to stand everybody down and said that all weapons were to be off the street from the two cars. It would have been crazy to think of taking on the Army. Whereas people were angry and in shock, there was agreement to this course of action. There was to be no action taken until after the funerals. Volunteers were sent out to tell people.¹⁷⁵

4B-199 Likewise, Martin McGuinness has stated that an armed response was not appropriate in the circumstances:

...I decided that it was better to let the world see what the British army had done. If we brought weapons into the area we would give the British army an excuse to go further. Therefore the decision was taken not to engage the British forces.¹⁷⁶

4B-200 PIRA 17, Battalion Quartermaster, claims to have been of a similar mind:

¹⁷⁵ APIRA24.14 paragraph 60

¹⁷⁶ KM3.12 paragraph 27

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We met up at our usual meeting place in the Bogside. I am not prepared to specify the place. A decision was taken very early on by the IRA that for obvious reasons there would be no return fire and that the arms dump would not be opened. The obvious reasons were that we thought the army were trying to bait us into a gun battle and we should not take that bait with so many innocent civilians still around.¹⁷⁷

4B-201 He has also stated:

I have always believed that the decision was correct. The OC was present and the Adjutant too, together with other volunteers... We were very aware that the army was serious and we were not going to be drawn into a dog fight with them.¹⁷⁸

4B-202 The OC of the Creggan Company, PIRA 23, explained that:

People were shocked and frightened and it was felt that the sight of guns on the streets would only make matters worse.¹⁷⁹

4B-203 All of these sentiments are inconsistent with a further decision that was apparently taken on Bloody Sunday.

THE DECISION TO SHOOT AT THE CITY WALLS

4B-204 PIRA 24's explanation for his decision that shots should be fired at a military position on the City Walls is inexplicable in the context of the evidence we have set out above:

At the time, of course, people wanted to get hold of guns in order to retaliate and I thought that if they heard guns, this would quieten them down as they would think the IRA was still there and operational. I therefore made the decision, in the company of Martin McGuinness, to fire a couple of shots at the Walls which would, in my view, stop people asking for weapons and which had

¹⁷⁷ APIRA17.6 paragraph 33

¹⁷⁸ APIRA17.3 paragraph 77

¹⁷⁹ APIRA23.2 paragraph 11

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*the added advantage that the Army would know that we were still there and that this might encourage them to leave the area.*¹⁸⁰

4B-205 So unlikely is this explanation that we suggest it is a lie.

THE TIMING OF THE SHOTS

4B-206 Mr McGuinness claims that these rounds were fired "symbolically" and late in the day:

*Much later in the evening I was party to a decision made by the IRA to fire a number of shots, symbolically, at the British Army observation post on Derry Walls. This decision was not taken until at least one and a half hours after the British army shooting had ended. Following the decision, shots were fired from the vicinity of the Bogside Inn by an IRA volunteer. I was not however present when this incident occurred.*¹⁸¹

4B-207 We suggest that they were fired with the intention of killing a soldier or soldiers. We further suggest that the first shots discharged on Bloody Sunday from this location at the City Walls by the Provisional IRA were fired shortly after 1 PARA deployed into the Bogside.

4B-208 The radio logs provide very firm evidence of the early timing of shots fired from the area of the Bogside Inn at the City Walls. The incident was well reported, as the table below demonstrates. The radio logs clearly indicate that an exchange took place at or around 1614 hours.

¹⁸⁰ APIRA24.14 paragraph 61

¹⁸¹ KM3.18 paragraph 58(8)

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LOG	SERIAL	TIME	TO	FROM	EVENT	PAGE REF
HQNI	60	1626		8BDE	1614 Man near Bogside Inn fired 4 shots towards the walls – 2 rds returned – seen to be hit	W28
I R ANGLIAN	74?	1617		2	4 shots fired at 21 from Bogside Inn. 2 HV returned ... (illegible)... shot returned at gunman at rear of Bogside Inn. Man seen to fall	W102
PORTER ¹⁸²	item 396 8 Inf Bde Log serial: 168	8 Inf Bde log DTG: 1617	0, 90A and 76	54A	... We have just had 4 shots fired at our call sign Q21 on the Walls. Ah, 2 HV rounds were returned. Over	W130
PORTER	item 432		54A	0	Ah, reference your report of a man being seen to fall in the area of the Bogside Inn. Ah, why was this man fired at? Over.	W132
PORTER	item 433		0	54A	This man was fired at because he fired 4 shots at us. Over.	W132

4B-209 Private AD of The Royal Anglian Regiment agrees that the radio messages extracted above appear to relate to an engagement in which he was involved.¹⁸³ He was positioned on the first floor of a derelict house at 21 Long Tower Street, just below the City Walls and close to the Double Bastion, home of Roaring Meg, at the south west corner of the Walls.¹⁸⁴

4B-210 The soldier saw a civilian with a rifle come out of an archway and take up a position just south of the Bogside Inn. He fired over AD's head and, presumably,

¹⁸² Transcript of Mr Porter's Tapes of Army Radio Transmissions on 30 January 1972 with 8 Infantry Brigade Log Entries

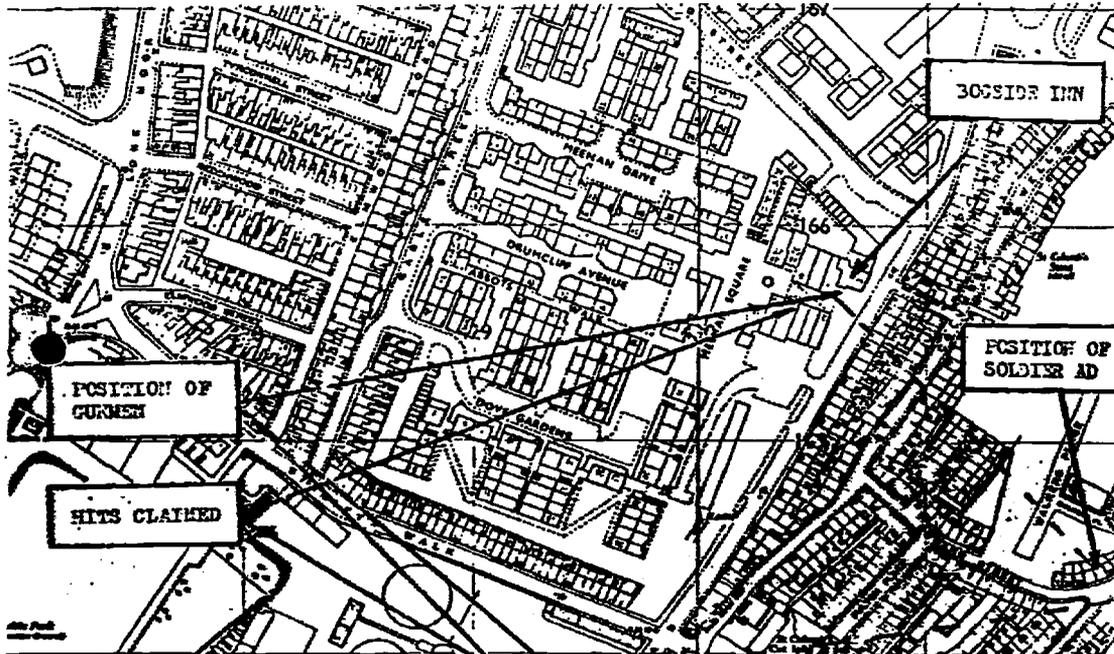
¹⁸³ B943.011 paragraph 7

¹⁸⁴ CJ2.21

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at a target on the Walls. AD returned two rounds, the second of which found its target. A crowd gathered around the gunman's body and dragged it into Meenan Square.¹⁸⁵

4B-211 The locations of Private AD and the gunman are marked on the map below:



4B-212 Not one PIRA witness accounts for these early rounds, which were fired from the same location and at the same target as the late “symbolic” shots about which they have actually made admissions. We suggest it is now clear that Provisional volunteers on active service were operating in the heart of the Bogsider at an early stage in the proceedings, shooting at soldiers.

4B-XI THE STANLEY'S WALK “CALL HOUSE” AND SHOTS FIRED FROM THE GASWORKS

4B-213 We deal in this section of our submissions with evidence of a meeting in the PIRA “call house” in Stanley's Walk, the sighting of an armed member of the

¹⁸⁵ **B933**; Private AD agreed in oral evidence to the Tribunal that his 1972 account likely to be the most accurate (Day 382/82/8; Day 382/90/7)

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Provisional IRA in the area of Stanley's Walk and with the presence of Thomas McGlinchey, of PIRA, in the area of the gasworks on the other side of Stanley's Walk. He was searching for a weapon. We observe that it is likely that all of this was taking place at exactly the time that a member of the Royal Anglian Regiment, Soldier AC, was involved in an engagement with two gunmen – situated in the gasworks.

MEETING AT STANLEY'S WALK ON 30TH JANUARY 1972

The Location of the Stanley's Walk "Call House"

4B-214 Martin McGuinness made it clear that meetings of PIRA Command Staff both prior to and shortly after the Bloody Sunday march took place at the same address:

A. Well, firstly, I want to clarify in relation to my evidence yesterday some matters.

Lord Saville has given the impression that I was referring to two different houses; the first where volunteers met me to receive orders for Bloody Sunday; the second the house where the volunteers congregated after the killings. In fact, this is one and the same house. This was, on those days, our command base which we referred to as 'the call house' and it was moved every few days, but on that Saturday and Sunday it was in fact the same house.

4B-215 However, he refused to give the locations of the "call house" or of the Bogside arms dump on the basis that to do so would entail compromising a tacit assurance given to the families whose premises these were, or, as he put it:

Now, the questions put to me about this and the location of the arms dump, therefore, relate to two separate premises. Now, I undertook to consider approaching the families who allowed us the use of these two premises as requested by Lord Saville and, after very careful consideration and with deep reservations, I did so last evening.

I have been in contact with members of both families connected with these premises. In both cases they have asked me not to reveal the names or the location of the premises, and I have to say that does not surprise me, this is what I expected and, in my view, their attitude is totally understandable.

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I think it has to be remembered that the people who provided us with logistical support -- including the use of the premises -- did so at great personal risk, they could have been arrested or killed as a result. They did so because of their deep commitment to the cause of Irish freedom and always on the basis that their trust in the IRA would not be betrayed.

The IRA was at that stage -- and still is in terms of British law -- an illegal organisation. We could not have survived as an Army without the logistical support of people in our community, but those who gave us this support were acting illegally under British law; they were, and still are, open to arrest and prosecution and, even if not prosecuted, they would undoubtedly suffer intense and sustained harassment.

In addition to these considerations, those I spoke to last evening in both cases pointed out to me that their families are by now quite extensive, well-dispersed and not confined to the West Bank of the Foyle. These family members, some of whom may not even be committed Republican supporters, would be put at grave risk of attack by Loyalist paramilitaries who have killed many Republicans and who continue to target Republicans.

They may also suffer in terms of victimisation, in terms of employment or where they now live, and there actually may be all sorts of other wide-ranging situations that they could find themselves in as a result of their names being disclosed.

So, for all these reasons, I am not prepared to betray the confidence or put at risk people who sheltered, helped or put their trust in me. I think -- I have to say that they have my deepest gratitude and respect and I will never reveal their names.

4B-216 Having just refused to give information of the greatest relevance to the Tribunal, Mr McGuinness then castigated the Ministry of Defence for having been "most unhelpful":

I think also that I am absolutely confident that the families of those who were murdered on Bloody Sunday understand my position on this matter and I think also I need to say that as far as the people of this city are concerned, there is a very, very strong view in the city that the group which has been most unhelpful to this Tribunal right

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*throughout the course of the Tribunal has been the British Ministry of Defence.*¹⁸⁶

4B-217 PIRA 24 also refused to disclose the location of the Bogside arms dump.¹⁸⁷ He was, however, happy to give the location of the Stanley's Walk meeting house:

Q. But you do recall it was a derelict house, it was not a house --

A. It was a house -- what actually happened, the old houses would have been knocked down and the people were re-housed and we just moved, we just took it over.

Q. You deliberately took over a house where you would not be putting those people who had lived there to any danger?

A. No, that is right.

Q. It was not necessary to ask anybody's permission?

A. It was not necessary to ask for permission.

Q. If it was derelict and nobody was connected with it at the time, there could be no earthly reason why you do not tell us the address. You are not exposing anybody to any danger by doing that?

A. That is right.

Q. In that case, if you are not exposing anybody to any danger, I premise it by that, please tell the Tribunal what the address was?

...

4B-218 PIRA 24 then marked the approximate location of the "call house" on a photograph:

MR GLASGOW: Photograph 223 may help. If you find P223 and enlarge the bottom left-hand corner. Does that help?

A. Somewhere around there. Somewhere in that area, I just cannot tell you exactly what house it is. (Marked with blue arrow - APIRA 24.29)

¹⁸⁶ Day 391/1/9

¹⁸⁷ APIRA24.8 paragraphs 31 to 33; Day 426/93/8

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Q. Very well. We have the area. Perhaps that photograph can be saved with the blue arrow, as your best approximation --

A. It is an approximate area, because there was houses knocked down and I just would not be sure, you know.

Q. You confirm there is no reason --

A. I confirm that it was one of those houses.

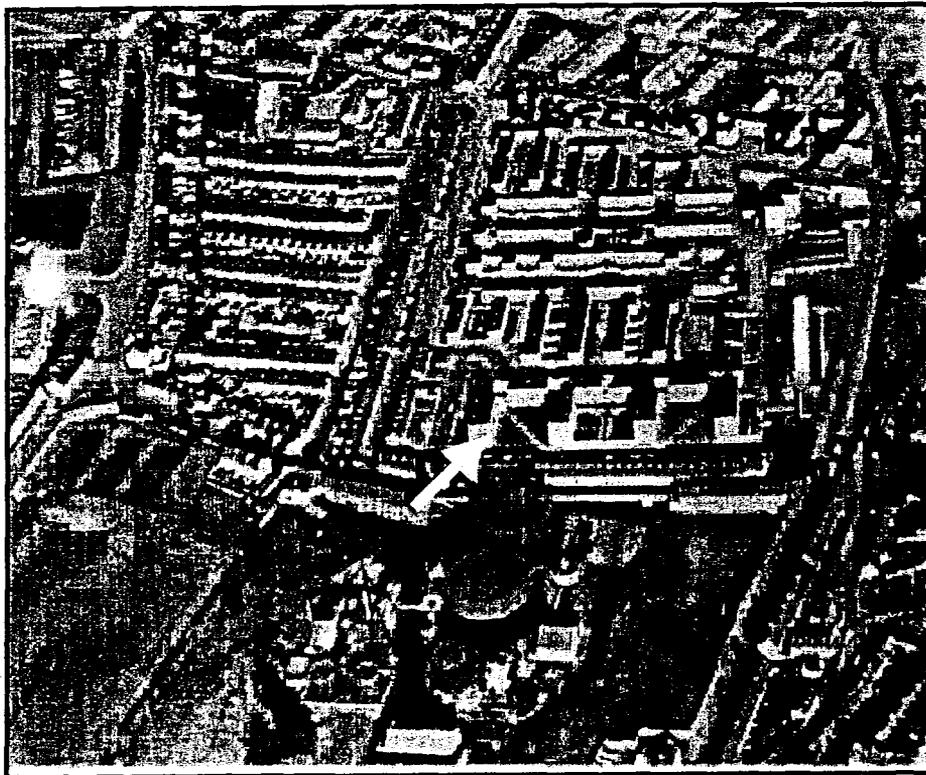
Q. There is no reason why if we can discover the address, why that address should not be known to anybody?

A. If we discover the address, okay, there is no problem. It is somewhere around there, it might be two houses out.

Q. You are not putting anybody at any danger by giving that at all?

A. Not at all, no.¹⁸⁸

4B-219 We recreate the marking he made on P223, below:



¹⁸⁸ Day 427/31/14

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4B-220 It is now clear that the “call house” was in a derelict building, exposing Mr McGuinness’s reason for not disclosing its location as false. This was a clear example of Mr McGuinness withholding information from the Tribunal in reliance on the Republican “code of honour” in circumstances where such considerations simply did not apply.

The Location of the Bogside Arms Dump

4B-221 Not one member of PIRA has agreed to disclose the location of the Bogside weapons dump. However, the Tribunal has two clues which may lead it to conclude that the dump was in the area of the gasworks.

4B-222 PIRA 24 was prepared to admit that the dump was “on the perimeter of the Brandywell and Bogside area”.¹⁸⁹ The gasworks would certainly fall in that area.

4B-223 What is more, the Tribunal knows that Thomas McGlinchey, a member of the Provisional IRA, made for the gasworks when he was looking for a weapon to fire on the Army. On Bloody Sunday, he was the driver of the coal lorry which led the march from the Creggan to the place where marchers were to gather to listen to the speeches. His BSI statement included this description of events:

9. I drove the lorry down Rossville Street, past the rubble barricade. I parked at Free Derry Corner... my work was done...

10. I was still sitting in the driver’s seat when suddenly the shooting started... I got out of the lorry immediately...

4B-224 Mr McGlinchey next described taking his wife and another woman to an address in St Colomb’s Wells. His narrative continued:

11. I do not recall where the shooting came from. I was more interested in getting hold of a rifle to shoot back at the soldiers and to defend the people in the crowd. I wasn’t the only one looking for a gun. I went to a place near Cable Street, where I thought I would

¹⁸⁹ APIRA24.8 paragraph 32

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have been able to get a gun, but there were none around (at that time, arms were tightly controlled by a few people).¹⁹⁰

4B-225 He went to the gasworks, according to his oral evidence to the Tribunal:

MR CLARKE: The last matter: can we have on the screen P216? You told us that the place where you thought you would have been able to get a gun was the gas place near Stanley's Walk or Cable Street. This is a photograph of the area and I think we can see that the gasworks were then off Stanley's Walk which is marked on the plan. (Marked in red) Am I right in thinking that Cable Street runs at right angles to Stanley's Walk?

A. Yes.

Q. There is the gasworks; is that the place you thought you might be able to get a gun?

A. Yes.

Q. Was it in one of the buildings we can see in the photograph?

A. Yes.

Q. Can you tell us which one it is?

A. Around here. (Indicating)

Q. Sorry, where?

A. Where I am pointing.

Q. That is to say just above the gas container on the left; is that right?

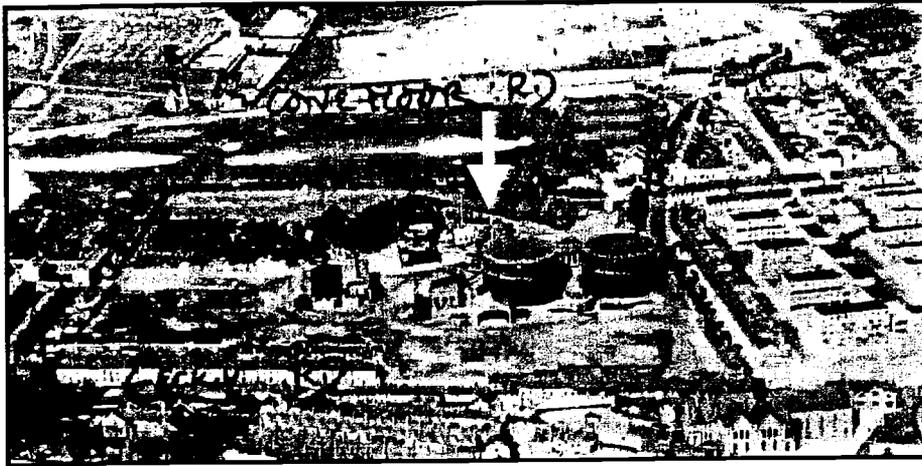
A. (Witness nodding)¹⁹¹

4B-226 No marked photograph was saved during the course of Mr McGlinchey's oral evidence; we have, therefore, recreated the location indicated on **P216** from the explanation given by Mr Clarke:

¹⁹⁰ AM249.5

¹⁹¹ 053/74/25

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4B-227 Mr McGlinchey's actions, combined with the clue given by PIRA 24, strongly suggest that there was a weapons dump at the gasworks.

The Meeting

4B-228 A meeting took place at the "call house" at about 4.30 or 4.45 pm, according to PIRA 24.¹⁹² It is not clear who was present; the Tribunal has received conflicting evidence in this regard, as becomes apparent from Edwin Glasgow QC's questioning of PIRA 24:

Q. ... PIRA 8 has told the Tribunal that you were at the meeting but Martin McGuinness was not ... PIRA 19 says that you were there and Mr McGuinness was not. But your recollection is that you were there, Martin McGuinness was there and PIRA 8 was there?

A. Yes, for --

Q. That is right?

*A. Okay.*¹⁹³

4B-229 PIRA 17 and PIRA 23 were probably there too:

¹⁹² Day 427/31/3

¹⁹³ Day 427/36/15

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- (1) PIRA 17, the Quartermaster, “wanted to get to the heart of the Bogside to a place I knew that other members of the IRA would be”.¹⁹⁴ He was “focused on getting to speak to the people who might know what had happened”¹⁹⁵ and went to “our usual meeting point in the Bogside”, where he met with the OC.¹⁹⁶
- (2) PIRA 23, the Creggan OC, also admits going to the Stanley’s Walk location.¹⁹⁷

4B-230 PIRA 8 was in the vicinity too. We have already discussed how PIRA 8, from the Brandywell Company, left the Brandywell for the Bogside, and referred above to an RUC document suggesting he was seen “on Lecky Road at Stanley’s Walk with a rifle”.¹⁹⁸

4B-231 The situation was, therefore, one in which there were several members of PIRA in Stanley’s Walk at approximately 4.30 or 4.45 pm. At what is very likely to have been a similar time, one member admits that he was looking for a rifle in the gasworks over the road, and a further member still was apparently seen in Lecky Road/Stanley’s Walk with a rifle.

4B-232 This was taking place at the same time that Soldier AC was engaged in a shooting incident with gunmen in the gasworks.

ROYAL ANGLIAN ENGAGEMENT WITH GUNMEN IN GASWORKS

The Radio Logs

4B-233 We have referred above to the engagement at approximately 1614 hours between the Royal Anglians’ Private AD and a gunman at the Bogside Inn. Private AD

¹⁹⁴ APIRA17.6 paragraph 30

¹⁹⁵ APIRA17.6 paragraph 33

¹⁹⁶ APIRA17.6 paragraph 33

¹⁹⁷ APIRA23.2 paragraph 9; Day 422/14/2

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was situated at the top of Long Tower Street, just below the City Walls. Private AC of the same Regiment was in a building close by. He was involved in two engagements with gunmen situated in the gasworks (incidents 1 and 2, below). According to the radio logs, these took place at or about 1635 and 1638 respectively.

4B-234 Relevant entries from the Army radio logs are contained in the table below:

Incident No.	Log	Serial	Time	To	From	Event	Page Ref
1	Porter ¹⁹⁹	item 492 8 Inf Bde Log serial: 187	8 Inf Bde log DTG: 1635	0	54A	We have just heard further shots fired at our call sign Quebec 21 at junction Bishop St/Long Tower. Ah, 2 shots returned. Details later. Out	W135
	8 INF BDE	187	1635		1 RA	2 shots fired at Q21, 1 shot returned, details to follow. ²⁰⁰	W49
	8 INF BDE COMMUNI- CATIONS CENTRE		1637			Q21 2 shots fire and returned	W79
2	Porter	item 504 8 Inf Bde Log serial: 192	8 Inf Bde log DTG: [1639] ²⁰¹	0	90A	... We just heard three shots fired at OP Kilo on the City Walls – wrong, 2 shots fired. Three shots have been returned by Quebec call signs.	W136
	8 Inf Bde	192	1639		22 Lt	... 2 shots at wall – Q21 returned 3 shots.	W49
	22 Lt AD Regt RA	68	1638	Ops	1	3 shots fired at sniper by 1 RA c/s	W97

¹⁹⁸ INT1.285

¹⁹⁹ Transcript of Mr Porter's Tapes of Army Radio Transmissions on 30 January 1972 with 8 Infantry Brigade Log Entries

²⁰⁰ Incorrect – the fuller Porter log shows that 2 rounds were returned.

²⁰¹ The actual time given in the Porter Log is "1640". This time has been inserted in error; it should read "1639", as does the corresponding entry in the 8 Inf Bde log from which the Porter log times are derived.

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Incident 1

4B-235 The first incident is recorded in the Porter transcript of the 8 Infantry Brigade radio traffic. Call sign 54 Alpha of the Royal Anglians reported:

*We have just heard further shots fired at our call sign Quebec 21 at junction Bishop St/Long Tower. Ah, 2 shots returned. Details later. Out.*²⁰²

4B-236 The shots were logged at 1635 on the 8 Brigade log.²⁰³ The target was given as the Anglians' Quebec 21, which was the call sign posted at the top of Long Tower Street.

4B-237 Private AC was positioned in a derelict house on the east side of Long Tower Street, on the corner directly opposite the junction with Howard Street.²⁰⁴ He was on the second floor, lying prone next to a large hole where a window had once been.²⁰⁵ He was armed with an SLR. Private 011 was in the same building and had a riot gun. AC sighted a gunman with a rifle in the gap between two huts on the line of the ridge of Celtic Park, on the western edge of the gasworks. The gunman fired over AC's head and, therefore, up in the direction of the City Walls. Private AC returned two rounds, the second of which probably found its target. The gunman was dragged away.²⁰⁶ This was the first of AC's two engagements and, although AC's RMP statement timed the incident at about 1645 hours, the radio logs demonstrate that it was in fact approximately ten minutes earlier.

4B-238 Private 011 gave an account that is consistent with that of Private AC.²⁰⁷

4B-239 Gunner 124 and Private 156 were both located at the Double Bastion on the City Walls, just above Private AC's position. They were both aware of this

²⁰² Serial 492, W135

²⁰³ serial 187, W49

²⁰⁴ B919; 20 Long Tower Street, according to Private 011; B1396.

²⁰⁵ B932.3 paragraph 12

²⁰⁶ B927

²⁰⁷ B1396

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engagement. In 1972, they recorded having heard two rounds being fired at their location, with a military sniper, who must have been Private AC, returning fire from a derelict house about 50 metres to their left. The two soldiers both timed the engagement at 1634 hours, which would coincide with the incident actually being logged a minute later at 1635.²⁰⁸

Incident 2

4B-240 The Porter log contains this report of the second incident from 22 LAD RA's call sign 90 Alpha:

*... We just heard three shots fired at OP Kilo on the City Walls – wrong, 2 shots fired. Three shots have been returned by Quebec call signs.*²⁰⁹

4B-241 Observation Post Kilo was situated at the south west corner of the City Walls, close to the Double Bastion and, thus close to Soldier AC's location.²¹⁰ Although it was Private AC's evidence that the second incident took place about fifteen minutes after the first, the radio logs demonstrate that in fact there was a shorter interval of approximately four minutes. The incident took place no later than 1638 because the corresponding entry in the 22 LAD RA log was made then.²¹¹

4B-242 Private AC became aware of a second gunman in the same location at the gasworks as the first. The gunman fired at him with a rifle. Private AC returned three rounds, the third of which probably found its target. This gunman was then dragged away.²¹²

²⁰⁸ Gunner 124: RMP statement at **B1775** (he stated in his oral evidence to the Tribunal that this accurately recorded the incident and its timing; **Day 358/13/16** and **Day 358/25/4**). Private 156: RMP statement at **B1934** (he too stated in his oral evidence to the Tribunal that this accurately recorded the incident and its timing; **Day 348/123/15** and **Day 348/125/15**).

²⁰⁹ Serial 504, **W136**

²¹⁰ **G133.904**

²¹¹ Serial 67, **W98**

²¹² **B921**

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4B-243 Private 011 gave a similar account of this encounter and added that the gunman's fire went overhead; it would therefore have continued in the direction of the Walls.²¹³

4B-244 Major 159, 22 LAD RA, was on the City Walls at the relevant time and probably not far from the Double Bastion. He heard two further rounds fired from the Bogside towards that location at about 1638 hours, which were clearly the incoming rounds recorded in the 22 LAD RA log.²¹⁴

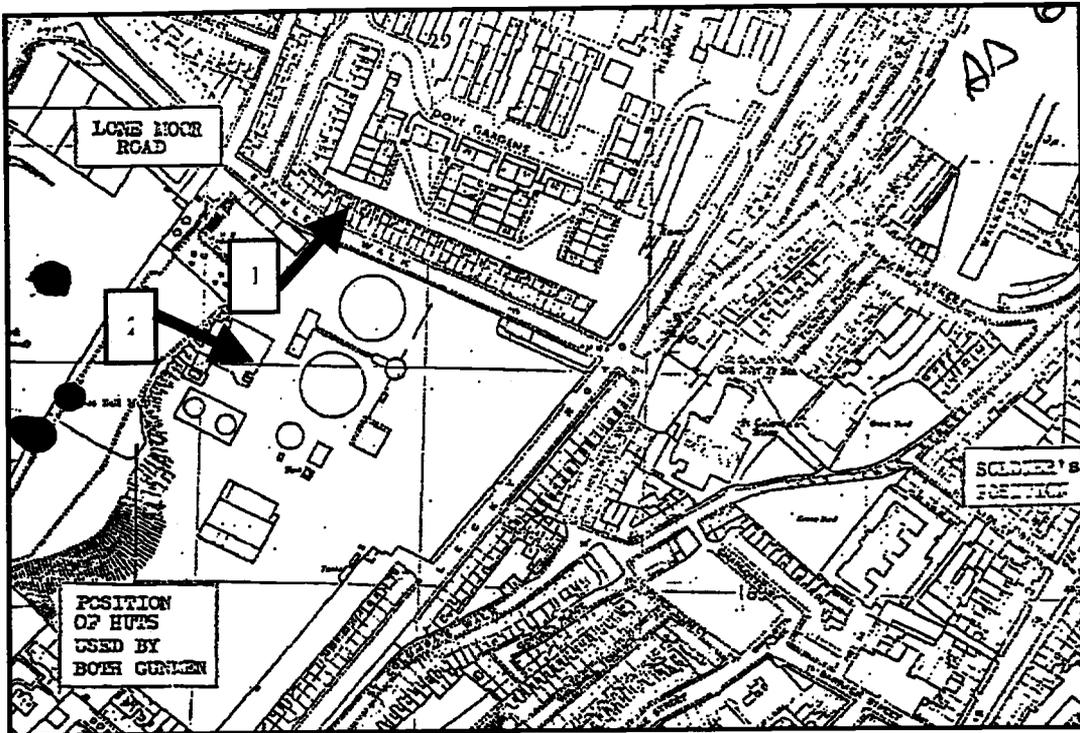
4B-245 The map accompanying Private AC's RMP statement was marked to show the location of the soldier and of the gunmen he engaged. We have added to the same map markings demonstrating:

- (1) The approximate location of the Stanley's Walk "call house" as indicated by PIRA 24; and
- (2) The approximate location to which Thomas McGlinchey went in search of weapons, as described above:

²¹³ B927

²¹⁴ B1952; confirmed Day 349/119/7.

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4B-246 At the very least, members of PIRA must have been aware of the exchanges between the gunmen and Private AC. The correlation of:

- (1) the location of Private AC's gunmen and of the members of the Provisional IRA congregating in and around Stanley's Walk and the gasworks; and
- (2) the timing of the meeting at the "call house" and of Private AC's engagements with the gunmen,

make this inevitable. Indeed, it suggests that this was a PIRA attack. That being so, here is yet another example of firing by PIRA members at soldiers on Bloody Sunday about which there have been no admissions. It further undermines attempts by PIRA witnesses to suggest that their armed activities on Bloody Sunday were confined to a few late shots at the City Walls from the Bogside Inn area.

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4B-XII MARTIN MCGUINNESS'S MISSING TWENTY MINUTES

4B-247 On the morning of Day 390,²¹⁵ Mr Clarke asked Mr McGuinness:

Q. Can we have KM3.4, please. Could we highlight the first half. You describe how you thought that snatch squads would be deployed to apprehend stone throwers and you refer to the fact your house had been raided with intention of arresting you for internment a few months earlier. You decided it would not be sensible to run the risk of being arrested so you moved away along Chamberlain Street with the intention of listening to the speeches at Free Derry wall. Do you have any recollection now of approximately how long you were at the barrier before you moved away?

A. Well, I cannot be accurate, but it was a short while.

Q. A short period?

A. Yes.

Q. I mean, I know times are difficult, are we talking about five or ten minutes?

A. I think you are talking about something in the region of five minutes, I am not really certain, but it was not that long a period, because I knew that there was a prospect of the snatch squads being used and I was not going to be arrested and interned needlessly.²¹⁶

4B-248 After the luncheon adjournment, Mr Clarke returned to the issue of timing and suggested that, on the face of it, Mr McGuinness had described what he was doing for no more than ten minutes of the half hour leading up to the entry of the Army into the Bogside and the commencement of its firing there:

Can you give us any idea of how long it had taken you to get from the top of Chamberlain Street down to the spot on the west side of Joseph Place?

A. I think just a couple of minutes.

²¹⁵ 4th November 2003

²¹⁶ Day 390/75/1

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Q. The reason that I ask you for these approximate times is that a question arises in relation to the timing that you have described. You told me before we broke that you were at the top of Chamberlain Street or that area for a short time, about five minutes or so and that as you say it cannot have taken you very long to get down from the top of Chamberlain Street to Joseph Place. Your evidence is that you were up at the top of Chamberlain Street shortly before the stoning began and it is possible with some degree of precision to time when the stoning began. I can show you how if you like, but it appears to have begun at just before 3.40 and we know that the Army came into the Bogside at approximately 4.10; we know that because there is a picture which shows the Guildhall clock at 4.10 as the Army vehicles came in. They must have come in either at the time or very shortly after you had reached Joseph Place because you heard firing from that position. The problem that I am suggesting to you is that there appears to be something like a half hour gap between the stoning starting and the Army coming in and the firing, therefore, beginning. There is a half-hour gap but your account of your movements only deals with, at best, something like ten minutes of that period. Do you follow the point I am making?

A. I do, indeed, but I did say that those were approximate times, that does not necessarily mean it was five minutes, it could have been much longer.

Q. What, as much as half an hour?

A. Well accumulated, yes, absolutely, but I mean, I cannot be certain.

Q. What were you doing for half an hour between the time when you got to the barrier and the time when you ended up at Joseph Place, if it was half an hour?

A. I did say that I was part of the several hundred people who marched on to William Street. I have given approximate times; those times could be wrong, but it is 30 years later and it is very hard to be accurate in all of this.²¹⁷

4B-249 In other words, there is a twenty minute period potentially missing from Mr McGuinness's account of this crucial early period. It will be for the Tribunal to determine whether the missing time can be innocently explained, as Mr

²¹⁷ Day 390/82/25

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McGuinness suggests it can be, or whether he was up to something during those twenty minutes, which he has since tried to hide. We suggest the latter is likely to be the case, in circumstances where Mr McGuinness has otherwise claimed to have a very clear recollection of his activities on Bloody Sunday.

4B-250 We are not in a position to state what Mr McGuinness was doing during the missing twenty minutes, or generally during this early stage in the events of Bloody Sunday. The Tribunal has received evidence which points to several possibilities.

DUFFY'S BOOKIES

4B-251 Des Clinton, the pseudonym of an IRA man interviewed by Liam Clarke and Kathryn Johnson for their book on Martin McGuinness, suggests that Mr McGuinness was part of a group to gain entry to Duffy's Bookmakers, via its back door in High Street. The window upstairs looked on to William Street and Clinton apparently believed that Mr McGuinness planned to bomb the soldiers below from that location. He was unable to, as word arrived that the Army was about to deploy through Barrier 14. Clarke and Johnston rely on another source to suggest that, as he left the building, Mr McGuinness fired a shot from a Thompson sub machine gun.²¹⁸ Mr McGuinness denies having been in the bookies.²¹⁹

4B-252 A further account has some similarities with the one given in the Clarke and Johnston book. The note made by the Sunday Times' John Barry of his interview with Ivan Cooper in 1972 is hotly disputed by Mr Cooper. However, Mr Barry maintains that it reflects what Mr Cooper told him.²²⁰ Mr Cooper is recorded as having suggested that Mr McGuinness and two others were in a house in William Street almost down by Chamberlain Street. "Their plan was to fire through the

²¹⁸ *From Guns to Government*, 2003 ed, page72

²¹⁹ Day 391/212/25

²²⁰ Day 193/122/2; Day 193/120/24

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doorway at soldiers, who IC says were occupying some of the houses on the other side of W[illiam] St. The troops moved in, and the trio were trapped". Mr McGuinness and the others dismantled the Thompsons that they were carrying and "put them up their jerseys" and ran off with the crowd. Mr Cooper apparently went on to describe what took place when Mr McGuinness reached the rubble barricade. Mr Barry records his own scepticism of what he was told, noting that "It reeks of "minimum approach" to me".²²¹

4B-253 There was definitely some activity in Duffy's bookies; a number of witnesses report it, although they do not mention Mr McGuinness's involvement. Francis Duddy, for example, describes entering with a group of people and going up to the first floor room, and looking through the window at barrier 14, below, "trying to figure out the best way to get behind the soldiers". It was shortly afterwards that soldiers came through the barrier. Mr Duffy and the others present with him left the building and made down Chamberlain Street.²²²

4B-254 There is, furthermore, a body of evidence suggesting that several members of PIRA were in the vicinity of the bookies at approximately this time. PIRA 14 has stated that he was with his younger brother, who was also a member of PIRA, in the general area of Chamberlain St/Eden Place/High Street when they bumped into Sean Keenan and Martin McGuinness.²²³ There is also the note of an interview conducted by the RUC in the early 1970s, which includes this report:

I was at the march on Bloody Sunday. I was in Chamberlain Street just before the shooting started. I saw PIRA 8, [redacted], 'Mad Dog' Doherty, [redacted] in Chamberlain Street near the junction of William Street.

I saw Martin McGuinness had a Thompson SMG under his coat. I don't know if any of the others were armed or not as I didn't notice

²²¹ KC12.68

²²² AD144.2 paragraphs 7 to 12; Day 89/104/16

²²³ APIRA14.2 paragraph 12

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*any guns. Neither do I know if McGuinness fired the Thompson or not...*²²⁴

INFLICTION

4B-255 The Tribunal has also received evidence about "Infliction", who was an agent who apparently reported to his handler about Martin McGuinness in 1984. He claimed that Mr McGuinness told him he had fired the shot on Bloody Sunday from the Rossville Flats that "precipitated the 'Bloody Sunday' episode, using a Thompson sub machine gun."²²⁵

4B-256 It will be for the Tribunal to decide whether there is any truth in these accounts, in the absence of Mr McGuinness's own explanation of what he was doing during the missing twenty minutes.

4B-XIII OTHER EVIDENCE SUGGESTIVE OF PIRA ACTIVITY ON BLOODY SUNDAY

WITNESS X

4B-257 Witness X was interviewed by two interviewing Special Branch officers some time after Bloody Sunday. Detective Sergeant Samuel Davidson and Detective Constable William Kilfedder both stated that they had no reason to doubt that the typed record of his interview was anything other than an accurate account of what they were told, although neither recalled the actual interview so long after the event.²²⁶ Detective Sergeant Davidson made the further point that the interview note appeared to have been for intelligence purposes only.²²⁷

4B-258 The heavily redacted note of Witness X's interview records that he told the officers:

²²⁴ INT1.74

²²⁵ KA2.7

²²⁶ JK6.5 paragraph 11; JD1.3

²²⁷ JD1.3

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On Bloody Sunday I was using a carbine. It was a joint operation. I was firing from Glenfada. I used two full magazines. I had four mags altogether. PIRA 8, PIRA 9, [blank] were the only Provos in Rossville Street along with the Stickies, Reg Tester, OIRA 4, OIRA 6 were the only "Stickies" I knew.²²⁸

4B-259 PIRA 24 gave evidence to the Tribunal that on 29th January 2004, he bumped into Witness X whilst out shopping.²²⁹ Coincidentally or otherwise, that was the date on which Witness X was scheduled, but failed, to give evidence to the Tribunal. After he failed to appear, Lord Saville informed the hearing chamber that an issue had arisen as to his health.²³⁰ The Tribunal will decide how convincing was PIRA 24's account of the circumstances in which he met Witness X. The following arises from the questioning of PIRA 24 by Gerard Elias QC:

Q. What time of day did you meet him?

A. I do not know. If it is going to incriminate him I am not going to answer it.

Q. I am sorry?

A. If it is going to incriminate the man, I am not going to answer the question.

Q. You are not going to tell this Tribunal what time of day you met him unless that incriminates him, is that it?

A. If it is going to incriminate that particular guy, I ain't going to answer the question, okay.

Q. Did he tell you that he was due to give evidence here?

A. He told me that the Special Branch had made up evidence that he was supposed to have given, but it was all lies.

Q. That is what you have told us yesterday?

A. Yes.

²²⁸ AX1.2

²²⁹ APIRA24.9 paragraph 37

²³⁰ Day 418/87/22

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Q. I am asking you the question: did he tell you that he was due to give evidence here --

A. No.

Q. -- that day?

A. No.

Q. Did he tell you whether he was under any pressure, either to give evidence to this Tribunal or not?

A. No.

Q. Was he apparently fit and well?

A. He did not look too well.

Q. He was doing his shopping, was he, with you?

A. No, he was not doing shopping with me.

Q. He was doing his shopping, was he?

A. I do not know what he was doing.

Q. He was in the shop, was he?

A. Aye, but he might not have been doing shopping.

Q. Was he meeting you?

A. He was not meeting me, no.

Q. You put no pressure of any kind on him, did you?

A. Not at all.

Q. Thank you very much.²³¹

4B-260 In his BSI statement, Witness X denied any knowledge of the interview and claimed not even to have been a member of PIRA.²³²

²³¹ 427/101/7

²³² AX1.3

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4B-261 The Tribunal has access to the unredacted material relating to Witness X that is not available to the Interested Parties. It will therefore be for the Tribunal to assess how much weight to attach to the allegations contained in the Special Branch note.

DEIDRE MCNAMARA

4B-262 Deidre McNamara is the daughter of a former Vice President of Sinn Fein, Derry Kelleher. "He was well acquainted with a number of people who were active in the provisional wing of the IRA."²³³ She has given a statement to the Tribunal in which she recounts a conversation she had with her father in 1975.²³⁴ She states: "I recall with some clarity, even at this distance in time, what was said because of the significant impact that my father's words had on me."²³⁵ It is therefore her evidence that:

I clearly recall my father saying to me that "the Provos" had "set up" the civil rights march which had taken place. By the use of the words "set-up" he was not implying organisation he was giving me a very clear message of having subverted the civil rights march which had taken place. He said that the "Provos" used the march as a means of moving the focus of the civil rights movement, which had previously espoused non-violent means, into something which was different in character, namely something prepared to embrace and use violence. He was explicit in his description, saying that the "Provos" strategy was to use the march to provoke the British military forces into firing their weapons and thereby create the appearance that the violence and mayhem which would follow had been caused by the British military forces acting in a seemingly unprovoked way."²³⁶

4B-263 When the Tribunal has reviewed the evidence given by those PIRA witnesses from whom it did eventually hear and has considered the many inconsistencies in

²³³ AM511.1 paragraph 1

²³⁴ AM511.1 paragraph 2

²³⁵ AM511.2 paragraph 6

²³⁶ AM511.2 paragraph 7

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the accounts given about fundamental matters, it may conclude that the evidence of Deidre McNamara merits consideration.

PIRA 14

4B-264 PIRA 14 claims that he was in Derry on Bloody Sunday "solely because I wanted to go to the civil rights march".²³⁷ We suggest that it is suspicious that PIRA 14, who held a very senior position in the Provisional IRA in the Republic,²³⁸ should have been there at all.

PRESENCE OF PROVISIONAL IRA PERSONNEL IN THE AREA OF THE RUBBLE BARRICADE

4B-265 According to PIRA 14's BSI statement, he, his brother and Colm Keenan were all at the Rossville Street rubble barricade at the same time as Hugh Gilmore.²³⁹ PIRA 14's bother and Mr Keenan were also members of the Provisional IRA.²⁴⁰ PIRA 14 was asked by Edwin Glasgow QC:

Q. So that is three members of the IRA standing in the immediate proximity of Mr Gilmore when he is shot?

A. Yes.

Q. That is right. Is your evidence still that none of them was armed?

*A. Yes.*²⁴¹

4B-266 PIRA 26, PIRA 14's brother, describes where they went in relation to the rubble barricade:

When we got to Rossville Street, my brother went ahead of us, and in fact had gone just across to the North side of the rubble barricade to the point marked E on the attached map. I stopped just

²³⁷ Day 421/7/19

²³⁸ Day 421/16/19

²³⁹ Day APIRA14.3 paragraph 18

²⁴⁰ Day 421/82/18

²⁴¹ Day 421/83/4

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*before the barricade, on the South side of it at the point marked C, and Colm stayed close to me at point D.*²⁴²

4B-267 PIRA 26's plan places point C directly north of the eastern end of the rubble barricade. Points D and E are just to the south of the barricade, again at its eastern end.²⁴³

4B-268 PIRA1 was also near to the rubble barricade. It is his evidence that he pulled George Roberts from the barricade into the safety of the gable of Glenfada Park North.²⁴⁴ He was one of those arrested at the Glenfada Park North gable and taken to Fort George.

4B-269 We are not in a position to make specific allegations against these members of the Provisional IRA arising from their positions near the barricade. The Tribunal may, however, consider it surprising that there was such a concentration of volunteers in this one area at a time when soldiers suggest they were engaging armed civilians.

CIVILIAN GUNMEN TABLE

4B-270 The 159-page Civilian Gunman Table contains a very significant number of accounts of the activities of armed civilians on Bloody Sunday. Importantly, the Table excludes sightings of gunmen allegedly made by soldiers. It cannot therefore be suggested that it presents a picture of what was taking place in and around the Bogside that has been distorted by untruthful soldiers' accounts. On the contrary, many of the entries relate to evidence given by civilians, who had much to lose from speaking about such things. The pressures on civilian witnesses to omit references to gunmen in their accounts of Bloody Sunday is an issue that is addressed in chapter 2. In many cases it has not been possible to identify the gunman involved, or indeed the IRA wing to which he belonged. It is likely that at

²⁴² APIRA26.3 paragraph 22

²⁴³ APIRA26.9

²⁴⁴ AM508.3 paragraphs 15 to 18

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least some of the sightings referred to in the Table relate to Provisional IRA gunmen.

THE SHOTS AT THE PRESBYTERIAN CHURCH AND THE EMBASSY BALLROOM

4B-271 The Echo Observation Post was situated in an elevated position on the Embassy Ballroom, close to Waterloo Place. One high velocity shot was fired at the OP at 1611 hours, as the radio logs show:

LOG	SERIAL	TIME	TO	FROM	EVENT	PAGE REF
Porter ²⁴⁵	item 399		0	90A	At 1611 hrs, one shot at Echo. No strike. Over	W130
8 Inf Bde Communications Centre		1617		90A	At 1611 1 shot at echo no strike	W75
22 Lt AD Regt RA	58	1612	Ops	Bde	1 x shot at OP "E" no strike observed	W97

4B-272 Three military witnesses, all of whom were at the Echo OP, corroborate the radio reports.²⁴⁶ It is not known by whom this round was fired.

4B-273 Soldiers on a roof adjoining the Presbyterian Church were targeted by a sniper at a time before the military deployment through the barriers into the Bogside. Again, it is not known by whom. Our full submissions in relation to that incident are in Chapter 6G.

²⁴⁵ Transcript of Mr Porter's Tapes of Army Radio Transmissions on 30 January 1972 with 8 Infantry Brigade Log Entries

²⁴⁶ Lieutenant 009: B1390, B1392.4 paragraph 22; Captain 021: B1507; B1509.4 paragraph 27 and Soldier 108: B1717.

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4B-274 We have suggested, above, that shots fired from the Bogside Inn at soldiers on the City Walls were discharged at approximately 1614 hours. These shots were fired by a member of the Provisional IRA.

4B-275 The rounds fired at the Echo OP and the Presbyterian Church have similarities with those fired at the City Walls. In all three cases, shots were fired at targets in elevated positions, at an early stage in the proceedings. We therefore raise the possibility that they are part of a pattern of early shots that is attributable to the Provisional IRA.

4B-XIV SUMMARY OF CONCLUSIONS

4B-276 Provisional IRA witnesses have shown a marked reluctance to come forward and to provide any assistance to the Tribunal. When they have come forward, they have done so late in the day, on their own terms and with their own objectives. The Tribunal may conclude that such an approach is inconsistent with a group of witnesses who are willing to tell the truth and who have nothing to hide.

4B-277 It was neither the desire nor the intention of the Provisional IRA witnesses to provide all relevant information about Bloody Sunday to the Tribunal. They made no secret of this fact. The witnesses explained that their "Republican code of honour" or their "oath of allegiance" was such that they must refuse to disclose certain categories of information, however helpful they might be to the Tribunal in its search for the truth.

4B-278 There may have been something altogether more sinister underlying the Republican "code of honour". There is startling evidence that even the most senior member of the Provisional IRA in Derry on Bloody Sunday, PIRA 24, has been threatened in relation to his evidence to the Inquiry. The concern and overwhelming probability must be, if the former commander has been intimidated in this way, many others will have been too.

4B-279 There has been a cynical attempt on the part of Provisional IRA witnesses to manipulate these proceedings and to exploit them for their own advantage. PIRA 24 came forward only at the last minute. In a move unprecedented even by the

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low standards of cooperation set by other PIRA witnesses, PIRA 24's BSI statement was not served on the Parties until 0140 hours on Day 426, 12th February 2004. This was the day on which he was to start giving oral evidence. His evidence concluded on Day 427, making PIRA 24 the final witness to give oral evidence to the Tribunal. There had previously been an inordinate delay by Martin McGuinness in producing a statement to this Inquiry, for which no satisfactory explanation was ever offered.

4B-280 A high level of orchestration was involved in the attempt to discredit the evidence of Paddy Ward, whose statement had cast considerable doubt on the evidence of Mr McGuinness. Mr Ward started to give oral evidence on Monday 20th October 2003. Yet, it was only on Friday 17th October that the statements of seven witnesses (and a solicitor's letter summarising the evidence an eighth) were served. In each case, the aim of the witness was to discredit Mr Ward. It is clear that this body of evidence was deliberately held back until the last conceivable moment.

4B-281 While some lack of recollection on the part of Provisional IRA witnesses about the structure of their organisation at the time of Bloody Sunday would have been wholly understandable, the high degree of contradiction in their evidence is more consistent with a desire to mislead.

4B-282 It is not clear how defined was the role of the Fianna within the Provisional IRA at the time of Bloody Sunday. It would seem, however, that this youth wing had a more involved role than some suggest. The very existence of the Fianna signified the involvement of a group of young people in the activities of the Provisional IRA in Derry. The Fianna did not constitute the only involvement of young personnel in the Derry Provisional IRA at the time of Bloody Sunday. The Tribunal has received evidence which shows that several full volunteers joined PIRA when they were just sixteen or seventeen. In fact, sixteen year old James O'Hagan had been killed on active service in the Summer of 1971.

4B-283 Members of the Provisional IRA had a very low regard for those in the Official IRA. It may therefore be of some concern that shortly before Bloody Sunday, approximately one third of the Official membership had defected to the

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Provisional IRA, according to PIRA 24. The defection was certainly not sufficiently in advance of that day's events to allow for appropriate re-training.

- 4B-284 An organisation that included a significant proportion both of young personnel and of newly recruited ex-Officials required a firm and experienced leadership to keep it in order. Derry PIRA was commanded by PIRA 24, who, on his own admission could not devote the necessary time to the enterprise and who left office within two weeks of Bloody Sunday. Internment had stripped the Provisional IRA of the older, more experienced officers.
- 4B-285 These were not the circumstances in which one would expect a disciplined regime to exist. We suggest it did not. In particular, we draw attention to evidence pointing to the existence in the organisation of "hotheads", who could not be trusted to exercise a sufficient degree of self-control.
- 4B-286 We suggest that the timing of PIRA 24's removal from office, within two weeks of Bloody Sunday, is suspicious. PIRA 24's claim to have stood down to allow him to rest and spend more time with his family does not ring true when one learns that he took up a position at Brigade level in Dublin, a role that would have required a high level of involvement and one which, presumably, took him away from his family.
- 4B-287 The Provisional IRA in Derry conducted a damaging guerrilla war against the Security Forces with a relatively small number of weapons. Working weapons being at a premium, it follows that every opportunity would be taken to keep them safe when they were not in use and, when they became stranded or were abandoned, to recover them.
- 4B-288 Martin McGuinness explained the primary purpose of the Provisional IRA in Derry at the time of Bloody Sunday was "to attack the British Army and those military forces supporting them". The organisation sought to achieve this purpose in different ways, including the regular exploitation of riots by gunmen and nail bombers. The claim that the gunmen and bombers were absent from the riots accompanying the Derry march should be viewed with suspicion. There would have been a firm expectation that they would be present. The ambush of a police

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car in Derry and the murder of two police officers three days before Bloody Sunday further demonstrate the brutal and bloody determination with which the PIRA policy of attack was pursued.

- 4B-289 There is clear evidence of the very poor relations that existed between the Provisional and Official IRA at the time of Bloody Sunday. The Provisionals distinguished themselves from their Official rivals by their more aggressive and murderous stance against the Security Forces.
- 4B-290 PIRA 24 and other senior PIRA officers have claimed that members of the organisation were ordered to take no action for the duration of the Derry march (other than the manning of two patrols in areas outside the Bogside). It is interesting to note that, whilst claiming to have issued such orders, the senior officers maintain there was no need for them. They have suggested that their men would not have conducted attacks without orders to do so, and certainly not whilst a march was taking place.
- 4B-291 There is conflicting Provisional IRA evidence as to the request, by members of NICRA and others, to seek assurances about PIRA's conduct during the march. For example, whilst Martin McGuinness asserts that such assurances were sought and given, PIRA 24 denies that this was the case.
- 4B-292 Certain Provisional IRA witnesses, including Martin McGuinness, now claim that PIRA weapons (other than those with two mobile patrols outside the Bogside) were gathered together and stored centrally in a single dump on Bloody Sunday. Mr McGuinness's earliest accounts had in fact made it clear that weapons were kept in different locations on that day, including in the near vicinity of the march. The inconsistency in his evidence is symbolic of an inconsistency in the PIRA evidence generally on this issue. In this case, the inconsistency is evidence of an attempt to create the untruthful impression that most Provisional IRA volunteers did not have access to weapons on Bloody Sunday.
- 4B-293 PIRA 24 and Martin McGuinness have both claimed that they ordered two armed mobile active service units to patrol in the Creggan and Brandywell on Bloody Sunday. It has been suggested by some PIRA witnesses that there was a need for

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an armed presence in the Creggan and the Brandywell because both areas were vulnerable to military incursion. However, the risk of a military incursion has now been shown to be a myth. The suggestions were probably made in a further attempt to demonstrate that armed members of PIRA were anywhere but in the Bogside at the time that the Army fired its rounds.

4B-294 PIRA 24 and Mr McGuinness both claim that the numbers involved in the two mobile patrols were small. The Tribunal is now in receipt of information that suggests more volunteers were on active service than the senior officers are prepared to admit. We have suggested that the claim that a limited number of volunteers was on duty, safely away from the Bogside, was merely a ruse to hide this fact that the Provisional IRA was involved in a series of armed attacks on Bloody Sunday.

4B-295 PIRA 8 was a member of the Brandywell patrol. He claims that he was watching soldiers at the old Dairy/Mex Garage location as part of his duties on Bloody Sunday, which is surprising in the light of his evidence that the concern was of an incursion from the area of Bishop Street and Foyle Street area. It is even more surprising that, on his evidence, he missed a concerted attack on the old Dairy. The radio logs demonstrate that the attack took place at precisely the time he was claims to have been there.

4B-296 Several high-ranking officers in Derry PIRA have told the Tribunal of the organisation's decision to take no action following the Army shooting in the Bogside. They have suggested that an armed response was not appropriate in the circumstances. That stance is totally inconsistent with a further decision that was apparently taken on Bloody Sunday to fire shots "symbolically" at soldiers on the City Walls, at a late stage in the proceedings. In fact, it is now clear from the radio logs that shots were fired from the Bogside Inn at the City Walls at or around 1614 hours – and so at an early stage, shortly after members of the Parachute Regiment passed into the Bogside. Not one PIRA witness accounts for these early rounds, which were fired from the same location and at the same target as those about which they have actually made admissions.

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- 4B-297 The Echo Observation Post was situated in an elevated position on the Embassy Ballroom, close to Waterloo Place. One high velocity shot was fired at the OP at 1611 hours, as the radio logs show. This round and the one fired at soldiers on a roof adjoining the Presbyterian Church have similarities with those fired at the City Walls. These were early shots fired at targets in elevated positions. We therefore raise the possibility that they are part of a pattern of early shots that is attributable to the Provisional IRA.
- 4B-298 A meeting took place involving various volunteers in the "call house" in Stanley's Walk at 1630 or 1645 hours, according to PIRA 24. At about the same time, an armed member of the organisation was seen in the area of Stanley's Walk and volunteer Thomas McGlinchey was on his own admission in the area of the gasworks on the other side of Stanley's Walk. He was searching for a weapon. It is likely that all of this was taking place at exactly the time that a member of the Royal Anglian Regiment was involved in an engagement with two gunmen – situated in the gasworks. The radio logs show that these gunmen were engaged at about 1635 and 1638 hours. At the very least, members of PIRA in the "call house" must have been aware of the exchanges. Indeed, we suggest it is likely that this was a PIRA attack.
- 4B-299 There is a twenty minute period potentially missing from Mr McGuinness's account of the crucial early period of Bloody Sunday between the stoning at Barrier 14 and the entry of the Parachute Regiment into the Bogside. Mr McGuinness maintains that the missing time can be innocently explained as the side-effect of an imperfect recollection. In circumstances where Mr McGuinness has otherwise claimed to have a very clear recollection of what he did on Bloody Sunday, we suggest it is much more likely that he was engaged in some activity during those twenty minutes, which he has since tried to hide. In this regard, it will be for the Tribunal to decide whether there is any truth in accounts relating to activity at Duffy's bookies and in the evidence of Infliction.
- 4B-300 The Tribunal has access to the unredacted material relating to Witness X that is not available to the Parties. It will therefore be for the Tribunal to assess how much weight to attach to the allegations contained in the note of the interview conducted with him by members of RUC Special Branch branch.

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4B-301 Deidre McNamara is the daughter of a former Vice President of Sinn Fein, Derry Kelleher. It is her evidence that her father told her that the Provisional IRA had subverted the Derry march, as she put it, "to provoke the British military forces into firing their weapons and thereby create the appearance that the violence and mayhem which would follow had been caused by the British military." The Tribunal may now conclude that her evidence merits consideration.

4B-302 The 159-page Civilian Gunman Table contains a very significant number of accounts of the activities of armed civilians on Bloody Sunday. In many cases it has not been possible to identify the gunman involved, or indeed the IRA wing to which he belonged. It is likely that it at least some of the sightings referred to in the Table relate to Provisional IRA gunmen.

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WITNESS X: ADDENDUM TO FINAL SUBMISSIONS

1. The initial Lawton Team submissions regarding Witness X are at pages FS7-490 to FS7-493 (paragraphs 4B-257 to 4B-261). We make these further submissions following the oral evidence of Witness X on 27th January 2005 (Day 435), when further relevant matters came to light.
2. We stress once again that in making our submissions about Witness X we have not had sight of the relevant unredacted and undisclosed material. We are therefore totally reliant on the Tribunal carefully to assess such material and to have regard to it where appropriate.
3. We now further submit that there is virtually no truthful information in the witness statement given by Witness X to this Inquiry on 9th February 2000, which is at AX1.3. He lied then, and has lied in oral evidence, in an attempt to hide the fact that:
 - (1) he was a member of the Provisional IRA; and
 - (2) he did indeed give the interview to the RUC in 1972, which the Tribunal has distributed in redacted statement form at AX1.1-2.

WITNESS X'S STATEMENT TO THE INQUIRY

THE RUC INTERVIEW STATEMENT (AX1.1-1.2)

4. Witness X claimed at paragraph 3 of his Eversheds statement that:

I have absolutely no knowledge of this interview nor the contents of the note.

He seemed also to suggest that the 1972 statement might relate to someone other than himself. He noted that his "is a fairly common name, I know of at least five in County Derry. The date of birth is incorrect" (paragraph 4). He added in a similar vein that "I was arrested in 1972...However, so was about half my family and very probably half the people in Creggan" (paragraph 5).

5. It is plainly dishonest for Witness X to suggest that he had no knowledge of the 1972 interview, when:
- (1) at paragraph 6, he actually gave details about the interview (“I was asked about my movements”); and
- (2) in oral evidence, he claimed to be able to give further details: “There was documents threw down in front of me, I was hit in prison for three or four days, I was hit and abused, documents were put [in] front of me.” He claims he probably would have given his name and address but no other answer (Day 435/42/13 to Day 435/43/9). See also his earlier evidence at Day 435/6/7 to Day 435/6/20).
6. Furthermore, the Tribunal has good grounds for concluding that Witness X did give the information contained in the 1972 statement. The Tribunal knows that the statement accurately records:
- his full name (Day 435/7/24 to Day 435/8/1);
 - the address at which he was living at the time of the interview (Day 435/8/2 to Day 435/8/4);
 - his date of birth (save for the year, which is given as 1972 and was “obviously a mistake”) (Day 435/8/5 to 435/8/15); and
 - the date on which he was interviewed by the RUC (Day 435/9/20 to 435/9/24).
7. That date is redacted from the disclosed version of the interview notes. Nevertheless, we now know that it was in 1972, at some stage after the summer (Day 435/40/20 to Day 435/42/9). In our initial Witness X submissions, we referred to the evidence of one of the interviewing RUC officers, Detective Sergeant Davidson. He made the

point that the interview note appeared to have been for intelligence purposes only.¹ The significance of the timing of the interview is that it was after Lord Widgery's Report had been published. Therefore, it cannot sensibly be suspected or claimed that the 1972 statement was concocted by the RUC with the aim either of propaganda generally or of influencing the Widgery Inquiry specifically.

8. Witness X refused, on advice from his lawyer, to comment on whether any of the further information contained in the 1972 statement was accurate. Edmund Lawson QC asked him:

Q: Was there anything that was recorded by the RUC in 1972 and attributed to you that was or might have been accurate? Anything at all...apart from your name and address and date of birth?

A: Sorry Sir, there was confusion (as heard) there, it would be unwise of me, under instructions from counsel, to answer that question" (Day 435/47/5 to Day 435/47/12).

Witness X again refused to answer one of Mr Lawson's questions:

Q: ...did you make any kind of statements to the RUC officers after you had been lifted?

A: Sir, I have been advised by my counsel not to answer that question (Day 435/48/21 to Day 435/48/25).

The Tribunal will have access to material that will help it to determine whether the 1972 statement does indeed contain further accurate information. We submit that Witness X's refusal to answer Mr Lawson's questions permits one to draw the inference that it does.

¹ JD1.3; FS7-490, paragraph 4B-257. See also Mr Kilfedder's evidence at JK6.4 (and the oral evidence at Day 423/35/18 to Day 423/36/1; Day 423/59/24 to Day 423/60/7; and Day 433/32/3 to 433/33/3).

9. Witness X's lawyers seem to have accepted that the 1972 interview was indeed given by their client. We presume that they relied on instructions from their client to reach that conclusion.

(1) The letter from J.B. Stelfox & Company to the Inquiry of 9th November 2001 enclosed (our emphasis): "**our client's** redacted statement". A highly redacted version of the 1972 statement was included (pages 54-55 of the Witness X bundle).

(2) Part B of Witness X's anonymity application included at paragraph 5 the information that: "He was interviewed by police and the document, which is the relevant document, refers to activities on Bloody Sunday" (page 38 of Witness X bundle).

10. It is possible from information that is in the public domain to work out what took place following the interview.

(1) The 1972 statement was certainly taken seriously by the Army. It is accurately reflected in the Intsum at **G134C.906.12**.

(2) INQ 2241 brought it to the attention of Colonel Tugwell, who retains a fairly accurate recollection of the information he was given.² He wanted Witness X to be re-interviewed (paragraph 48, **B1333.70**; see also INQ 2241 at 284/83/16-284/86/20).

(3) INQ 2241 therefore sought a re-interview (letter at **G134B.906.9**).

(4) The RUC attempted to re-interview Witness X, who then refused to talk about Bloody Sunday (**G134B.906.8**).

² See also INQ 2225, who believes he spoke to one of the RUC interviewing officers shortly after the interview (paragraph 58, **C2225.10**).

11. Colonel Tugwell presumes that Witness X's refusal to co-operate further was because he had been "intimidated by internment camp discipline" (paragraph 48, **B1333.71**). We suggest this is correct. Witness X now accepts that he was, indeed, interned following the interview (**Day 435/40/17** to **Day 435/40/20**). The Tribunal will doubtless have material relating to his internment that will provide further information as to the activities of Witness X and his reliability as a witness of truth.

MEMBERSHIP OF THE IRA

12. Witness X falsely asserted at paragraph 7 of his Eversheds statement that:

I have never been a member of the Provisional or Official IRA.

The Tribunal will probably have access to information which contradicts this assertion and which demonstrates that he was, in fact, a member of the Provisional IRA.

13. Nonetheless, Witness X repeated in oral evidence his claim that he had never been a member of PIRA (**Day 435/4/22** to **Day 435/4/25**). However, when specifically asked whether this was really true, he responded (our emphasis):

*I was never a member – I was not a member of either of the wings of the IRA **on Bloody Sunday** (**Day 435/5/4** to **Day 435/5/8**).*

14. He did not refer to the situation post Bloody Sunday. When Edmund Lawson QC asked Witness X to do so, he claimed:

*I have been asked by Lord Saville in this Inquiry to come to answer questions about Bloody Sunday and that is what I intend to do; not what happened after Bloody Sunday (**Day 435/37/8** to **Day 435/37/11**).*

15. When he was asked about the blanket denial contained in paragraph 7 of his Eversheds statement, Witness X gave the improbable explanation that (our emphasis):

*From my recollection, but I could be wrong, I would say that question was asked to me **about Bloody Sunday** and that is the truth. I was **never a member** of the Provisional IRA or the Official IRA **on Bloody Sunday** (**Day 435/38/8** to **Day 435/38/11**).*

16. The Tribunal ruled at the conclusion of Witness X's oral evidence that he was not entitled to refuse to answer questions about his membership of the IRA, but added that

“no purpose whatever will be pursued by taking the matter further” (Day 435/56/7 to Day 435/56/13).

17. The names of “Mad Dog” Doherty and “Ducksie” Doherty, both sometime members of the Provisional IRA, appear in the 1972 statement at AX1.2. Witness X claimed at paragraph 9 of his Eversheds statement that these names:

...are completely unknown to me.

It quickly became apparent during the course of his oral evidence that this was yet another lie. Witness X admitted that, in fact, he knows both “Ducksie” and “Mad Dog” Doherty – although he denied that he knew either at the time of Bloody Sunday (Day 435/16/21 to 435/16/15).

18. Witness X has unconvincingly sought to distance himself from the Provisional IRA and its members. The truth is that he was a member of PIRA and was accordingly in a position to give the information contained in the 1972 statement.
19. The only credible and sensible explanation for the catalogue of lies that X has told is that he now wishes to distance himself from what he did say about Bloody Sunday in 1972 and to deny his role in the IRA – and those two deceptions are self-evidently and directly related to one another.

WHEREABOUTS ON BLOODY SUNDAY

20. What was Witness X actually doing at the relevant time on Bloody Sunday? He told Eversheds, at paragraph 2 of his statement, that (our emphasis):

I remember the evening of Bloody Sunday. I was in my mother and father’s house with some of my brothers and sisters.

21. Witness X was therefore coy about his whereabouts *at the time of the march*. In oral evidence he suggested that at all relevant times he would have been at home. At home, as he explained, did not mean that he would actually have been indoors. He might have been out in the Creggan (Day 435/32/24 to Day 435/33/2).
22. The Tribunal may be in possession of undisclosed material which assists it to determine the significance of:

(1) Witness X's failure to account to Eversheds for his whereabouts at the time with which this Inquiry is primarily concerned; and

(2) his admission that he might have been out in the Creggan at that time.

LACK OF CO-OPERATION WITH THE BLOODY SUNDAY INQUIRY

23. In January 2004, the Tribunal issued a subpoena requiring Witness X to attend to give evidence. This was because he had previously refused to do so (Day 435/53/22 to Day 435/54/6).

24. He was due to give oral evidence on 29th January 2004 (Day 418). He failed to appear, ostensibly for health reasons. The Tribunal will, or should, know the truth about this but it would appear that his failure to attend on that day is properly to be regarded as evidence of his refusal to co-operate with the Inquiry and had nothing to do with his state of health. In this regard we refer the Tribunal to:

(1) Its own ruling of 9th December 2004, in relation to Witness X's application to set aside the subpoena, which included this finding at paragraph 4 (Witness X bundle page 46):

The information provided in January 2004 by Witness X's solicitors, including the medical evidence, was insufficient to satisfy us that Witness X should not give oral evidence, whether at that time or at all.

(2) The evidence of PIRA 24, who claims to have bumped into Witness X at the shops that very day.³ Witness X denies meeting PIRA 24 in this way (Day 435/24/15 to Day 435/24/16).

(3) His later reliance on another excuse for failing to attend: his fear of loss of anonymity. This excuse was given in his application of 30th November 2004 to set aside the subpoena (Witness X bundle pages 41-45). However, Witness X did not seek

³ See our submissions at FS7-491 to FS7-492, at paragraph 4B-259.

to rely on it in oral evidence (Day 435/55/10 to Day 435/55/13). This was probably sensible, bearing in mind the Tribunal's ruling of 9th December 2004 had also included the finding at paragraph 11 (Witness X bundle page 48) that:

We are not satisfied that fear of compromise of his anonymity was a reason for Witness X's failure to attend on 29 January 2004.

The submission was arguably doomed from its inception, in circumstances where Witness X had previously very publicly claimed:

I fully intended to make my identity known when I came to the inquiry. I have nothing to hide...⁴

25. This history of non-cooperation is legitimately to be relied upon as evidence that Witness X did not want to have to answer further questions about the 1972 statement, believing he had successfully explained it away in his February 2000 statement to Eversheds.

"JOINT OPERATION"

26. The Lawton Team has never suggested that there was a "joint" PIRA – OIRA operation on Bloody Sunday in the sense of a pre-planned and co-ordinated assault on the Army. We do, however, maintain that both wings of the IRA fired on soldiers on Bloody Sunday and it is quite possible that they did so "jointly" in the sense that they were firing for the same purpose, from the same area and at the same time. We would further submit that anyone observing, participating in, or commenting on that activity would have referred to it as "joint".
27. We submit that Witness X did indeed give the information contained in the 1972 statement to the RUC and that its significance is that it described both wings of the IRA in operation in the same area of the Bogside and at the same time on Bloody Sunday, which description was essentially accurate. It is in that way that we suggest the Tribunal should read the words "joint operation" at AX1.2.

⁴ Derry Journal 30th April 2002 (Witness X bundle page 53).

ANTHONY LAWTON

Assistant Treasury Solicitor

25th February 2005.

CHAPTER 4C

THE OFFICIAL IRA

4C-I INTRODUCTION

4C-1 Former members of the Official IRA have finally admitted to this Tribunal that OIRA gunmen did fire at soldiers, not at a late stage but very early in the day on Bloody Sunday - a fact denied and concealed by them and many of the people of Derry for many years.

4C-2 It will by now be clear to the Tribunal, however, that those OIRA witnesses who have appeared before it have been far from truthful and have, indeed, admitted only that activity which the Tribunal was bound to find proven in any event. Those witnesses have persisted in misrepresenting: the true nature and tendencies of the Official IRA in January 1972; the nature of their orders for the day of Bloody Sunday; the extent to which arms were available and/or issued to its members that day and the true extent of the activities of OIRA gunmen both in presenting an armed threat to and firing upon soldiers.

4C-3 The Tribunal has finally come to learn that the Official IRA was not, in 1972, the disciplined, intellectually focused organisation dedicated to defensive policy that these witnesses claimed in their early written statements. Rather, it was a poorly disciplined and violent group bent on the murder of as many British Soldiers as possible. Having, from the outset, issued press statements denying any OIRA firing on Bloody Sunday, the Official IRA has sought for many years to avoid responsibility for its role in the tragic events of 30th January 1972. It continues to seek to do so before this Tribunal.

4C-II THE STRUCTURE AND ORGANISATION OF THE OFFICIAL IRA

4C-4 Those witnesses who have given evidence to this Tribunal have been reluctant to cooperate in confirming the membership, command structure, weaponry and extent of the membership of the Official IRA as at 30 January 1972. While they have all claimed in words similar to those of OIRA 5 that they wish to:

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Assist in the truth of the events of 30 January 1972 becoming known and providing some finality to the proceedings¹

They have also followed the example of their then commanding officer OIRA 3 in stating that:

I am not prepared to discuss issues which relate to the organisation of the Official I.R.A. prior to or after the events of Bloody Sunday. I will not identify the number or names of any volunteers who were members of the Official I.R.A.. I will not discuss the nature of the armoury available to the Official IRA at or around this time².

4C-5 The Tribunal will find similar sentiments expressed by OIRA1³, OIRA2⁴, OIRA4⁵ and OIRA 5⁶. Each has also made clear that such reluctance is based not on Article 2 considerations but, as expressed here by OIRA 3 and echoed by each of his former colleagues, on

... my Republican duties and beliefs⁷.

4C-6 Such a position has been, in part, abandoned by OIRA witnesses as they have succumbed to pressure from the Tribunal to respond to questions about OIRA structure and weaponry in 1972. These witnesses have not, however, as the Tribunal is aware, cooperated to the extent of revealing crucial information about the identity of other members of the organisation.

4C-7 While some information has now been given by these and other OIRA witnesses as to the structure and organisation of the Official IRA, it has undoubtedly emerged as a result of pressure exerted by the Tribunal rather than any desire on their part to reveal the truth about Bloody Sunday, so that the Tribunal will no

¹ AOIRA5.5 paragraph 2

² AOIRA3.1 paragraph 4

³ AOIRA1.8 paragraph 27

⁴ AOIRA2.1 paragraph 3

⁵ AOIRA4.1 paragraph 5

⁶ AOIRA5.1 paragraph 5

⁷ AOIRA3.1

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doubt wish to treat such evidence with caution bearing in mind the declared loyalties of these former paramilitaries.

EXTENT AND STRUCTURE

- 4C-8 The Tribunal has been told by a number of witnesses, such as OIRA1⁸, OIRA2⁹, and Reg Tester¹⁰, that the OIRA as at January 1972 had some 20-30 volunteers including the Command Staff, divided between sections in the Creggan and the Bogside.
- 4C-9 The Tribunal has heard evidence from OIRAs 6, 7, 8 and 11, all of whom were volunteers in one of two sections in the Creggan¹¹ although all claim not to have been part of the Creggan force allegedly appointed to defend the area on the day.
- 4C-10 The Tribunal has heard nothing from any member of the Bogside Section other than the Command Staff members OIRA1 and OIRA2. There is intelligence evidence to suggest, however, that "Red Mickey" Doherty was the OC of the Bogside Section¹². The Tribunal has, of course, been denied the benefit of hearing from Mr Doherty. The circumstances in which that situation came about were highlighted by Paul Mahon on Day 412 and are examined in detail in Chapter 2, above.
- 4C-11 The Command Staff is said to have comprised some six volunteers headed by OIRA 3, the OC appointed a few days before Bloody Sunday. The second in command or Adjutant is said to have been OIRA4, and Reg Tester has confirmed that, as Quartermaster, he considered himself to be third in command¹³. Also on the Command Staff were OIRA1, OIRA2 and OIRA 5.

⁸ Day 395/009/21

⁹ Day 392/011/20-21

¹⁰ Day 414/007/25

¹¹ AOIRA6.2 paragraph 11

¹² INT1.345

¹³ AT6.6 paragraph 1

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4C-12 The refusal of witnesses to name other members, or even to describe their roles or fully to explain the structure of the organisation has, of course, had the effect of denying the Tribunal a full understanding of the workings of the Official IRA while also obstructing examination and can only have been calculated to prevent the Tribunal from getting to the truth about what happened on Bloody Sunday.

4C-13 Some witnesses have openly refused to name their former colleagues as OIRA 1 emphasised to Gerard Elias QC:

I have already made my position clear: I am not prepared to talk about other people's roles in the organisation, it is entirely up to them to describe their own roles¹⁴.

Others have claimed not to know the identity of other members or understand the command structure of the organisation. OIRA 6, for example, displayed a typical lack of willingness to assist in the following exchange with Ms McGahey:

Q. In your statement you refer to the OC, who is known to us by the cipher OIRA 3. Is it right you knew he was on the command staff?

A. I had a rough idea, yes.

Q. Did you not know who was the head of the Official IRA in Derry?

A. We were not told that... ..

...Q Then you go on to describe OIRA 3 and his ability to keep discipline. It does seem from that, does it not, that you did know that OIRA 3 was the OC of the Official IRA in Derry?

A. I probably did know.

Q. You must have known, must you not?

A. It all depends, you see, to be quite honest with you. I had never much contact with the command staff at all. Any information that I was given come down through my section leader¹⁵.

¹⁴ Day 396/133/09-11

¹⁵ Day 413/140/09 -141/18

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4C-14 The tactics adopted by this group of witnesses in giving evidence is examined in Part 4A - VII of these submissions but it is noted at this stage that any denial of knowledge of the identity of other members must be incredible in an organisation of such size, and was indeed confirmed to be so by Reg Tester.

Q. Yes. Whilst it may well have been desirable that they would not spread around their full names and any more details than were necessary, they would all, you would expect, be known to each other in the same way you knew them?

A. Yes, they would. Mind you, it was a little different for me because I was not a local man. They all knew each other because they had all grown up together.

Q. They knew each other as Derry men?

A. I was an outsider.

Q. Indeed.

A. So I would not know them so well.

Q. But they all knew each other beforehand –

A. Yes¹⁶.

DECISION MAKING

4C-15 The Tribunal has heard from a number of members of the Command Staff that decisions were taken collectively, as might be expected of a declared socialist organisation. On other occasions, however, witnesses, even when members of the Command Staff, have sought to plead ignorance of orders and activities relating to both Bloody Sunday and other crucial events when it has suited them to decline to assist the Tribunal.

4C-16 Clearly, where the OIRA witnesses have sought to persuade the Tribunal of the existence of a particular decision or policy they are happy to speak of collective

¹⁶ Day 414/120/19-121/07

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decision making and accept their role in and knowledge of the process. Thus OIRA1 speaks of the decision to collect weapons:

Q. "I remember that it was the general order on 30th January 1972 that all weapons should be collected up to the Creggan." Did this order come from the OC?

A. Well, in -- technically the OC was the person responsible for all those orders, yes. The decision to do that was one which was discussed and collectively agreed with by the staff¹⁷.

4C-17 OIRA 2 agreed:

Q. "On that day [that is 30th January] we had orders, insofar as it was agreed that we would not precipitate a situation which would cause the Army to react." Did that order come from the O/C?

A. That order would have come from the O/C, yes.

Q. Was it a decision that he would have made himself or did the command staff meet to determine what the policy would be?

A. The command staff met and decided what the policy would be.¹⁸

4C-18 In relation to more problematic issues, however, it seems that orders were taken by and known only to the OC. Thus the Tribunal heard OIRA 1's evidence when questioned by Edmund Lawson QC as to his knowledge of the posting of snipers on Bloody Sunday:

Q. You were in the Bogside unit, as you have told us. You, therefore, were aware, were you, of the disposition of Red Mickey Doherty with a weapon in a sniper's position?

A. I would have been aware that the, the OC of the organisation would have posted people as and where he saw fit. I was not aware of the actual details until after the incident.

Q. You would have been aware of the posting of people by the OC at the time?

¹⁷ Day 395/029/05-12

¹⁸ Day 392/028/05-14

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A. No, I would not -- what I am saying is, I would have been aware that the OC would have told people to go to wherever he decided he wanted them to go. I personally had no knowledge of that particular posting until after the event¹⁹.

OIRA 2 pleaded equal ignorance and deference to the OC in the matter of the posting of snipers:

Q. Could we have the rest of the column, please. As a member of the command staff, would you not have expected to know if marksmen had been positioned covering Rossville Street and William Street?

A. Well, not necessarily because at the end of the day it is up to the -- the O/C himself can basically make any decision that he wants and he does not necessarily because it is an Army, you know, it is not to consult -- he does not have to consult everybody. Somebody may have taken a decision to position marksmen in the places that it says on this clip, but personally I was not aware of it²⁰.

4C-19 OIRA 2, as a member of the Command Staff, was equally keen to stress his ignorance of the orders relating to snipers when questioned about the statements attributed to the acting OC in the Observer galley proofs. Thus he said when questioned by Mr Lawson:

A. Well, what you need to do here is you need to ask the individual who made the statement. I did not make the statement, so, therefore, I do not know.

Q. As a member of command staff you do not know?

A. You are talking about the nitty gritty, you know. Not everybody had to know everything about the nitty gritty. As I say, you need to ask -- direct your question to the person who made that statement. The person who made that statement was not me²¹.

And when the point was pursued by Mr Elias:

¹⁹ Day 396/126/21-127/002

²⁰ Day 392/102/19-103/05

²¹ Day 393/030/08-16

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Q. Would you find that, as a member of command staff, astonishing if, indeed, on the day, there were snipers posted and you had no knowledge of it; would that be a rather astonishing state of affairs?

A. No, not particularly, no, because it would be possibly -- I am speculating here -- it could possibly be on a need-to-know basis²².

4C-20 Prior, however, to the emergence of evidence of "Red Mickey" Doherty's activities on Bloody Sunday, OIRA 2 had been happy to assert in his written evidence to this Tribunal that:

...no one was ordered to take up sniping positions of any kind as this would have been contrary to the orders to remove weapons and maintain a defensive stance²³

4C-21 Addressing the same issue, OIRA 5 too felt able to say in written evidence that:

I can confirm that no volunteer was ordered to take up any sniping position or to be in a position to take any action against the Army in the Bogside on Bloody Sunday²⁴.

OIRA 5 elected to take a different line in oral evidence from that of OIRA 2, however, claiming that the decision making process of the Command Staff was, indeed, a collective one:

A. The O/C in many ways was the conduit through which all instructions were to be given. The command staff was a collective body; it took decisions collectively; it was responsible for the organisation as whole and the command staff would have been responsible for interpreting any instructions which were given to it by the headquarters staff.

Q. After the command staff had deliberated and decided what ought to be done, the O/C was then the conduit for those orders?

A. Quite²⁵.

4C-22 OIRA 5 continued to be emphatic when questioned by Mr Lawson:

²² Day 393/125/19-25

²³ AOIRA2.9 paragraph 30

²⁴ AOIRAS.10 paragraph 43

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A. There was no decision taken to place gunmen in and around the city.

Q. None?

A. None.

Q. Is that something about which the collective decision-making body would, in your experience, have been consulted?

A. Of course²⁶.

4C-23 Indeed, contrary to the evidence of OIRAs 1 and 2, OIRA 5 confirmed that all of Command Staff would have known about snipers if they had been present as alleged in the Observer galley proofs:

A. I would have been in a position to know about it, yes.

Q. As a member of command staff?

A. Indeed.

Q. And OIRA 2 presumably would have been in an identical position to you?

A. Should have been, yes.

Q. And OIRA 1?

A. Yes.

Q. And OIRA 4?

A. Indeed²⁷.

4C-24 OIRA 5 himself was, however, inconsistent as to the extent of the Command Staff's knowledge about OIRA activities; when questioned by Mr Lawson about assertions in the Observer galley proofs that OIRA snipers were on duty on Bloody Sunday his evidence was:

²⁵ Day 393/148/12-22

²⁶ Day 393/181/02-09

²⁷ Day 393/189/10-19

Q. How can you say it was untrue?

A. Well, I have just told you it was untrue.

Q. I dare say you have, sir, but it may be the Tribunal may be reluctant to make a decision based solely on your say-so. Tell us why you are able to assert that it is untrue?

A. Because I was a member of the command staff and would have known that.

Q. You would have known about this if it had happened?

A. Indeed.

Q. Did you know about the shooting of Gunner Ham on 29th December 1971?

A. No, I did not.

Q. You did not?

A. Well, I do not have any details about it, so no, I do not know.

Q. You heard that referred to this morning?

A. I did, yes.

Q. It does not mean anything to you?

A. No²⁸.

4C-25 It is clear that if, as is claimed, the Official IRA was an organisation of some 20 to 30 men, located in a close knit community and led by a Command Staff of six, it is highly likely that every volunteer knew a great deal about the other members and their activities and that the Command Staff were privy to all of the orders pertaining to Bloody Sunday. Any claim to the contrary is merely an attempt to obstruct this Tribunal in discovering the truth about the Official IRA's activities.

²⁸ Day 393/183/09-184/03

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THE OFFICIAL FIANNA

- 4C-26 The Tribunal has also heard contradictory evidence from members of the Official IRA about the existence of a Fianna linked to the Official IRA. Intelligence material available to the Tribunal clearly suggests that there was such an organisation in place in January 1972.
- 4C-27 INT1.317 records an interview by the RUC conducted at some time in the early 1970s, although the date has been redacted. The interviewee is reported as having given the police information about how one could join the Fianna (Official). He is also recorded as making specific reference to Gerard Donaghy's membership of and role in the Official Fianna organisation.
- 4C-28 INT1.333, a record of an interview of a different person where again the date of the interview has been removed, refers to the fact that "*It was the Official Fianna who stole the Army uniforms from the cleaners.*" According to a confidential intelligence report, this theft took place from Peerless Dry Cleaners on on 9th January 1972.²⁹
- 4C-29 INT1.28/29 makes further reference to both Gerard Donaghy and Denis McFeely being members of Official Fianna.
- 4C-30 Indeed, some members of the OIRA Command Staff were prepared to admit recalling the Official Fianna. OIRA 2 told the Tribunal in some detail about a Fianna affiliated to the OIRA:

Q. I would like to leave now the organisation of the Official IRA in Derry and ask you about a separate -- I believe related -- organisation, which is the Fianna. At about January 1972, we have heard evidence that there was a Fianna which was allied to the Provisional IRA. Was there also one allied to the Official IRA?

A. As far as I know, there was a Fianna affiliated to the Official IRA.

²⁹ G51.311

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Q. Did you have any involvement in that at all?

A. Absolutely no contact with the Official IRA Fianna³⁰

.....Q. Did the Official IRA command staff give any instructions to the Official Fianna about how they should behave on Bloody Sunday?

A. Well, I would imagine that -- I would say they obviously would have done, yes.

Q. The command staff would have given such an instruction?

A. Somebody on the command staff no doubt would have talked to whoever was in charge of the Fianna, but probably would have called the Fianna together and explained to them what the orders of the day were supposed to be.

Q. Would the command staff have discussed among themselves what orders should be given to the Official Fianna?

A. No, not necessarily, because whoever was designated, the command staff obviously had a meeting before Bloody Sunday, had decided upon the orders of the day, and the O/C would probably have said to somebody on the command staff "call a meeting of the Fianna and pass on these instructions"; I would imagine that is the way it would have been, it would have been done.

Q. That does suggest, does it not, there was quite a link between the Official IRA and the Official Fianna, if the Official IRA were in a position to give orders to the Fianna?

A. Well, I imagine there would be a link all right between the Official IRA and the Official Fianna³¹

Q. In the days leading up to Bloody Sunday and indeed the meeting you have talked about on the morning of Bloody Sunday, do you remember there being any discussion at the command staff about the orders that should be given to the Fianna?

A. Not specifically about the orders that should be given to the Fianna, just about the orders for the day, for the organisation as a whole, which would have included the Fianna³².

³⁰ Day 392/017/02-11

³¹ Day 392/019/13-020/12

³² Day 392/020/19-021/02

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4C-31 OIRA 11 also recalled the Official Fianna:

A. I was never a member. I knew that it existed and that it was the younger side of things³³.

Q. When you are talking about the Fianna in paragraph 15, are you talking about Fianna linked to the Officials or linked to the Provisionals?

A. Probably both.

Q. Each wing had a Fianna, did it?

A. Yes, I think so³⁴.

4C-32 OIRA 9 also confirmed in his BSI statement that there was an Official Fianna³⁵ and the Tribunal will recall Mr O'hEara's evidence on day 406 to the effect that he was OC of just such an organisation.

4C-33 Others have, however, been keen to deny the existence of an Official Fianna.

4C-34 OIRA 7 is recorded by Eversheds as saying that:

I have been asked about the Fianna. This was made up of teenagers under 16. They were used by the Officials to take messages and as look-outs but not to throw nail bombs³⁶.

But then claimed in oral evidence never to have heard the word "Fianna" prior to his Eversheds interview.

A. First of all as I said yesterday the word Fianna was actually given to me by Eversheds, my preference would have been to describe a group of young 14 or 16-year olds who hung around wanting to do whatever they could do³⁷.

³³ AOIRA11.3 paragraph15

³⁴ Day 422/051/19-24

³⁵ AOIRA9.5 paragraph 22

³⁶ AOIRA7.4 paragraph19

³⁷ Day 399/067/12-16

4C-35 The Tribunal will then recall OIRA7's evasiveness when questioned further by Gerard Elias QC as to the existence in 1972 of an Official Fianna:

A. To my organisation -- or to my knowledge and recollection the organisation, the Fianna, as described by Eversheds and alluded to by you, did not exist.

Q. What do you mean "as described by Eversheds"?

A. When they talk about the Fianna?

Q. Yes.

A. My assumption is they are talking about an organisation called - that its full title would have been Fianna Eireann.

Q. What was Fianna Eireann?

A. Youth of Ireland.

Q. What was the organisation?

A. On 30th January 1972 I was unaware of the existence of the Fianna, I did not know if the Fianna existed or it did not.

Q. Is that the truth, OIRA 7?

A. That is what I am saying³⁸.

4C-36 OIRA 8 claims to have been unaware that there was ever a Fianna with any links to the Official Republican movement.³⁹ OIRA1 told the Tribunal that it did not exist.

Q. I would like to ask you next about a separate topic which is that of the Fianna. OIRA 2 told the Inquiry that there was a Fianna associated with the Official Republican Movement; is that right?

A. No.

Q. There was no Fianna?

A. No.

³⁸ Day 399/069/07-23

³⁹ Day 410/028/15-17

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Q. None at all?

A. Not that I am aware of, no⁴⁰.

.....Q. OIRA 2 said, when he had given evidence, said the command staff would have given instructions to the Official Fianna about the way in which they should behave?

A. No.

Q. He is wrong?

A. Yes.⁴¹...

....If there were individuals in the city who had come from a Fianna background and considered themselves as supporters of the Official IRA, well, I am not in a position to say they did not do that, but they were not organised into any kind of coherent organisation with any direct relationship to the Official IRA⁴².

4C-37 OIRA 5 denied that there was any formal organisation called Fianna Eireann attached to the Official Republican movement⁴³ and Reg Tester also preferred not to acknowledge the existence of an Official Fianna:

I do not remember the Official IRA having a Fianna movement.⁴⁴

4C-38 Why certain members of the OIRA Command Staff should be so keen to deny the existence of the Fianna in the context of an inquiry into Bloody Sunday is not immediately clear. The Tribunal will, however, have noted the presence of two of its alleged members, Gerard Donaghy and Denis McFeely, in the Glenfada Park area when soldiers entered that area. The Tribunal will no doubt, when perusing the evidence in relation to Sector 4 as examined in Chapter 9, consider the significance of their presence at that time in an area where considerable OIRA activity took place and young boys were seen by civilian witnesses carrying nail bombs. The Tribunal will judge whether it is likely or even conceivable that the

⁴⁰ Day 395/013/08-16

⁴¹ Day 395/017/02-08

⁴² Day 395/016/09-15

⁴³ Day 393/169/20-22

⁴⁴ AT6.14 paragraph 55

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evidence of such civilian witnesses was mistaken or fundamentally unreliable. In making that judgement it will also consider why it was necessary for so many lies to have been told, in the context of this Inquiry, by OIRA witnesses about the Fianna, if indeed the members of Fianna did nothing on Bloody Sunday which required concealment.

DISCIPLINE

4C-39 A number of the OIRA witnesses have also attempted to persuade the Tribunal that the Official IRA was a disciplined organisation, firmly controlled by its OC of a few days, OIRA 3.

4C-40 OIRA1 told the Tribunal that:

“there were clear lines of reporting and discipline. The OC... would have rigidly imposed discipline, and would have taken any breach of his orders very seriously”⁴⁵

4C-41 OIRA 6 told the Tribunal that:

OIRA 3 was an OC who kept discipline”⁴⁶

Although the Tribunal will recall his later uncertainty, referred to above, as to whether he in fact knew who the OC was at all.

4C-42 The Tribunal has, however, heard considerable evidence both from within and without the Official IRA to the effect that the organisation was far from well-disciplined. Indeed, the admitted behaviour of members of the Official IRA on Bloody Sunday is in itself sufficient to demonstrate a pervasive lack of discipline.

4C-43 OIRA 7, for example, admitted that, despite the danger of internment, he was happy to push himself to the front of the rioting crowd:

⁴⁵ AOIRA1.4 paragraph 7

⁴⁶ AOIRA6.2 paragraph 11

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Q. And there on Bloody Sunday itself, do you think you were behaving in a disciplined manner?

A. No, I think I was, um, shall we say, overenthusiastic. That is if that photograph that we looked at -- I mean, I say I was at the front of William Street; I was throwing -- I was on William Street and I did throw some stones.

Q. Yes. So you went to the front of the rioting, so to speak?

A. I need not necessarily have been at the front.

Q. Close to it?

A. Yes...⁴⁷

4C-44 Even more significantly, of those members of the Official IRA who admit to firing on Bloody Sunday, two admit to doing so, in areas heavily populated by civilians, out of pure anger and frustration, entirely disregarding the question of orders.

4C-45 Reg Tester admitted that even taking his car down to the Bogside was in itself foolish and born out of temper:

If our two cars had got stopped, we could have got into terrible trouble with all our weaponry in the cars. However, the mood that I was in was that I wanted to hit back⁴⁸.

As regards his firing or attempts to fire he said that:

The truth is that having heard what I had heard, that people were being shot by the army, my simple reaction was wanting to hit back. I didn't analyse what the orders were to see whether this would have been stretching them or breaching them⁴⁹.

4C-46 OIRA 4 also described, in written evidence, the moment at which he decided to shoot in a crowded area out of pure temper:

⁴⁷ Day 398/140/02-13

⁴⁸ AT6.10 paragraph 30

⁴⁹ AT6.11 paragraph 34

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I just lost my temper. The Brits were gunning down innocent civilians. I took my short weapon out of my pocket and fired two, possibly three, shots towards the Saracen at point D. I did it out of pure anger at what was happening around me.....I was just firing out of pure frustration⁵⁰.

4C-47 By OIRA 4's own admission, it was only when civilians remonstrated with him that he claims he desisted from shooting. He says that:

I was still mad as hell but these people brought me to my senses⁵¹.

4C-48 Both Reg Tester and OIRA 4 then admit to firing in locations and circumstances which were calculated to attract return fire and which were, therefore, bound to endanger civilians.

4C-49 Indeed, the local population, who knew well the men they were dealing with, held a very different view of the Official IRA from that which its members have attempted to portray to this Tribunal. Father Bradley's view, as expressed in his BSI statement, was that:

The Official IRA however was a different and disparate group. They were mainly disliked in the city. It was an old Catholic thing. They were seen as Marxist left wing and were not particular about who joined them. They were inclined to be considered "gangsterish". There were very irresponsible people in their organisation. The Provisionals were much more careful about who was allowed in and were more disciplined. When I was therefore told that an Official IRA gunman had fired a shot but the Provisionals had taken him away or disarmed him, I believed what I was told⁵².

4C-50 Thomas McGlinchy also told this Tribunal when questioned by Edwin Glasgow QC that the Official IRA was less disciplined, less well-controlled and less well-organised than the Provisionals,⁵³ and the Tribunal will recall the allegations put by Mr McGrory to Kathryn Johnston on Day 387 of this Inquiry that the Official

⁵⁰ AOIRA4.17 paragraph 16

⁵¹ AOIRA2.18 paragraph 17

⁵² H7.3 paragraph 18

⁵³ Day 053/041/04-08

IRA was an organisation which was engaged in acts of extortion, robbery and counterfeiting⁵⁴. Such allegations receive some support from Father Bradley who thought that:

I think there was an impression that perhaps some robberies were happening that were carried out by the Official IRA and people were not always very sure why they were happening. So I think there was that feeling that perhaps they were not being as responsible in their organisational sense as -- I also think there was an impression that some people who had been within the Provisional IRA and had been asked to leave the Provisional IRA were then allowed to join the Official IRA; I think that is where some of that impression came from⁵⁵.

4C-III OIRA POLICY TOWARDS THE BRITISH ARMY

4C-51 Early suggestions that the Official IRA was, in all but an absurdly narrow sense, a “defensive” organisation have also been shown in the course of oral evidence to be entirely misleading. It is clear that the “Defence and Retaliation” policy applicable in January 1972 was interpreted by the Official IRA as justifying its members firing not only upon any Army movement into the no-go areas but also upon soldiers outside those areas for their mere presence in Northern Ireland.

4C-52 OIRA 2 was the first to explain to the Tribunal the nature of this policy which had been in force since the introduction of internment in August 1971. He initially said, when questioned by Catherine McGahey, that the policy required the British Army to shoot live rounds first, and meant that no offensive action was to be started by OIRA. He maintained that the British Army coming into the Bogside to make arrests would not justify Official IRA firing⁵⁶.

4C-53 OIRA 2 later admitted, however, when questioned by Mr Lawson, that in fact the policy was quite different:

⁵⁴ Day 387/107-108

⁵⁵ Day 140/108/19-109/04

⁵⁶ Day 392/032/02

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A. Let us put it like this, Mr Lawson: Derry was occupied by members of the British forces at the time, as you are well aware, therefore, in the broadest sense, attacks on members of the British Armed Forces could be clearly seen as part of a defence and retaliation strategy just because of the very fact that they happened to be present⁵⁷....

...A. I think I have already outlined to you what, what I understand by defence and retaliation. The very fact that members of the Armed Forces were present on our streets was seen as -- any action against them would have been seen as retaliatory.

Q. Any action against them would have been seen as?

A. Retaliatory.

Q. That is retaliation, not defence?

A. That would be retaliation in the broadest interpretation of the word, as I would understand it.

Q. Retaliation for the fact of his being a British soldier and a member of the occupying forces?

A. You have got it in one.

Q. Nothing to do with him shooting anybody?

A. As I said, you have got it in one.

Q. That was the policy, was it? You are telling us this as a member of the command staff of the Official IRA as at January 1972, that was the policy in existence then?

A. Yes⁵⁸.

4C-54 OIRA 5 agreed with OIRA 2's interpretation when questioned by Mr Lawson:

Q. Was that policy, as it was described this morning, by OIRA 2, in practice the way it was used, defensive and retaliatory?

A. That is correct.

Q. He got it right, did he?

⁵⁷ Day 393/010/24

⁵⁸ Day 393/012/22-013/15

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A. Yes, he did.

Q. He did, including that if you were a British soldier in uniform on the streets of Derry, that was sufficient justification for being shot dead?

A. Yes, it was.

Q. It was in accordance with the policy?

A. Exactly⁵⁹.

4C-55 OIRA 1 was equally in no doubt, when questioned by Ms McGahey, as to the nature of this policy to take any opportunity to murder British soldiers, even if they were outside the no-go area:

A. My view is that if the British Army moved into the areas in which we lived, we were entitled to defend those areas by trying to put them back out.

Q. If a soldier, for example was in William Street, which is not part of Free Derry, did you feel you were entitled to shoot him simply because he was present as a member of the occupying force?

A. Yes.

Q. Were you entitled to shoot a British soldier anywhere in Northern Ireland?

A. If it was in line with the defence order and retaliatory policy, yes⁶⁰.

.... Q. Your policy of retaliation entitled you, you believed, to open fire on a soldier simply walking down the street in Derry?

A. If there had been activity prior to that by the British Army which we believed required retaliation, yes.

Q. Could that be action taken days or even weeks earlier?

A. Yes⁶¹.

⁵⁹ Day 393/180/05-16

⁶⁰ Day 395/025/01-12

⁶¹ Day 395/025/20-26

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OIRA 1 was unequivocal in his responses to Mr Lawson:

Q. We have heard from OIRA 2 and there, in unequivocal terms, from OIRA 5, that defence and retaliation as a policy extended to permitting the shooting dead of a British soldier on the streets of Derry, whatever he was doing; was that your understanding of the application of the policy at the time of Bloody Sunday?

*A. Yes*⁶²

4C-56 The only other member of the Command Staff from whom the Tribunal has heard full oral evidence, Reg Tester, eventually agreed with this interpretation of Defence and Retaliation. Questioned by Christopher Clarke QC he said:

Q. But it would be consistent with the policy, would it, for the staff to decide to take the opportunity to shoot a soldier who came in in a patrol into the area of the Bogside or –

A. Yes.

Q. Is it right that the policy of retaliation could involve shooting at Security Forces in response to action that might have been taken by the Security Forces days or weeks, possibly even months earlier?

A. I suppose so. You -- you make your plans and you take the action when you consider it appropriate and, if necessary, safe to do so.

Q. And whether or not the soldier or soldiers against whom you take action form -- are presenting any form of threat at the time when you shoot them?

*A. Yes*⁶³.

4C-57 When Mr Lawson questioned him he initially said that:

Q. So a British soldier or soldiers in an ordinary patrol walking down William Street, they would not be regarded as fair game?

A. I suppose some people would have regarded them as fair game, but it would not have been, it would not have been the policy at the

⁶² Day 395/176/10-16

⁶³ Day 414/026/21-027/11

*time to just open up on them for literally no reason whatsoever other than the fact that they were standing there*⁶⁴.

4C-58 But, on further questioning, it became clear that Mr Tester in fact agreed with OIRA 1's interpretation that the policy in force in January 1972 was to murder British soldiers at every opportunity:

*A. Well, if they had invaded there would not have been much we could do, we did not have the manpower or the weapon-power to do anything about that. But a small incursion, if -- let us put it this way, if they were threatening, if they came into the area, they threatened people in the area, we would have opened up on them if it was practical to do so*⁶⁵.

Referred by Mr Lawson to OIRA 1's evidence he conceded that it was not necessary even for there to be an incursion into the no-go areas to justify shooting within the policy:

Q. "Question: If a soldier, for example, was in William Street, not part of Free Derry, did you feel you were entitled to shoot him simply because he was present as a member of the occupying force? "Answer: Yes." That was the answer of OIRA 1, then a member of the command staff. Did that reflect the policy of the Official IRA, as you understood it to be at the time of Bloody Sunday?

A. No, I see. Yes, it would have done.

Q. It did?

A. But not from my personal point of view.

Q. Is this the key to it: that the policy of the organisation was to permit the shooting on sight of a British soldier even if he was not in Free Derry, simply because he was present as a member of an occupying force, as the enemy, that was the policy at the time, but not one which you personally carried out?

*A. That is correct*⁶⁶

⁶⁴ Day 414/134/04-11

⁶⁵ Day 414/132/22-133/03

⁶⁶ Day 414/137/10-138/03

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.... Q. A British soldier being on the street warranted being shot dead on sight in retaliation for the fact that he was a member of the occupying force and was here?

A. Correct⁶⁷

4C-59 OIRA 4, while his evidence could not be fully explored, agreed that entry by soldiers into the Bogside would indeed merit shooting under the policy:

Q. And those orders to maintain a defensive stance of the area, did they mean that if anybody from the Army or police came into the area it would be open to a volunteer to shoot him or them if they did so?

A. If it was defending the area, yes.

Q. Just so we are clear, you say, "if it was defending the area;" assume that a body of soldiers came into the Bogside; would part of the defence of the Bogside involve shooting at soldiers who came into it?

A. It was a no-go area, I would agree⁶⁸.

4C-60 As far as ordinary volunteers were concerned, there was, it appears, little doubt about the nature of the policy. While OIRA 7 made an attempt to couch his description in "defensive" terms, his interpretation clearly envisaged firing at any soldier who dared to enter the no-go areas:

... most of what we did by way of 'action' was defensive. We operated from behind the barricades as it was our job to protect the no-go areas. ... By defensive, I mean able to respond to an attack or an incursion. The Officials did not go seeking out the Army in an attempt to create or develop an attack⁶⁹

4C-61 OIRA 8 was more forthright

Q. If the Army carried out an arrest operation without opening fire with real bullets.

⁶⁷ Day 414/139/05-08

⁶⁸ Day 394/008/25-009/08

⁶⁹ AOIRA7.3 paragraph 12

A. Yes.

Q. Would the standing orders permit retaliation for that arrest operation?

A. Yes, it could well be, I mean, if they made an incursion into the area to arrest people and it was safe to do so, we would have a crack at them.

Q. That would be counted as retaliation within the definition?

A. Yes⁷⁰.

4C-62 As was OIRA 6:

Q. Was the very presence of an Army patrol sufficient for you to fire at it?

A. To me, yes, but I had, I had to go through my section leader.

Q. What, if anything, did an Army patrol have to do in order to justify you firing in defence?

A. Nothing, really.

Q. Just had to be there?

A. Just had to be there.

Q. Could it be anywhere in Derry?

A. Possibility.

Q. Your policy of defence was simply to take the opportunity to attack the Army when it presented itself?

A. This was my, my own thoughts⁷¹.

He confirmed, when questioned by Mr Lawson, that:

Q. As far as you were concerned, you would take any chance you could to shoot a member of the British Army; that is right, is it?

A. That is correct⁷².

⁷⁰ Day 410/031/24-032/09

⁷¹ Day 413/154/12-25

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4C-63 Even OIRA 11, who claimed to know very little about anything, knew that:

Q. What instructions were you given about when you could use weapons?

A. Well, basically, as far as I know now, I never used any myself, like, but so far as I know there was -- the no-go area at the time and you took your chances, whatever it was, now.

Q. To --

A. You took your chances or whatever it was to attack --

Q. If you got a chance to shoot at a soldier you should take it?

A. That was the thing then, like.

Q. That was the general understanding; it was pretty vague by the sound of things; is that right?

A. That is right.

Q. Soldiers were fair game to be shot at?

A. Yep⁷³.

4C-IV THE STANDING AND ATTITUDE OF THE OFFICIAL IRA AT THE TIME OF BLOODY SUNDAY

4C-64 OIRA policy towards the British Army as at January 1972 could, then, hardly be clearer. While termed "Defence and Retaliation", the policy in fact encouraged any gunman to take any opportunity to murder any member of the British Army present in Derry, whether within or without the no-go area. OIRA Command Staff have confirmed to this Tribunal that the policy did not require such a soldier to be presenting a threat, his mere presence as a member of an occupying force was sufficient to justify action under the umbrella of either "retaliation" or "defence". Occasions when the Army entered the no-go areas and/or simply carried out an arrest operation were clearly expressed to be instances in which shooting at

⁷² Day 413/185/19-22

⁷³ Day 422/063/04-063/19

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soldiers was not only justified but expected, as were occasions on which a specific incident of shooting by the British Army was seen to require "retaliation".

4C-65 In January 1972, that policy coincided with a time when the Official IRA had a particular need to assert their reputation amongst the Derry population as men of action and stem the flow of volunteers to the Provisional IRA, who were perceived to offer more opportunities to attack soldiers and policemen. While no OIRA witness gave evidence of the defection of a third of their members to the Provisional IRA, PIRA 24's evidence, given on Days 426/427 that this is what had occurred was not challenged by Counsel for members of the Official IRA.

4C-66 Father Bradley has explained to the Tribunal the low esteem in which the Official IRA was held in Derry at that time.

because the Officials were not highly thought of in this particular area, remember this is very much Provisional IRA country and the Officials were not particularly highly thought of⁷⁴

... the Provisional IRA were stronger or growing stronger and the Official IRA were perhaps finding it more difficult to get numbers⁷⁵

4C-67 Ivan Cooper told the Tribunal, when questioned by Christopher Clarke QC, that:

I can tell you, Mr Clarke, that the Official IRA had practically no support at that time in this city⁷⁶.

4C-68 Certainly, there was a general perception that OIRA were talkers rather than men of action. Michael Clarke, PIRA explosives officer, has told the Tribunal that:

A. You can infer whatever you like. As far as I know there was a split between the -- in the IRA, people that stayed with OIRA were people that rather talk than fight⁷⁷.

⁷⁴ Day 140/092/01-04

⁷⁵ Day 140/108/04-06

⁷⁶ Day 419/076/04-06

⁷⁷ Day 402/112/25-113/03

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4C-69 PIRA 24, the OC of the Provisionals, also said with some disdain when referring to the Official IRA in his BSI statement that:

Yes, there was a cat and mouse game about stealing weapons from one another, but there were no real bad feeling (sic) about that even. After all, the Officials weren't going to use the weapons anyway⁷⁸.

4C-70 Anthony Martin, speaking of the shooting of William Best on 21 May 1972, confirmed to Paul Mahon the extremes to which the Official IRA were, in that period, being driven by their rivalry with the Provisional IRA. Speaking, intitially, of the Provisional IRA he said:

they watched people. They didn't want....because the Stickies were involved with the CRA...they thought, ah the Stickies are going to do it because we got a rivalry...Ranger Best got shot because of that rivalry....And would be alive today only for the fact that the Provies goaded the Stickies saying "Oh, you chicken bastards" you know. So they took the guy out and headed him⁷⁹

4C-71 Following the shooting of William Best, a soldier in the British Army on home leave in the Creggan, the Official IRA released a statement which sets out in no uncertain terms their mindset in this period:

The ruthlessness shown by British forces against the people of Free Derry could only be answered in similar terms. Regardless of calls for peace from slobbering moderates, while British gunmen remain on the streets in the Six Counties the [Official] IRA will take action against them.⁸⁰

4C-72 Moreover, there is persuasive evidence that the incident involving the abduction on 18th January 1972 of INQ2245 had left the Official IRA with the reputation of being too "soft", and exacerbated the problem of the loss of members to the

⁷⁸ APIRA24.9 paragraph 36

⁷⁹ X4.18.49

⁸⁰ Lost Lives p.189

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Provisionals. According to the evidence of PIRA 8, this incident actually led to physical violence between OIRAs and PIRAs on Bloody Sunday⁸¹.

4C-73 British Intelligence had at the time picked up on the disquiet caused by the incident as recorded in INT2.25 dated 27th January 1972, just three days before Bloody Sunday.

following a row between the Officials and the Provisionals over the recent affair of handling of Private [blank] kidnapped by the Officials on 18th January, some of the Officials were against releasing the soldier and the Provisionals are making capital out of this, the Provisionals said they would have shot the soldier.

4C-74 Journalists were at the time also aware of the difficulties which the incident had created for the Officials. Vincent Browne reported in the Sunday Press on 6 February 1972 that:

It was crucial to the Officials that they should take some effective action in defence of the Bogside in the circumstances. Their prestige had been somewhat knocked a few weeks previously when, having captured a British soldier while visiting his fiancée in the Bogside they let him go after interrogation⁸²

4C-75 Members of the Provisional IRA have confirmed that this was the case. PIRA 11 told John Barry in an interview conducted in 1972 that:

They took...fearful stick when they released the soldier they found in the Bogside. People "even women" he said with wonder and possible distaste said they should have shot him⁸³.

4C-76 OIRA witnesses themselves have, however, been reluctant to admit either any knowledge at all of the INQ2245 incident or that there was a perception in the days and weeks before Bloody Sunday that they were too "soft".

⁸¹ Day 418/076

⁸² L171

⁸³ M45.35

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4C-77 Even members of the OIRA Command Staff, such as OIRA 2, claim to have known nothing about the abduction of INQ2245.

A. I do not really know and I am not aware of the incident.

Q. Not at all?

A. I am just not aware of the incident, not at all.

Q. Was it not something of which the command staff were aware?

A. Well, possibly somebody on the command staff may well have been made aware of it. A couple of volunteers might have apprehended a soldier and then went and told somebody on the command staff. I remember hearing something about it afterwards, but I did not hear any detail about it, if that is what you are asking me⁸⁴.

Q. You have absolutely no knowledge at all of this incident?

A. I have no knowledge of it, no⁸⁵.

4C-78 OIRA 5, while admitting that he recalled the incident, denied ever hearing of any suggestion that the Official IRA was too soft in releasing INQ2245:

Q...you, then, would have been involved, would you, in discussion, collectively, about what happened to the Scottish soldier on 17th/18th January?

A. Yes, I might have been, yes.

Q. You remember that?

A. Yes, I do.

Q. You remember, do you, that there was feeling in some quarters that you collectively, exercising your collective decision-making responsibilities, had been too soft?

A. No.

Q. You do not remember that?

⁸⁴ Day 392/030/21-031/06

⁸⁵ Day 392/031/24-032/01

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A. No, I do remember that and it is not true.

Q. You do remember it and it is not true?

A. I do remember discussions took place and it is not true that people said that we were too soft.

Q. No-one said that?

A. No.

Q. This was no suggestion of that?

A. I have no memory of it.

Q. Was there any perception that came to your ears, whether you agreed with it or not, that the Official IRA was being too soft?

A. No.

Q. In or about January 1972?

A. No.

Q. You never heard a hint of it?

A. No⁸⁶.

4C-79 OIRA 1 similarly denied, when questioned by Mr Lawson, that there was any such perception either within or without the Official IRA.

Q. What about this general question: do you agree or disagree generally that there may well be some perception in some quarters that the Official IRA was too soft at the time?

A. No.

Q. You disagree?

A. There was not that perception⁸⁷.

Q. Was there any perception arising out of the handling of the abduction of the Scottish soldier that the IRA, the Official IRA, had there been too soft?

⁸⁶ Day 393/177/08-178/11

⁸⁷ Day 395/165/21-166/02

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A. No.

Q. None at all?

A. No.

Q. Is that right? Was there any disagreement within your organisation as to his having been released, as opposed to killed?

A. No⁸⁸.

Q. Was there, as far as you were aware, any attack being made on you by any other organisation, or specifically the Provisionals, that you had been too soft and, again, released him, rather than killing him?

A. Not that I recall.

Q. No?

A. No⁸⁹.

4C-80 Reg Tester was one of very few prepared to admit both knowledge of the incident involving INQ2245 and that it had caused disquiet within the Official IRA and exacerbated the factional row brewing between the Officials and Provisionals, although the evidence of some PIRA and other witnesses suggests that he very much "underplayed" the extent of the problems which the incident caused. He said in his BSI statement

There was one Official IRA volunteer who wanted to shoot the soldier, and he was the one that left soon after and went to join the Provos⁹⁰.

When questioned by Mr Lawson, he expanded upon his written evidence.

Q. That then refers to those incidents leading to a factional row between the Officials and the Provisionals or that being brewing; do you see that?

A. Yes.

⁸⁸ Day 395/166/21-25

⁸⁹ Day 395/167/12-22

⁹⁰ AT6.14 paragraph 53

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Q. Is that right?

A. Yes, there was a little bit of to and froing.

Q. Cannot have done relations much good, could it? You had a pretty dim view -- as a member of the command staff -- a pretty dim view of the Provisionals anyway, did you not?

A. That is correct.

Q. That was not helped by the row that there was and the stand-off there was on the night 18th January or thereabouts --

A. That is correct.

Q. -- concerning the kidnapped soldier, is that right?

A. That is correct.

Q. It is said in the intelligence report that "the Officials had boasted that they would wipe out the Provisionals". I do not know if you had or not, I suppose you might have done; propaganda?

A. Probably.

Q. I expect they were boasting they were going to wipe you out, were they?

A. They would have been doing the same thing⁹¹.

4C-81 OIRA 2 also conceded, when questioned by Mr Lawson about the incident, that the perception that the Official IRA was becoming too soft was an issue at the time.

A. No, that is not what I am saying to you at all. What I am saying to you quite simply is: maybe some members of the organisation felt that the organisation was being too soft when they allowed this soldier to go⁹².

Q. It caused, did it not, dissension between your organisation and the relatively new Provisional organisation?

⁹¹ Day 414/148/08-149/07

⁹² Day 392/150/21-24

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A. It may well have caused some people to say -- it is quite possible that that happened.

Q. And it led to the suggestion that is being made that you, the Officials, were simply not tough enough, not hard enough, not violent enough; did it not?

A. Well, that is your reading of the situation, you know.

Q. It may be my reading; is it a correct reading?

A. It is people's perceptions, you know, it may well be that some people perceived that the Official IRA were too soft⁹³.

4C-82 He confirmed that view when he returned to continue his evidence on Day 393 and was again questioned by Mr Lawson:

A. What I said to you on Thursday, and I am looking at it now, it is people's perceptions. You know, it may well be that some people perceived that the Official IRA were too soft. It may well be that some people did perceive they were too soft, yes.

Q. That was a perception of which you would have been aware as a member of command staff in January 1972?

A. I would imagine so, yes.

Q. And were, to your knowledge, steps taken to seek to change that perception?

A. Not as far as I am aware⁹⁴.

4C-83 OIRA 6 admitted that he was one of those who felt that the Official IRA's decision to release INQ2245 was "soft"

I confess that deep down, I too thought that the Command Staff had been soft in releasing him, but I have never heard the suggestion that an operation be mounted on Bloody Sunday as an opportunity to counter the impression that the Official IRA had gone soft⁹⁵

⁹³ Day 392/152/05-17

⁹⁴ Day 393/003/14-24

⁹⁵ AOIRA6.9 paragraph 52

FS 7. 537

4C-84 While OIRAs 2 and 6 claim to be unaware of any suggestion that the poor standing of the Official IRA could be addressed by decisive action on the day of Bloody Sunday, it is clear from the evidence of Liam O'Comain, who describes himself as being "on the fringes" of the Official IRA, that the idea had most certainly occurred to some. He told Kathryn Johnston and Liam Clarke that:

There is an interesting twist to Bloody Sunday. There was an element within the Officials that definitely made a decision to open up on Bloody Sunday, and they did. It was nothing to do with Bishop Daly's gunman. I [O'Comain presumably] I was on the fringes then but I tell you this, there was an element there and the thought at the time was that if we can have some form of death on Bloody Sunday, it might pull the Officials back in line again. They might be forced into a situation to place a bit more hope in.

4C-85 Mr O'Comain claimed in his statement to this Tribunal and in his oral evidence that this aspect of the information he gave to Ms Johnston and Mr Clarke was based on rumour and a lie⁹⁶. Indeed he claimed that he told more lies than truth in the information which he gave to them⁹⁷. The Tribunal will, however, recall the detail in which Mr Lawson scrutinised Ms Johnston and Mr Clarke's notes⁹⁸ together with Mr O'Comain⁹⁹ when it became clear that in fact Mr O'Comain verified as correct every part of those notes¹⁰⁰ bar the passage set out above.

4C-86 It is clear from such examination that Mr O'Comain's attempts to repudiate his statement about the "interesting twist" to Bloody Sunday as mere fantasy is entirely disingenuous. He, as a member of the Official IRA on Bloody Sunday¹⁰¹, clearly believed that there was "*an element within the Officials that definitely made a decision to open up on Bloody Sunday, and they did*".

⁹⁶ Day 417/032/12

⁹⁷ Day 417/052/01-03

⁹⁸ A082

⁹⁹ Day 417/030/05-053/07

¹⁰⁰ With the exception of one reference to Patsy O'Hara which he no longer recalled.

¹⁰¹ Day 417/015/04

4C-87 There is then persuasive evidence that the Official IRA felt, in the period leading up to Bloody Sunday, under particular pressure to prove themselves capable of decisive and violent action.

4C-88 Nor should it be forgotten, when considering the particular role that retaliation played in OIRA policy on Bloody Sunday, that two civilians, Peter McLaughlin and Peter Robson, had been shot by British Forces the day before, a fact of which, as OIRA 1 confirmed to Mr Lawson, the OIRA Command Staff were well aware.

Q. The shooting to which you refer is a reference to the shooting earlier the same day of two young men called Robson and McLaughlin; is it not?

A. Yes.

Q. Is that right?

A. Yes.

Q. You presumably heard about that shooting, had you, by the time that you went down to Columbcille Court that evening?

A. Well, yes, I must have heard about it¹⁰².

4C-89 The Tribunal should bear in mind that one member of the OIRA Command Staff had a compelling personal reason for retaliating on Bloody Sunday. This connection was, of course, unknown to those representing the soldiers when they examined this witness. Official IRA Orders for Bloody Sunday

DEFENSIVE POLICY?

4C-90 The context in terms of arms, policies and attitude in which the Official IRA formulated their policy for Bloody Sunday is set out above. OIRA witnesses nevertheless claimed, in their early statements to this Tribunal, that the Official IRA was determined to adopt a purely defensive stance on Bloody Sunday. Hence the OC's statement to this Tribunal that:

¹⁰² Day 395/184/10-19

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There should be a defensive mode only. No units or volunteers were to incite any confrontation with the British Forces, nor was anyone to commence any offensive action against the security forces¹⁰³

4C-91 This was clearly the “party line” at the time these statements were drafted as similar sentiments were included in the statements of :

OIRA1:

No one was to actively engage the British Army in an offensive manner. Any action of that nature would surely have led to civilian casualties which would have been totally unacceptable¹⁰⁴.

OIRA2:

I recall that on Bloody Sunday we had specific orders that we were not to take part in any active operations during the march, nor were we to incite or instigate any form of contact with the British Forces¹⁰⁵.

OIRA4:

We were to maintain a defensive stance and no one was to initiate any contact with the army or police¹⁰⁶.

And OIRA5:

The orders were that there were to be no weapons in the Bogside and that no volunteers were to be carrying weapons on the march¹⁰⁷.

4C-92 In fact, while OIRA witnesses attempted in these statements to convince this Tribunal of the peaceable nature of their intentions on Bloody Sunday, the former Command Staff have agreed that in fact the policy of Defence and Retaliation, the

¹⁰³ AOIRA3.2 paragraph 6

¹⁰⁴ AOIRA1.4 paragraph 6

¹⁰⁵ AOIRA2.2 paragraph 4

¹⁰⁶ AOIRA4.2 paragraph 7

¹⁰⁷ AOIRA5.2 paragraph 8

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murderous nature of which they have also explained, remained in place on Bloody Sunday. Thus OIRA3 stated in his second statement to this Tribunal that:

There was no need for a formal meeting (on the morning of Bloody Sunday) because everyone in the organisation was aware of the general OIRA directives which had been in place as standing orders for some time¹⁰⁸.

4C-93 OIRA 5 confirmed in oral evidence that:

A. No, the position on defence and retaliation was the standard regulations that were issued and they stood on the day of Bloody Sunday, there were no changes to that¹⁰⁹.

4C-94 OIRA1 also confirmed in oral evidence that:

Obviously the defence and retaliation policy continued to apply¹¹⁰.

And, when questioned further by Mr Lawson, that:

Q. There were those orders, before Bloody Sunday there were no special orders as such, were there?

A. No, the standing orders were reiterated.

Q. The standing orders which, in effect, were -- in terms of the use at least of violence -- were the defence and retaliation orders; is that right?

A. Yes¹¹¹.

And he agreed with OIRA 5's interpretation:

Q. A policy which, as OIRA 5 -- because this is he -- confirmed then remained in force on Bloody Sunday. OIRA 5 then confirmed that the policy was straightforward, did not really need any embellishment for Bloody Sunday; "precisely" he said; you would agree with that, would you not?

¹⁰⁸ AOIRA3.18 paragraph 10

¹⁰⁹ Day 393/147/23-25

¹¹⁰ Day 395/003/12

¹¹¹ Day 395/174/24-175/05

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A. Yes¹¹².

4C-95 OIRA 2 also agreed, when questioned by Mr Lawson, that there was no change in policy for Bloody Sunday.

Q. So the policy actually adopted on Bloody Sunday was no different, you tell us, from the general policy in force at that time?

A. Yes¹¹³.

As did Reg Tester, when questioned by Mr Clarke:

Q. Is what happened in the period leading up to Bloody Sunday, so far as orders were concerned, that there was simply a confirmation that the current defence and retaliation policy would continue to apply?

A. Yes¹¹⁴.

4C-96 While OIRA3 claimed, in his second statement, that Defence and Retaliation should, in the context of Bloody Sunday, be interpreted to mean that:

The general standing OIRA directives in place at the time and which were well known to volunteers, were defensive. This meant that no action against the army or RUC was to be initiated, but that defensive or retaliatory action was permitted if the army/RUC initiated action themselves.

4C-97 The true meaning of that policy has been explained in no uncertain terms to this Tribunal by every member of the Command Staff who has appeared before it.

THE NEED TO PROTECT CIVILIANS

4C-98 There has been an attempt to suggest that there was in effect a gloss on the usual policy by virtue of the fact that civilians would be in attendance at the march on Bloody Sunday.

¹¹² Day 395/175/18

¹¹³ Day 393/004/13

¹¹⁴ Day 414/032/21-25

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4C-99 That misleading “gloss” was put forward very early by members of the OIRA Command Staff. Reg Tester told Philip Jacobsen of the Sunday Times Insight team in an interview carried out on 3rd February 1972 that:

On the morning of the march...staff officers decided to re-emphasise the existing orders that Officials should only open fire on the Army if they were shot at first, if the Army had shot at other civilians and in any case, never to open fire in a crowd situation¹¹⁵.

And in a further interview with Peter Pringle in March 1972, Mr Tester said that:

The Officials, by contrast (to the army), could not afford to risk hitting any civilians¹¹⁶.

4C-100 A similar suggestion was apparently made by the acting OC of the Official IRA whose comments were recorded in the Observer galley proofs as:

We cannot use the weapon because it would be too dangerous, only a madman would be prepared to start a shoot-out in an area crowded with people... We had two marksmen on duty, but with strict instructions not to use their weapons until the area was clear of civilians¹¹⁷.

4C-101 Similar claims that OIRA gunmen would not have considered firing in areas populated by civilians have been put forward in evidence to this Tribunal. OIRA 1 claimed that:

The orders were that no-one was to actively engage the British Army in an offensive manner. Any action of that nature would surely have led to civilian casualties which would have been totally unacceptable¹¹⁸.

And OIRA 2 claimed in relation to OIRA 1's shot that:

¹¹⁵ ED20.30

¹¹⁶ S34

¹¹⁷ ED24.9

¹¹⁸ AOIRA1.4 paragraph 6

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I would imagine that no shots would have been fired at all had there been a large number of people about¹¹⁹.

4C-102 OIRA 7 also claimed that OIRA gunmen would always hold fire when civilians might be present:

Q. Did the orders permit retaliation with lethal force if the Army mounted an arrest operation?

A. Depending on the circumstances. I mean, at all times we would not have been allowed to retaliate, for instance, if there were people, you know civilians about¹²⁰.

And OIRA 8 had been briefed with a similar "party line"

I mean, at all times we would not have been allowed to retaliate, for instance, if there were people, you know civilians about¹²¹.

...during a riot we would not have opened fire if there was civilians about¹²².

4C-103 OIRA 5, indeed, claimed that the whole population of Derry would have been aware of this aspect of the Official IRA's orders on Bloody Sunday:

The organisers and our relatives would have been well aware that we would not take risks with the lives of innocent civilians¹²³.

4C-104 Manifestly this was not the case, however, as there is clear evidence that the local population did not perceive there to be any such policy in place and were, in fact, extremely concerned by the prospect of OIRA gunmen operating in the vicinity of the march. Events proved these concerns to be justified.

4C-105 Father McIvor, Curate of St Mary's Church at the time of Bloody Sunday, had concerns about the Official IRA. He was referred by Christopher Clarke QC to an

¹¹⁹ Day 393/052/24-25

¹²⁰ Day 410/031/19-23

¹²¹ Day 410/031/21-23

¹²² Day 410/035/21-22

¹²³ AOIRA5.9 paragraph 40.11

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interview he gave for the purposes of a television programme "Remember Bloody Sunday":

Well, to put the whole thing in context, it has to be said the Creggan people had a great reliance on their clergy. They looked to them for everything practically. You were not just a priest, you were everything that they thought they needed, so every sort of inquiry, advice was sought from the clergy from the priest and at the time of the march a lot of apprehension was being brought my way by parishioners about whether they should in fact attend the march on Sunday, and one of their worries was that the march would be used that an organisation, the Official IRA and the Provisional IRA at the time might see an opportunity to cause trouble and I think that that was the biggest thing I remember about most of the people I talked to....¹²⁴

... there was this soul-searching going on as to whether they should attend or not. They wanted to -- I mean civil rights was something that they wanted to be involved in, but in the back of their minds was this worry, this fear, and I remember talking to a considerable number of people who were just thinking the thing through, whether they should go or not, but the big worry was trouble, was there going to be trouble.....¹²⁵

4C-106 Father McIvor confirmed to this Tribunal that:

Q. Is that correct; were your parishioners concerned that one or other wing of the IRA might seek an opportunity to cause trouble on the march?

A. That is correct...

... Q. It looks from that as if this was a real, sizeable concern at the time?

A. Yes, it was.¹²⁶

4C-107 Father Bradley also told the Tribunal about his particular fears in relation to the Official IRA whom he described in his BSI statement as both "very irresponsible"

¹²⁴ Day 055/039/22-44

¹²⁵ Day 055/040/17-25

¹²⁶ Day 055/041/01-03

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and "gangsterish". While he did not feel that the Provisional IRA would endanger civilians, he had no such confidence in the Official IRA.

I had held a fear about the Official IRA's activities that day. I had gone on the march aware that the Provisionals were not going to be there. I knew this because I was aware of who they were...my parish was densely populated with the Provisionals. Members of the youth club I ran were members of the Provisionals I would have said to them that they had better not be on the march. They had assured me that they would not be. I was not sure however of the Official IRA. Generally the Provisionals were conscious that there was a mass of "their people" on this march who didn't want them there. If there were any Provisionals on the march, I feel sure they would not have been armed¹²⁷.

4C-108 Certainly, others felt the need to seek assurances from the Official IRA whom they clearly did not trust to avoid putting civilians in danger as a matter of general policy.

4C-109 Ivan Cooper has told this Tribunal that he had concerns that the Official IRA might use the march as an opportunity to attack the Armed Forces, and for that reason sought assurances from them. He received none. Mr Cooper told Mr Clarke:

Q. Had you had yourself any contact on this or communication on this score with the Officials?

A. I had spoken informally to two members of the Officials, but as I have said in my statement their star was on the wane at this particular time. The number of people that they had on the ground were diminishing rapidly, but I did have informal contact with two people.

Q. What was the upshot of that?

A. They did not give me any undertakings¹²⁸.

And confirmed, when questioned by Mr O'Donovan, that he was, indeed, concerned that the Official IRA might use the march to attack the Armed Forces.

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Q. You had a formal meeting with representatives of the Provisional IRA; did you not?

A. Yes.

Q. You followed that up then by a less formal meeting with members of the Official IRA?

A. Yes.

Q. Presumably the purpose of those meetings was to ascertain what precisely those paramilitary bodies proposed to do on the day of the march?

A. That is correct.

Q. And I suppose in particular you wanted to know whether they would be using it as an opportunity to open fire upon the Armed Forces?

A. That is correct.

Q. Would I be right in thinking that your major concern was that if they did so there was a real risk that civilians would be at risk of injury or, worse still, being killed?

A. That was my primary thinking¹²⁹.

4C-110 It became clear, when Mr Cooper was questioned by Mr Lawson, both that he did approach members of the Official IRA because of his misgivings as to how they might behave at the march and that he received no assurances from them or from any other quarter that they would not do exactly as he feared.

Q. Is this right, that the purpose of your seeking, even informal assurances, was to ascertain precisely what the OIRA, the Officials as one of the paramilitary bodies proposed to do on the day of the march; you wanted to know precisely what they were going to do?

A. Yes.

Q. Right, and in particular you wanted to know whether they would be using it as an opportunity to open fire upon the Armed Forces?

¹²⁷ H 1.7

¹²⁸ Day 419/001-009

¹²⁹ Day 419/157/08-158/01

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A. Any type of confrontation which could lead to loss of life or potential loss of life.

Q. Is it right that in particular you wanted to know whether they, that is the Officials, would be using it, the march, as an opportunity to open fire upon the Armed Forces –

A. Or, or to throw any type of bombs, petrol bombs or nail bombs or anything of that type.

Q. So you agree you wanted in particular to know if they were going to be opening fire or using any other kind of violence on Bloody Sunday; is that right?

A. Yes.

Q. That was your particular concern?

A. Yes

Q. When you spoke informally to, as you recall, to members of that organisation, you did not get any assurance, did you?

A. No.

Q. They gave you no undertaking?

A. They were, they were individuals; they were not in a position to give me an undertaking. What they said was, that they would go back to their organisation.

Q. Yes, and?

A. I never heard after that.

Q. They gave you no undertaking –

A. No.

Q. -- at all, did they?

A. No.¹³⁰

...Q. Just think about it: did you have credible information that satisfied you that the Officials would not be

opening fire?

A. No.

Q. You did not?

A. No¹³¹.

4C-111 Michael Havord, the Public Relations Officer of the Derry Civil Rights Association, also felt the need to seek assurances from the Official IRA and approached Malachy McGurran to seek such an assurance from him that there would be no violence on the march¹³².

4C-112 OIRA 1 was extremely reluctant to assist the Tribunal as to the role of Malachy McGurran in providing assurances to NICRA. Referring to Mr McGurran, OIRA 1 was asked:

Q. He is, I believe, publicly acknowledged to be a senior figure within the Republican movement in 1972; is that right?

A. Yes.

Q. Was he in a position to give an assurance on behalf of the Official IRA in Derry?

A. I have no idea.

Q. You were on the command staff?

A. Yes.

Q. So you must surely as a member of the command staff know whether or not Mr McGurran could speak for the leadership of the Derry –

A. No, I do not know whether he spoke on behalf of the leadership or not, I have no idea.

Q. You were one of the leadership; were you not?

¹³¹ Day 420/040/07-12

¹³² Day 125/015/15

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A. Yes¹³³.

4C-113 OIRA 2 was prepared to admit to recalling a little more:

Q. Do you know a man called Michael Havord?

A. No.

Q. He was a public relations officer of the Derry Civil Rights Association; does that help at all?

A. The name rings a bell, but I mean, I do not know him.

Q. He has given evidence to the Inquiry. What he says is he approached Malachy McGurran, whom he knew to be a chairman of the Republican Clubs and a senior figure within the Republican movement. He sought assurance from Mr McGurran there would be no violence on the march from the Republican movement. Do you have any knowledge at all of that?

A. I think I heard something about it all right, and, um, well, presumably Malachy McGurran could well have been in a position to give them some kind of verbal assurance that there would be no activity on the day.

Q. Would Malachy McGurran have known what the command staff's orders were?

A. Malachy McGurran would have been known what the command staff's orders were, yes¹³⁴.

4C-114 Eamon Melaugh has given evidence to this Tribunal that he approached members of both the Provisional and the Official IRA and advised them not to bring weapons or be provoked into firing on 30th January¹³⁵. Indeed, he provided the Tribunal with the names of six Officials whom he approached so that the Tribunal will be in a position to compare Mr Melaugh's evidence with that of those so named.

¹³³ Day 395/006/20-007/10

¹³⁴ Day 392/024/06-25

¹³⁵ Day 143/066/13-19

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4C-115 There is then no doubt that the local population and its representatives did not trust the Official IRA to operate a policy of avoiding confrontation with the military when civilians might thereby be endangered. Far from that, they saw an urgent need to pursue the OIRA for assurances about just that fact. Such assurances were not, according to the OIRA Command Staff themselves, forthcoming.

4C-116 OIRA 3, the OC, has told the Tribunal in his first written statement that:

As far as I am aware there were no formal or informal approaches to the Official IRA about assurances over weapons or operations. No such approaches were made to me. No assurances were given¹³⁶.

And repeated in his second statement that:

No one spoke to me about assurances about weapons or anything else that day¹³⁷.

4C-117 OIRA 1 agreed that:

So far as I am aware no such formal or informal assurances were either sought from the Official IRA or given by it¹³⁸.

And continued to deny in oral evidence any knowledge of any assurance¹³⁹.

4C-118 OIRA 2 gave similar evidence

As far as I recall I gave no assurances and I think it unlikely that the other members gave assurances¹⁴⁰.

As did OIRA 5

¹³⁶ AOIRA3.12 paragraph 49

¹³⁷ AOIRA3.27 paragraph 47

¹³⁸ AOIRA1.19 paragraph 80

¹³⁹ Day 395/007/08

¹⁴⁰ AOIRA2.13 paragraph 3

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As far as I am aware no such formal or informal assurances or commitments were either sought or given¹⁴¹.

- 4C-119 The Tribunal will, however, have noted that Mr O'Donovan, Counsel to the OIRA witnesses, put to Ivan Cooper that Mr Cooper had, indeed, had a meeting with his clients to ascertain whether they intended to use the march as an opportunity to open fire on the Armed Forces and to express his concern that civilians would, if they did so, be at risk of being killed or injured¹⁴². It is clear that, following that meeting, no assurances were forthcoming to Mr Cooper from the Official IRA.
- 4C-120 OIRA 9, who claims to have been the OC of the Official IRA immediately before OIRA 3 has, at a very late stage indeed, produced a statement to this Tribunal to say that he attended a meeting with Malachy McGurran and Brigid Bond at which assurances that there would be no military activity on the day of the march were offered to NICRA¹⁴³.
- 4C-121 Quite why, if this was the case, no other member of the Command Staff was aware of the meeting, or how effective such an assurance could be if OIRA 3 himself, the OC on the day of the march, was ignorant of it is not at all clear.
- 4C-122 What is clear is that the suggestion that the Official IRA was an organisation that would have eschewed all military activity for fear of endangering civilians is not borne out by those in the community who had experience of dealing with them. Instead the people of Derry clearly felt the need to seek special assurance from them. The evidence which OIRA witnesses have given to this Tribunal would suggest that any request for such an assurance would have been met with a response to the effect that "of course we will not shoot if there are civilians around, we never do". Such a response would in any event have been unlikely to satisfy those seeking assurances, contradicting as it would their own everyday experience of the Official IRA's behaviour. In fact, far from receiving any

¹⁴¹ AOIRA5.9 paragraph 40

¹⁴² Day 419/157/08-158/01

¹⁴³ AOIRA9.1 paragraph 3

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assurances it would appear, in reality, that the concerns of the local population were met with silence from the OIRA Command Staff.

4C-123 Moreover, the behaviour of OIRA gunmen on the day of Bloody Sunday itself completely belies the existence of any standing policy to avoid confrontation where civilians might be endangered.

4C-124 OIRA 4, for example, having claimed that “*you couldn't just use your own people as human shields*”,¹⁴⁴ clearly managed to put such concerns aside when he decided to open fire at the Chamberlain Street gable end in a fit of temper¹⁴⁵. He had to be reminded by others present, such as the then Father Daly, that he was endangering their lives.

4C-125 Reg Tester admitted that when, as he claims, he attempted to fire from a balcony in Rossville Street “*There were a lot of civilians around*”¹⁴⁶. While he now claims to have desisted because he recognised the danger to civilians, the fact remains that such concerns did not stop him from pulling the trigger.

*A. I could see them moving around and it suddenly dawned on me, bearing in mind that I was extremely angry and upset, like anybody else in my position, I wanted to strike back, but I realised after a minute that, thank God, that my rifle had jammed, because I could not see the soldier really clearly enough and there was still civilians wandering around*¹⁴⁷.

4C-126 Nor does such behaviour appeared to have caused their commanding officer the concern that might be expected had an embargo against firing in the vicinity of civilians actually existed. The alleged disciplinarian, OIRA3, said in his BSI statement of Reg Tester's shots or attempted shots in Rossville Street:

He was not instructed to take up a firing position and as I have said it was too dangerous to put someone there with so many people

¹⁴⁴ AOIRA4.23

¹⁴⁵ AOIRA4.23:49

¹⁴⁶ Day 414/052/19-20

¹⁴⁷ Day 414/054/05-11

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*about. He acted out of anger and frustration and I understand his feelings...*¹⁴⁸

There is certainly no suggestion that OIRA 3 applied any sanctions following such a blatant disregard of his alleged orders.

4C-127 OIRA 3 also said that he found OIRA 4's and OIRA1's shots to be "*entirely within the standing orders*"¹⁴⁹.

4C-128 OIRA 5 agreed, commenting on the shots fired by OIRA 4:

Q. His explanation was, apparently at least, to the effect that he fired a couple of shots at approaching Pigs from the car park area?

A. That is my very vague memory of it, yes.

Q. That, you recall, do you, was accepted to be a proper application of the defence and retaliation policy?

A. In the circumstances, yes, it was.

Q. That was the collective decision?

A. Yes, it was.

Q. It was a collective approval that was given, was it?

A. Yes, of course.

Q. Not the CO's decision and his alone?

A. No, it was his decision to -- it was his responsibility to ensure that those decisions were carried out. It was a collective decision.

Q. A collective decision that what OIRA 4 had done was within the policy?

*A. Yes, it was*¹⁵⁰.

¹⁴⁸ AOIRA3.22 paragraph 23

¹⁴⁹ AOIRA3.26 paragraph 40

¹⁵⁰ Day 393/196/03-19

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4C-129 The approval of OIRA 4's actions by, according to OIRA 5, the entire Command Staff clearly gives the lie to any suggestion that such standing orders included a prohibition against firing in circumstances where civilians might be endangered.

WEAPONS/CONTROL OF WEAPONS

4C-130 It is, therefore, clear that the Official IRA operated at the time of Bloody Sunday a policy towards the British Army which would have justified shooting any soldier present within or without the no-go areas, particularly in the event that there had been recent shooting of civilians. That policy also placed particular emphasis on defending against any incursion into the no-go areas which included the Bogside and Brandywell as well as the Creggan. It is in pursuance of that policy that the Tribunal will judge the credibility of OIRA witnesses' accounts of the orders they allege were given in relation to the distribution of weapons on Bloody Sunday.

4C-131 The evidence of the OIRA witnesses as to the quantity of weapons within the control of the Official IRA in January 1972 has been inconsistent and unreliable. The picture which they have attempted to present, of there being a minimal quantity of weapons within their control, and, furthermore of the weapons they did possess being in poor or non-working condition, is entirely contradicted by the evidence of their own Quartermaster, Reg Tester¹⁵¹.

4C-132 Most of the OIRA witnesses have attempted to persuade this Tribunal that all available weaponry was tightly controlled by the Command Staff, more particularly the Quartermaster, Mr Tester. OIRA 7 told the Tribunal that:

Q. I follow, but are you saying that if you needed a weapon, you would need the authority both of the quartermaster and another member of the command staff, or are you saying something different?

A. I think in the main I am saying, um, both, from my memory.

Q. The quartermaster and another?

¹⁵¹ Day 414/114-115

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A. Yes¹⁵².

4C-133 Mr Tester and others had also originally told the Tribunal that a strict audit was kept of shots fired by OIRA volunteers by means of ammunition checks carried out by Mr Tester himself, not least because ammunition was in such short supply. He said in his first statement that:

Each volunteer had to account for each round of ammunition issued to him and god help him if he couldn't account for it¹⁵³.

4C-134 OIRA2 told the Tribunal that in 1972 ammunition was in such short supply that any shots fired always had to be reported to the OC and the Quartermaster¹⁵⁴

4C-135 In fact, the suggestion that firing by members of the Official IRA was at any time strictly controlled or seriously examined by their OC as being within or without orders is entirely undermined by OIRA3's own comments about the events of Bloody Sunday. He first concedes that his only means of monitoring firing was to keep physical control of the weapons himself. Asked if an unauthorised shot was fired he says he can say only that:

I do not think this could have happened but if they did it could not have been while the Brits were shooting at us because I know exactly where the weapons were during that time

Moreover, he is happy later to abandon all control, saying:

If anyone had a blatter after that, that is not something I can comment on¹⁵⁵.

4C-136 It was only at the very late stage of Day 414, when Mr Tester himself gave evidence, that the Tribunal finally learnt the truth about the lax control of weapons and ammunition within the Official IRA. It then became quite clear that Mr Tester could not, in fact, have had in place the system of control that he alleged as he

¹⁵² Day 398/013/21-014/03

¹⁵³ AT6.1 paragraph 4

¹⁵⁴ AOIRA2.17 paragraph 19

¹⁵⁵ AOIRA3.26 paragraph 42

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was, for some considerable time, entirely ignorant of the shots that had been fired on Bloody Sunday itself.

- 4C-137 Furthermore, it has emerged that, contrary to all the evidence of other OIRA witnesses, Mr Tester and the other members of the Command Staff had no control over the weapons of the Bogside Section at all, either before or on Bloody Sunday.

Orders re Weapons on Bloody Sunday

- 4C-138 The Tribunal has been told on numerous occasions that weapons were withdrawn to the Creggan on Bloody Sunday upon the instruction and under the control of the Quartermaster, Mr Tester. The Tribunal will have noticed, however, the blatant inconsistency in the terms of those orders as described in the developing evidence of OIRA witnesses.

- 4C-139 The Tribunal will have noted the description of the terms of the order given in the first round of OIRA statements: that arms were to be taken to the Creggan *and Brandywell*. These were the terms of the order as described by the OC in his statements:

*... Some volunteers were based and ordered to remain in the Creggan and Brandywell areas... these units remained in the area with the weapons available*¹⁵⁶

*I am certain that all weapons were recovered and secured in the Creggan or Brandywell...*¹⁵⁷

- 4C-140 Other members of the Command Staff followed OIRA 3 in their initial statements in suggesting that weapons would be taken to both areas.

¹⁵⁶ AOIRA3.2 paragraph 7

¹⁵⁷ AOIRA3.8 paragraph 32

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OIRA1

The orders that no weapons were to be left in the Bogside area and they were all to be removed to the Brandywell and Creggan areas were repeated. All weapons would be stored in dumps in the Brandywell and Creggan areas¹⁵⁸.

OIRA 2

An order was confirmed on the morning for all weapons not already recovered to be retrieved and stored in the Creggan and Brandywell areas¹⁵⁹.

OIRA 4

All the weapons were to be retrieved and brought into the Brandywell and Creggan areas¹⁶⁰.

4C-141 OIRA 5 also agreed, in his first statement, that weapons were to be taken to "Creggan and the Brandywell"¹⁶¹.

4C-142 That position was, for some reason, abandoned when OIRA Command Staff members came to give further statements and oral evidence, when the Tribunal heard from numerous OIRA witnesses that all OIRA weapons were transported to the Creggan only.

4C-143 OIRA 1 said, in his second written statement, that:

I remember that it was the general order on January 1972 that all weapons should be collected up to the Creggan¹⁶².

Similar evidence was given by OIRA 2

¹⁵⁸ AOIRA1.4 paragraph 10

¹⁵⁹ AOIRA2.2 paragraph 5

¹⁶⁰ AOIRA4.2 paragraph 9

¹⁶¹ AOIRA5.2 paragraph 9

¹⁶² AOIRA1.26 paragraph 12

A. *Well, the simple answer to the question is: all weapons that were controlled by the Official IRA were to be brought to the Creggan.*¹⁶³

OIRA 4 agreed that

*The volunteers would stay in the Creggan*¹⁶⁴

4C-144 OIRA 2 was asked about the change.

Q. Do you know now from your own knowledge whether any weapons were left in the Brandywell?

*A. Um, no, I have no knowledge of any weapons being left in the Brandywell*¹⁶⁵.

4C-145 There was also a lack of consistency in the reasons for taking them there. OIRA3 certainly stated that the reason for moving weapons out of the Bogside was to defend the Creggan and Brandywell

*We did feel that there may be an attempt to get British Forces into the Creggan and Brandywell areas while many people were on the march*¹⁶⁶.

4C-146 OIRA 1 appeared to agree.

*It is not a question of removal of weapons, the cars were told to come to Creggan. It made sense, the march was down in the Bogside. The Bogside, if you want, was well protected, there were thousands of people in it. The Creggan was basically empty and people said: "what do you do about the cars?" Bring them all up to the Creggan, I do not think it was any more complicated than that*¹⁶⁷.

LORD SAVILLE: Let us see if I can pick some of that up: if I got you directly -- do correct me if I am wrong, because you were speaking quite fast, I quite understand it is difficult to slow down

¹⁶³ Day 392/050/24

¹⁶⁴ Day 394/007/19-22

¹⁶⁵ Day 392/051/08-11

¹⁶⁶ AOIRA3.2 paragraph 7

¹⁶⁷ Day 395/030/18-25

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sometimes -- there was a possibility, but not rated particularly highly, that with the Creggan empty, because people were on the march, the Army might take it as an opportunity to get in there; is that right?

A. Yes.

LORD SAVILLE: Was that, then, the reason for moving the arms up there?

A. I would say that would have been the motivating reason, yes.

LORD SAVILLE: Another reason has been suggested, which is that they were moved up there so as to avoid the risk of any hot heads who might get their hands on the weapons, using them against the Army during the course of the march; was that discussed at all?

A. No¹⁶⁸.

4C-147 OIRA 2 seemed equally sure in his prepared statement but less so when questioned in oral evidence. In his first statement he said that arms were moved:

in order to remove them from the Bogside. This was partly to be in preparation for any attempt made by the Army to enter and control what had become "no go" areas¹⁶⁹

4C-148 In answer to questions put by Ms McGahey, however, he was less convinced about the possibility of incursions into the Creggan.

Q. You say in your statement that you cannot now recall whether there was a fear of incursion into the Creggan by the Army, but that your view was that the Creggan and the Brandywell were probably safe from incursion; is that right? A. Um, we were not very sure¹⁷⁰.

And, questioned by Mr Lawson, he felt that other reasons may have played a role also:

A. To remove them from the Bogside or any other areas because of the fact that the civil rights march was taking place.

¹⁶⁸ Day 395/033/16-034/09

¹⁶⁹ AOIRA2.2 paragraph 5

¹⁷⁰ Day 392/051/02-07

FS7. 560

Q. There was no sensible fear, was there, that the Security Forces were going to go into the Bogside?

A. Well, nobody really knew what the Security Forces -- what their intentions were.

Q. You were not expecting that to happen; were you?

A. As I say, we did not really know.

Q. Was there concern that if the weapons were not removed, mavericks or those who were not disclosed (sic) to follow the orders, might use the weapons?

A. No, that was not the issue because the members of the organisation were fully aware of what the orders were on the day and bringing the weapons back up to Creggan was simply a way of ensuring that all the weaponry could be accounted for on the day.

Q. It is not a matter for (sic) accounting for the weapon as a counting exercise, this was to get the weapons out of the way so they could not be used?

A. Well, I suppose that is probably true, that is one interpretation, yes¹⁷¹.

4C-149 Upon further questioning, OIRA2 became even less sure as to the reasons for moving the weapons:

LORD SAVILLE: Mr Lawson, excuse me a moment; OIRA 2 it is the Chairman. Can you help because I do not quite understand, it may be my fault: what was the reason for getting all the weapons back up to the Creggan?

A. Just to make sure that they were secure.

LORD SAVILLE: It seems to follow from that that you must have thought there was at least a possibility that the Army would come into the Bogside; is that right?

A. Well, I suppose the possibility was that they may well -- that they may have come in and decided to search -- engage in a very, very thorough search. So, as a precaution, the idea was just to remove -- to remove the weaponry to a safer location, presumably in Creggan.

¹⁷¹ Day 393/037/08-038/04

FS 7. 561

MR LAWSON: Was there a fear that they might do a very, very thorough search?

A. I would imagine there probably was, aye¹⁷².

4C-150 He finally admitted, when questioned further by Mr Lawson, that the order made little logical sense at all:

Q. Was there any concern that guns had to be removed from the Bogside in case people would use them if they were there?

A. No, that was not, that was not the reason that the guns were removed from the Bogside and brought to the Creggan.

Q. If this be true, why not simply leave them there, they were secure; were they not?

A. Mr Lawson, I do not know, it probably seemed like a good idea at the time¹⁷³.

4C-151 A policy of moving all weapons out of the Bogside to the Creggan also makes little sense in the context of the OIRA policy, still in force on Bloody Sunday, to defend the no-go areas, as it was clearly in the minds of some of the Command Staff, at least, that the British Army were all too likely to fire on the marchers. OIRA1 apparently predicted just such an outcome:

It was not out of the ordinary for shots to be fired and for someone to be shot by the Army at these types of demonstrations for no good reason.¹⁷⁴

While I was angered by the shooting, I was not particularly surprised by it. Shootings on marches or protests by the army had happened before. It was not therefore an unreasonable assumption that the army had shot two people without reason¹⁷⁵

And later said:

¹⁷² Day 393/038/14-039/05

¹⁷³ Day 393/039/25-040/09

¹⁷⁴ AOIRA1.29 paragraph 28

¹⁷⁵ AOIRA1.37 paragraph 94

FS 7. 562

A. I was looking up Rossville Street because I wanted to know what was going on. It was not out of the ordinary for shots to be fired and for someone to be shot by the Army at these types of demonstrations for no good reason. I had seen it all before and it was not, in that sense, sensational.

Q. Had you previously witnessed somebody being shot by the Army at a demonstration?

A. I had witnessed innocent civilians being shot on all sorts of occasions¹⁷⁶

4C-152 OIRA 1 expanded further on this topic when questioned by Mr Lawson:

Q. Is it true you were not particularly surprised by the shooting by the soldiers?

A. That is correct, yes.

Q. That is correct. Thank you. Is it also correct that it was not out of the ordinary for people, according to you, for people to be shot by the Army at such demonstrations as this?

A. Well, I think that what I said -- I am not sure exactly the words in my statement, but what I was inferring was that it was not unusual for the Army to shoot unarmed civilians in different circumstances.

Q. In the course of a demonstration?

A. Possibly in the course of a demonstration, possibly in the course of a confrontation, possibly in the course of when nothing was happening.

Q. Is it true that it was not out of the ordinary for shots to be fired by the Army at these types of demonstrations for no good reason?

A. Yes, it would not be true to say that the Army opened fire in the manner they did on Bloody Sunday on a regular basis on demonstrations. It would be true to say that the Army, on various occasions, had opened fire on innocent civilians in a number of different situations¹⁷⁷.

¹⁷⁶ Day 395/098/09-18

¹⁷⁷ Day 395/190/13-191/11

FS7. 563

4C-153 Harboursing such expectations, it would have been inconceivable that the OIRA Command Staff would, in applying their own policy of Defence and Retaliation, remove all their weapons into the Creggan so that the people of the Bogside were left, in their estimation, defenceless.

4C-154 There must be some doubt as to whether there were, in reality, men deployed to defend the Creggan, as the OIRA witnesses claim, or whether this alleged plan is simply a device to persuade this Tribunal that weapons were removed from the Bogside. The Tribunal has, after all, heard from eleven members of the Official IRA in Derry out of a claimed total membership of 20 to 30¹⁷⁸. Seven of those witnesses were attached to the Creggan section¹⁷⁹ but only one, Reg Tester, claims to have been part of the force deployed in the Creggan and is unable to recall any of those who were with him on the day¹⁸⁰. Whether, if there was indeed a plan to defend the Creggan, six of the very limited number of members of the Creggan section, including their OC, OIRA 3¹⁸¹, would have been omitted from that operation is a matter for the Tribunal to consider.

4C-155 A decision to remove all Official IRA weapons to the Creggan then makes little sense in terms of declared Official policy at the time. Nonetheless the position which this Tribunal was long asked to accept was that put forward by Mr Tester in his first statement:

Prior to Bloody Sunday I had received an order from the Officer in Command of Derry to ensure all weapons belonging to the Official IRA were collected from the Bogside and taken to the Creggan¹⁸²

4C-156 It has, of course, emerged in the course of his evidence, however, that the suggestion that he was controlling all of the weapons available to the Official IRA

¹⁷⁸ See for example evidence of OIRA 1 that there were 25 members at most. Day 395/195/20-25

¹⁷⁹ OIRA's 3,4,6,7,8, 11 and Reg Tester.

¹⁸⁰ AT6.10 paragraph 28

¹⁸¹ According to the evidence of OIRA 7 at Day 398/132/19 and Reg Tester at Day 414/009/22

¹⁸² AT6.2 paragraph 7

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on the day is entirely false. He was not in fact aware, he says, that weapons were being carried by volunteers on the day, or that they had fired.

4C-157 Regarding OIRA 1's shot, he said in his first BSI statement that:

A long time afterwards I found out that a volunteer member of the Official IRA had the sporting rifle .303 that was missing at the time....I heard that the volunteer had fired one in return although I have never been able to confirm this for a fact¹⁸³.

4C-158 By the time he made his second statement, Mr Tester had revised his estimate of the time before he heard about a shot having been fired:

It would therefore have been a couple of days before I heard about another Official IRA volunteer firing a weapon, as mentioned at paragraph 16 of my first statement¹⁸⁴.

4C-159 In oral evidence he claimed that by "a long time" he had indeed meant a matter of days:

Q. You say "at least", but do you mean that it was within days or weeks, as opposed to months or years?

A. It would have been days¹⁸⁵.

4C-160 Whether Mr Tester heard of OIRA 1's firing within days, weeks, months or years, it is quite clear from the evidence he gave that this individual most certainly had not been required to account to him "for every round of ammunition fired by him".

4C-161 It was Mr Tester's claim that he has been ignorant for some 30 years of the fact that this shot was fired by OIRA 1, a man he regarded as a more junior, co-member of the six man Command Staff. He told the Tribunal that, until the date of this Inquiry, he had understood the shot fired across William Street to have been the work of "Red Mickey" Doherty. Questioned by Mr Clarke, Mr Tester seemed

¹⁸³ AT6.3 paragraph 16

¹⁸⁴ AT6.13

FS7. 565

unconcerned by this lapse in the alleged practice of OIRA gunmen reporting shots to him:

Q. When you learnt within weeks that some volunteer had fired across the street, would you not have been told who that volunteer was?

A. No, not necessarily, it would have -- it was up to the OC¹⁸⁶.

4C-162 Mr Tester was also, he claimed, ignorant of there having been any firing at all in Barrack Street, shooting which it is now admitted was in fact carried out by Mickey Doherty.

Q. When was it that you learnt that a weapon was issued to a volunteer on observation duties at a location unknown to you.

A. I would not have known about that now, until I heard it given in evidence here. At the time I had no knowledge of it, therefore, I have no recollection of it¹⁸⁷.

4C-163 The Quartermaster and third in command of the Official IRA in Derry, confirmed his complete ignorance of any of the activities of even the co-members of the Command Staff in the Bogside on Bloody Sunday.

Q. So you have got a volunteer who was issued with a weapon which he actually used and in the course of which he was wounded. It is really the position, is it, that you, as the quartermaster of the Officials, did not hear of that for 30 years, or more than 30 years?

A. That is correct. It might seem strange, but ...

Q. Until recently you thought that it was OIRA 4 who fired across William Street?

A. No.

Q. You thought it was Mickey Doherty, sorry, who fired across William Street. Thank you. Did you learn at the time that OIRA 4 had fired?

¹⁸⁵ Day 414/070/11-13

¹⁸⁶ Day 414/071/07-11

¹⁸⁷ Day 414/043/04-09

FS7. 566

A. Um, no.

Q. Did you learn at the time that OIRA 1 had fired anywhere?

A. No, I did not. You see, with not being in the Bogside I really had no accurate picture of what went on there. I knew nothing of any of our volunteers with weapons, other than I assumed that the OC had his pistol with him and when I eventually heard the reports that came out long, long after about Father Daly's gunman, I thought to myself, well there was only one of ours down there possibly with a pistol, and I know it would not have been him who fired¹⁸⁸.

4C-164 The Tribunal now knows that much of the reason for Mr Tester's ignorance (if ignorance it be), if not for his earlier claims to be able to account for the OIRA's weapons, lay in the fact that he did not control the Bogside Section's weapons at all.

CONTROL OF BOGSIDE WEAPONS

4C-165 That the Bogside Section's weapons were held separately was indeed the account published in 1972 by The Sunday Times Insight Team following their interview with a staff officer who, according to Peter Pringle and Philip Jacobsen, was Reg Tester¹⁸⁹.

Officials on bloody Sunday. PP/PJ interview with staff officer 15/3/72

The officials' orders of the day for Sunday, drawn up the previous day, were as follows:

1. There were to be no weapons in the Bogside except for those held by the Bogside Official unit, and those were to be kept in several safe dumps. All other Official weapons were to be kept in two cars which would be on hand in the Creggan.

2. Nobody was to initiate firing on the army

4C-166 Although he later corrected himself, OIRA 1 initially endorsed the account published in The Sunday Times as being "broadly correct".

FS 7. 567

The Officials decreed that there were to be no weapons in the Bogside except those held by the Bogside Official Unit – and these were to be held in two cars on patrol in the Creggan¹⁹⁰.

4C-167 He “corrected” this prior to attending to give his oral evidence

The account could be read as suggesting that the weapons of the Bogside OIRA unit were to be held in several safe dumps within the Bogside, such a suggestion is inaccurate¹⁹¹

but conceded that Mr Tester was the man who would have known.

A. Because there was only about half a dozen weapons available to the Bogside unit at any one time. There was only maybe about 12 or 15 weapons in the entire area and they were all in Creggan.

Q. Was it Mr Tester's responsibility to ensure that they all went back to the Creggan?

A. It would have been his overall responsibility to ensure that, yes¹⁹².

4C-168 He said that it was Mr Tester and the OC who took them

Q. Did you drive any of the cars up from the Bogside to the Creggan?

A. No.

Q. I am not asking you for a name, but do you know who did?

A. No.

Q. How do you know that any weapons in the Bogside were taken to the Creggan?

A. Because I am aware of the responsibilities of the OC, I am aware of the responsibilities of the quartermaster, and I am aware of the decisions of the staff. I personally did not go to the Creggan

¹⁸⁸ Day 414/046/04-047/03

¹⁸⁹ Day 190/093 & 191/112

¹⁹⁰ L211

¹⁹¹ Day 395/003/06-10

¹⁹² Day 395/038/19-039/01

FS 7. 568

*to inspect those cars, but I am assured by them they did, and I take their word for it*¹⁹³

4C-169 It was from OIRA 6 that the Tribunal first heard that each section kept its weapons separately.

*Every section kept itself to itself and would look after its own*¹⁹⁴*weapons.*

4C-170 Mr Tester, when he gave evidence on Day 414, finally revealed the true position to the Tribunal:

Q. Except there is this important exception, is there not, that as you have indicated in your evidence today, a number of weapons had been entrusted by you to the Bogside section?

A. That is correct.

Q. And responsibility for the safe custody of those weapons rested with whomsoever was in charge of that section, presumably?

A. That is correct.

Q. Yes. To the best of your knowledge and belief those weapons were held securely –

A. That is correct.

Q. -- at dumps or locations within the Bogside; is that right?

A. That is correct.

Q. In addition, there were certain weapons, as you have told the Tribunal today, there were certain weapons that were held in dumps on the Creggan?

A. That is correct.

Q. In addition to which there were weapons kept in the boots of the car or cars?

A. The bulk was in the boots of cars, the two cars I had.

¹⁹³ Day 395/039/05-17

¹⁹⁴ AOIRA6.8 paragraph 43

FS7. 569

... .. Q. So Bogside rifles, that is the sporting rifle and the Red Mickey rifle, if I can call it that, those two were apparently out that afternoon; is that right?

A. Yes.

Q. Whether there were other rifles or weapons from the Bogside creche, you simply cannot say?

4C-171 It is quite clear that Mr Tester did not know where the Bogside Section's weapons were on Bloody Sunday.

Q. And those that were in the Bogside would have been in what sort of places?

A. That I could not say, because that was up to the officer who was in charge down in the Bogside as to where he kept his weapons¹⁹⁵.

4C-172 He certainly was not in a position to deny the account given in PIN 437 of weapons being stored in a car in Glenfada Park

On that account (PIN 437), if it was given and if it is true, a body of arms were removed from a car in which they had been stored in Glenfada Park. You, as I understand it, were not aware where the Bogside arms were kept on the day?

A. No, I was not¹⁹⁶.

4C-173 Indeed, he confirmed as accurate exactly that Sunday Times report which OIRA 1 had clearly told the Tribunal was "inaccurate":

Q. What you have just said is consistent with what you are recorded as telling Peter Pringle because what you are recorded as saying, is this: "There were to be no weapons in the Bogside except for those held by the Bogside Official Unit and those were to be kept in several safe dumps." That is obviously, is it not, a reference to the safe dumps in the Bogside that you have just been talking about?

A. Yes¹⁹⁷.

¹⁹⁵ Day 414/029/19-23

¹⁹⁶ Day 414/082/06-11

FS7 . 570

4C-174 Mr Tester's evidence makes it clear that the Bogside Section operated entirely outside his control and without his knowledge. He did not know where its weapons were kept and no report was made to him if its members opened fire, despite his role in issuing ammunition to the section. So much is evident from his complete ignorance of Mickey Doherty's firing in Barrack Street on Bloody Sunday.

Q. The position is: you did not know that this weapon had been issued at the time; is that right?

A. That is correct.

Q. You did not know who had issued it?

A. No.

Q. You do not know where it came from?

A. No, I did not at the time.

Q. How does that come about, that a weapon under your overall responsibility is issued without your knowing that it has been issued or to whom it has been issued or from where it has been taken?

A. The only answer I can give you to that is the fact that, unlike the opposition, the British Army, I do not have a nice quartermaster's stores with weapon racks in it; I do not have a system of signing in and signing out. In other words, we are not quite perfect and things can happen without one's knowledge on occasions.

Q. If this weapon was issued, it must presumably at some stage have been returned, or do you not even know whether that happened?

A. The only thing I can say there is it must have been one of the Bogside unit's weapons, which I did not control directly.

Q. Is what you are referring to in this sentence, the rifle that must have been issued to Micky Doherty, who fired from the Barrack Street area at a soldier, hitting his flak jacket; is that what you are talking about in this sentence?

A. I could not honestly say. I did not know about Micky Doherty having a weapon.

Q. You say that you only learnt in the course of this Inquiry that a weapon had been issued to a volunteer on observation duties at a location unknown to you. What was it that you learnt in the course of this Inquiry?

A. Precisely that.

Q. Is that from the evidence that has been given to the Inquiry or by something that somebody has told you whilst the Inquiry was going on?

A. I heard it in the evidence here.

Q. Which evidence are you referring to?

A. Oh, I do not know who it was, I have only been here a few times. If you want me to be quite accurate about it.

Q. I would?

A. Until comparatively recently I never knew of any shots being fired other than the one that was fired across William Street. I never knew there was anybody else with a weapon in the Bogside until comparatively recently, with all the publicity that this Inquiry has produced. I was always under the impression, because nobody ever actually told me different, I actually thought it was Micky Doherty who had fired the shot across William Street. I now know, of course, that it was not¹⁹⁸.

4C-175 Nor can Mr Tester verify that all the Creggan Section's weapons were present

Q. All you can say is that the bulk of the weapons was in the back of the cars?

A. That is correct.

Q. Where was the Thompson (with a P)? A. The Thompson, I think, was in the boot of one of the cars.

Q. Do you remember?

¹⁹⁸ Day 414/043/21-045/24

FS7. 572

A. I am not certain. I mean, a whole load of weapons were put into the boots of the cars; I did not keep a, a list and I certainly cannot remember what the precise weapons were.¹⁹⁹

Q. It follows, does it not, from the evidence you have given today that if it be the case -- and the Tribunal has heard evidence about this -- that OIRA 1, OIRA 4 and Red Mickey Doherty did fire on the day using IRA weapons, there was no account made to you by any of those individuals?

A. No.

Q. That is correct, is it?

A. That is correct.

Q. It further follows, does it, that no account was made to you in respect of any of those shootings by the OC of the Bogside or any quartermaster who might have been in place there?

A. That is correct.

Q. Should we understand the position to be this: that if the OC assigned, that is to say your OC, if you like --

A. Yes.

Q. -- assigned a volunteer to a particular task which required a weapon to be issued, that volunteer would come to you to be issued with the weapon and with the relevant ammunition that would go with it?

A. If he had been from Creggan in particular, that is correct. But as they -- I have already explained, the Bogside had their own supply of weapons down there, and ammunition, of course.

Q. Issued by you, as I understand it?

A. Issued from main stores by me to be cared for and used as and when necessary or when ordered, um, by the OC.

Q. But never accounted for to you?

A. But never accounted to me²⁰⁰.

¹⁹⁹ Day 414/109/07-111/022

²⁰⁰ Day 414/151/16-152/20

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4C-176 Now that the Tribunal has been told something of the truth of weapons control or lack of it on Bloody Sunday, it can more easily assess the degree to which attempts to mislead have been made by other members of Official IRA. It is quite clear that, when OIRA3 said

..my orders on the day were that the weapons were to be in the Creggan...I received no report from any other volunteer or Command Staff member suggesting that any weapon was unaccounted for or was not where I ordered it to be²⁰¹

he was lying.

And when OIRA 1 categorically rejected the Sunday Times notes, suggesting that Bogside weapons were kept separately, he too was misleading the Tribunal.

Gunmen in the Bogside on Bloody Sunday

4C-177 The Tribunal has been presented with repeated denials that there were any volunteers on active service in the Bogside on the day of Bloody Sunday.

4C-178 OIRA witnesses initially made efforts to deny that there were any armed volunteers at all on active service on Bloody Sunday or a third weapon at large in addition to those fired by OIRAs 1 and 4. OIRA 3 said in his first statement that:

I can confirm that there were no units on active duty during the day on Bloody Sunday²⁰².

4C-179 OIRA 1, a member of the Bogside Section, also categorically denied that his was active on the day:

Q. Was there a Bogside unit or a section on duty on that day?

A. No²⁰³.

²⁰¹ AOIRA3.10 paragraph 38

²⁰² AOIRA3.2 paragraph 5

²⁰³ Day 395/124/23-25

FS 7. 574

4C-180 OIRA 2, in his first statement, was also adamant that:

I know that there were no operations planned or carried out in the Derry area on Bloody Sunday and can confirm that there were no active units operational on that day²⁰⁴.

The only people with any form of weapon other than the .303 we put in the car were the army²⁰⁵.

4C-181 The Tribunal now knows, however, that the rationale that there could not have been offensive action by gunmen in the Bogside because all the weapons were under the control of the Quartermaster, Mr Tester, is based upon evidence about weapons control that is patently false.

4C-182 The Command Staff have also had to concede that there were gunmen in the Bogside because, but only because, it has emerged that at least OIRA 1, "Red" Mickey Doherty and Father Daly's gunman fired on the day. OIRA 3, in his first statement, confined his admissions as to gunmen to OIRA 1 and OIRA 4:

The only weapons which were outside of those areas have already been mentioned in this statement and were a .303 rifle and a handgun²⁰⁶.

4C-183 By the time he came to give his second statement, however, this position was clearly unsustainable so that he had to change his evidence to account also for Mickey Doherty's presence:

There were only three OIRA units on active duty that day, one unit each in cars in relation to the expected incursions in the Creggan and Brandywell, and a third unit, a single volunteer, who was posted in a house somewhere in Bishop's Gate²⁰⁷.

²⁰⁴ AOIRA2.1 paragraph 3

²⁰⁵ AOIRA2.10 paragraph 32

²⁰⁶ AOIRA3.8 paragraph 30

²⁰⁷ AOIRA3.18 paragraph 9

F57. 575

4C-184 The subsequent efforts of all OIRA witnesses to portray these three admitted gunmen as exceptions from a general “no weapons to be carried in the Bogside” rule are far from persuasive.

Personal Protection Weapons

4C-185 OIRA witnesses have attempted to persuade the Tribunal that OIRA 4, far from being part of any operation of defence and retaliation on Bloody Sunday, was, out of habit yet uniquely amongst OIRA members, carrying a personal protection weapon on the march.

4C-186 OIRA 4 told the Tribunal that he carried this weapon for his own protection only.

Q. You say that you were carrying this as a personal protection weapon. From whom were you protecting yourself?

A. Well, it was the no-go area; I was protecting myself against possibly British soldiers or the RUC²⁰⁸.

Such an explanation must presumably include the intention of OIRA 4 to fire the weapon should soldiers enter the Bogside as it is difficult to see how otherwise he would protect himself “*against British Soldiers or the RUC*”.

4C-187 The Tribunal has also heard that all members of the Command Staff were authorised to carry such weapons. The Tribunal will recall the evidence of OIRA 2²⁰⁹, OIRA3²¹⁰, OIRA5²¹¹ and OIRA4²¹² to the effect that it was entirely normal and authorised for Command Staff members to carry shortarms for personal protection. OIRA3 confirmed that there would have been no need for special

²⁰⁸ Day 394/011/16-20

²⁰⁹ Day 393/096/11-18

²¹⁰ AOIRA3.24 paragraph 34

²¹¹ AOIRA5.21 paragraph 39.5

²¹² AOIRA5.5 paragraph 22

FS7. 576

authorisation to do so on Bloody Sunday²¹³ and, indeed, OIRA4 has confirmed that he carried such a weapon on the day, as he did almost every day²¹⁴.

4C-188 It is for the Tribunal to consider whether it is persuaded that, while all Command Staff members were authorised to carry personal protection weapons on the march, only OIRA 4 felt it appropriate and necessary to do so. The Tribunal will recall that Mr Lawson questioned OIRA2, a Command Staff member, as to his alleged decision to go unarmed to collect a weapon from Columbcille Court on Bloody Sunday:

Q. So what was, and obviously recognised at the time, to be a dangerous operation?

A. That is correct.

Q. A member of the IRA at the time when carrying out a dangerous operation of a quasi military nature, what would you take with you?

A. Could you repeat the question, please.

Q. I will be blunt about it if it is not clear: what guns did you take with you?

A. We did not take any guns with us.

Q. Why not, you were embarking on a dangerous military operation to recover guns and if you had been stopped by the military, you could have been shot dead, you are saying you took no weapons at all, neither of you?

A. That is correct.

Q. What was going to happen if you had been stopped, were you simply going to surrender meekly?

A. I do not know.

Q. Had you thought about it?

A. No.²¹⁵

²¹³ AOIRA3.24 paragraph 34

²¹⁴ AOIRA4.15 paragraph 4

FS 7. 577

.... For the avoidance of doubt you were authorised to carry a handgun for your sole protection?

A. I was authorised but I did not carry a handgun.

Q. So was OIRA 1?

A. He did not carry a handgun either to the best of my knowledge

Q. He was authorised?

A. He would have been authorised, yes.

Q. As you have told us, despite the dangerous mission on which you were engaged neither of you chose to arm yourselves?

A. The only weapon in our control was the .303²¹⁶.

4C-189 OIRA2 was certainly under the impression that at least two members of the Command Staff were carrying personal weapons on Bloody Sunday and told Mr Lawson that:

Q. Were you aware of no other gunmen, apart from what you later heard, about the man who came to be known as Father Daly's gunman. Let us put him to one side, he was mentioned at your evening debriefing; was he not?

A. Yes, that is correct.

Q. Were you aware of no other gunmen that day?

A. I was aware that another member was carrying a sidearm for personal protection.

Q. Where was he?

A. I am not quite sure.

Q. Was he a member of the command staff?

A. He was a member of the command staff, yes.

Q. That is apart from OIRA 4 who apparently volunteers himself to be Father Daly's gunman?

²¹⁵ Day 393/042/04-23

²¹⁶ Day 393/096/11-22

FS7. 578

A. That is correct.

Q. So in addition to him, in addition to OIRA 4 there was another member of the command staff carrying a sidearm?

A. It may well have been the quartermaster.

Q. Mr Tester?

A. That is right.

Q. Anybody else?

A. Not as far as I am aware, no²¹⁷.

4C-190 It is apparent from his article in the Sunday Press on 6th February 1972 that Vincent Browne was told that more than one volunteer was armed on the march:

The Officials had an Active Service Unit of four men on duty. They were all either to be armed during the parade or to have immediate access to arms should they become necessary. In addition, a number of other volunteers in the parade were armed for their personal protection²¹⁸.

4C-191 Mr Browne no longer recalls the circumstances in which he obtained the information contained in this article but assumes he spoke to members of the Official IRA²¹⁹.

4C-192 The Tribunal will also need to consider whether, if there were indeed a plan to guard the Creggan and the acute shortage of weapons which OIRA witnesses allege, a member who was not on active duty would have been casually permitted to take one of the valuable, lethal weapons for no defined reason. OIRA 4 himself says that:

I didn't always carry it as it would only be available if not needed elsewhere²²⁰.

²¹⁷ Day 393/023/01-023/22

²¹⁸ M8.2

²¹⁹ Day 203/087/20-25

²²⁰ AOIRA4.15 paragraph 4

ES7 . 579

4C-193 The circumstances in which he could carry a weapon were:

So long as everyone knew the weapon was in my possession and it wasn't needed anywhere else²²¹.

4C-194 OIRA 2 stated, in his first statement, that:

It was policy that if weapons were available, Command Staff could have one for personal protection²²²

4C-195 And yet OIRA 4 himself acknowledged that there was a shortage of weapons to defend the Creggan where, it was alleged, the Official IRA's efforts were to be concentrated:

There would have been no point in all the volunteers staying in the Creggan simply to protect it rather than going on the march because, as I have said, we simply didn't have the weapons for everyone to be armed²²³

4C-196 OIRA 6 made the point himself, saying:

If the Official IRA had been awash with weapons then people might have been able to get easy access to weapons. That simply wasn't the case. Weaponry was very limited in number and very few weapons worked. Weapons were therefore needed for patrolling and volunteers, like me, would simply not have been allowed to carry a personal weapon around with them²²⁴.

4C-197 OIRA 6 was clear when questioned by Mr Lawson

Q. Weapons were needed, were they, for patrolling?

A. Yes, whatever weapons we had in the section, yes.

Q. So the few weapons that you had had to be reserved for those who were going on patrol?

A. Yes.

²²¹ AOIRA4.15 paragraph 4

²²² AOIRA2.17 paragraph 19

²²³ AOIRA4.16 paragraph 6

²²⁴ AOIRA6.7 paragraph 37

FS7. 580

Q. Is that right?

A. Yes, that is right.

Q. When you were not on patrol there would never be any question of you having a weapon, would there?

A. No.

Q. If you were not on duty even more so, there would never be any question of you having a weapon; would there?

A. That is correct²²⁵.

4C-198 OIRA 8 estimated the arsenal of the Creggan section as

We had a couple of .303s, a Thompson and a couple of handguns²²⁶.

And OIRA 3, the OC, confirmed that

As OC, I knew we had to have all our guns readily available to use in the area we might need them²²⁷.

4C-199 Why, in those circumstances, would OIRA 4 have been allowed to take a pistol for no operational reason at all?

4C-200 The evidence given as to the circumstances in which OIRA 4 was in possession of a handgun was entirely undermined by Mr Tester who apparently believed that only the OC would carry a weapon of this kind. In his first statement he had said, having seen a video of Father Daly's gunman, that:

I can confirm that although the Commanding Officer had a pistol at the time, he would not have been on his own firing at soldiers as this gunman was²²⁸.

4C-201 He remained confident, in his second statement, that only the OC had been issued with a pistol on the day:

²²⁵ Day 413/177/08-20

²²⁶ AW14.15 paragraph 15

²²⁷ AOIRA3.17 paragraph 7

²²⁸ AT6.3 paragraph 17

The volunteers were not going on the march armed with the exception of the OC who would always have access to a pistol²²⁹.

I thought that the OC would have had the weapon and I did not know that someone else had it on the day. There was only one pistol and it is clear to me know, that the OC had given it to another person. At the time I assumed that he would have held it as he always did²³⁰.

4C-202 Putting aside the fact that OIRA 3 had only had three days in which to establish the habit of "always" holding a pistol (he had only been OC for that length of time), it is clear from the evidence of OIRA 4 and OIRA 3 that the former had not simply borrowed the OC's gun. Mr Tester was questioned about his evidence on this point by Mr Clarke:

Q. The reason I am asking about this is because the man known as Father Daly's gunman, who is OIRA 4, in his evidence to the Tribunal, says that the gun that he had was his own gun, he did not take the OC's gun, he simply carried his own and, in his written evidence to the Tribunal -- he has not given oral evidence yet -- the OC accepts that there was a gun in the possession of another volunteer, which would seem to be OIRA 4, but he does not suggest that it was his gun. In those circumstances, can you be clear that the OC had given his pistol somebody else?

A. If he says different, I cannot argue with that, can I?

Q. I am not sure: are you conscious now that one of the guns that was out on the day was the OC's own pistol?

A. Well, he would certainly have initially carried it. If you say that somebody has already said that it was not his gun that he had, um, then I have to accept that. It means there is a pistol somewhere which, with the march of time, I cannot now account for²³¹.

4C-203 Mr Tester has now admitted that he had no idea that OIRA 4 was carrying a pistol on the march:

²²⁹ AT6.9 paragraph 23

²³⁰ AT6.13 paragraph 47

²³¹ Day 414/039/03-21

FS7 . 582

Q. Plainly unless you were being disingenuous there -- I am not suggesting you were -- you did not know at the time of OIRA 4 having volunteered that he was the gunman?

A. No, I did not.

Q. And you had no idea in the year 2000, as the ex-quartermaster of the Derry Official IRA, that OIRA 4 had had a gun that day?

A. No, I did not know.

Q. You did not learn of that until this Inquiry got going?

A. No, I did not²³².

4C-204 He had previously suggested that he was in a position to say that there was only one pistol at large that day, and that that was with the OC. He had also said that, while he could not speak for the Bogside Section, all weapons issued in the Creggan would be dealt with by and accounted for to him. The misleading nature of such evidence is fully apparent from the fact that a Creggan Section member who was also a member of the Command Staff had a weapon on the day, of which Mr Tester knew nothing.

4C-205 The Tribunal should, therefore, not accept OIRA 4's account of why he had a gun.

4C-206 Regardless of his reasons for carrying a weapon, OIRA 4 provided a clear demonstration of the lack of discipline within the Official IRA in opening fire in the manner in which he describes. OIRA 4 admitted:

I just lost my temper....I did it out of pure anger at what was happening around me²³³

I was just so angry and firing out of frustration²³⁴

4C-207 OIRA 4's evidence was, of course, never tested in oral examination. Had we had the opportunity to do so, they would have probed with OIRA 4 the question of

²³² Day 414/124/08-125/08

²³³ AOIRA4.17 paragraph 16

²³⁴ AOIRA4.18 paragraph 18

FS7.583

whether he was, indeed, the man known as “Father Daly’s gunman”, a fact of which the Tribunal cannot be entirely confident. Had his examination proceeded, OIRA 4 would also have been questioned as to where, if he was indeed Father Daly’s gunman, he then went, what he did and to whom he spoke. Given the attention which, on his own evidence, he had attracted to himself, it is surprising that no one admits to having seen him or his weapon after it was used in the limited circumstances claimed.

Broken weapons

4C-208 The Tribunal is also aware that there was, on any view of the evidence, another weapon present in the Bogside, the rifle fired by OIRA 1 from Columbcille Court. The Tribunal is asked by the Official IRA to believe that this was yet another exception to the “no weapons” rule, this time because the weapon was broken.

4C-209 OIRA 1’s admission that he fired this shot is a clear example of the Official IRA admitting only that which they are no longer in a position to deny before this Tribunal. The evidence of numerous civilians who knew that OIRA 1 had fired is set out in full in Chapter 6. The extent of knowledge of this shot amongst the Derry population is summed up by Paul Mahon who said when questioned by Mr Lawson that:

A. Mr Lawson, let me put it this way: someone once said to me in this city, the dogs in the street knew that that shot had been fired²³⁵.

4C-210 Whether this Tribunal would have learnt as much had there not been other, independent evidence of the shot is another matter. The Tribunal will recall the evidence of the highly respected Mr Barry of the Sunday Times Insight Team as to his experience in Derry:

Q. You say that your experience up to that time was that nationalist sympathisers had a near genius for not mentioning the presence of

²³⁵ Day 412/163/17-19

FS7 . 584

the IRA when giving their versions of some event, and you initially met that in Derry?

A. Yes²³⁶.

4C-211 Certainly Mr Tester conceded when questioned by Mr Lawson, that civilians must have been complicit in concealing his, allegedly attempted, firing in the area of Rossville Street:

A. There was just a large crowd that was milling around the junction of Lecky Road and Rossville -- and Westland Street.

Q. But a large crowd of people who plainly saw that you were an IRA man with a weapon that day who could if they had wanted to obviously have come along to tell this Inquiry about that many months or years ago?

A. I suppose so²³⁷.

4C-212 The Official IRA were, however, faced with consistent and documented military evidence of incoming fire as well as the fact that OIRA 1 himself had spoken of his shot to both John Barry²³⁸ and Gerard Kemp²³⁹.

4C-213 While the fact that at least one shot was fired by OIRA 1 could not be denied, Mr Tester's evidence, given on Day 414, must establish conclusively that the account given by OIRA 1 and OIRA 2 of attending Columbcille Court to collect a broken weapon was entirely spurious. He not only denied ever receiving a rifle with a defective sight for repair²⁴⁰ but also said that he would never encourage volunteers to move a weapon between the Bogside and the Creggan unless absolutely necessary²⁴¹. Indeed, OIRA 1 and 2's account had already been shown in the course of their oral examination to be incapable of belief, a matter addressed in Chapter 6 of these submissions.

²³⁶ Day 193/095/25

²³⁷ Day 414/141/17-24

²³⁸ PIN 437

²³⁹ L210

²⁴⁰ Day 414/129/11-25

²⁴¹ Day 414/112/10-113/13

FS7. 585

4C-214 Nor should it be accepted that OIRA 1 fired in response to Army fire as it appears to be clear, from the evidence surrounding his shot (if indeed he fired only once) as set out in Chapter 6, that he fired prior to the shooting of Damien Donaghy and John Johnston. Such a conclusion is unsurprising bearing in mind the Official IRA's policy, examined in detail above, of attempting to pick off British soldiers whenever the opportunity arose.

4C-215 The Tribunal should not, in our submission accept the account of OIRAs 1 and 2 that they fired only in response to Army firing. The Tribunal will nevertheless note that, even on the discredited account of OIRA 2, the policy of Defence and Retaliation was open to liberal application on Bloody Sunday.

Q. Your evidence is that you heard noise and a confrontation. You had no idea, did you, whether the soldier who you could see had fired any shots?

A. That is correct.

Q. And you actually had no idea whether anyone had fired any shots at all?

A. That is correct too.

Q. In those circumstances a shot at the Army by the Official IRA would surely not be a defensive shot?

A. Yes, but if you go further back up to the start of paragraph 11, I actually heard somebody shouting "Two boys have been shot" and I would have automatically assumed that the shooting would have come from the Army.

Q. And you had assumed what you had heard was right? A. And I assumed what I had heard was right, yes.

Q. Was just hearing that shouting from the crowd enough for you to break the very strict orders that there should be no firing at the Army?

A. Well, hearing the shouting from the crowd, I automatically assumed that shots had been fired, that first strike had happened and that the Army had engaged in the first strike.

FS7 . 586

Q. And you felt that that entitled you to take action in defence or retaliation?

A. In a word: yes²⁴².

4C-216 OIRA 2 has said that the OC was

perfectly comfortable that this action was within the policy of defence and retaliation.²⁴³

4C-217 Such a reaction is of course hardly surprising bearing in mind the true nature of the Defence and Retaliation policy which was to shoot any soldier who dared to be in Northern Ireland.

Red Mickey Doherty

4C-218 The Tribunal is also asked to believe that the incident of firing by “Red Mickey” Doherty was yet another exception to the rule that the Official IRA would not engage the Army on the day of Bloody Sunday. Unfortunately, the Tribunal has not had the benefit of the late Mr Doherty’s evidence, despite what is now known to have been his very close proximity to the very location of the oral hearings in Derry. This issue is relevant to, and touched upon in, a number of Chapters in this submission. It is, of course, particularly material to this section.

4C-219 The Tribunal will recall the way in which, on day 412, Paul Mahon called attention to the failure of any party to draw the attention of the Tribunal to Mr Doherty’s presence before his death. The absence of Mr Doherty from the witness box indeed appears to have provided some amusement to members of the Republican community such as Liam O’Comain who volunteered the following poem which he presumably felt reflected well on himself and would appeal, if not to the Tribunal, then at least to those in the Guildhall and elsewhere who shared his evident contempt for the Tribunal’s efforts to establish the truth about Bloody Sunday:

²⁴² Day 392/077/13-078/12

FS 7. 587

4C-220 With respect:

*They sought him here.
They sought him there,
Saville sought him everywhere.
Is he in Derry,
Where does he dwell,
That gentle giant, "Red Mickey?"²⁴⁴*

4C-221 Some explanation of the efforts made to obtain a statement from Mr Doherty was provided by Mr O'Donovan on the last day of these hearings. He explained that Mr Canavan, his instructing solicitor, had made contact with Mr Doherty through one or more OIRA witnesses in Autumn 2002 and remained in contact with him from that time in an attempt to obtain his formal instructions.

4C-222 Mr O'Donovan stated that the Tribunal, via its solicitor Mr Tate, was kept informed by Mr Canavan of the state of Mr Doherty's health and the efforts that were being made to involve him in the Tribunal process but that, apparently due to Mr Doherty's deteriorating health, it was not possible to obtain a witness statement from him before his death.

4C-223 Since these submissions were prepared and circulated, the Inquiry has written to the Interested Parties setting out its knowledge of the steps taken to obtain evidence from Mr Doherty. It appears that the Inquiry had no direct contact with Mr Doherty at any time, although the importance of Mr Doherty's evidence was recognised at an early stage in the Inquiry.

4C-224 The surprising absence of any evidence from Mr Doherty was raised before the Tribunal by Mr Glasgow on the 24th September 2003. It is, we submit, regrettable that the Tribunal did not obtain evidence from Mr Doherty, or at least provide any

²⁴³ AOIRA2.19 paragraph 28

²⁴⁴ Day 417/041/04-11

explanation as to its absence prior to Mr O'Donovan's statement on the very last day of the Tribunal sittings.

4C-225 Several OIRA witnesses have given thoroughly disingenuous evidence about Mr Doherty's presence as a sniper. OIRA 1 told the Tribunal:

Q. As far as you are aware, would it have been possible for a volunteer who was detailed to stay in the Creggan to have obtained a weapon and gone down to the Bogside?

A. No.

Q. Why not?

A. Because they would have been in cars with more than one person and not one person would have been allowed to get out, take one of them and walk away with it²⁴⁵.

4C-226 In fact, as a fellow member of the Bogside Section, OIRA 1 would have known full well that Mr Doherty had not obtained his weapon from the Creggan at all but from the cache kept by the Bogside Section themselves, which was outside Mr Tester's control.

4C-227 OIRA 5 attempted to create a new category of "close to the Bogside" weaponry in order to explain Mr Doherty's presence with a rifle.

A. How did he have a weapon?

Q. Yes.

A. He would have been -- he would have fallen outside the terms of reference for the recall of weapons in the Bogside; he was not in the Bogside.

Q. So Red Mickey Doherty was not in the Bogside?

A. Well, Barrack Street is not part of the Bogside.

Q. What part of the city is Barrack Street?

²⁴⁵ Day 395/052/12-19

A. It is towards Bishop Street.

Q. Into what part of the city does it fall, insofar as the administration areas of the IRA are concerned?

A. Well, it falls out on the, on the edge of an area probably known as the Bogside, but it is not actually part of the Bogside itself. It is an area -- well, it is very difficult for me to describe, other than it was not described -- it was not, in my view, it was not part of the Bogside.

Q. It was not part of the Bogside --

A. It was, it was outside of the area in which the march and meetings were to take place.

Q. Yes. So the collection of weapons from the Bogside and their removal to the Creggan involved, what, the collection of some of the weapons from the Bogside, but if you took a view that a particular street or area fell outside what one might precisely call the Bogside, that weapon was to be left in the hands of the volunteer?

A. In that particular instance it probably did²⁴⁶.

4C-228 It is difficult to follow how such an explanation can possibly be reconciled with the OIRA evidence that weapons were recalled to the Creggan not because there was a need to remove them from the Bogside but because they were needed in the Creggan. Nor is it credible that, as OIRA 5 suggested when questioned by Mr Elias, Mr Doherty was the only exception to the general rule.

Q. How many other volunteers were left with weapons on the fringes of the Bogside, as you have put it, because they did not fall within the precise area?

A. I am certain that none other were, were covered by that.

Q. Just the one exception?

A. One exception²⁴⁷.

4C-229 OIRA 1 said in his first statement that:

²⁴⁶ Day 393/201/21-202/22

FS7. 590

I recall that that night there was a meeting of the command staff. I was at that meeting and I became aware at that meeting that one of the volunteers had been injured in an incident after the shooting had calmed down²⁴⁸.

4C-230 In fact, he knew about and had seen Mr Doherty earlier in the day. His explanation, when questioned by Mr Lawson, for his failure to mention this in his earlier statement is far from convincing:

Q. When were you first aware of that?

A. When I was told by someone in the street that there was a person wounded in Vinny Coyle's house.

Q. Who was it who told you that?

A. I do not recall who it was.

Q. Did you go to Vinny Coyle's house?

A. Yes.

Q. There is no reference then, is there, in this statement to your having gone to Vinny Coyle's house or seeing a wounded man there?

A. No.

Q. Something you were concealing?

A. No, something I just had not thought about when I was making the statement; at the Eversheds interview, a lot of these details became a bit more clear in my mind.

Q. Something you had not thought about when making this statement, that you had seen a member of the Official IRA wounded that day?

A. I was asked to comment about this type of thing in my original statement, I said that at the meeting that night -- I think what I was saying was, that is when it became common knowledge or knowledge within the staff. I personally, and maybe I had

²⁴⁷ Day 393/205/01-06

²⁴⁸ AOIRA1.11 paragraph 38

FS7. 591

overlooked it when I made this statement, had actually known about that earlier on in the day²⁴⁹.

4C-231 OIRA 2 admitted that the evidence he had given about weapons being collected in the Creggan was wholly undermined by Red Mickey's presence:

Q. So as an observer, all weapons, as we understand it -- and you have given detailed evidence and other OIRA members are to come and give detailed evidence -- all weapons having been recalled and accounted for to the Creggan area, how was it that Red Mickey Doherty had a weapon to fire?

A. I have no idea how he had a weapon to fire²⁵⁰.

4C-232 OIRA 2 suggested that Mr Tester would be able to assist the Tribunal as to Mr Doherty's posting on the day:

Q. Can you assist the Tribunal about this: from what you have told us, in the light of the questions that you have answered about this, I am not clear as to what role the command staff played. Can you help about this: if snipers were posted, would you, as a member of the command staff, necessarily have known?

A. Not necessarily.

Q. Who would have known?

A. I presume -- you would need to ask -- you are saying to me about somebody having a gun in a certain position, then I am sure you would need to ask the person who was in charge of the weapons whether or not this was true.

Q. So that would have been on the day, who?

A. Um, Mr Tester.

Q. Let me ask the question again, then -- Mr Tester would be able to tell us; would you, as a member of the command staff on the day -- whatever you may remember now -- would you have known on the day whether or not snipers, that is armed persons, were posted at various places in and around the city, or not?

²⁴⁹ Day 396/117/18-118/17

²⁵⁰ Day 393/124/09-15

FS7 . 592

A. Well, my answer to that, Mr Elias, is that I have no knowledge of such activities; I have no knowledge of such activities²⁵¹.

4C-233 Mr Tester, in the event, claimed when he came to give evidence that he could not assist at all. Regarding Mr Doherty he said in his BSI statement that:

A weapon was issued to a volunteer who was on observation duties at a location then unknown to me²⁵².

4C-234 In oral evidence it became clear that he was ignorant not only of Mr Doherty's location but of his very existence as a sniper on the day.

Q. Do I understand from that that you subsequently learnt what that location was?

A. No, it does not. It just means that I did not know it then and I do not know it now.

Q. Who had issued the weapon?

A. As far as I know, it must have been the OC himself.

Q. It was not you?

A. No.

Q. Do you know when the weapon was issued?

A. No, I do not.

Q. Or what exactly the observation duties were?

A. No, I do not.

Q. Why would somebody need a weapon for the purpose of observation duties?

A. You would have to ask the person who ordered him.

Q. What is the –

A. I cannot speak for him.

²⁵¹ Day 393/124/21-125/18

²⁵² AT6.8

FS7. 593

Q. What is the basis of what is contained in this sentence. You say: "A weapon was issued to a volunteer who was on observation duties at a location then unknown to me." If it was not you who issued the weapon, how do you come to say what is set out in this sentence?

A. Do you mean how do I know about it?

Q. Yes?

A. I have since learned.

Q. From whom?

A. From talking to others²⁵³.

4C-235 Mr Tester then suggested that the only witness who could assist the Tribunal as to Mr Doherty's role on the day was the OC. The account which OIRA 3 now gives in his BSI statement, and on which he has not made himself available to be questioned, is that:

This volunteer had been placed in a house in Barrack Street as an active unit because of the possible incursion into the Creggan and Brandywell areas. He had heard shooting in the Bogside and didn't know what was going on and a Brit must have seen him and shot at him²⁵⁴.

4C-236 OIRA 3 entirely fails to mention that this gunman fired at soldiers and that, according to the evidence of Soldiers AA and AB, it was this incoming fire to which their shots were fired in response.

4C-237 This military account was supported by the account given by the gunman himself to the Observer's Mary Holland to the effect that he was a member of OIRA and had been in an empty house on the corner of Cooke Street and Joyce Street with orders to cover Bishop Street. She reported in her article, published in the Observer on 6 February 1972, "How the IRA gained a sniper" that:

²⁵³ Day 414/041/11-042/13

²⁵⁴ AOIRA3.22 paragraph 25

FS 7. 594

...He was wounded by a soldier returning fire from a house opposite after he himself had fired at a soldier in the street beneath. He thinks his bullet grazed the soldier's flak jacket, but did not injure him...He was hit in the thigh by one bullet and another ricocheted off a wall to graze the flesh of his eye²⁵⁵.

4C-238 Bearing in mind Mr Tester's evidence, the Tribunal will question whether Mr Doherty was, in fact, acting under the command of the OC at all or had obtained his weapon and his orders from the OC of the Bogside Section, in respect of whose identity there has been a universal refusal on the part of OIRA witnesses to assist the Tribunal.

4C-239 Intelligence material suggests that the OC of the Bogside Section was Mr Doherty himself²⁵⁶. John Barry of the Sunday Times Insight team recorded, in PIN 437, having been told by OIRA 1 that he himself was OC of the Bogside Section.

4C-240 Mr Tester claimed not to recall who was OC of the Bogside Section.

Q. I do not ask you to give a name, at least not publicly here, but are you in a position to tell the Tribunal who it would have been in 1972 in the Bogside that could account for which weapons were issued and which ammunition was subsequently accounted for?

A. Whoever was the, was the officer in charge or section leader, whichever it was, in charge of the Bogside unit.

Q. That individual could give us that information. Just answer this question yes or no: do you know who that person was?

A. No, I do not.

Q. Do you mean by that that you now cannot remember or you would not have known at the time?

A. I may well have known at the time, but I certainly cannot remember now. I spent the last 30 years trying to forget everything²⁵⁷.

²⁵⁵ L162

²⁵⁶ INT2.101

²⁵⁷ Day 414/154/05-20

FS7 . 595

4C-241 When questioned by Mr Lawson, OIRA1 declined to assist:

Q. You will not help us to discover who was in charge of the Bogside that day?

A. I certainly will not.

Q. No?

A. No.

Q. That is against your principles, is it?

A. Yes, well, I mean, I have been asked on a number of occasions, in other locations, I did not give it then, I do not intend to give it now²⁵⁸.

Q. Was it a member of command staff?

A. I am not prepared to discuss it.

Q. Will you be prepared to tell the Tribunal privately?

A. No.

Q. You appreciate the importance of the issue as to what was happening with the Bogside unit on the day of Bloody Sunday; do you not?

A. No, actually I do not appreciate the significance.

Q. You do not?

A. No.

Q. And you do not understand that anybody else might take the view that it would be interesting to discover what the Bogside unit of the Official IRA was doing –

A. You have already discovered what they were doing. They were doing nothing, the weapons were in Creggan.

Q. Because you tell us?

A. Yes.

²⁵⁸ Day 395/170/02-15

FS 7. 596

Q. And we should take that –

A. And if someone else was to come and tell you the same thing, you could go through the same procedure, so I have no intention of taking it any further.

Q. That is a considered reaction, is it?

A. Yes.

Q. Under no circumstances will you assist in that regard?

A. Yes²⁵⁹.

4C-242 Once again the Tribunal is asked to accept that the Bogside unit of the Official IRA was “*doing nothing*” because “*the weapons were in Creggan*” an assertion which, following the evidence of Mr Tester, the Tribunal knows to be wholly false.

4C-243 The Tribunal should not accept that there were only three OIRA weapons present in the Bogside on Bloody Sunday, all of which were there for wholly exceptional reasons and all of which were fired. The OIRA witnesses have proved either unable or unwilling to assist the Tribunal as to the whereabouts of the Bogside unit’s weapons on the day. All that is known is that they were clearly never taken to the Creggan as claimed by many OIRA witnesses.

4C-244 Nor, it is suggested, is Mr Tester to be wholly relied upon as to his alleged control of the weapons belonging to the Creggan Section, because he apparently had no idea that a member of that section, OIRA 4, was armed on the day.

4C-245 Mr Tester has clearly been involved at various stages in efforts to conceal from the Tribunal the full extent of Official IRA activity on the day of Bloody Sunday. In his first statement signed in March 2000 he said:

On the morning of the march there were two weapons missing; the pistol which was carried by the OC at all times and a Sporting (cut down) .303 rifle²⁶⁰.

²⁵⁹ Day 395/171/06-172/03

FS 7 . 597

4C-246 By the time he gave his second statement, signed in November 2003, he had decided to change his evidence to say

On Bloody Sunday I knew there were three weapons out²⁶¹.

I rifle in the Bogside, I small calibre pistol and a rifle allocated to a volunteer²⁶².

4C-247 Mr Tester declined to admit at that stage that he knew nothing about any weapons belonging to the Bogside Section and would not expect to.

4C-248 It would also seem inconceivable that if, as is claimed, all firing was reported at a Command Staff meeting on the evening of Bloody Sunday, Reg Tester as Quartermaster and third in command would remain ignorant of all of the firing on the day. Certainly his initial claim to this Tribunal that

Each volunteer had to account for each round of ammunition issued to him and god help him if he couldn't account for it²⁶³

can now be seen to be entirely spurious.

4C-249 The Tribunal may conclude that Mr Tester's claimed ignorance is disingenuous and an attempt to conceal his knowledge of the true extent of OIRA firing on the day, for Mr Tester appears, in talking to the press in the past, to have known far more of the firing which took place than he now admits. Certainly, he said of OIRA 1, in his interview with Peter Pringle at S34, that:

Q. "This man had been in the immediate area when Donaghy and Johnston were shot. Being a member of the Bogside unit, he had access to a weapon and rushed to his position."

4C-250 Mr Tester also maintained, when questioned by Mr Lawson, to have been ignorant until very recently of the fact that Mr Doherty fired or suffered an injury.

²⁶⁰ AT6.2 paragraph 9

²⁶¹ AT6.7 paragraph 12

²⁶² AT6.10 paragraph 27

²⁶³ AT6.1 paragraph 4

FS 7 - 598

Q. So if we have the whole of that page, it was conveniently the last page of the statement. On 26th March 2000, you were unaware, were you, of Red Mickey Doherty having been wounded on Bloody Sunday?

*A. Yes*²⁶⁴.

4C-251 Such a claim appears highly unlikely in view of the fact that the injuries to Red Mickey were well-publicised by Mr Tester's own OC in the immediate aftermath of the incident. Mr Tester appears to have been unaware of this publicity:

Q. Can we have XI.25.14 back on the screen. The transcription that is provided to this Inquiry and is being used ends with the words "as a consequence," as we have just heard what OIRA 3 said was: "As a consequence a volunteer of the Official Irish Republican Army was wounded in the leg and the neck"; you heard that, as everybody here did?

A. Yes.

Q. Plainly, as you would now recognise, a reference to the injury or injuries suffered by Red Mickey Doherty?

A. Yes.

Q. Being spoken of on the night of Bloody Sunday by your OC, OIRA 3?

A. Yes.

Q. How recently was it that you appreciated that Red Mickey Doherty had been injured on Bloody Sunday?

A. It would have been some time over the past few years. When exactly, I am afraid, I do not recall.

Q. We are talking of recently?

A. Since I started reading the evidence being given here.

Q. Since the setting up of this Inquiry?

A. Yes.

²⁶⁴ Day 414/094/01-05

Q. So for the best part of 30 years preceding that, you had remained completely ignorant –

A. Yes.

Q. -- of Red Mickey Doherty having been injured, yes?

A. Yes.

Q. Is that when you first became aware or thought you were aware that Red Mickey Doherty had fired a shot on Bloody Sunday, also when the Inquiry was set up?

A. I think I heard about that a little bit earlier.

Q. That will do. So a little earlier than the setting up of this Inquiry?

A. Oh, yes, much earlier, years ago.

Q. Years ago, but not immediately after Bloody Sunday?

A. No.

Q. No, quite a long while after Bloody Sunday?

A. Yes.

Q. I will not ask you to put a period on it. You in fact then for many years were under the misapprehension that Red Mickey had fired the shot across Rossville Street?

A. I was.

Q. You were only disabused of that shortly before coming here to give evidence, is that right?

A. Yes.

Q. Despite being a member of the collective decision-making command staff body, you tell us you knew nothing at all about Red Mickey or the other shooting that had gone on on Bloody Sunday until recently?

A. Strange though that may seem, that is correct²⁶⁵.

²⁶⁵ Day 414/102/25-104/24

FS7. 600

And yet the “staff officer” interviewed by Peter Pringle in 1972, who Mr Pringle confirmed was Reg Tester²⁶⁶, appeared by that time to know all about the firing in Barrack Street. Mr Pringle’s notes record that:

An official fired and was wounded in the leg elsewhere near somewhere near Bishop Street early in the march. This is almost certainly Mary Holland’s man. We are getting more details²⁶⁷.

4C-252 Whatever the circumstances in which “Red Mickey” fired, it seems he was not the only one to have done so as the OC has said in the statement he presented to this Tribunal that:

*I am aware of **some incidents** which occurred between the end of the military shooting and the arrest operation and the Command Staff meeting at which it was determined that there would be no further action. In **one of those incidents** I am aware that a volunteer was injured....²⁶⁸*

What were the others?

OIRA GUNMEN ON BLOODY SUNDAY

4C-253 The OIRA evidence is a concerted attempt to suggest that these three individuals were entirely exceptional amongst members of the Official IRA in being armed on Bloody Sunday.

4C-254 Indeed it is clear that the existence of these three gunmen has been acknowledged by the OIRA witnesses only once it became clear that their presence and actions could not realistically be denied. In fact there is persuasive evidence that there were others on active service in the Bogside and the Tribunal may well conclude that they were part of a concerted effort to apply the Defence and Retaliation policy by shooting British soldiers.

²⁶⁶ Day 191/112/15-19

²⁶⁷ S37

²⁶⁸ AOIRA3.7 paragraph 27

FS7. 601

4C-255 Certainly the existence of OIRA active service units became known to the Press shortly after Bloody Sunday.

4C-256 The Observer galley proofs include extracts from an interview with the acting OC of the Officials who explained that there were at least two marksmen on duty on Bloody Sunday. OIRA 3 claims not to recall talking to anyone at the Observer but does not deny doing so²⁶⁹.

According to the acting OC quoted by the Observer:

"First you must understand that we do not look on a riot situation as any great opportunity for us. We cannot use the weapon because it would be too dangerous, only a madman would be prepared to start a shoot-out in an area crowded with people. Our policy is to have marksmen stationed so that they can, if it looks promising, use the situation when a riot is over. We know the pattern here. The riots start in the afternoons and in the winter they usually end when darkness falls. It gets cold and people start drifting away for their tea.

On Sunday most of the members were taking part in the march and were unarmed. We had two marksmen on duty, but with strict instructions not to use their weapons until the area was clear of civilians. One was covering Rossville Street from the corner of William Street and Rossville Street. Another was in the Little Diamond covering William Street.

The marksmen were armed with rifles and there were sub-machine-guns in the cars²⁷⁰.

4C-257 Vincent Browne had also been told of OIRA units on active service

The Officials had an Active Service Unit of four men on duty. They were all either to be armed during the parade or to have immediate access to arms should they become necessary. In addition, a number of other volunteers in the parade were armed for their personal protection.

... There have been reports that all IRA arms in the area had been moved out before the march to ensure that there would be no

²⁶⁹ AOIRA3.30paragraph 56.5

²⁷⁰ ED 24.9

FS 7. 602

*unauthorised and ill-advised opening of gunfire. This is only partly true...*²⁷¹

Civilian Evidence

4C-258 There is also direct civilian evidence of gunmen and firing on Bloody Sunday some of which can be linked to the Official IRA.

Sector 1

4C-259 There are a number of civilian witnesses who corroborate press reports of Official IRA activity in the area which are now denied. The Tribunal will recall that the account given to the Observer by the acting OC of the Officials referred to two Official IRA marksmen, one of whom was stationed in Little Diamond in order to cover William Street²⁷².

4C-260 David Tereshchuk reported hearing a single, isolated rifle shot fired at about 1600.²⁷³ His evidence to the Widgery Tribunal was that the shot had emanated from the direction of the Little Diamond²⁷⁴.

4C-261 The same shot appears to have been heard by Simon Winchester who was near the City Cabs office at the time. He reported that:

When I was in William Street standing by the City Radio Cabs office, I heard a single shot which I thought came from the direction of the Little Diamond²⁷⁵.

4C-262 Stephen McGonagle gave a detailed description in his BSI statement of a man with a pistol or revolver standing slightly south of the junction of Rossville Street and William Street apparently lying in wait for soldiers, but disarmed before they arrived. Such a location of course fits exactly with that of the other "marksman"

²⁷¹ L171

²⁷² ED 24.9

²⁷³ M77.12 paragraph 7

²⁷⁴ M77.7 at E-F

²⁷⁵ M83.16 paragraph 12

FS7. 603

referred to by the acting Official IRA OC who spoke to the Observer, although he is reported as saying that they were armed with rifles²⁷⁶. Mr McGonagle said:

I could see a young man of about seventeen or eighteen walking around this area. This young man was wearing a gabardine raincoat which I remember thinking was strange as it was a fair day and not raining. I saw the young man put his hand into the left pocket of his coat and pull out either a pistol or a revolver. He held this in his left hand pointing towards the ground. The young man was walking around as if he was looking for a vantage point from which to open fire.²⁷⁷

4C-263 That there was, indeed, at least one gunman actively stationed in Rossville Street was confirmed by Reg Tester in an interview he gave to Peter Pringle and Philip Jacobson:

We fired only one shot in the area and that was after the Army had finished shooting. A soldier went into the street by himself and our man covering Rossville Street thought he could get him. "He fired one shot and then realised it would be dangerous to go on because, although the immediate street was clear, people were huddled in doorways and running to safety whenever the firing stopped.

4C-264 Vincent Browne reported in an article published in The Sunday Press on 6 February 1972 an account of firing by an OIRA gunman with a short arm in William Street:

When the second volley of British gunfire occurred, the four members of the Active Service Unit were immediately alerted. Two of them had, in fact, to return to a maisonette in the Bogside to collect a couple of rifles.....

Meanwhile, the two other members of the unit moved into what they described as sniping positions but what in fact were only street corners. Both of these were armed only with short arms, .38 revolvers. After the second burst of Army gunfire, the Officials took up positions and one shot was fired by one of the men with the short arms at a soldier in William Street, but it missed. No other shot was

²⁷⁶ ED 24.9

²⁷⁷ AM253.5 paragraph 25-26

ES 7 . 604

fired then by anybody until the actual murderous assault on the Bogside by the paratroopers²⁷⁸.

4C-265 Clearly, this was not a reference to OIRA 1's firing but to an additional OIRA gunman firing with a pistol in the William Street area. Such a man was seen by David Capper who said in his BSI statement that:

I then saw a short man of about 30 to 40 years of age wearing, I think, a brown overcoat, fire one round from a pistol toward some soldiers who were in a derelict building near the Presbyterian Church on the other side of William Street. After the pistol was fired the man placed the pistol into his coat pocket and ran off. I cannot remember in which direction he ran. The assembled crowd scattered as soon as the shot was fired and I went back to the junction of Rossville Street and William Street (Grid Reference N9) to observe the riot down by barrier 14²⁷⁹.

4C-266 Mr Capper expanded in his evidence to this Tribunal:

Q. Did you actually see the man fire?

A. No, I did not see him fire. I heard the bang, looked round and I could see him put a handgun into the coat and then blend into the crowd, he was -- it all happened very, very quickly and I could not have identified him, so that is why, in the initial one I said I did not see anybody.

Q. You say that he appeared to fire one round from a pistol towards soldiers who were in a derelict building near the Presbyterian Church; are you able to tell us which building that was?

A. No, um, just one of the derelict buildings in that area.

Q. Do you know whether --

A. Sorry, I did not see him point, um, I just heard the bang and looked round and he was putting it back in his coat, but he was facing out in that general direction (indicating).

Q. When you say "facing out in that general direction", towards the north, towards where the Presbyterian Church was?

²⁷⁸ L171

²⁷⁹ M9.1 paragraph 5

FS 7. 605

A. Yeah²⁸⁰.

4C-267 Explaining why he failed to tell the Widgery Tribunal that he had actually seen this man, he said

Q. You have told this Tribunal that in fact you could identify a gunman who appeared to be in his 30s or his 40s wearing a brown coat and carrying a small pistol. Can you recollect which is the case –

A. Oh, I did see somebody definitely and I saw seen the guy who had fired the shot, but at that time giving evidence it was, how can I put it, diplomatic not to say that you had identified or -- because you would have been in the position then of maybe attending identification parades and in the light of subsequent events, the firing of that one shot became pretty irrelevant.

Q. Mr Capper, you do not feel any such embarrassment in front of this Tribunal?

A. No²⁸¹.

4C-268 Derek Humphrey, a staff reporter for the Sunday Times, had also heard of a shot fired with a short arm in William Street.

"...An Official IRA man told us that he had fired a pistol shot at soldiers stationed in a derelict building on the N side of William St near the GPO building. This shot, however, was only fired in response, we were told, to the Army shooting Damien Donaghy from the roof of the GPO building itself. We were also told that the pistol shot was followed by John Johnson being hit by an Army shot also coming from the roof of the GPO building as he went to Donaghy's assistance²⁸².

4C-269 Mr Humphrey said, when questioned by Christopher Clarke QC, that he had verified this account with the gunman himself.

Q. You spoke to this man yourself, did you?

A. Yes.

²⁸⁰ Day 073/011-012

²⁸¹ Day 073/064-065

²⁸² M43 paragraph 10

FS 7. 606

Q. Not through an intermediary, you actually saw him?

A. No.

Q. Did he describe where he was at the time when he fired this shot?

A. I cannot recall, sir.

Q. What was described as a pistol shot, was it?

A. Definitely, yes.

Q. One only or more than one?

A. One, one shot from one pistol.²⁸³

4C-270 And Philip Jacobson and Peter Pringle were told of it in an interview conducted on 3 February 1972 with a senior member of the Official IRA who, they told this Tribunal, was Mr Tester²⁸⁴.

We have established beyond doubt that a member of the Official IRA fired a single shot from a .45 pistol at an army sniper on the roof of the post office sorting building on Wm St... The Ira man was in a burnt out house on the corner of William St and Rossville Street. He believes he hit the soldier but we have been unable to confirm this from the Army. The range, almost 100 yards, was extreme for an accurate pistol shot²⁸⁵.

4C-271 Mr Tester claims now not to recall this interview:

Q. Do you recall giving an account of this shot across William Street, if I can put it neutrally, to journalists shortly after Bloody Sunday?

A. No, I do not.

Q. Did you ever understand that the shot that went across William Street was from a pistol?

²⁸³ Day 217/159/025-160/010

²⁸⁴ Day 191/111/23

²⁸⁵ ED20.30-31

FS 7. 607

A. I have never heard that claim²⁸⁶.

4C-272 Thomas Mullarky also reported in 1972 hearing a shot fired from a revolver while he was in William Street.

I estimate 4 to 5 shots were fired at this time. A little later I heard a single shot, loud, a revolver I thought, but could not place where it came from²⁸⁷.

4C-273 Mr Mullarkey confirmed to this Tribunal that, while he did not recall this now, the account he gave at the time would have been correct²⁸⁸.

4C-274 Chris Myant, a journalist then working for the Morning Star who assisted with the taking of NICRA statements, said in his BSI statement that:

One young woman among those coming to give statements, said to me that she was sure that somebody had fired a hand gun in William St. She was very young, about 18 yrs old. I asked if she was absolutely sure and she said she wasn't sure when it had been but she was sure what she had seen. She didn't want to say any more about it and didn't want to make a formal statement. I couldn't figure out whether she was frightened about what would happen to her if she spoke or whether she was hysterical and got it wrong - I felt at the time it was the latter. Nobody else mentioned this... I do not recall the woman's name...²⁸⁹

4C-275 Mr Myant did not, of course, know, at the time he formed his view of this young woman's evidence, that her sighting of a man with a pistol in William Street was, in fact, corroborated by a number of other witnesses.

4C-276 PIN437, a note of an interview which John Barry has said he conducted with OIRA 1, also refers to an additional OIRA gunman firing in Sector 1. This man:

Ran up to what OIRA1 swears was the northwest corner of Glenfada, that is the corner towards Wm St and furthest from the

²⁸⁶ Day 414/036/10-16

²⁸⁷ AM452.2

²⁸⁸ Day 069/057-058

²⁸⁹ M91.4 paragraph13

FS 7 · 608

flats. OIRA1 says he got up on a balcony ---on the front of C. Court, he said the bloke told him later,---and got in a couple of shots with the .22 automatic.

4C-277 Further reference was made to this shooting in interview with Gerard Kemp, which he again attributed to OIRA 1:

'One guy got on to a balcony and fired at the Paras'²⁹⁰.

Sector 2

4C-278 OIRA 4 has admitted that a pistol was fired from the gable end of Chamberlain Street. The fact that one of the OIRAs fired here is, of course, something which even the Official IRA could hardly deny in the face of the evidence of Father Daly and the one surviving photograph of this gunman. The Tribunal will, of course, be concerned as to what happened to the others.

4C-279 The various and contradictory accounts of civilian witnesses as to when this man fired are examined in Chapter 7D of these submissions. No doubt the Tribunal will consider whether in fact there was more than one pistol man operating in this area.

4C-280 Certainly, the Sunday Times Insight team considered this to be a possibility, reporting that:

"One and possibly two IRA gunmen were in fact operating in the car park. But the Army never saw the first gunman ..."²⁹¹

4C-281 While Peter Pringle could not now recall the basis for such a suggestion, he confirmed that, for the Sunday Times to record their conclusions in this way, they themselves had had to be satisfied that there was sufficient evidence so to do. He explained in this exchange with Edwin Glasgow Q.C.

I should say that it ought to be clear from this article that we are being as scrupulously fair as we could have been to the question of

²⁹⁰ L210

²⁹¹ L213

FS 7. 609

what the IRA did on this day. Therefore, if there is a possibility that there was a second gunman, either identified by eyewitnesses or heard as a low velocity shot, then we have included it in our final article, in order to be as objective as possible.

Q. Would that too, sir, have to pass the rule of thumb test: that it must have been corroborated by at least one person, or might it have just depended on one account?

A. In principle it would have passed that test²⁹²

4C-282 The Tribunal may also wish to compare the various descriptions of "Father Daly's Gunman" given by civilian witnesses. The descriptions given by, for example, Robert Brady²⁹³, Geread Greeve²⁹⁴ Bernard Gilmore²⁹⁵ and Father Daly himself are hardly consistent and OIRA 4's claim that he was a man who usually wore glasses but did not do so on Bloody Sunday out of "vanity"²⁹⁶ must be highly suspicious.

4C-283 The Tribunal will, therefore, have to consider whether there was in fact more than one Official IRA pistol man in the area of the Rossville Flats car park, evidence as to which the OIRA witnesses, principally OIRA 4, have preferred to accept as all referring to "Father Daly's Gunman", no matter what the discrepancies in such evidence. The discrepancies should be borne in mind when considering the claim that, of all members of the Official IRA Command Staff, only OIRA 4 was armed with a personal protection weapon on the day. The Tribunal should consider, in particular, the role of OIRA 3 who was of course the man Reg Tester believed to be carrying a short arm on the day and who was also in the vicinity of the Rossville Flats car park.

Sector 3

4C-284 There is also evidence of an additional Official IRA gunman firing from the door to the Rossville Flats. Soldier U spoke, in his second RMP statement, of seeing a

²⁹² Day 191/039-040

²⁹³ AB 71.1

²⁹⁴ AG 55

²⁹⁵ AG 38.4 paragraph 24

²⁹⁶ AOIRA 4.20 paragraph 32

FS 7. 610

pistol fired from the doors of the flat, the round ricocheting off of the rubble barricade to hit Alexander Nash²⁹⁷. Soldier U repeated this account in his BSI statement²⁹⁸.

4C-285 The circumstances surrounding this incident are examined in full in Chapter 8A of these submissions as is the evidence of Kieran Gill that the gunman who fired in this way was a member of the Official IRA.

4C-286 Mr Gill worked for the Derry Journal at the time of Bloody Sunday and also became involved in assisting the Sunday Times Insight Team in their investigations. In his first BSI statement he said that:

I received information from PIRA that a member of the Official IRA on Bloody Sunday had a revolver and had fired it. I was told his name and we found his address. Peter Pringle and I went to his home and knocked on his door and he answered it. He recognised both of us. We told him that the Provos had said that he had fired a revolver on Bloody Sunday. I said something like "So you shot Mr Nash!". The man looked horrified. He admitted that he had fired a revolver around a door of the Rossville Street flats. He said that he had fired the revolver after the army had fired between 100-150 rounds and there was a lull in the shooting. There were people lying outside in front of the flats dead and there was a feeling in the flats that the soldiers were coming towards there and that people were frightened that they were going to come into the flats and continue to shoot... The man said that he had put his hand around the door and fired the revolver up Rossville Street to make them stay away. He said that he fired 3-4 shots. We said to him that he might have shot Mr Nash in the arm.²⁹⁹

4C-287 Mr. Gill confirmed this account both in oral evidence to the Tribunal and in a further statement, which he gave after contacting the OIRA gunman. The gunman refused to come forward and now denied any involvement in the shooting:

I showed my source... paragraph 59 of my statement. My source's reaction was to say that he had no recollection of the conversation.

²⁹⁷ B761-762

²⁹⁸ B787.6 paragraph 36

²⁹⁹ M105.13 paragraph 59

FS 7. 611

He also denied having shot a revolver at the door of the Rossville Street flats. Despite these comments I still believe that the account which I gave in my statement is correct³⁰⁰

4C-288 OIRA1 has admitted that he was the man whom Kieran Gill approached in this way³⁰¹ but insists that Mr Gill is a liar and that the contact which Mr Gill had with him in 1972 as well as the incident itself are fictitious³⁰². It is wholly unclear as to why Mr Gill should ever have taken what would, quite obviously, have been an exceedingly dangerous risk of telling what would have been provocative lies in 1972, let alone why he should persist with them today.

4C-289 The Tribunal should not in our submission accept that Mr Gill either lied or gave anything other than an accurate report of these matters, not least as Alexander Nash's own son, John Nash, told Jimmy McGovern about a man who was apparently resident in Dublin and who had admitted shooting his father:

... my father has been telling me for the last twenty seven years that he was shot by a soldier... but then you have ... some other fucking eejit and I actually went down to the Republic of Ireland. I went into a Sinn Fein office and apparently this is only a few years back way this guy says that he is the person responsible for shooting me Da...

... The argument is that he, he is just ... well the argument is that he just stuck he's hand out the door and he fired you know what I mean well ... this is... a soldiers statement... you know what I mean and I do not believe that statement... you know what I mean because I you know there is nobody dis... because if the points his hand out the door and there is quite a number of people at that door as you can see... you know what I mean like... and I know some of the people that are... the likes of Jimmy Green ... people like that there... who are there standing at the door... and he said now they never seen no gunman at that point.³⁰³

4C-290 This information was not given in John Nash's initial BSI statement. A further statement was, therefore, taken from him and he was recalled to give oral

³⁰⁰ M105.29 paragraph 14

³⁰¹ Day 395/148/21-22

³⁰² Day 395/149-150

FS7. 612

evidence. He was asked about the McGovern transcript by Bilal Rawat for the Tribunal:

Q. Reading it alone by itself, what you appeared to have told Mr McGovern was that you went to confront someone who claimed to have shot your father, a civilian who claimed to have shot your father and so whose name was known to you; do you follow?

A. Yes.

Q. But your evidence is that that is not the position at all?

A. That is absolutely not the case. You know, had I have ever known of any -- the name of any individual who would have made such a statement as that, the first people to know that name would be the Inquiry. I have done absolutely nothing over the last six years but do my best and my utmost best to assist this Inquiry. If I have given the impression that I actually knew the name of this gunman, then I have given, in this particular interview, I have given a wrong impression and I apologise for that.

Q. Because it seems to be the impression that Mr McGovern had because he then asks you, he says:

"It is strange for a Sinn Fein man to say 'It was I who shot him' because he must have been an idiot" and you do not appear to have corrected him at that point.

Were you surprised when you saw this transcript again and saw what Mr McGovern's impression had been?

A. I have a -- I have never actually seen this particular part of the transcript.

Q. This particular page?

A. Uh-huh.

Q. It is attached to your supplementary statement?

A. Yes, I did not read it.

Q. Was there any reason why you chose not to read it?

*A. No, not really.*³⁰⁴

4C-291 Peter Pringle and Philip Jacobsen also recorded, in their notes of an interview with Mr Tester on 15 March 1972, his own account of firing an M1 from the balcony of a flat in the area of Westland Street at a soldier standing by the lead pig in Rossville Street. Their notes record that:

*When the M1 man arrived on the balcony, people were looking out of their front doors which are not in the line of return fire. The Official fired one shot at a Para standing beside the lead Pig that had drawn up a little way beyond the barricade outside the Rossville Flats entrance. He does not think he hit the man, who did not react at all; the M1 then jammed*³⁰⁵.

4C-292 Mr Tester admitted in his evidence to this Tribunal that he did indeed attempt to fire such a shot but that his rifle jammed before he was able to do so:

I can only repeat, my recollection is that the rifle jammed when I attempted to fire it and I did not get off a shot; that is my recollection.

Q. Is it possible that with the passage of the years your recollection is faulty?

*A. Quite possible*³⁰⁶.

Q. You know Peter Pringle, you describe him as a friend; is that right?

A. Yes.

Q. He is not a man who is likely to invent something, is he?

A. No, I do not think so.

Q. Putting it broadly, is it possible that, understandably, your memory has played you false and that this account, which must have come from you, because you are the only man with an M1 carbine in this location at this stage, is it possible that this account, written down within about six weeks of the events, is accurate?

³⁰⁴ Day 424/088/04

³⁰⁵ S36

³⁰⁶ Day 414/061/20-25

FS 7 . 614

*A. It is possible. That is the best I can do*³⁰⁷.

4C-293 Moreover, both the Sunday Times notes and a civilian witness Seamus Duffy bear witness to there being other armed men with Mr Tester. The Sunday Times notes record that:

*The other two both carried .303 Lee Enfield Number 4 rifles*³⁰⁸

4C-294 Mr Duffy said in his BSI statement that:

*I thought all the shooting had been coming from Rossville Street and so it would be safe at the Bogside Inn. Ivan Cooper, our local MP was huddling people against a wall in the courtyard. As I came into the courtyard I saw three boys who I believe were members of the Official IRA. I knew one of them who was called Tester. I could see that he had a long rifle which he kept down his over-trousers. I could see the butt of the rifle in his right armpit. One of the other boys had a cream jerkin on and I am sure that he also had a gun or something like that under his jacket. The third boy did not seem to have any weapons on him. The other two boys with Tester were younger than him.*³⁰⁹

4C-295 Mr Tester has denied being with others who were armed³¹⁰.

Sector 4

4C-296 There is considerable evidence of Official IRA activity in the Glenfada Park area which is fully examined in Chapter 9 of these submissions but which has again been denied by the OIRA witnesses.

4C-297 The Tribunal will recall the information passed to John Barry by, he believes, OIRA 1 which included reference to additional Official IRA firing³¹¹.

³⁰⁷ Day 414/063/12-24

³⁰⁸ S34

³⁰⁹ AD190.3

³¹⁰ Day 414/163

³¹¹ PIN 437

FS 7 . 615

4C-298 The authenticity of Mr Barry's interview notes is examined in Chapter 9 of these submissions. They included a reference to the fact that

OIRA1 says he knows that a man from the Creggan Section of the Officials got in a couple of shots in the car park from a .38 pistol³¹²

4C-299 It may be that such reference is to the admitted actions of Father Daly's gunman in the car park of the Rossville Flats, although, if he was OIRA4, his own evidence is that he was armed with a .32 pistol³¹³.

4C-300 The Tribunal will have noted, however, the reference in Mr Kemp's article L210, the product, it is claimed, of a further interview with OIRA1, to the fact that:

A second OIRA gunman fired with the pistol.

4C-301 This reference to firing with *the* pistol certainly appears to refer back to the preceding quote from OIRA1 "I told some of the boys to get their weapons out of their cars". The Tribunal may well conclude OIRA1, is in fact, referring to a pistol being fired in the area, having been retrieved from one of the cars in Glenfada Park.

4C-302 The Tribunal has also seen the notes of an interview conducted by John Barry with Ivan Cooper in which Mr Barry records Mr Cooper as referring to another Official IRA gunman, OIRA 6, operating in Glenfada Park.

IC [Ivan Cooper] had seen the Officials in the march, but nowhere else. And IC only heard later that OIRA 6 had fired a revolver in Glenfada Park. CIV2 told Ivan Cooper that OIRA 6 had been running around mad with a pistol all afternoon CIV2 says that he fired very, very early.³¹⁴

4C-303 Mr Cooper has denied giving this information to Mr Barry, although there would appear to be no other source from which Mr Barry is likely to have received the name of OIRA 6. Indeed, it is not clear from where Mr Cooper would have

³¹² AOIRA1.1

³¹³ AOIRA4.15 paragraph 4

FS 7. 616

received OIRA 6's name if not via an intermediary such as Mr CIV2 as OIRA 6 claims that he did not in fact know Mr Cooper³¹⁵.

4C-304 Whether OIRA 6's claim to know nothing of CIV2, the alleged original source of the information, is credible, bearing in mind Mr CIV2's own estimation of himself as a prominent citizen of Derry, is a matter for the Tribunal which will recall the questioning of OIRA 6 by Mr Lawson on this point.

Q. Did you know of CIV2?

A. I have never heard of the man.

Q. Someone who, according to him, ran a substantial business in Derry?

A. CIV2 (Witness shaking head) No.

Q. Ran a business called Derry Office Supplies until 1971, when he sold or transferred it. Does that ring any bells?

A. No, I never heard of that at all, to be quite honest with you.

Q. And then was involved in the selling of ice-cream machines and cash registers from Donegal, but still coming to Derry?

A. No.

Q. You had never heard of him?

A. Never heard of him.

Q. In this very, very small place?

A. That is true³¹⁶.

4C-305 Certainly, OIRA 6's account of his activity on the day is extremely odd as highlighted by Mr Lawson's questioning of him on Day 413 of evidence:

³¹⁴ KC12.71

³¹⁵ Day 413/163

³¹⁶ Day 413/197/04-21

FS 7. 617

Q. You have virtually no recollection of what happened during the main part of the violence on Bloody Sunday, have you? A. No, I have not.

Q. Is it right that while you were sitting on the wall having your cigarette and you became aware of people running away down Rossville Street, that as far as you were concerned there was nothing unusual going on at that time?

A. No, that is correct.

Q. You did not hear any vehicles?

A. No.

Q. You did not see any Army vehicles?

A. No, I did not, I was out of view.

Q. You did not hear a single shot fired?

A. I heard banging all right, but I took it for granted it was rubber bullets or gas.

Q. Do you have any recollection of hearing any shooting of live rounds on the day?

A. No, only what I heard people shouting.

Q. None at all?

A. No.

Q. And you being somebody who was not only in the Official IRA, but someone with particular knowledge about weaponry, you, of course, would recognise the sound of live rounds being fired; would you not?

A. Probably, probably so, yes. I was not paying any particular attention to anything going on.

Q. You were not paying particular attention?

A. No, I was just sitting there having a cigarette.

Q. And you clearly remember sitting there having a cigarette, do you?

A. Yes.

Q. But you have no recollection whatever of hearing a single live round fired?

FS 7 . 618

A. What is the problem there? I was not paying any attention. Q. Is that true?

I was not paying any attention.

Q. Is that the truth?

A. Probably so³¹⁷.

4C-306 OIRA 6 was not keen to come forward to defend himself against the allegation included in the Sunday Times notes. The Tribunal will recall that OIRA 6's name was first mentioned by Mr Clarke in opening on Day 7 of the hearing, on 5th April 2000³¹⁸. He has claimed that he first heard of this, and received papers from the Inquiry, approximately 18 months before he came to give evidence³¹⁹. He did not, however, agree to assist the Tribunal until a month or two before he gave evidence³²⁰, more than three and a half years after his name was first mentioned as that of an OIRA gunman.

4C-307 Most extensive is the information given to both John Barry and Gerard Kemp by OIRA 1 as to the movement of rifles in Glenfada Park. The Tribunal has now been presented with considerable evidence to suggest that there were OIRA gunmen in Glenfada Park who were very likely to have provoked the fire which killed at least some of the dead and injured in Sector 4, including Jim Wray. The topic is fully examined in Chapter 9 of these submissions

Sector 5

4C-308 The Sunday Times notes, authenticated by an Official IRA staff officer, who Peter Pringle confirms was Reg Tester,³²¹ state that there was additional firing by an OIRA gunman in Sector 5.

³¹⁷ Day 413/189/20-191/10

³¹⁸ Day 007/060/07

³¹⁹ Day 413/195/16

³²⁰ Day 413/196/15

³²¹ Day 191/112/15-19

FS 7. 619

An Official fired two .32 pistol shots from the lane behind Joseph Place up at the Walker OP. It was hopelessly out of range but the man was infuriated and frustrated; it was also risky since he was in full view of the walls and the lane was crowded with panicky people³²².

4C-309 Whether this firing is likely to represent an additional OIRA gunman or further firing by one of those gunmen who were active in Sector 2 is unclear. Mr Tester claims not to recall anything of this incident or of giving the information to Peter Pringle:

Does that bring back any memories?

A. None whatsoever³²³.

4C-310 OIRA 3 denied, in his BSI statement, that this account could be correct as:

I would know exactly what weaponry everybody had and what was in their magazine. I would check the ammunition when the weapon came back, so not only would the volunteer tell me if they had fired when they returned from active duty, but I would know by checking their ammunition as well³²⁴

4C-311 Quite how OIRA 3 could reconcile this story of strict control with his earlier assertion that he would not know (or apparently care) if his men had "had a blatter³²⁵" late in the afternoon is far from clear.

4C-V PROPAGANDA AFTER THE EVENT

4C-312 The Official IRA has always publicly denied its part in the events of Bloody Sunday.

4C-313 On the evening of 30th January itself, an OIRA officer gave a press conference giving an entirely misleading picture of OIRA activity on the day. Reporters and

³²² S37

³²³ Day 414/064/16-17

³²⁴ AOIRA3.32 paragraph 56.28

³²⁵ AOIRA3.26 paragraph 42

FS 7. 620

photographers were summoned from a hotel in the city and taken to a conference where they were told:

... The officer claimed that the IRA official wing had at no time fired shots in the immediate vicinity of the area where the deaths occurred....

... He could not speak for the Provisionals but to the best of his knowledge there was no shooting at all against the Army in the William Street/Rossville Flats area.

... The officer, who was not named, agreed that there had been certain "military activity" on the part of the officials outside the immediate district and during an exchange with troops one volunteer received leg and neck injuries.

Members of the Official IRA had taken part in the march 'as private citizens', he said but none had been armed.

... Shortly afterwards members of the IRA had decided not to use arms in the immediate area because this would have given the Army an excuse for more shooting, said the officer³²⁶³²⁷.

4C-314 OIRA 3 also gave a televised interview in the immediate aftermath of the march. Video 25, transcript 9 records an RTE interview with an OIRA man on 30.1.72.

15:56 Can you tell us what happened?

15:58 Well, today the official IRA, first of all I would like to give you the attitude of the official IRA on the civil rights association demonstration here today. Official IRA policy was that **all guns were called to a centralised point** we had absolutely no intentions of using guns because... Like we could never see the murder that has happened today with the British Army. We were in complete support of the mass demonstration as we always have been official [INAUDIBLE] Members of our organisation participated in march, unarmed as citizens protesting against internment.

... The official IRA again, when the British Army forced the people into Rossville Street, were not armed.

³²⁶ ED12.4

³²⁷ ED 12.3 - 12.7

FS 7 . 621

... The members of the official IRA assembled at a central point, we decided that we would not use guns in the vicinity of the riot area, where the riot was taking place and where the British Army was shooting indiscriminately because we knew if we did shoot the British Army would shoot even more people down. What we did do was, we took our units and sections in the Derry City area, took our positions outside the area where the riot was taking place. sniping positions. These were at the other side of town, Bishop Street, Hamilton Street and other areas outside the barricaded area as a Consequence of this a volunteer of the Official Irish Republican Army was wounded in the leg and the neck.

... 19:52 Can you speak for the provisional IRA as well?

19:56 I cannot, no, the best of my knowledge... there was no guns used today at all, there was no shooting today at all before the British Army opened up and when the British Army did open up there was shooting but it was not in the immediate vicinity of this, the riot or where the British Army were shooting. There was sniper fire by our men but it was not in that area³²⁸.

4C-315 Mary Holland also published a letter in her own newspaper in the following terms:

In my story from Londonderry last Sunday I quoted an IRA marksman who admitted to firing at a British soldier on Bloody Sunday. What was not made clear -- mainly because another story due to appear in the same issue giving a detailed reconstruction of events of that Sunday was held out for fear of prejudicing evidence to be given to the Widgery Tribunal -- was that the marksman I quoted says he fired his shot at 5 pm after the confrontation with the British Army had taken place and more than a mile away from where it occurred. "The IRA insists that none of its marksmen fired a shot within the area where the killings took place and that such shots as were fired at the British Army came only after the first 13 civilians had been killed."³²⁹

4C-316 OIRA1, indeed, admitted when questioned by Edmund Lawson QC that he was willing to lie in order to conceal the truth of OIRA activity on Bloody Sunday.

Well, in 1972 it was decided that, given the propaganda that was coming out from the British establishment and the claims that there

³²⁸ X1.25.13-15

³²⁹ M42.3

FS7.622

were gunmen all over the place and given that people you represent had said that they were fired upon by hundreds of gunmen and hundreds of shots and given the fact that half the world's press were in here trying to find these gunmen, we just decided it would not be right to give them any excuse by admitting to any shot.

Q. In other words, it would be better to lie?

A. Yes³³⁰.

4C-317 OIRA 7 provided another example of Official IRA evasiveness when giving accounts to the Press. In a transcript of a programme called, "The Road to Bloody Sunday", he was asked about the carrying of weapons on Bloody Sunday:

Question: And no-one else that you know of did?

4C-318 His answer was:

Everyone was told that no weapons were to be carried

4C-319 He was questioned about that reply by Mr Lawson:

Q. I see. When you made or gave the interview you did for that purpose, the purpose of the film, obviously you knew at that time, did you not, about the shot that had been fired by one of your Official colleagues in Columbcille Court?

A. I did, yes.

Q. Because you knew about that on the day; did you not?

A. I did, yes.

Q. You had also become aware on or after Bloody Sunday of the man who had fired a pistol, had you not, in the Rossville Flats car park?

A. I think he describes it as a revolver, yes, I became aware of that.

Q. All right, a revolver, I am happy to call it that.

A. Yes.

³³⁰ Day 395/157.6-16

FS 7. 623

Q. Did you learn that on or about Bloody Sunday?

A. I learned it after Bloody Sunday.

Q. Long after?

A. It would not have been very long after.

Q. Certainly you learnt of it before 1997?...

A. Yes, I would say so³³¹.

... Q. Do you still say your answer in 1997 was not, then, deliberately evasive and designed to mislead?

It was not designed to mislead. It was not a lie, I made a point of not telling a lie³³².

4C-320 OIRA3 admitted, in his BSI statement, that the Official IRA knowingly lied to the press about their actions on Bloody Sunday, saying that:

I thought it better to say nothing, or deny the shots, rather than give the Brits an excuse for their actions¹.

4C-321 Tellingly, he goes on to say that:

Since then we have agreed with the families, having been approached by them, that we would explain OIRA's involvement, and exactly how it came about that volunteers discharged their weapons so that there could be no doubt that they in no way provided an excuse for the Paras to open up and kill innocent people¹.

4C-322 The OIRA witnesses have then, according to OIRA 3, come forward still with the agenda of proving that they were in no way responsible for provoking fire on Bloody Sunday, an agenda which is reflected in the limited and misleading evidence which they continue to give as to OIRA activity on the day.

³³¹ Day 398/106/11-107/05

³³² Day 398/121/08-11

FS 7. 624

4C-323 OIRA 2 has indeed provided a telling example of the way in which the OIRA witnesses continue to promote the same "propaganda" about their role on Bloody Sunday so far as they are able.

4C-324 Ms McGahey initially drew OIRA2's attention to the misleading and self-serving account of Bloody Sunday that he gave at an anti-internment demonstration in Kilburn on 5th February 1972 where he:

said that the IRA had not fired back until the firing had been going on for 20 minutes and then only in a gallant attempt to draw the troops' fire from the innocent.

queried whether a 16-year-old boy with four bullets in his back could have been a terrorist.

And

claimed that he saw innocent people, as he thought, diving for cover "but when I got to them I found them lying in pools of blood"³³³.

4C-325 All of these claims were admitted by OIRA 2 to be untrue or, as he preferred to term it, "a wee bit of poetic licence"³³⁴, employed in addressing an Irish audience immediately after Bloody Sunday.

4C-326 In fact OIRA2 told the same lies to this Tribunal as was demonstrated when he was questioned by Mr Lawson:

Q. Did you actually see bodies that day?

A. No, because, um, I was trying to get away because of the total confusion that actually happened on the day. When we left the immediate area that we were in, we were trying to move away in the opposite direction.

Q. Because that is something fairly memorable, is it not, seeing bodies lying on the ground?

³³³ INT2.70 paragraph 15

³³⁴ Day 392/124/12

FS 7 . 625

A. It would be, yes.

Q. You have no recollection of that?

A. I have no recollection of seeing any actual bodies, no. I would've seen photographs the following day.

Q. Why, in that case, did you say this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground"?

A. As I say, it could have been a wee bit of poetic licence, you are addressing a meeting of Irish people in London, so one might have got carried away a wee bit, you know, with the occasion.

Q. I was not referring in fact to the meeting that you addressed in London, I was referring to the statement that you delivered to this Tribunal, we will see it on the screen. AOIRA 2.7, please, paragraph 22, would you expand that. This is the statement that you produced in, we are told about, January 2002, as you have confirmed this morning, with the assistance of your own solicitors and prior to preparing the so-called Eversheds statement. In it, as you can see, in the fourth line of the paragraph on the screen, you solemnly declared this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground." So far as the last phrase is concerned, that is simply not true?

A. I have gone on to say there, if you notice: "These are not coherent memories as the time was frantic."

Q. It is not true, whether it is coherent or not? A. No, I am not saying that it is not true, what I am saying is that in the state of confusion that existed at the time and, even when I was submitting that statement through our solicitors, um, it may well be the case that that was -- that obviously was included.

Q. And it was not true?

A. Those are your words.

Q. Do you remember seeing bodies lying on the ground?

A. I cannot honestly remember whether I saw bodies lying on the ground.

FS7 . 626

Q. About two minutes ago when I asked you the question you gave a simple: no to that. Which is it, do you want to qualify the note (sic)?

A. No, I do not want to qualify it at all³³⁵.

4C-327 OIRA2's willingness to embellish his evidence regardless of the truth was again demonstrated when he was questioned by Mr Lawson about the shots he had heard while in Columbcille Court:

A. Well, I have already told the previous counsel that I have no recollection of actually hearing any shots. I am not sure. I may have done, I am just not sure.

Q. Are you in a position to assert that you can confirm that the shots were high velocity shots?

A. Which shots are we talking about here?

Q. The shots that allegedly preceded the rifle being fired?

A. I would imagine they would have been, yes.

Q. Can you definitely confirm that to be the position?

A. I cannot definitely confirm it.

Q. Why did you do so when you made this same statement for the benefit of the Inquiry?

A. Because --

Q. Just a minute, you ought to look at it, page 3, please, paragraph 9, where you said, did you not, in this statement of about January 2002, that you heard a number of high velocity shots with a gap between them. You cannot remember exactly at this time, but you believe there could have been two or three shots, right. You go on to say that you could not specify the time between them. Lest there be any doubt about the matter, concluded the paragraph by saying: "From my experience living in Derry at that time I can definitely confirm that these were high velocity shots." That is what you said, is it not?

A. That is what I said, yes.

³³⁵ Day 392/125/01-127/03

FS 7 . 627

Q. And you were in no position whatsoever to do that, were you, OIRA 2? A. Well, according to the way that you are putting it, the answer to the question would be that I probably was not, but again I think, in the general state of confusion possibly what I said there, you know, was, um, just a reflection of how things happened on the day.

Q. It was at best, was it not, a serious exaggeration?

A. No, I would not accept that.

Q. You would accept it was an exaggeration, presumably?

A. No, I would not even accept it was an exaggeration.

Q. What, when you said "I could definitely confirm these were high velocity shots", when you at least were unsure whether you had heard any shots; is that not an exaggeration?

A. It could well be, yes³³⁶.

4C-328 The Official IRA has, in its formal dealings with the Press and in its evidence to this Tribunal, sought to avoid any acknowledgement of its role on Bloody Sunday beyond that which it has been forced to concede. Evidence suggests, however, that, in addressing a local audience, certain Officials, immediately after Bloody Sunday at least, had not abandoned their hope of having proved themselves to the Derry citizenry by way of their decisive action on the day. Such individuals may well have been those to whom Liam O'Comain referred when he told Liam Clarke and Helen Johnston that there was:

an element within the Officials that definitely made a decision to open up on Bloody Sunday, and they did

and that that element felt that

if we can have some form of death on Bloody Sunday, it might pull the Officials back in line again. They might be forced into a situation to place a bit more hope in.

³³⁶ Day 392/128/23

FS 7. 628

- 4C-329 Willie Breslin has given evidence that Father Daly's gunman, maintained the hope that the tragic events of Bloody Sunday might still assist the Official cause.
- 4C-330 Mr Breslin describes in his BSI statement an encounter in Nell McCafferty's house when he told one of the Official Republicans that "*there is five dead*". The Official replied that "*I know, it may be the best thing that has ever happened*"³³⁷.
- 4C-331 Mr Breslin identified this man as being the man who was carrying a revolver in the Rossville Flats car park and who shot some pistol shots from the gable end of Chamberlain Street. He knew this because he recognized the man from the photograph published by Fulvio Grmialdi³³⁸.
- 4C-332 OIRA 4, representing himself as Father Daly's gunman, denies having uttered these words³³⁹. Mr Breslin, however, remained positive, when questioned by Mr O'Donovan, of what he heard:

A. It is the sort of offensive statement that leaves a mark on your mind and it left a mark on my mind, and I lost respect for the gentleman when he said it. I understood what he meant when he explained it, but I thought it was extremely insensitive and very offensive.

Q. I am merely suggesting that he never said that.

*A. I am absolutely certain that he did*³⁴⁰.

- 4C-333 The circumstances in which Mr Barry obtained the information contained in PIN 437 also indicates that OIRA 1, another potential member of the "element" referred to by Mr O'Comain, was keen to claim his shots when speaking on what he took to be "home ground", in his local, Republican pub.
- 4C-334 The Tribunal will recall Mr Barry's evidence that:

³³⁷ AB112.11 paragraph 63-65

³³⁸ Day 194/191/02-14

³³⁹ AOIRA4.23 paragraph 52

³⁴⁰ Day 194/194/20-195/01

FS7. 629

I recall the name and I recall having met him and I am sure that at least one of those occasions must have been in the Bogside Inn because I recall going to the Bogside Inn as a way of meeting a lot of people at that time, we all used to go there, but I have no recollection -- I come back: I have no recollection of the circumstances of the gathering of this note³⁴¹.

4C-335 The explanation for OIRA 1's frankness with Mr Barry lies in the information given in OIRA 2's BSI statement that:

Half the time you didn't know who you were talking to when you were in there (the Bogside Inn) having a pint but you trusted most people as the strangers were always with locals³⁴².

4C-336 It would appear that, in the immediate aftermath of Bloody Sunday at least, the Official IRA had one version of events for the citizens of Derry while it had and has quite another for the national Press and this Tribunal.

4C-VI OIRA EVIDENCE BEFORE THIS TRIBUNAL

4C-337 Members of the Official IRA have attempted from the outset to orchestrate their evidence to this Tribunal. OIRAs 1-5 initially declined to be interviewed by Eversheds so that only their unsigned, undated, self-prepared statements were circulated to the parties on 26th April 2002. It appears that those OIRA witnesses then refused to expose themselves to further questioning by the Inquiry, as indicated by Mr Tate's letter of 8th May 2002 stating that it was the Inquiry's position that it wanted OIRA1-5 to be interviewed by Eversheds but "whether we shall succeed in that objective is open to debate". Indeed, it would appear that almost a year passed before cooperation was secured in the provision of interviews and further statements by these witnesses, all of which were signed on 3rd March 2003.

4C-338 Statements from other OIRA witnesses followed only at a much later stage.

³⁴¹ Day 194/093/11-18

³⁴² AOIRA2.21 paragraph 42

FS 7. 630

4C-339 By delaying their evidence in this way the OIRA witnesses were able to assess the vast bulk of the civilian evidence given to the Tribunal before providing their own accounts of Bloody Sunday. Such an approach was clearly essential to their policy of revealing to this Tribunal only that which is already in the public domain, a point which was raised with OIRA 1 by Mr Lawson on Day 396

Q. Is that your position, OIRA 1, and that of your colleagues: that you will deal with those matters which the Tribunal has already heard about from some other independent source, but you will actually reveal nothing new?

*A. You know, I cannot reveal something I do not know. Lawson*³⁴³

4C-340 The suggestion that the OIRA witnesses have tailored their evidence to account only for what could not realistically be denied was also explored by Mr Clarke with Mr Tester on Day 414,

*Q. One view that the Tribunal might be invited to take, which I would like to raise for your comment, is that the Official IRA could not realistically have maintained a fiction that no shots had been fired because the shot across William Street, the shot seen by Father Daly and Micky Doherty's shot or shots at a soldier in Barrack Street were not realistically deniable and that it has therefore adopted plan B, which is to be economical with the truth about the circumstances in which the undeniable shots were fired and about other shooting which is deniable because it cannot be clearly laid at the door of the Official IRA*³⁴⁴

Mr Tester could not assist

Q. And amongst the members of the Official IRA has there been an attempt to play down, so far as possible, any evidence that might reflect badly on the Officials?

A. I do not think so.

Q. Do you know one way or the other?

³⁴³ Day 396/131/16-20

³⁴⁴ Day 414/75/14-25

FS 7 . 631

A. No³⁴⁵

4C-341 Those OIRA witnesses who have withheld evidence until the very late stages of this Inquiry (OIRA 9, for example, signed his BSI statement on 9th January 2004) have also inhibited questioning of the OIRA witnesses themselves as Lord Saville acknowledged when the matter was raised by Mr Lawson:

MR LAWSON: I am sure not and I was not for a moment intending to suggest that, but it is unsatisfactory that we should be cross-examining members of the organisation if there are other statements in existence from other members, the contents of which we are entirely unaware of.

LORD SAVILLE: I entirely agree, but that in turn is a function of the fact that some witnesses -- and I include the OIRA people among them -- have only chosen to come forward at a very late stage³⁴⁶.

4C-342 It is also quite clear that, in giving their first statements to the Tribunal, the OIRA witnesses coordinated the evidence they intended to give. OIRA 1's denial, when questioned by Mr Elias, that they had corroborated in this way is simply not credible in the face of even a brief textual comparison of those statements.

Q. Before you got involved, did you speak with your other colleagues, as you call them, OIRA s 1 to 5?

A. No.

Q. Not at all?

A. No.

Q. Did you have any meetings with them of any kind together or separately?

A. No.

Q. So when you made your statement to your solicitor, the first statement, did you make that on your own?

³⁴⁵ Day 414/77/11-16

³⁴⁶ Day 393/216/05-14

FS 7. 632

A. Did I make it on my own? Well, I think you can talk to my solicitors as to how I made that statement.

Q. You do not want to tell the Tribunal about that?

A. I mean, what do you want me to say: yes, I spoke to my solicitor.

Q. Do you want to tell the truth, OIRA 1?

A. Yes, and the truth is, yes, I spoke to my solicitors; yes, I made a statement; if you have any questions further than that, then I suggest you ask my solicitor to confirm it.

Q. I am asking you: did you make your statement alone or with other OIRA members?

A. I made my statement alone.

Q. Alone?

A. Yes.

Q. None of the others were present when you made it?

A. No.

Q. Were the words of your statement -- that is your first statement to your solicitors -- were they yours?

A. Yes.

Q. So if this Tribunal sees -- it is entirely a matter for them of course, we could go through it, I shall not trouble to do it this afternoon -- if the Tribunal sees similar phrases and similar sentiments in the statements of OIRA witness after OIRA witness that is because those are the words that happened to tumble out of that witness's mouth quite independently; would that be right?³⁴⁷

4C-343 The fact that the OIRA witnesses have, indeed, discussed the evidence they intended to give was highlighted by the almost comical exchange between OIRA 6 and Mr Lawson on Day 413:

Q. Was Reg Tester the quartermaster at the time of Bloody Sunday?

A. If the man says there he was, that is, that is his statement.

³⁴⁷ Day 396/145/18-147/05

FS 7 . 633

Q. Try again: was Reg Tester the quartermaster on Bloody Sunday?

A. Well, according to the statement he was.

Q. According to which statement?

A. The one you are giving me.

Q. The statement you have got in front of you?

A. It says here, aye.

Q. Paragraph 4?

A. That is right, if the man says he was quartermaster, he must have been quartermaster, then.

Q. Whose statement is that in front of you, OIRA 6? What does it say on the top of it, after "The Bloody Sunday Inquiry," it says "I ..."

A. Paragraph 4, you are on about.

Q. At the top of the page, can you see where it says, in big letters, "The Bloody Sunday Inquiry"; do you see that?

A. Yes.

Q. Look to the line underneath it, does that say "I, OIRA 6"?

A. Yes.

Q. Right. I appreciate your memory may not be all that it was, OIRA 6, but this is the statement you made some 48 hours ago, is it not?

A. That is correct, aye.

Q. Right. In which you were happy, 48 hours ago, to say in paragraph 4 that you have got in front of you?

A. Uh-huh.

Q. Without equivocation "the quartermaster was Reg Tester", you refer to him as such; "the quartermaster, Reg Tester"?

A. Yes, I got this information from somebody else.

Q. From whom did you get it?

A. I, I was told.

FS 7. 634

Q. By?

A. By a person that told me that –

Q. By?

A. -- reg Tester was the quartermaster and it was okay to mention his name.

Q. Who told you it was okay to mention his name?

A. I am not giving any names. That is what I was told.

Q. I am going to ask you again?

A. His name is down there.

Q. When were you told it was okay to mention his name?

A. Not too long ago.

Q. How long ago?

A. Actually within the last week or fortnight.

Q. Who told you?

A. (Pause). I am not giving any names who told me.

Q. Why not?

A. Because I do not want to give any names out.

Q. Why not?

A. Because I do not want to.

Q. Just because you do not want to?

A. That is correct.

Q. I will ask you again.

A. I am not giving any names.

Q. I will give you one more chance: why not give us the name, if what you are saying is the truth?

A. Because I do not want to give you names.

Q. Is he present here today?

A. I think he is up there somewhere.

FS7 . 635

Q. You say "up there somewhere", you are pointing to the public gallery?

A. Aye³⁴⁸.

4C-344 The Tribunal will recall OIRA 6's Counsel requesting an adjournment at this point in case the question "*might tend to identify someone in the public gallery*" (as indeed OIRA 6 had clearly indicated). His client's suggestion, on his return to the witness box, that he had misunderstood the question and had in fact been given this information by "someone in Eversheds" is simply incredible³⁴⁹ and a further example of the readiness with which lies were told to the Tribunal by OIRA witnesses who wished to prevent information becoming known.

4C-345 OIRA 1 also denied, when questioned by Mr Elias, that there had been any discussion between him and his colleagues:

MR ELIAS: Before making your first statement, OIRA 1, did you discuss with any of your colleagues, and if so which –

A. No.

Q. -- the events of the day or what you were to say?

A. No.

Q. Or pool your recollections or anything of that kind?

A. No.

Q. To your knowledge did any of your colleagues meet together?

A. No.

Q. So your statement, the Tribunal should take it, your statement to your solicitor in the first instance was a statement which arose out of your mouth, your recollection with no input from anyone else in terms of assisting your recollection?

A. Well, obviously the input that I would have had would have been my memory, the current events that are taking place, things which

³⁴⁸ Day 413/170/08-173/01

³⁴⁹ Day 413/175/11-17

FS 7 . 636

would have jogged my memory and, in the consultation with my solicitor as I developed my statement, some things may have occurred that I had not thought about, but essentially, yes, the statement is my statement³⁵⁰.

4C-346 Mr Tester was, however, frank enough to admit that there had been discussion between the OIRA witnesses before giving evidence:

Q. Can you help about this: the Tribunal has heard from a number of Official IRA witnesses now. I think I am right in saying that all of them, let me simply say most for the purposes of my question, most of them have made two statements to this Tribunal, in the first of which they have referred, as you did in your statement, to two weapons being unaccounted for and in a statement made a year later, each of them has referred to three weapons being unaccounted for, as you have; do you follow?

A. Yes.

Q. Can you assist the Tribunal, have you had discussions, for example, with OIRA 3, who falls into that category, having made a statement in March 2002 and another statement in March 2003, in which he refers to two in the first and three in the second, as you did?

A. I have spoken to him.

Q. About this very issue?

A. About this issue, yes.

Q. You have spoken, have you, with OIRA 3 about the fact that when you both put into your first statements the existence of two apparently missing weapons, if I can use your terminology, it actually now appears that you will have to be saying there were three. You have spoken to OIRA 3 about that, have you?

A. Yes.

Q. And discussed it with him?

A. I have.

Q. And with other members of the Official IRA?

³⁵⁰ Day 396/150/02-24

FS 7 · 637

A. No, only with OIRA 3.

Q. Only with him from your point of view?

A. Yes.

Q. Has there been any directive given, if I can use the expression 'from on high' that this information may be given or may not be given?

A. No, there has not.

Q. So the change as between your first and second statement and OIRA 3's first and second statement may have come about because of discussions that you and he had together, but just the two of you?

A. Yes³⁵¹.

4C-347 OIRA 7 was also forced to concede that he had met with his colleagues despite his earlier denials.

Q. Having made your Eversheds statement, did you have any group meeting, that is to say you and other OIRAs, if I may call them that, you together with other members or former members of the IRA?

A. No.

Q. You are sure about that; are you?

A. Did I meet and talk with any of them?

Q. Did you meet, let us forget the talk?

A. Did we meet?

Q. Yes.

A. Yes, I would have met people in, in the lobby here.

Q. Was there a group meeting which included you, OIRA 7, and other OIRA members?

A. Not that I was at.

³⁵¹ Day 414/154/21-156/10

Q. Because I simply read a note from your solicitor which has been provided to us in the information that has come this morning: "I can confirm that the first group meeting including OIRA 7 occurred after the interview with Eversheds." Do you know what that means?

A. I thought you meant the subversive meeting. Yes, we met with the instructing solicitor.

Q. Who is "we"?

A. Um, myself and --

Q. Give no names, the ciphers?

A. I think, um, OIRA 3, OIRA 4 and OIRA 5, from, from my recollection.

Q. When was this; how far are you having to remember?

A. I do not think -- it was not that long ago.

Q. Are we talking about days or weeks; how long before you signed your statement on 10th November, if you like?

A. I think, I think it may have been before that. Yes, I think it was before that, but I am not sure how long before that.

Q. It may have been nine or ten days ago or perhaps a little longer?

A. Yes, it may have been, yes.

Q. Who was there, is the question I am asking you?

A. I just told you who was there.

Q. You seem a little doubtful about it?

A. Sorry, I am looking at ... I know OIRA 3 was there; OIRA 4 was there; OIRA 5 was there and, um, --

Q. Without giving any names, were there any other, as you might describe them, former colleagues who have not got ciphers, present?

A. Yes, there was one, yes.

Q. A former member of the IRA, in other words, who is not ciphered who is not coming forward to this Tribunal? We are talking of Mr Tester? A. Yes.

Q. Anyone else who was not falling into that category, any other former colleagues?

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*A. No*³⁵².

4C-348 Each of the OIRA witnesses has also, on a number of occasions, attempted to "hide" behind a purported uncertainty as to the terms of the Attorney General's undertaking on self-incrimination in order to avoid giving details which might have proven uncomfortable for the Official IRA. Mr Lawson challenged OIRA 2 as to his use of this tactic which was widespread amongst his colleagues:

Q. "I have been made aware of suggestions that it was a common practice to transfer people out of Derry for treatment or even burial." Right?

A. Yes.

Q. You go on to say: "Having sought legal advice ... I cannot comment on whether or not this was a general practice." Let me ask you, please, a simple question for a simple answer; did it happen?

A. To my knowledge, no.

Q. Why on earth did you have difficulty in answering the question that you purport to have there?

A. I do not really know.

Q. You do not know?

*A. I do not know why I had difficulty in answering the question the way it is reported there*³⁵³.

4C-349 There is a clear conspiracy amongst the members of the OIRA to keep the truth from this Tribunal as is clearly demonstrated by their joint adherence to palpable lies. The Tribunal will have noted for example the willingness of OIRA 3 to support the entirely incredible suggestion that OIRAs 1 and 2 "*were on neutral duty to return a stored weapon to the Quartermaster*"³⁵⁴, an explanation which the Quartermaster himself has repudiated.

³⁵² Day 399/41/12-43/24

³⁵³ Day 393/115/17-116/08

³⁵⁴ AOIRA3.23paragraph 30

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4C-350 Such a conspiracy extends to a willingness to “tow the party line” on important issues no matter what the witnesses actual recollection, as became clear when OIRA 4 was required to justify the content of his statement to this Tribunal:

4C-351 OIRA 4 had said in his first “prepared” statement that:

There was a concern that the distraction caused by the march and the large numbers of people who would leave the Creggan and Brandywell areas would be seen as an opportunity for the Army to enter those areas and try to take control³⁵⁵.

4C-352 Yet in his second statement, compiled after interview with Eversheds, said that

I cannot remember anyone saying they thought the Brits were going to try to get back into the Brandywell and Creggan because we were all down in the Bogside on the march or that all our weapons would be held up in the Creggan³⁵⁶

4C-353 By the time he gives oral evidence he can say only that concern at the Creggan being deserted “is what I think I recall”³⁵⁷.

4C-354 Equally regarding the order to remove weapons from the Bogside, OIRA 4 said in his first statement that :

All the weapons were to be retrieved and brought into the Brandywell and Creggan areas³⁵⁸.

And yet concedes in oral evidence that:

Q. Do you have any recollection now of orders being given that the weapons would be removed and taken to the Creggan and the Brandywell?

A. No, I, I cannot remember³⁵⁹.

³⁵⁵ AOIRA4.2 paragraph 9

³⁵⁶ AOIRA4.15 paragraph 6

³⁵⁷ Day 394/14/07-08

³⁵⁸ AOIRA4.9 paragraph 44

³⁵⁹ Day 394/14/09-12

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4C-355 Indeed it became increasingly clear as he was further questioned by Mr Toohey that OIRA4 has repeated evidence he has been instructed to give and can now neither recall nor justify.

Q. For instance, Mr Clarke has just asked you about the sentence at the foot of 4.2, in which you say: "It was ordered that all the weapons in our command would be removed from the Bogside and brought to the Creggan and the Brandywell where they would be stored in mobile stores and would be accompanied by volunteers... .. Do you have any recollection of that particular order being given, either on the Sunday or on the preceding Saturday?

A. I am not sure, to be honest³⁶⁰.

And to Mr Clarke's question

Q. On the morning [that is on the morning of the march] and at the start of the march, I was with the OC when he confirmed the orders ...³⁶¹

What did you mean when you said, "he confirmed the orders"?

A. I do not know really what I mean there. He probably just must have mentioned to me³⁶².

4C-356 There is no doubt either of the willingness of a number of civilians to conceal the activities of the Official IRA. As Mr Lawson put to Mr Tester in respect of his allegedly attempted fire:

A. There was just a large crowd that was milling around the junction of Lecky Road and Rossville -- and Westland Street.

Q. But a large crowd of people who plainly saw that you were an IRA man with a weapon that day who could if they had wanted to obviously have come along to tell this Inquiry about that many months or years ago?

³⁶⁰ Day 394/15/08-20

³⁶¹ AOIRA4.3 paragraph 13

³⁶² Day 394/16/05-08

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*A. I suppose so*³⁶³.

4C-VII CONCLUSIONS

- 4C-357 It is clear that Official IRA policy at the time of Bloody Sunday was to shoot British soldiers whenever the opportunity presented itself. As well as such opportunistic firing the Officials also considered it their responsibility to defend the no-go areas, including the Bogside. Even if they considered the presence of the local population and rioting crowds to be the first line of defence against the Army, they would and did fire when that failed.
- 4C-358 The rationale put forward by all of the OIRA witnesses that there could not have been Official firing in the Bogside, outside of the three incidents of which the Tribunal already knew, because the weapons had all been removed from the Bogside has proved to be entirely spurious. The Tribunal now knows that the weapons belonging to the Bogside Section and some at least of those belonging to the Creggan Section were at large.
- 4C-359 The Tribunal should, it is submitted, also conclude that the first shot fired on Bloody Sunday was that fired by OIRA 1. While the fact that this firing took place had to be admitted, the attempts made to explain the circumstances in which that firing took place, and to justify it, have been shown beyond doubt to have been a tissue of lies and should, it is submitted, be rejected in their entirety by the Tribunal.
- 4C-360 Civilian evidence, together with accounts given to the Press, also demonstrate that the three gunmen which the Official IRA concede were operating on the day were not isolated exceptions. There were other Official gunmen in the area, in all likelihood as part of an operation to carry out Official IRA policy of Defence and Retaliation. Some of those gunmen fired at the British Army.

³⁶³ Day 414/141/17-24

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4C-361 The actions of those Official IRA gunmen attracted military fire which, it is acknowledged, killed and injured civilians.

4C-362 The Official IRA have been engaged in elaborate attempt since the very day of Bloody Sunday itself to conceal the truth of their role in the events of Bloody Sunday. They continue to attempt to do so.

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CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 3

CHAPTER 5

SENIOR OFFICERS: PLANNING AND ACTIVITIES ON

30 JANUARY 1972

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CHAPTER 5

SENIOR OFFICERS: PLANNING FOR AND ACTIVITIES ON 30 JANUARY 1972

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CHAPTER 5A

BACKGROUND TO THE MARCH

5A-1 In Op Directive 3/71¹ Brigadier Cowan, Commander 8 Infantry Brigade, reported:

... a resurgence of street hooligan activity, after a long period of comparative peace, on the streets of Londonderry towards the end of June.²

5A-2 He assessed the prospects in terms of security for the immediate future as follows:

Outlook. The present level of explosive attacks is likely to be continued, especially those directed against the Security Forces. As the Orange Order marching season gets into full swing, the Brady Group can be expected to defend their Catholic areas and repel incursion, and to take advantage of of the parades to draw the Security Forces into positions from which they could be attacked.³

5A-3 The commander of the battalion carrying out the City task at any given time was to:

... pursue the policy of further isolation of minority extremists and hooligan elements, by establishing contact and liaison with the local population, local leaders of industry, civil leaders and other key communicators.⁴

5A-4 Brigadier Cowan signed Op Directive 3/71 on 2nd July 1971. Of the days immediately thereafter his successor, Brigadier MacLellan, was later to write:

¹ G1.1

² G1.2 paragraph 1(a)(6)

³ G1.4 paragraph 1(e)

⁴ G1.6 paragraph 5(d)(1)(d)

Within two days of the Directive⁵ being signed, the situation changed dramatically. On 4 July the IRA mounted a campaign in the City with the short term aim of so disrupting the life of the City that the Apprentice Boys Annual Celebrations on August 12th would have to be cancelled. The campaign opened with an ever increasing number of shooting incidents on succeeding days, until reaction by the Security Forces to the IRA gunmen led to the return of fire and the death of two of the rioters.⁶

The effect of this first ever return of fire in Londonderry instantly turned the Catholic community from benevolent support to complete alienation.⁷

5A-5 Major General Ford succeeded Major General Farrar-Hockley as Commander Land Forces on 29th July 1971. Within a fortnight the Province saw the institution of internment. On 20th August Lieutenant General Sir Harry Tuzo, the General Officer Commanding Northern Ireland, held his meeting with the Committee of Thirty, as a result of which the military profile was to be reduced in Londonderry in the hope that moderate opinion would prevail.

5A-6 Brigadier MacLellan, writing in November 1971, continued:

The subsequent introduction of internment, followed in its turn by the erection and dismantling of barricades throughout the Bogside and Creggan, all combined to lead to a situation in which the Security Forces were faced by an entirely hostile Catholic community.⁸

On 20 August it was decided that the military profile in Londonderry should be lowered, in the hope that moderate opinion would win the day. This has proved to be a pious hope. At present neither the RUC nor the military have control of the Bogside and Creggan areas, and law and order is not being effectively maintained. No military

⁵ Op Directive 3/71 2nd July 1971

⁶ Op Directive 4/71, G27.196 paragraph 1(a)(2)

⁷ Op Directive 4/71, G27.196 paragraph 1(a)(3)

⁸ Op Directive 4/71, G27.196 paragraph 1(a)(3)

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*routine patrols take place in those areas and the mob rule of the gun prevails.*⁹

5A-7 There was general recognition that the attempt to give moderate opinion a chance not only failed but permitted the extremists to consolidate their hold on the Bogside and Creggan¹⁰. In his Appreciation (relating to the whole Province) of 4th October 1971¹¹, the Chief of the General Staff, General Sir Michael Carver, wrote:

*In Londonderry the situation in the Creggan and Bogside is such that there are virtually "no go" areas, with about 200 extremists and "hard core" hooligans operating unchecked. The influence of the "Committee of 30" has clearly failed to improve matters. One alternative is to let the present situation continue. But it is desirable to reassert the full range of military and police activities throughout the city; and if there is an IRA/Blaney build-up in Londonderry with a bomb offensive in the city centre of the Protestant areas it may become imperative to go into the Bogside and root out the terrorists and the hooligans.*¹²

5A-8 Recommending his Option 3, General Carver (admittedly with little consultation with the GOC Northern Ireland¹³) thought an operation to restore law and order in Londonderry would be necessary:

*To continue our present policy, but to remove those restraints on the operations which the GOC Northern Ireland wishes to carry out, which are motivated by a desire not to disturb the current "political initiatives". This option would certainly include intensification of border operations, including humping and cratering of roads, and an operation in Londonderry.*¹⁴

⁹ Op Directive 4/71, G27.196 paragraph 1(a)(4)

¹⁰ Gen Ford, told Desmond Hamill that this was a policy with which he never agreed: Day 253/026/03

¹¹ Military Appreciation of the Security Situation in Northern Ireland as at 4th October 1971, at G14B.86.9

¹² G14B.86.12 paragraph 14

¹³ G14B.86.8

¹⁴ G14B.86.15 paragraph 23

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5A-9 When (it is thought) interviewed by Desmond Hamill in 1984 General MacLellan repeated the sentiments of the Op Directive 4/71 in relation to the Committee of Thirty:

We had already tried the softer approach – started by Tuzo with the White Line or the 42 Line – and this patently had not worked¹⁵.

MPs would come and I would brief them. A recurring theme was that we had tried the Tuzo initiative but it hadn't worked. Mob rule runs in the Catholic areas. 80% of people perfectly OK. 20% not OK and of those only a few pulling triggers. But there was a friendly sea in which they could swim.¹⁶

5A-10 General Steele, Brigade Major 8 Brigade from 1970 to 1972, wrote in his statement to this Inquiry:

Having followed a policy of containment under command of Brigadier [Cowan] until July 1971, it became clear in the second half of 1971 that the policy had to change. Between July and October 1971 Brigadier [Cowan] did his best to contain the increasing disorder.¹⁷

5A-11 In his first draft statement for the Widgery Inquiry Brigadier MacLellan summarised the position so far as the hooligans were concerned as follows:

Ever since the Army arrived in Londonderry, towards the end of 1969, there have been in existence organised gangs of hooligans who have thrived on violence and who have presented a special problem to the Security Forces. They specialise in rioting attacks on the Security Forces, hi-jacking of cars and destruction of property. Until July 1971 the Security Forces were able to contain these hooligan gangs, and a considerable number of them were arrested and charged with disorderly behaviour. It was also possible to conduct extensive scoop up operations of these rioters,

¹⁵ B1279.003.001

¹⁶ B1279.003.015

¹⁷ BSI Statement, B1315.001 paragraph 3

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the last of which was in February 1971 when 27 of them were arrested in one swoop.

But since July 1971, when the IRA campaign opened in Londonderry, and the shooting started, the hooligan gangs have been operating under cover of snipers in nearby buildings. This has had the effect of strictly limiting the scope of hooligan arrest operations that we have been able to mount; no longer are we able to use snatch squads and out-flanking manoeuvres, as these entail deployment on foot and expose our troops to sniper fire.

About 25-50 hooligans turn out almost every afternoon in the William Street area, now a derelict no-mans land, where they are opposed by about two platoons. In the ensuing stone throwing attacks, a few nail bombs are usually included, and some shots fired, either by gunmen operating from within the crowd, or sniping from nearby buildings. The troops are obliged to use street fighting techniques to counter the gunmen and these do not lend themselves to the arrest of the hooligans, as attempts to close with them bring the troops into the killing zone of the snipers.

It will be clear from this that the Londonderry hooligans present a serious threat, not only to the commercial areas of the City, but also to the lives of the Security Forces whose duty it is to deal with them.¹⁸

5A-12 General Ford issued a Province wide Directive for Internal Security Operations on 26th October 1971.¹⁹ Not surprisingly this is a document which concerns the need to defeat the terrorists, in respect of which see the content of the Background paragraphs (paragraphs 1 to 4²⁰), General Outline (paragraphs 6 and 7), the Conclusion (paragraphs 14 to 16²¹) and the Tasks, both first and second priorities, for all Brigades in the Province (paragraphs 8 and 9):

¹⁸ Brig MacLellan's Statement, First Draft, B1279.018 paragraphs 15-19

¹⁹ Commander Land Forces' Directive for Future Internal Security Operations, G23.166. MOD on Distribution List: G23.168

²⁰ G23.165

²¹ G23.167

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The first priority task is the defeat of the IRA's campaign of violence.²²

The second priority is to overcome threats to law and order from all other directions, including in particular inter-sectarian strife. However much the first priority task brings us into conflict with one section of the community, we must retain our sectarian impartiality. Furthermore, we must avoid unnecessary alienation of Roman Catholic opinion because the rejection by the Catholics of IRA violence is an essential ingredient of our ultimate success.²³

- 5A-13 Only under Additional Tasks are the hooligans referred to, and then in the context of the particular problems of each Brigade area. Given the difficulties the hooligans had been creating for the Security Forces in Londonderry since they had received the support of the gunmen (ie from July 1971) it would be remarkable if there had been no mention of them.

8 Inf Bde. Additional Tasks.

a. Progressively impose the rule of law on the Creggan and Bogside. Hooligan fringe activity is to be vigorously countered: arrest operations are to continue to be mounted; and normal patrols are to be restarted as soon as practicable.

- 5A-14 This Directive was a means of passing orders down the chain of command:

MR CLARKE: Would it be fair to say that this Operational Directive represented in effect a deliberate change of gear?

A: It was a change of gear, and in relation to the new instructions which had come down from above.

Q: That is what we have just been looking at.²⁴

- 5A-15 Brigadier Cowan handed over command of 8 Brigade to Brigadier MacLellan on 27th October 1971. In the notes he prepared for his

²² G23.165 paragraph 8, which carries four particular steps to be taken to this end.

²³ G23.166 paragraph 9

²⁴ Day 253/035/06

successor he summarised his own concerns and priorities, the DYH very much to the fore, in the following terms:

*Gunmen alone no real problem as soldiers could deal and population wouldn't object. But this not the case. RC resent invasion of homeland so gunmen, 25,000 hostile population plus active hooliganism. ... But fact you are in a containing posture should not inhibit dealing when he comes out and makes trouble but reserve required as key areas must not be uncovered and you must not be sucked in to sniper nest on ground of his choosing. ... Cutting off for snatch is still on if you can work it. Policy arrest as many as you can.*²⁵

5A-16 On the day Brigadier MacLellan took command of the Brigade a bomb attack on an Observation Post at Rosemount Police Station in Brooke Park killed two soldiers, Lance Bombadier Tilbury and Gunner Stephens of 45 Med Regt RA²⁶. Less than two weeks later, on 9th November, Lance Corporal Curtis of 1 R ANGLIAN was fatally shot on the Foyle Road.²⁷

5A-17 Continuing the process of passing orders down the chain of command, Brigadier MacLellan issued a Directive to his Brigade on 10th November 1971.²⁸ It was this Directive which described the failure of the initiative with the Committee of Thirty and summarised its effects. A week later Brigadier MacLellan was host to a visit from the Leader of Her Majesty's Opposition. His briefing included the following concerns about the Security Force's inability to maintain law and order in the Bogside and Creggan:

Law and order not being effectively maintained. Present tactics - active containment of Bogside and Creggan plus attrition by patrols eg lifts, searches, ie military working from outside. ... Convinced must restore law and order in Bogside and Creggan painlessly as possible - means saturation - more troops to enable moderates to speak

²⁵ At **B1279.041**

²⁶ *Lost Lives*, page 111

²⁷ *Lost Lives*, page 117

²⁸ Op Directive 4/71, at **G27.196**

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*without fear. Occupation will be regarded as invasion represented as punitive and repressive but when dust settles majority glad, believe occupation to restore law and order.*²⁹

5A-18 General Ford visited Londonderry on 12th December 1971, not returning to Lisburn until 14th December. He was clearly on an extensive fact finding mission, as on 14th December 1971 he produced his paper 'Future Military Policy for Londonderry: An Appreciation of the Situation by CLF' ³⁰. Adding his own contemporary voice to those who saw the policy of 20th August 1971 as a failure, the General's major concern was the terrorists. Having regard to the passages set out above, he had clearly been listening to his hosts, the senior commanders in 8 Brigade:

*3. None of the expectations of the meeting with the "Committee of Thirty" have materialised. At present neither the RUC nor the military have control of the Bogside and Creggan areas, law and order are not being effectively maintained and the Security Forces now face an entirely hostile Catholic community numbering 33,000 in these two areas alone. Between 4 July and 13 December the Security Forces have suffered 22 casualties from the gunmen – 7 of which were fatal; there have been 380 confirmed shooting incidents; 1932 rounds have been fired at us – 364 being fired in reply and 1741 lbs of explosives have been used in 211 explosions (not counting 180 nail bombs). There are present 29 barricades up, 16 of which are impassable to 1 ton armoured vehicles.*³¹

*4. Until mid November, the policy adopted after the meeting of 20 August generally obtained, namely, no military routine patrolling in the Bogside and Creggan, and no military initiative other than that demanded in response to aggression or for specific search or arrest operations.*³²

5. Since 3 December, when the force level was increased by one battalion, the Security Forces have been carrying out

²⁹ Brig MacLellan's notes, at G30A.226.001

³⁰ G41.263

³¹ G41.263

³² G41.264

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battalion strength operations in the hostile areas. These have included recce and fighting patrols in depth and arrest, search and barricade clearance operations.³³

6. ... Although a fair rate of attrition has been maintained against the terrorists, the three month containment phase between 20 August and 3 December has enabled the extremists to increase their hold on the Catholic community, and to recruit and train more volunteers. ... our best estimate is that the activists total some 1000, of whom half can be counted as the hooligan element, who themselves have a hard core of 250. The IRA strength is estimated at 100, of whom at least 40 are active gunmen.³⁴

7. Meanwhile the extremists have made good use of the period of limited military activity. There are now sentries and searchlights on all major obstructions during the hours of darkness and an efficient alarm system of sirens, hooters and car horns has been established. Groups of men are organised, each under a leader and 30 to 40 strong, who appear at very short notice to deploy to prearranged positions. As a result of these precautions surprise has become almost impossible to achieve.

5A-19 The General has also clearly taken note of what the local commanders have said about the risks of alienating the non-violent Catholic population. Included in his analysis of the disadvantages of what he was referring to as Course 2 is the following:

Due to the rapid reaction, numerical strength and aggressive tactics of the opposition, the Security Forces are forced to use baton rounds and CS gas in large quantities. The former are ineffective and the latter, being an area weapon indiscriminate in nature, causes havoc amongst large sections of the community who are not involved, not intend to be involved in violence.³⁵

5A-20 The General's conclusions demonstrate the professionalism of his approach:

³³ G41.264

³⁴ G41.264 paragraph 6

³⁵ G41.268 paragraph 15

19. *The policy of restricting military activity in Londonderry as a result of the meeting on 20 August has produced no apparent beneficial result. The moderates have failed to assert their influences and the Bogside and Creggan areas are completely dominated by the extremists. The pause for political activity is now over and some new initiative is clearly necessary if the present stalemate is to be broken.*

20. *The only way to restore law and order in the Bogside and Creggan is to adopt Course 3 and there is no doubt that this is the best military solution. The difficulty of course is that the problem is not entirely a military one; indeed it can be argued that there is really no military necessity to enter the area at all, since it could be contained from the outside until such a time as a solution is reached elsewhere in the Province. The political disadvantages of Course 3 are considerable. It will be represented as repressive against one section of the community and will generate an emotive reaction, which could become politically counter productive. It also requires 7 battalions, which cannot be provided from within N Ireland and therefore means a reinforcement of 3 additional battalions of infantry.³⁶*

21. *Taking into account the history of Londonderry, the fact that it is almost universally recognised as something different from the rest of the Province, the proximity of the border, the Republican reaction and the fact that the IRA may well call off their campaign if defeated in Belfast, all lead to the conclusion that the decision whether to adopt Course 3 at the present time is entirely a political one. Circumstances could however change if for example the IRA were to amount (sic) an offensive from the hostile areas into other parts of the city.³⁷*

22. *There seems to be little military value in continuing the Course 2 Policy compared with the antagonism which it is arousing in the community. It is true that gunmen may be shot, some intelligence may be gained and our ability to enter the area is demonstrated, albeit only in battalion*

³⁶ G41.271

³⁷ G41.271. These sentiments do not sit easily with Mr Harvcy's attempt to portray Gen Ford as politically insensitive Ford and cager to please the hard line Protestants. See Mr Harvcy's Opening Statement at Day 044/003/22

*strength and with copious use of CS gas. However the basic fault of this policy remains its temporary nature and its very harmful effect on those who might otherwise be prepared to forsake the IRA cause. It can be argued that all that it achieves is to drive the community further into the arms of the IRA and to increase the danger of a massive reaction. The wisdom of continuing with Course 2 is therefore in doubt unless the introduction of Course 3 were imminent.*³⁸

*23. The best that can be said of Course 1 is that it does not stir the pot unduly in Creggan and the Bogside, but it must be recognised that the price to be paid is the fact that a community of 33,000 citizens of the UK will be allowed to remain in a state of anarchy and revolt. The containment aspect of this policy can certainly be achieved and the temptation to adopt this course until a cessation of hostilities elsewhere in Ulster is strong and certainly attractive from a political point of view. Some limited military benefit will also accrue in that some pressure is brought to bear on the IRA provided that the offensive aspect is given sufficient emphasis.*³⁹

*24. To summarise, although Course 3 is the correct military solution to the problem of restoring law and order in Londonderry, the political drawbacks are so serious that it should not be implemented in the present circumstances. The dangers inherent in persisting with Course 2 are in no way balanced by the limited military gain and the right answer in the present circumstances is to adopt Course 1. In order to avoid comparison with the previous Course 1 which was adopted up to mid November⁴⁰ and was too defensive and defeatist in concept, it might be best to call it Course one and a half.*⁴¹

*25. It is recommended that the present policy in Londonderry should be abandoned in favour of Course 1 as described in this Appreciation.*⁴²

³⁸ G41.272

³⁹ G41.272

⁴⁰ This is a specific reference back to the policy in place prior to the Directive, which was dated 26.1.0.72 and resulted in 8 Bdc's Directive of 10.11.71

⁴¹ G41.272

⁴² G41.272

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5A-21 In all senses General Ford was recommending a lower profile and therefore less provocative approach by the military:

Mr Clarke: Then your formal recommendation was that the present policy in Londonderry should be abandoned in favour of Course 1, as described in this appreciation. It looks from that, does it not, that in one sense you were reverting to a less provocative approach?

A: Yes.

Q: This policy, as I understand it, was approved by the Secretary of State; is that right?

A: Yes. I was not aware, until last week when I actually read the third draft of my Widgery statement, that the entire appreciation, after approval by General Tuzo, was forwarded to London.

Q: Until then you had known it had gone to Tuzo, but no more; is that right?

A: I know that the content of it had gone, but I did not know that the actual appreciation word for word had been sent right up to the top.

Q: Did you know that your recommendation had been approved by the Secretary of State?

A: Yes.⁴³

5A-22 General Ford's next visit to Londonderry took place on 7th January 1972, just over a week after the fatal shooting of Gunner Ham of 22nd Regt on Foyle Rd⁴⁴. It is 'almost certain'⁴⁵ that he went at the behest of General Tuzo in the wake of the Joint Security Committee meeting the previous day. The Minutes of that Meeting record that:

The Prime Minister mentioned that the Strand Traders Association had asked him to meet a deputation about a spread of violent activity into the William Street area of the

⁴³ Day 253/042/07

⁴⁴ *Lost Lives*, page 135

⁴⁵ Gcn Ford at Day 253/045/10

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city. The Parliamentary Secretary at the Ministry of Home Affairs stressed the harm that this was doing to business interests in the area and the danger of further spread. The GOC undertook to discuss the situation on the spot with the Association.⁴⁶

5A-23 General Ford accepted during his evidence to this Tribunal that his Memorandum to the GOC⁴⁷ was likely to have been the paper dated 10th January 1972 originally attached as Annex B to the third draft statement for the Widgery Tribunal.⁴⁸ The version of the memorandum available to the Tribunal is unsigned. There is in fact no evidence of there ever having been a signed version, and when he and General Ford met in 1998 General Tuzo had no recollection of ever having seen it.⁴⁹

5A-24 As to the situation then pertaining in Londonderry, it contains a summary of the information General Ford learned, the impressions he obtained and the conclusions he came to. It formed part of the reporting process it was incumbent upon him to carry out, given his own responsibilities, including the specific task that there is (effectively) a record of him having been given. It also records the orders he gave to Commander 8 Brigade in view of the impending NICRA march, to be held on 16th January.

5A-25 Although during his evidence to the Tribunal General Ford was criticised for writing it, paragraph 1 of the 10th January Memorandum simply shows a senior officer reporting on an important aspect of the situation as he found it in one of the Brigade areas for which he was responsible, an area in which there had been a steady and serious deterioration in the security situation over the preceding six months. It was his responsibility to attempt to assess the approach the local commanders were taking to the violence in Londonderry.

⁴⁶ G47.291

⁴⁷ Memorandum 'The Situation in Londonderry as at 7th January 1972', at G48.299

⁴⁸ Day 254/003/06

⁴⁹ Day 253/003/02

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5A-26 The Commander Land Forces was fully entitled, on the basis of the description of the difficulties they gave him⁵⁰, to form the view (right or wrong) that the attitude of some of the senior officers he met (including the Brigade Commander) was a cause for concern⁵¹:

Neither foot nor mounted patrols now operate beyond the bend in William Street to the west of Waterloo Place as a regular feature of life. They claim that all foot patrols are put at risk from snipers from the Rossville Flats area (the ground all around here dominates the William Street area) and that if mounted patrols move in pigs, the pigs are surrounded by yobbos and this means that dismounted men must go with them with the consequential sniper reaction. They claim that the bombers (and of course there are only one or two each day) are mostly teenagers carrying small 5-10 pound devices who operate in the thickness of the shopping areas and cannot be detected by the considerable number of three man infantry patrols. Because of the number of ruined buildings and back alleyways which lead into the general area from the Bogside they claim it is impossible to either confine public movement or control it. In addition the vast majority of people in the shopping area not only give no help to our patrols but, if they saw a youth with a very small bag which might contain a bomb, they would be likely to shield the youths movements from the view of our patrols.⁵²

5A-27 In paragraph 3 of the Memorandum General Ford reported on his meeting with the Strand Traders Association. Far from complying with all of the demands of these Protestant businessmen⁵³, the Commander Land Forces agreed to the construction of gates in an alleyway, said he would examine the practicability of establishing more Observation Posts and a military

⁵⁰ G48.299 paragraphs 1-2. See the next quotation.

⁵¹ At Day 258/026/11 Arthur Harvey QC suggested to Gen Ford that an attitude on the part of the Brig Comd whereby the latter felt he had to accept the situation as he found it was 'radically different' to a situation in which the Brig Comd was failing to produce an initiative. If not identical, these two formulations are intimately related, the latter failure being the direct result of the former attitude.

⁵² Memorandum 10th January 1972, G48.299 paragraph 2

⁵³ Recorded at the end of G48.300 paragraph 3. Gen Ford did not just invent these invent these: Day 253/047/10

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position at the west end of William Street⁵⁴ and told them that they must themselves impose restrictions on access to their premises⁵⁵.

5A-28 Paragraph 4 records both what the General had been told about the security situation and the conclusions he drew:

This situation is difficult enough but it is not beyond our capacity to deal with using normal IS methods and equipment, although I feel it probably needs the establishment of a further military base at the west end of William Street (this is now being examined as a matter of urgency, with the Stardust Club being the likely choice).⁵⁶

5A-29 At paragraph 5 General Ford reported what he had been told by the military in Londonderry about the hooligan⁵⁷ problem in Londonderry:

MR CLARKE: That looks, I think we have already established, have we not, as if that was an assessment given to you by the Army.

A: Yes'.⁵⁸

5A-30 There is no doubt that paragraph 5 of the Memorandum reflects the view of the commanders who had to deal with the problem. The Brigade Commander's evidence to Lord Widgery about their impact was as follows:

A: The violence was spreading, sir. It was our intention and we have managed to contain it on the William Street line,

⁵⁴ Which appears to have been a consideration for him for his own, purely military reasons, in any event: see G48.300 paragraph 4, and below.

⁵⁵ G48.299 paragraph 3(a)

⁵⁶ G48.300

⁵⁷ Despite Lord Gifford's protestations about the use of the term hooligan the first use of the term Hooligan was not by the military. Some of these individuals appear to have used it to describe themselves with a degree of pride: see Eamonn McCann at AM77.31-32 and Day 087/158/06-159/13. The error in the description lay in any implication that these people were necessarily young: Patrick McCallion, for example, AM74, a witness who was prepared to admit that he was a regular rioter, was 29 in 1972. See Day 071/158/12-159/16

⁵⁸ Day 253/054/01

which is being destroyed by arson, and so on, and there is definite pressure on the commercial area.

Q: North of it?

A: North of it.

Q: And there was a definite threat and risk to the Security Forces?

A: Yes, sir. Since July, when the gunmen have come on the streets to support the hooligans, the soldiers containing these riots and hooliganism have come under fire on many occasions.⁵⁹

5A-31 The former Commanding Officer of 1 Coldm Gds described to this Tribunal both his experiences of the DYH and the difficulties of catching them:

There was, however, in addition to the terrorists, a hardcore known as the 'Derry Young Hooligans' who were a constant irritation to the decent people of the City. The name Derry Young Hooligans was actually a complementary description as these were nasty, brutish young thugs who threw stones and petrol bombs, burnt cars and broke into houses. It was quite clear to me that they would exploit the march to their own ends in that there would almost certainly be either a riot or they would act as 'come ons' to the soldiers and the RUC, in effect inviting us to catch them but putting the soldiers and RUC officers in a position where snipers could open fire on them. They had often exploited such opportunities in the past.

The Derry Young Hooligans were regarded as a front for the IRA; they worked in conjunction with the IRA. They were basically young people with strong Republican tendencies.⁶⁰

The hooligans were an absolute menace and in particular they were destroying a lot of the buildings in the shopping centre and towards Waterloo Place and they were also constantly provoking the forces of law and order, whether

⁵⁹ B1246

⁶⁰ BSI Statcmnt, C598.1 paragraphs 6-7

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*they were RUC or military. And they were extremely difficult to engage; they were very fleet-of-foot; they knew the area very well and they had a very good system of watching their backs and we simply were not successful in arresting them.*⁶¹

5A-32 The difficulties the hooligans caused for the military were clearly given to General Ford in stark terms:

*Against the DYH the Army in Londonderry is for the moment virtually incapable.*⁶²

5A-33 And their impact in terms of security in the City, albeit obvious, was on any view serious:

*This incapacity undermines our ability to deal with the gunmen and bombers and threatens what is left of law and order on the West bank of the Foyle.*⁶³

5A-34 The sentence of this long paragraph which has been particularly seized upon reads as follows:

I am coming to the conclusion that the minimum force necessary to achieve a restoration of law and order is to shoot selected ring leaders amongst the DYH, after clear warnings have been issued.

5A-35 At the same time little attention has been given to the context in which the observation was made or its actual terms:

- (1) the Army could not prevent the hooligans from breaking the law, including threatening the lives of the soldiers, with the internal security weapons that were available:

The weapons at our disposal are ineffective. This is because the DYH operate mainly in open areas where they can avoid the gas (and some have respirators, many have make-

⁶¹ Day 272/024/22

⁶² G48.300 paragraph 5

⁶³ G48.300 paragraph 5

FS 7. 664

shift wet rag masks) and in open order beyond the accurate range of baton rounds. Alternatively, they operate in built up areas where, because of their tactics and the personal protection they have, CS gas has to be used in vast quantities and to such an extent that it seeps into nearby buildings and affects innocent people, often women and children. Attempts to close with the DYH bring the troops into the killing zones of the snipers.⁶⁴

- (2) General Ford had not formed a final view: he was 'coming to the conclusion';
- (3) while there is no doubt that the 7.62 SLR adapted to fire .22 ammunition remained a lethal weapon, General Ford did as a matter of fact draw the distinction between on the one hand causing less damage to the targeted individual and on the other the danger of injury to more than one person:

I believe we would be justified in using 7.62 mm but in view of the devastating effects of this weapon and the danger of rounds killing more than the person aimed at, I believe we must consider using rifles adapted to fire HV .22 to enable ring leaders to be engaged with this lethal ammunition.

- (4) in terms of the practicalities, the only step reported was that thirty of the adapted weapons had been sent to 8 Brigade for zeroing and familiarisation training. The weapons were in the Province as part a long standing initiative (which originated with HQNI under General Tuzo's predecessor) to provide the troops with a weapon less likely to cause injury to more than the person targeted in the internal security environment. There was a long way to go before the weapons could be a part of the standard equipment carried by the troops:

⁶⁴ G48.300 paragraph 6

FS 7. 665

MR CLARKE: Are you saying that paragraph 6 was simply an idea, the details of which would have to be worked out later if it was to be put into effect?

*A: Absolutely. It is purely an idea. A first suggestion.*⁶⁵

- (5) the weapons were not to be used operationally without authorisation. General Ford appreciated that a change in the Yellow Card would have been required before his thoughts were ever to become policy in the Province.

5A-36 Furthermore, little attention was paid to the terms of paragraph 7⁶⁶:

If this course is implemented, as I believe it may have to be, we would have to accept the possibility that .22 rounds may be lethal. In other words, we would be reverting to the methods of IS found successful on many occasions overseas, but would merely be trying to minimise the lethal effects by using the .22 round. I am convinced that our duty to restore law and order requires us to consider this step.

5A-37 Whether General Ford had got the technicalities right or not, his intentions were and remain clear:

MR GLASGOW: General Ford, there is one matter, if I may, to put to you on the memo of the visit on 7th January which we have as G48.29. It has been put to you so many times, but there is one passage, reminding yourself of G48.29. Perhaps we should go straight to G48.300. Do you remember the infamous paragraph 6 at the bottom of the page?

A. Yes.

Q. There are two matters I would like you to deal with if you can, General Ford, when you say in this paragraph the sentence: "I believe we would be justified in using 7.62-millimetre, but in view of the devastating effects of this weapon and the danger of rounds killing more than the person ..." Are there two dangers being referred to, two

⁶⁵ Day 253/060/14

⁶⁶ G48.301

FS 7. 666

undesirable consequences being referred to? Or is it just the risk of more than one person being killed?

A. No, I think there are two.

Q. What is the first? When you say: "... in view of the devastating effects of this weapon ..." ... is that simply a further illustration of the concern that more than one person might be killed? Or is it something else and, if so, what?

A. The problem is that the 7.62 is very likely to kill.

Q. In answer to Lord Saville you have said that you would know that the intention and the orders of the soldiers would have been to aim to kill with what is a potentially lethal weapon?

A. Yes.

Q. So the risk of somebody being killed is something that you accept was anticipated?

A. Yes.

Q. Could we go over the page and look at the top sentence of the following page. Again may I ask you what this means: "If this course is implemented, as I believe it may have to be, we would have to accept the possibility that .22 rounds may be lethal." What did you mean by that?

A. A .22 round would really only be lethal, as I understand it, if it hit you in an absolutely vital place.

Q. Which is what, as you accept, the soldiers were expected to aim for?

A. To aim for, yes.

Q. This sentence where you are expressing the view that it has to be accepted that there is a possibility that .22 rounds may be lethal, does that have anything to do with your intentions or your desires or your anticipation of what might happen?

A. What I wanted was to disable the people concerned if we used this weapon. That was the primary aim.

FS 7. 667

Q: Accepting the possibility that they might be killed?

A: Of course, accepting it, yes.⁶⁷

5A-38 While Eversheds had recorded the surprise of many officers at General Ford's thinking (or the thinking as explained to them by the Eversheds interviewers), little interest⁶⁸ was shown in the fact that General Ford was not alone in thinking that the arrangements current in January 1972 disadvantaged the troops. This is a passage from the evidence to this Tribunal of Colonel Jackson:

MR GLASGOW: Could we go, please, to the third page of your statement, which we have at CJ2.3, and could you please help the Tribunal with paragraphs 9 and 10. In paragraph 9 you wrote, or your statement records, that: "The Yellow Card in Northern Ireland was different to the ones under which we operated in Aden and Malaya. In comparison with them it is restrictive: in retrospect too restrictive, when operating against bombers and stone throwers." In what way did you consider the Yellow Card was too restrictive when your soldiers were operating against stone throwers, Colonel?

A: Against stone throwers?

Q: Yes, that is the word you use, the second of the two phrases?

A: I said bombers and stone throwers.

Q: So you did. Now would you answer my question?

A: I have, and probably you have also, copies of the Yellow Card.

Q: Yes.

A: You also have the MoD instruction of October 1971, which led to the amendment of the Northern Ireland Yellow Card in November 1971.

⁶⁷ Day 260/118/05

⁶⁸ Not even from Counsel to the Tribunal

FS 7 . 668

Q: Yes.

A: Here we have, and to my mind at that time, something confusing, a bit of confusion, but I go back, if I may, to when I first went to Northern Ireland in December 1969, while we were on standby, the spearhead battalion to go to Belfast, and I asked in Belfast, because I saw a lot of people using petrol bombs, and I said "what does the Yellow Card say in Northern Ireland about petrol bombs?" The remark I got back was, "We do not take action against petrol bombers," although the Yellow Card says you may fire after due warning against a person throwing a petrol bomb, after due warning, but it does not say you may fire without warning at a petrol bomber, and it states that firearms include grenade, nail bomb or gelignite-type bomb, not petrol bombs. So the petrol bombing was a very, to my mind, funny area.

Q: That was why, sir, with respect, I asked you about stone throwers. May I say I accept the force of the point you have made, that the Yellow Card may have been inadequately clear, insufficiently clear about various types of bomber. I will repeat my question if I may, because it may be important to others of whom the same question or similar questions have been asked: in what way did you consider that the Yellow Card was too restrictive when your troops were operating against stone throwers?

A: Well, it did not mention stone throwers.

Q: And it should have done, should it?

A: In Aden in 1967, it mentions stone throwers, but only for escorts and mobile patrols and it states: "If you are only stoning, tell your driver to keep going and get away. Do not fire unless the stoning is so serious that you really believe the vehicle may be stopped altogether and that you, the driver or your passengers will be seriously injured." The one thing about Yellow Cards, if I may say so, is that in Aden the opening gambit, to my mind, was very good; it gives individual responsibility and says: "Always use the minimum force necessary to achieve your aim."

Q: I am sure that is very laudable, sir. Please would you answer my question?

A: If you use what in your opinion is the minimum force, you need never fear the consequences.

Q: Again, sir, I am sure that is right and I am sure that is very laudable and it may well be that you are recorded here

FS7. 669

in your statement as saying something that you did not really mean to say. If so, it is right that you should have the opportunity of correcting it. But I will respectfully suggest that it is an important point, in a statement made to a solicitor to this Inquiry. May I ask the question again -- and I mean no disrespect to you, sir, please listen to it, sir. If you refuse to answer my question, that is a matter for you: in what way did you believe that the Yellow Card was too restrictive when your soldiers were operating against stone throwers?

A: It did not give any direction and stone throwing was a big issue in Northern Ireland. There should have been some directive to my soldiers about stone throwing.

Q: Something less restrictive that enabled them to shoot stone throwers in certain extreme conditions; is that the point?

A: Yes, whatever the lawyers or the Ministry of Defence saw fit. But there was no direction.

Q: Whether that be right or wrong is a matter for others to comment on, but you believed that thought ought to have been given to the question of whether or not things had reached such a stage that some kind of fire might have to be directed at rioters, as distinct from shooters; that is fair, is it?

A: Yes.

Q: Very well, thank you, sir.⁶⁹

5A-39 Paragraph 8 of the Memorandum is concerned with the NICRA march which, at the time the Memorandum was drafted, was anticipated the following weekend, to which this Submission will now turn.

⁶⁹ Day 286/040/01

FS7. 670

CHAPTER 5B

PROLOGUE TO THE MARCH: 7TH JANUARY TO 25TH JANUARY 1972

5B-1 There is no doubt that Brigadier MacLellan was right when, in his letter to General Ford of 15th March 1972¹, he wrote that for the purposes of his discussions with Chief Superintendent Lagan on 24th January 'the question of whether the march should or should not be stopped was academic'. He would in fact have been right had he been speaking of his discussions with General Ford on 7th January 1972, as the policy decisions in relation to marches had by then already been taken, above the level of both of these officers, in the wake of marches far removed from Londonderry (on 25th December 1971 and 2nd January 1972): these marches were to be stopped.²

5B-2 It is against that background that paragraph 8 of CLF's memo of 10th January 1972³ must be read:

I told Commander 8 Brigade that he was to prepare a plan over this weekend based on the assumption that the march was to be stopped as near to its starting point as was

¹ G128.849

² See the NISEC paper dated 5th January 1972 at G53.318 and paragraph 7 of the PUS' Memo written to the Secretary of State on 6th January 1972, at G46A.288.2. The final decision was taken at the JSC meeting of 13th January, in the Minutes of which (at G52.315) the Chief Constable can be seen 'emphasizing the importance of stopping marches decisively, leaving no room for infiltration.' The Brigadier could have added that the Chief Superintendent would have known as well as he did that any discussion as to whether or not to stop the march was academic, as a joint RUC/Army Instruction (G59.362) on the subject had been issued to the RUC and police on 19th January 1972 (just five days before the meeting), which stated that 'It is essential that the prohibition be strictly enforced'.

³ G48.301 For these purposes it is accepted that this is indeed the date of the document. It is not accepted, as has been suggested, to Gen Ford at Day 258/049/22, that this memo was tabled at the JSC Meeting of 13 January 1972: the document tabled was clearly the NISEC document, as is apparent from its location in amongst the JSC documentation at G52 to G54.

FS7. 671

practical and taking into account the likelihood of some form of battle (therefore he must choose a place of tactical advantage) and also the fact that the minimum damage must be done to the shopping centre. ... It is the opinion of the senior commanders in Londonderry, that, if the march takes place, the DYH backed up by the gunmen will undoubtedly take over control at an early stage.

5B-3 The steps General Ford has taken in respect of the forthcoming march are, as one would expect, entirely consistent with the developments that have been taking place at the levels of command and responsibility above him and (it being safe to assume that he would have seen it) the NISEC paper of 5th January 1972:

- (1) he takes it as read that the march is to be stopped as near to its starting point as possible;
- (2) the likelihood of violence is to be factored into the planning for the event ('some sort of battle'. Violence as a consequence of stopping marches was specifically drawn to the JSC's attention in the NISEC paper of 5th January⁴).

5B-4 The General has also clearly listened to and taken note of the local commanders' (certainly Brigadier MacLellan and possibly Chief Superintendent Lagan⁵) views about the prospects of violence at the event and is reporting these views up the chain of command. These local views are without doubt accurately recorded in the Memo, as they are set out expressly in the document produced by Headquarters 8 Brigade as a result of these discussions, the outline plan for the march on 16th January⁶. There is nothing to suggest that at this stage the Chief Superintendent was voicing any disagreement with the notion that the march was going at some stage to have to be stopped, either in his own discussions with the

⁴ G53.318

⁵ Day 253/078/15

⁶ G49.302 paragraph 4(b), (h) and (k)

F57. 672

CLF or in any discussion he may have had with the Brigade Commander for the latter to pass on.

5B-5 The plan produced on 10th January 1972⁷ in accordance with the General's instructions provided for the RUC to be in the vanguard of the effort to block the path of the march.⁸ It is at the very least likely that there had been some consultation with the RUC during the course of its preparation: the lack of information as to the intentions of the organisers available to both the uniformed and Special branches of the local police are noted at paragraphs 2 and 3, and Chief Superintendent Lagan's need for massive reinforcements in the event of a police lead operation is recorded at paragraph 4e.

5B-6 Despite suggestions to the contrary before this Tribunal⁹, the reaction of HQNI in general or of General Ford in particular to this plan is and will remain unknown. The event of 16th January 1972 having been cancelled or postponed, there were clearly other things to focus on until it became known that the event was to be revived for 30th January. There is in particular no evidence that the plan was simply rejected, by the CLF or anyone else. If what was put to General Ford by Mr Clarke, that the General 'simply rejected' the plan, was intended to imply a rejection of the plan without good reason, the suggestion has no evidential basis and is not accepted. It may well be that had the march proceeded on the earlier date as originally planned the Security Forces would have managed it as set out in the original plan.

⁷ G49.302

⁸ In his questioning of General Ford Christopher Clarke QC made the assumption that the central concept of this plan, *ie* that the RUC rather than the Army would block the route of the march, came from 8 Brigade: see Day 254/049/10. We do not accept or understand that assumption.

⁹ In particular by Christopher Clarke QC to Gen Ford, at Day 254/10/01: 'I think it must follow that you must simply have rejected that proposal'.

FS7 . 673

- 5B-7 The gap in the evidence in relation to planning for a Londonderry march continues until 24th January 1972, when the march now proposed for 30th January was discussed by Brigadier MacLellan and Chief Superintendent Lagan at a meeting at Ebrington Barracks also attended by the Chief Superintendent's deputy, Superintendent McCullagh.
- 5B-8 Chief Superintendent Lagan's evidence to Lord Widgery about this meeting resulted in a degree of controversy in 1972¹⁰. This must now be resolved in favour of General MacLellan given his evidence to this Tribunal that at the time, so far as he was concerned, the fact that the Government had decided that the march was going to be stopped was effectively his starting point.¹¹ Chief Superintendent Lagan's evidence as set out in his statement¹² has not been tested as he has not appeared as a witness before this Tribunal. The meeting was not, of course, a formal meeting for the purposes of joint military/Army planning for the event: the Chief Superintendent had asked for this opportunity to air his own views.¹³ While this controversy was raised with General MacLellan by Christopher Clarke QC¹⁴, who asked in particular whether for reasons of politeness or other reasons he might not have communicated his view of the proposal to allow the march to proceed with photography for later prosecutions to the Chief Superintendent (a suggestion which General MacLellan did not accept)¹⁵, no Interested Party asked about it.
- 5B-9 The meeting ended with both the Chief Superintendent and the Brigadier stating that they would report to their superiors. Chief Superintendent Lagan apparently submitted a report to the Chief Constable¹⁶. Given the

¹⁰ See Brigadier MacLellan's letter to Gen Ford dated 15th March 1972, at **B1279.001**

¹¹ **Day 261/043/20**

¹² At **JL1.4**, and dated 13th December 1998

¹³ **Day 261/043/20**

¹⁴ **Day 261/039/14-045/03**

¹⁵ **Day 261/041/10**

¹⁶ **JL1.10 paragraph 51**

FS7. 674

Chief Constable's views as recorded in the minutes of the JSC meeting of 13th January, see note 2 above, it is doubtful whether any report along the lines claimed by Chief Superintendent Lagan would have been acceptable to him. Brigadier MacLellan reported by way of his signal to CLF of 24th January 1972.¹⁷

5B-10 Entirely consistently with what he has always maintained about what happened at the meeting, Brigadier MacLellan reported (i) that the Chief Superintendent was urging identification and photography for the purpose of prosecutions rather than confrontation; and that (ii) for his part he agreed with the Chief Superintendent that the consequences of stopping the march would be very serious, sufficiently serious to render his present force levels inadequate.¹⁸

5B-11 What, if any, thinking about the revived march had been going on at HQNI prior to 25th January 1972 is now impossible to discern. As of that date, however, the general approach being taken by General Ford (and therefore presumably General Tuzo) becomes clear. Brigadier MacLellan's note of his telephone conversation on 25th January¹⁹ shows that 8 Brigade was to cordon off the Bogside and Creggan approaches and was required to prevent damage to the commercial and Protestant areas of the City. As to force levels, the Brigade Commander would receive additional assistance in the form of the Province Reserve (1 KOB), the 39 Brigade Reserve (1 PARA) and possibly a further battalion from outside the Province. The note shows that CLF at that stage saw 1 PARA in a 'counter attack' role, going 'round the back' to arrest three to four hundred rioters. This was to be a military operation. The Brigade

¹⁷ G70A.441.001

¹⁸ G70A.441.002 paragraph 2

¹⁹ B1279.081

FS7. 675

Commander's plan, with a marked up map, was to be with CLF by the following morning, the 26th January 1972.²⁰

5B-12 There has been debate before this Tribunal as to the reasons for the change in approach between the 10th January, when 8 Brigade submitted its plan for the RUC to be in the vanguard, with a modest reserve at Drumahoe, and 25th January, when the Army are to replace the RUC and will also provide for a reserve force which would enable it to arrest the hooligans (the provision for an arrest force will be dealt with in the next section of this Submission). The tenor of much of the debate appears to have been critical of General Ford, there being an assumption that he rejected the 8 Brigade plan to have the RUC to the fore without good reason.²¹ If this is the case, the assumption is not accepted and was not based on any evidence.

5B-13 The witnesses who were asked about the difference in the two plans during the course of this Inquiry concentrated on the different expectations of the size of the march on the two occasions: General MacLellan thought a march of 1,000 would have been well within the capabilities of the RUC while, so far as he could remember, the predictions were for a 'vast' march on 30th January²²; General Steele remembered there having been much greater certainty in respect of the 30th January march, in respect of which people were talking of an

²⁰ At Day 253/077/06 Mr Clark put it to Gen Ford that there would have been no problem asking the police, in particular Chief Superintendent Lagan, about the likely size of this march. Gen Ford answered, correctly, that the proper way for things to be done was in accordance with the chain of command. But in reality, by the time he spoke to Brig MacLellan on the telephone on 25th January Gen Ford had received the Chief Superintendent's views on both the likely size of the march and the consequences of stopping it, as both are recorded in Brig MacLellan's signal of the previous day. The normal channels had proved to be effective.

²¹ Christopher Clarke QC's suggestion to Gen Ford, at Day 254/010/01: 'I think it must follow that you must simply have rejected that proposal', already referred to.

²² Day 261/037/13

FS7. 676

attendance of 10,000 when the Brigade started to plan for it²³; and General Ford saw the size of the march on the later date as a decisive factor.²⁴

5B-14 These answers are supported by the contemporaneous documentation: the plan for the 16th January march anticipated one thousand marchers if it was to be ignored by the Security Forces and two to three thousand if the Security Forces were to stop it²⁵; the Operation Order for Operation Forecast recorded an estimate of between 3,000 to 8,000 or 12,000 marchers²⁶; the Notes for the Co-Ordinating Conference put the estimate at 20,000, with an actual expectation of 5,000²⁷; and a newspaper published an advertisement for a 'gigantic' anti-internment march²⁸.

5B-15 While these responses did not appear to satisfy Counsel to the Tribunal (Mr Clarke in the case of General Ford²⁹ and Mr Rawat in the case of General Steele³⁰), they are in fact an answer to the question raised. Brigadier MacLellan's evidence is that a small march, of 1,000 or so, would have been within the capabilities of the RUC but a larger one would not³¹. In the plan dated 10th January, when the estimate of the numbers was either 1,000 or between 2,000 and 3,000 (depending on the Security Force's reaction) Headquarters 8 Brigade recorded (presumably having consulted the RUC on this issue as well as that of expected

²³ Day 266/035/23

²⁴ Day 254/048/03

²⁵ G49.302 paragraph 4(a)

²⁶ G95.564 paragraph 1(e)(1)

²⁷ G88.537 Serial 1 remark 2(b)

²⁸ KH8.5

²⁹ Having asked for and received Gen Ford's answers on this issue at Day 254/011 and then moved on to discuss other topics, Mr Clarke then returned to it at Day 254/047, asking 'What had caused the change from the earlier to the later proposal?'

³⁰ '... can you help us with why there was such a change in approach, other than the fact that you were not too certain of how many people were going to turn up?' Day 266/035/19. In fact Gen Steele was saying that they were much more certain of the number - it was a large number who were likely to attend.

³¹ Day 261/037/13

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numbers) that 'massive reinforcements will be required by Comd N Div if he is to conduct such an operation.'³²

5B-16 It is not now possible to tell whether or not those reinforcements were available or could ever have been mobilised, but there is no reason to suppose other than that the numbers spoke for themselves. Once the decision had been taken that this march was to be stopped at some stage along its route security force personnel were going to be required in large numbers; and once security force personnel were going to be required in large numbers the reality was that the Army would have to manage the march.

5B-17 Although the anticipated numbers of marchers was of itself a persuasive reason for the change in approach, there is also the issue of violence, to which General Ford attempted to turn, with only partial success³³:

Mr Clarke: It seems, to the uninitiated, a very dramatic change of approach.

A: It is a definite change of approach. But of course the size of this march, and the indications of the extent of the rioting that was likely to take place, dictated the fact that the Army would have to be in control from the start.

Q: I follow the point that you make about size, because the sort of numbers that appear to have been in contemplation for the earlier march were 2,000 plus; the numbers that appear to be talked about at this stage are somewhere between 8 to 12,000, which is self-evidently much greater. But you say at the end of this paragraph that we see on the screen, 7.25, that: "... the forecasts of the size of the later march and its potential repercussions for law and order in Londonderry were such that large numbers of troops would be required ..." What were you referring to by the phrase "its potential repercussions for law and order in Londonderry"?

³² G49.302 paragraph 4(e)

³³ Day 254/048/03

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A: Had not Lagan reported by then that there would be extensive repercussions? And had we also not by then -- or by then received also intelligence reports of the violence that was likely to follow? I think we had.

Q: Yes. Paradoxically, Lagan had prophesied violence if the march was stopped. In fact, the report that is the subject of the signal was a report as at the 26th January, which, as it happens, was the Wednesday actually after the plan had been conceived.

A: Yes.

Q: When you say "potential repercussions for law and order", do you mean simply that, because of the size of the march and the number of hooligans who were expected to be there, you had to adopt a different approach from that which had been put forward by 8th Brigade³⁴ in early January?

A: Yes.

5B-18 It goes without saying that larger numbers on the march could be expected, certainly so far as security force planning was concerned, to result in greater involvement in and therefore levels of violence. But the evidence on this issue is more specific than that, and in one important respect it was not shown to General Ford. There are two aspects: (i) gunmen; and (ii) hooliganism.

5B-19 What was not shown in this context to General Ford in this context was the evidence going to the activity of the gunmen during the two weeks leading up to 30th January 1972 and the threat assessments in the two documents relating to the marches. What he was given was the following:

³⁴ Mr Clarke did not explain the basis of his suggestion that that the concept which became the approach of the document of 10th January originated in 8 Brigade rather than in HQNI or more particularly with Gen Ford. It will be recalled that the overall concept for the march of 30th January, ultimately contained in the Operation Order for Operation Forecast, was given to Commander 8 Brigade by Gen Ford over the telephone on 25th January. Gen Ford had been in Londonderry on 7th January and had ordered Commander 8 Brigade to prepare this plan and submit the document and it is at the least possible that the concept to go in the plan formed a part of their discussions. There is no possibility that the Brig would have submitted a plan with a central concept which contradicted any wishes expressed by the General.

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'Summarising the memorandum: it appears to propose RUC to play a large part in attempting to halt the march; local units to be engaged with the reserve of two companies of the province reserve being deployed at Drumahoe Factory.'³⁵ That summary took no account of an important rider, contained in paragraph 4f of the 10th January plan. It reads:

*This RUC cordon technique will not be used if there is a threat from gunmen. In this event Army action will be necessary from the time the entire parade has got under way.*³⁶

5B-20 While the document contains the inevitable reference to a threat from gunmen³⁷, it does not do so in the terms seen by the time the Operation Order for Operation Forecast was drawn up during the night of 26/27th January, by which time the threat included:

*IRA terrorist activity, to take advantage of the event, to conduct shooting attacks against the Security Forces, and bombing attacks against Business, Shopping and Commercial premises in the City Centre.*³⁸

5B-21 This paragraph raises the possibility that some information, albeit not precise, about IRA intentions did come to the attention of the Security Forces between 10th and 25th January 1972: it may be that the source was not an RUC source, but the one the Director of Intelligence referred to in his later signal to Commander 8 Brigade³⁹ (in that signal the source is described as 'known to' Brigadier MacLellan: this person may have come

³⁵ Day 254/008/06

³⁶ G49.303

³⁷ At paragraphs 4b (Some gunmen are certain to be sheltering behind the hooligan ranks) and 8 (Army action will only take place if the RUC have been brushed aside, or if gunmen are present from the start of the event)

³⁸ G95.565 paragraph 2(b)

³⁹ G81A.511.1. Gen Ford cannot now remember the outcome of D Int's visit to Londonderry in the week commencing 10th January 1972: see Day 253/077/03. And neither can the D Int, David: KD2.1 paragraph 7

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to the knowledge of the Brigadier when the Director of Intelligence visited Londonderry in the week commencing 10th January 1972).

5B-22 Alternatively, it may be that the Threat paragraph of the Operation Order (above) resulted from the level of IRA activity in Londonderry in the period under discussion, which Brigadier MacLellan described in 1972 as follows:

In the two weeks prior to the march, the IRA was particularly active within the City and the Security Forces were fired on in 80 confirmed incidents, in which 319 rounds were fired, and a total of 84 nail bombs were thrown at them. Security Force casualties during this period were 2 killed and 2 wounded. A feature of some of these attacks was the use of hooligan crowd cover.⁴⁰

5B-23 That this was a factor in General Ford's mind can be seen in his 1972 statement, which contains the following at paragraph 14: 'In the two weeks prior to the march, the IRA had been particularly active'.⁴¹

5B-24 While during the course of his evidence to this Tribunal General Ford was shown Brigadier MacLellan's signal of 24th January 1972, its precise terms were not drawn to his attention in this context. In the signal Brigadier MacLellan was reporting that the local police commander envisaged 'intense violence' if (as it was going to be) the march was stopped⁴², and increased violence that 'will continue for days'.⁴³ On any view the situation described would present a serious challenge to the Security Forces.

5B-25 Given the evidence that there is about the capabilities of the RUC (in particular the need for massive reinforcements given that the march was to

⁴⁰ Brig MacLellan's 1972 Statement, B1233 paragraph 19 . Confirmed to Lord Widgery at B1247

⁴¹ B1143

⁴² G70A.441.001 paragraph 1(b)

⁴³ G70A.441.001 paragraph 1(c)

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be stopped) an Army operation on 30th January 1972 was the only possible outcome. The issue has been debated before the Tribunal, but no one has been able to suggest that the RUC could have handled the violence that in fact took place.

5B-26 It was Chief Superintendent Lagan's predictions of the likely scale of the violence which also necessitated the provision of a reserve in a position to carry out an arrest operation. And those predictions were passed on to General Ford the day before he and Brigadier MacLellan spoke about the 30th January march on the telephone.

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CHAPTER 5C

PLANNING AT HQNI

5C-1 As at 25th January 1972, the earliest date in relation to which there is evidence of the thinking of HQNI as the 30th January march approached, General Ford, who knew that the march was to be stopped at some point along its route, had at least the following information available to him¹:

- (1) the local RUC's estimate of both the size of the march: eight thousand to twelve thousand; and the likely repercussions of putting into effect the decision to stop it: 'intense violence' and 'increased violence' and 'smaller marches' continuing for days;²
- (2) presumably sight or at least an awareness of an earlier RUC assessment that no trouble was anticipated³, which could no longer

¹ At Day 260/008/08 Sir Louis Blom-Cooper asked whether he had got in touch with NICRA, which had its headquarters in Belfast. General Ford replied that any information from NICRA would have reached him by way of RUC channels. The question was a naive one. The Security Forces were, entirely correctly anticipating that NICRA would not be able to control the hooligans; and NICRA was not in any event an organisation that could be trusted: both the military and Special Branch felt, also correctly that NICRA had an unhealthy relationship with the Official IRA: see INQ 2225's BSI Statement, C2225.3 paragraph 12 (a view Michael Mansfield QC chose to challenge with Gen Ford Day 260/056/17 but not with INQ 2225). As Col Roy Jackson told this Tribunal, when asked by Ms McGahy (at Day 285/029/22) whether he recalled receiving any intelligence to the effect that the IRA would not fire because of the numbers of people present, 'No. We could not allow that to be part of the operational plan.'

² Reported by Comd RUC N Div to Comd 8 Bdc, reported on up the chain of command by means of the latter's signal to CLF of 24th January 1972

³ G66.411. Somewhat surprisingly there has been a degree of controversy in relation to the status of this document: in his Opening Arthur Harvey QC referred to it as 'an appendix to document G64.380 ... the overall Special Branch assessment' at Day 045/005/21, and Barry MacDonald QC referred to it in similar terms as 'an appendix to the Special Branch assessment for the relevant period' when questioning INQ 2225 at Day 384/146/03. The problem may arise out of the misdescription of this document in the Index to Volume 3 of Bundle G: 'Appendix B to Special Branch Assessment for Period Ending 19 January 1972'. The first three headings of the Minutes of the Meeting of the JSC of 20th January (G63.377) are 1 Special Branch Assessment for the Period ended 19 January 1972, 2 Schedule of Incidents and Situation Report and 3 Forthcoming Events. The documents that follow the

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be relied on given the information he had received in Commander 8 Brigade's signal of 24th January;

(3) the information given to him about Londonderry on 7th January 1972, when he had had discussions with Commander 8 Brigade, Commander N Division and the Commanding Officer of the City Battalion Lieutenant Colonel Ferguson. So far as presently material this amounted to:

(a) the opinion of the senior commanders that if the march were to take place, however good the intentions of the organisers might be, the Derry Young Hooligans, backed up by the gunmen, would undoubtedly take control at an early stage;

(b) what he had been told about the DYH: gangs of tough teenage youths who had developed sophisticated tactics of brick and stone throwing, destruction and arson and who acted under the cover of snipers. Brigadier MacLellan later described the situation to Lord Widgery in the following terms:

Apart from the use of firearms against static military positions and the observation posts, a large number of unemployed youths gathered daily at the points of entry into the areas which were guarded by troops in order to attack them with stones and other missiles. Nail bombs were used with great frequency during these attacks. Great

Minutes carry those very same headings and appear in that very same order. The document in question was clearly produced for the Meeting, and relates to a different item on the agenda to the item under which the Special Branch Assessment was considered. This arrangement needs to be contrasted with the Minutes of the JSC Meeting of 27th January 1972, where there was no Special Assessment to be considered (as these were produced fortnightly) but Forthcoming Events is still an item on the Agenda, the discussion under this heading was recorded in the Minutes, and the document headed Forthcoming Events (G78.484, clearly produced weekly) is in the same place in the annexures, after the Schedule of Incidents and Situation Report for that period.

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*use was made by gunmen of the cover offered by the gangs of youths which made it increasingly difficult to engage the youths at close quarters in order to effect arrest. The situation has now arisen that the behaviour of these youths backed by gunmen and bombers, has created a serious threat, not only to the commercial areas of the city but also to the lives of the security forces whose duty it is to deal with them.*⁴

(c) what he had been told about the Army's current inability to deal with the DYH:

Against the DYH – described by the People's Democracy as "Brave Fighters in the Republican cause" – the Army is for the moment virtually incapable.

The Brigade Commander's analysis of this, set out in the first draft of his statement for the Widgery Tribunal, but no doubt consistent with that given when he saw the General on 7th January, was simple:

*Until July 1971 the Security Forces were able to contain these hooligan gangs, and a considerable number of them were arrested and charged with disorderly behaviour. It was also possible to conduct extensive scoop-up operations of these rioters, the last of which was in July 1971 when 27 of them were arrested in one swoop. But since July 1971, when the IRA campaign opened in Londonderry, and the shooting started, the hooligan gangs have been operating under cover of snipers in nearby buildings. This had the effect of strictly limiting the scope of hooligan arrest operations that we have been able to mount; no longer are we able to use snatch squads and out-flanking manoeuvres, as these entail deployment on foot and expose our troops to sniper fire.*⁵

⁴ 1972 Statement, **B1229 paragraphs 3- and 4**

⁵ **B1279.018**. In his BSI Statement Col Roy Jackson made great claims for his 'Derry Hook': see **CJ2.4 paragraphs 19- 21**. Col Jackson appears to have forgotten that the last such operation by his battalion took place as long before 30th January 1972 as 16th July 1971, a date which coincides with the time the Brigadier says that IRA sniping put an end to large arrest operations. The abandonment of operations such as these may explain why the CO of the other battalion resident in the area by 30th January 1972, Col Peter Welsh, had never heard of

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- (4) the statistics for injuries and damage to property in Londonderry so far that year. Gunner Ham had been fatally wounded on the Foyle Road just over a week before the General's visit⁶, and on 9th November 1971 Lance Corporal Curtis had been shot dead on the Foyle Road⁷ and Lance Bombadier Tilbury and Gunner Stephens had been murdered in a bomb attack on the Rosemount Police Station on 27th October 1971⁸. In all there had been twenty two Security Force casualties, seven of them fatal, in three hundred and eighty shooting incidents between 4th July and 13th December 1971. In the same period there had been two hundred and eleven explosions and one hundred and eighty nail bombs⁹;
- (5) possibly some information from the Director Intelligence, who had been to Londonderry on what is likely to have been 9th January and was to report on the 10th. There is no record of any such information and no one has any recollection as to whether there was any or not¹⁰, but David's later signal to Commander 8 Brigade, of 27th January 1972¹¹, does include the phrase 'the source known to you'; the most likely occasion for Brigadier MacLellan to have become aware of such a source was perhaps during discussions about the source on this visit.

the hook: Day 283/045/01, although Captain INQ 1495, a Company Commander (and previously, during the same tour, the Adjutant of) in 1 R ANGLIAN does not remember the phrase 'Derry Hook' being in use at the time: Day 304/052/16

⁶ 29th December 1971. *Lost Lives*, page 135

⁷ *Lost Lives*, page 117

⁸ *Lost Lives*, page 111

⁹ Future Military Policy for Londonderry, An Appreciation of the Situation by CLF, G41.263 paragraph 3

¹⁰ David, not surprisingly at this remove and given his age and health, does not now remember his visit: see KD2.1 paragraph 7, Day 330/007/01 and Day 330/070/13. It cannot be assumed after more than 30 years, that just because there are no contemporaneous records and no present memories, such information did not exist.

¹¹ G81A.511.1

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- (6) 8 Brigade's requirement for additional troops in order to contain the march.
- (7) at least one and probably more than one newspaper advertisement publicising a 'gigantic' march;¹²

CONCEPT OF OPERATIONS

5C-2 The outcome of HQNI's consideration of this material can be seen at least in part in Brigadier MacLellan's note of his telephone discussion with the Commander Land Forces on 25th January 1972: in accordance with the requirement that the march would have to be stopped, 8 Brigade was to block the path of the march and prevent damage to the shopping and Protestant areas of the City; in view of the large numbers of people anticipated and the increased levels of violence (hooliganism and gunmen), the blockades were to be protected by troops able to fire volleys of baton rounds and 'snipers' (the inverted commas appear in the Brigadier's note); the additional forces required to achieve the massive containment effort would be provided: the Province Reserve, 1st Battalion the King's Own Border Regiment (1KOB), the 39 Brigade Reserve, 1st Battalion the Parachute Regiment (1 PARA), and possibly a further battalion from outside the Province (in the event Tactical Headquarters and two companies of the 3rd Battalion the Royal Regiment of Fusiliers (3RRF)).

5C-3 Given the situation the military faced, these arrangements are what would be expected. The controversy here arises, of course, out of the specific task envisaged for 1 PARA:

In addition CLF 'saw' 1 PARA in reserve in the City to 'counter-attack ie go round the back to arrest 300 - 400 rioters.'

¹²KH8.5

THE NEED FOR AN ARREST OPERATION

5C-4 A significant amount of time has been spent with the senior officers during the course of this Tribunal on the issue of General Ford's decision to establish an arrest force for the march on 30th January 1972. In its deliberations the Tribunal will no doubt take note of the fact that there is no evidence from military or police witnesses that either the creation of a reserve for the purpose, or the idea of it 'going round the back', was in any way an unreasonable step. Such controversy as there is (and it is not as extensive as some have chosen to paint it) goes not to whether there should have been provision for an arrest operation but to whether the arrest operation should have been carried out by a local battalion or a non-local battalion, and in particular before this Tribunal, by 1 PARA.

5C-5 As Brigadier MacLellan said to Desmond Hamill¹³:

We had for months being trying to arrest hooligans – and if there was a suitable opportunity to scoop up a bundle at the barrier it had my approval and Lagan's approval.¹⁴

5C-6 And as Col Jackson told this Tribunal:

Although I did not question the, then, need to arrest hooligans, the actual arrest operation needed to careful planning in that (all agreed) there had to be separation between the hooligan element and the marchers ...¹⁵

5C-7 The reason for this uniformity of approach amongst the Londonderry commanders may derive from their common appreciation of the dangers

¹³ At Day 256/018/07 Gerard Elias QC put it to Gen Ford, as a criticism, that there had not been any consultation with 8 Brigade on the wisdom of carrying out an arrest operation: see Day 256/018/07. Mr Elias did not explain what he says the answer to any such consultation would have been. This quotation and the one that follows from Col Jackson show that General Ford would not have met with any objection from the Londonderry commanders.

¹⁴ At B1279.003.006

¹⁵ Supplemental BSI Statement, CJ2.48 paragraph 6

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posed by the DYH¹⁶, and there is no doubt that the idea of taking the opportunity that a large riot would present, to arrest a large number of hooligans all in one go, was attractive to many.¹⁷ General Ford and General Steele voiced this view during their evidence to this Tribunal¹⁸, as did Brigadier MacLellan to Desmond Hamill and in the first draft of his statement for Lord Widgery:

The event on the 30th January appeared likely to present a suitable opportunity to arrest a great number of these hooligans.¹⁹

5C-8 The overall desire to arrest the hooligans was no doubt felt more acutely in the context of a march of the size now expected. On a general level it was a military necessity for the Brigade to have the capacity to mount a large arrest force, and such a need could only be met by having a predesignated force in a central location ready to move, with flexibility, at short notice to deal with rioting that threatened the integrity of the containment operation. Even at this general level it would have been a dereliction of duty on the part of senior commanders not to have provided adequately for such a contingency.

5C-9 But the provision of such a force was not only a necessity at this general level. General Ford was asked a number of questions on this issue by Counsel to the Tribunal²⁰ and Counsel for one of the Interested Parties²¹,

¹⁶ See, for example, the description of them given to this Tribunal by Gen INQ 0598 in his BSI statement at C598.2 paragraphs 6-7 (not drawn to the attention of the Tribunal by anyone, despite its similarity to the views expressed by Gen Ford in 1972). The views Brigadier MacLellan held are set out above, at paragraph 5C-1(3)(b).

¹⁷ As a proposition it would not have surprised them: it was well within 'course one and a half' of Gen Ford's December 1971 Appreciation and the Tribunal has received Gen INQ 0598's photographs of 1 Coldm Guards carrying out an arrest operation by chasing hooligans down Rossville Street.

¹⁸ Day 254/049/17 and Day 266/045/09 respectively

¹⁹ Brig MacLellan's Statement, First Draft, B1279.018 at paragraphs 15 and 19

²⁰ For example at Day 254/049/17 and Day 255/053/11

²¹ Eilis McDermott QC at Day 259/070/10

the general tenor of which was critical. His answer was as it had been in 1972: the large number of people who were expected to attend this march, one purpose of which was to defy the ban on marches, meant that the hooligans would turn out in great numbers and were likely to be joined by others resulting in very serious violence, sufficiently serious to threaten the security of the City.

5C-10 The problem faced by General Ford in giving his evidence on this issue is illustrated by the following passage from his evidence:

Mr Clarke: Is it fair to say that you had reached a clear decision that it would be desirable, if opportunity had presented itself, to arrest several hundred of the hooligans with a view to halting their activities?

A: With a view to arresting them and putting them in front of the Courts.

Q: Yes. Was part of the thinking that on this occasion, that is to say 30th January, there would in all probability be a lot of hooligans, and also a large number of troops, so that this was an opportunity to arrest them that was not to be missed?

A: It was an opportunity to arrest them. And I also recall there was that message saying that it was very likely that, in the day, they would be determined to break right through to the Guildhall. And that was something which was very uppermost in my mind, because I foresaw not only violence against the barriers, but also, when the march was over, and all the speeches were over, and the last speakers like Bernadette Devlin had raised the temperature, I foresaw the DYH being reinforced by quite a number of the locals who sympathised with them anyway -- a proportion who did -- and all of them making for the troop positions.

Q: Why did you think that was going to happen, as opposed to the march tailing off, people going, listening to speeches that might or might not be very interesting and then everything dying down?

A: Because we had an intelligence report, which is quoted in one of these documents, saying that they were determined to get to the Guildhall. Was it not to avenge Magilligan, or something like that? I am afraid, I am sorry, I do not have the quotation.

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Q: If we could have the report back on the screen, it is G81A.511.5. It is item four that you are referring to; is it not?

A: May I just read it. (Pause). That is the one I am thinking of, yes.

Q: This is a report that I think you have no recollection of seeing?

A. No, but I must have seen it. I have no recollection. Well, I must not say -- I mean, I find it very difficult to believe the Director of Intelligence would give information to one of my brigade commanders, but would also not give it to the GOC, to whom he is responsible for all intelligence -- and this was a very important one -- and possibly either he -- either the GOC or he would give me a copy, or drop by and tell me the content or show me the content. I think it is just - - things happened that way. I mean, he would not tell the Brigade Commander only. I mean, that would be very irregular.

Q: Two points: paradoxically, this signal which was sent on 27th January is in fact highly unlikely, is it not, to have affected the basic plan, which must have been being put into operation during the beginning of that week?

A: Highly unlikely.

Q: Secondly, if one looks at the signal, it indicates that marchers will be armed with sticks and stones, the IRA will use the crowd as cover, and the marchers are determined to get to the Guildhall come what may. Why should one assume from that that, if they were prevented from going to the Guildhall and everybody went off to a meeting at Free Derry Corner, that after the meeting was all over they would all come back again?

A: I thought the temperature would be raised by the later speakers; not the early speakers, the later speakers.²²

5C-11 General Ford may well have been mistaken in thinking that he had relied upon the Director Intelligence's Signal to Commander 8 Brigade of 27th January. That was a document the General had no present recollection of

²² Day 254/049/17

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seeing (the sight he had of it would, after all, have been more than thirty years ago). Mr Clarke failed, however, to show General Ford the only document to which he could really have been referring, Brigadier MacLellan's Signal of 24th January²³, containing Chief Superintendent Lagan's opinions as to what would happen in terms of violence in the event that the march was at some stage stopped:

Bravo: He believes massive confrontation with SF will shatter such peace as is left in City, create intense violence and remove last vestiges of moderate goodwill etc

Charlie: He forecasts increased violence and smaller marches eg factory workers, WAC etc will continue for days until ban is clearly seen to be impossible to impose effectively (as SF cannot seal Bogside permanently without bring the City to a halt).

- 5C-12 Mr Clarke returned to this issue at Day 255/53/11, when General Ford was again not shown the Signal of 24th January. It was of course because of the concern of prolonged rioting that the warning order Headquarters 39 Brigade received in respect of the Londonderry operation was for 1 PARA to be away for up to four days.²⁴
- 5C-13 Although Mr Rawat attempted, when questioning General Steele, to present the challenges facing the Security Forces in the run up to 30th January 1972 as akin to those presented by the regular Saturday afternoon matinee²⁵, it is clear that General Ford was not alone in taking the Chief Superintendent's predictions to heart. Brigadier MacLellan's description to Lord Widgery of the seriousness of the position applied as much at this, the planning stage, as it did at the moment he ordered the launch of the arrest operation:

²³ G70A.441.001

²⁴ B1208.35 paragraph 7.9

²⁵ Day 266/044/09

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A [to Mr Stocker]: I had not that advice [ie Lagan's advice that the march should not be stopped] in mind but the advice about hooliganism. The situation as I saw it about the hooligans was this, that if we had not done anything about it there would have been arson, hijacking of cars, and so on, in William Street. This would then have led at the end of the meeting, which would have presumably been fairly emotional, to a number of people at the meeting joining with the hooligans with a grave risk of them breaking through the barricades or a barrier into the City Centre, rioting going on in the commercial areas, my reserve having to be launched and general control being lost of the situation. This was a factor I considered.

Q: I think that leads on to the next question, in other words, you considered that it was essential in the interests of security to order the arrest operation?

A: I did.²⁶

5C-14 It had no doubt been this thinking that had resulted in the Brigade Major including, with the Brigade Commander's approval, the following passage in the Threat assessment section of the Operation Order for Operation Forecast:

Hooligan reaction to the general excitement of the event, in the form of stone, bottle and nail bombing of troops, arson of private premises and vehicles, and a high degree of violence throughout the City. Although this violence is expected to continue throughout the event, it will intensify during the closing stages of the event, especially in the William Street/Rossville Street area; it is possible that hooligan violence may continue thereafter for several days.²⁷

²⁶ At B1277. At Day 255/055/22 Mr Clarke asked General Ford whether he had 'discussed with Brig MacLellan [his] view that, even if things appeared to die down at the barriers, the likelihood was that the hooligans would unite with others after the march and storm the barriers.' General Ford could not remember, but the answer Brigadier MacLellan would have given had he done so is available for all to see.

²⁷ G95.565 paragraph 2(c)

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5C-15 The Notes prepared for the Co-Ordinating Conference include the following²⁸:

3. Hooligan reaction – continuing after event.

5C-16 It is with this evidence: (i) as to the general desire amongst the local commanders for the DYH to be arrested; (ii) as to the wish of each of the local infantry battalions to carry out the operation; and (iii) as to the specific reasons why this might be necessary on 30th January, in mind that the Tribunal needs to consider a subsidiary criticism of General Ford put by Gerard Elias QC.²⁹

There was not, was there, any real consultation with brigade on the wisdom of carrying out an arrest operation?

5C-17 Mr Elias did not explain to the Tribunal or to General Ford what it was being suggested the result of any such consultation would or should have been, but the reality of the position was surely obvious : the arrest operation was approved by the Brigade Commander, who definitely knew what Chief Superintendent Lagan was saying; and the local commanders, who may or may not have known the Chief Superintendent's views, actually wanted to carry it out themselves.

5C-18 To the extent that there was disagreement in 8 Brigade with what was proposed by HQNI the debate revolved around the Commander Land Forces' decision that 1 PARA would provide the arrest force.

SELECTION OF 1 PARA

5C-19 Attempts have been made, during this Inquiry and before, to argue that 1 PARA was the wrong battalion for the arrest task on the grounds that it was not appropriate to use either (a) any battalion that did not know Londonderry; and/or (b) a battalion with the reputation of 1 PARA, either

²⁸ G88.537 Serial 2

²⁹ Day 256/018/07

in the sense that it was too robust for Londonderry or that it behaved improperly.

5C-20 So far as the claim that 1 PARA behaved improperly was concerned, it is an indication of the paucity of the evidence that the issue was barely raised with General Ford.³⁰ Simon Hoggart had written his article in *The Guardian* of 25th January 1972³¹, but his sources, the two junior officers, had come up with very little (in reality just the well known incident in Andersonstown the previous August, the rights or wrongs of which are now impossible to resolve) and he had never bothered to speak to the allegedly complaining Commanding Officers about whom he was writing; on any objective view the behaviour of one or even two members of C Company 1 PARA at Magilligan Beach the week before could never have been sufficient to inhibit the operational availability of a much needed reserve battalion; and it took Sgt O to point out that Mr Macdonald's reliance on an incident during the first week of Internment when five Catholics were shot dead was an incident involving a completely different battalion, 2 PARA.³²

5C-21 General Ford's evidence has always been to the opposite effect: that for perfectly proper reasons the character and experience of 1 PARA, together with the surrounding circumstances viewed as a whole, made them an entirely reasonable choice for this operation. His reasons for choosing 1 PARA are set out in paragraph 5.2 of his BSI statement:

5.2 I selected 1 PARA for this part of the operation for the following reasons:

³⁰ Mr Clarke, at Day 254/027/15, limited his questions to 8 Brigade, asking the General whether he ever became aware, before 30th January 1972 or afterwards, of disquiet among local units as to the use of 1 PARA on the day: he replied that he did not, and none of the Interested Parties attempted to contradict him.

³¹ L7-L9

³² Day 335/156/22

FS7. 695

(i) The units in 8 Brigade were already committed in areas which they knew around the perimeter of the City.

(ii) The City battalion (that is the one covering the William Street area etc) was 22 Light Air Defence Regiment Royal Artillery. This was not an infantry battalion but an artillery regiment temporarily being used in an infantry role and was not suited for a major arrest operation.

(iii) The Province Reserve (1 KOB) were my reserve. They only became operational on 13 January 1972 and had no experience of arrest operations, major or minor. A major arrest operation would certainly have been beyond their capabilities until at least the middle of February or so.

(iv) As the reserve battalion of 39 Brigade in Belfast, 1 PARA were not committed to permanently holding any particular area.

(v) The third Brigade in Northern Ireland had no reserve battalion.

(vi) 1 PARA had been in the province for well over a year. They had much experience, more than any other battalion in Northern Ireland, both in carrying out arrest operations and in coming under and countering terrorist fire.

(vii) They could be spared for three or four days by Commander 39 Brigade.³³

5C-22 None of the local commanders subscribed to any argument that 1 PARA's robust approach was such that it should be ruled out. General Ford was not alone in his view of the appropriateness of using 1 PARA: General Tuzo must have agreed³⁴, and General Kitson³⁵ certainly had a high opinion of the battalion for its work in Belfast. But that view was not limited to senior commanders outside Londonderry. General Steele told this Tribunal:

³³ **B1208.031**

³⁴ See Gen Ford's evidence at **Day 254/018/23**. This must be right, given that the 39 Brigade was going to be without its reserve for a number of days.

³⁵ BSI Statement, **CK1.7 paragraph 2(e)**.

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I knew that they were very tough and fit; I knew they were very well trained; I knew that they were vastly experienced in internal security operations in Northern Ireland and I personally thought they would do a very good job.³⁶

5C-23 Colonel Ferguson of 22nd Regt was of a similar view:

My thinking was that 1 PARA were a very mobile and well equipped unit and that we should take advantage of the fact that many from the Creggan were going to be out on the march. ... I would have had no reason or justification to say that 1 PARA should not be used in an arrest role.³⁷

5C-24 As was General INQ 0598, Commanding Officer of 1st Battalion the Coldstream Guards (1 Coldm Gds) at the time:

1 PARA were the [Province³⁸] Reserve Battalion, based in Belfast and it was entirely sensible that they would be involved. As the Province Reserve Battalion their role was to support the resident battalions where and whenever needed. I did not think it was surprising at all that the paras were going to be involved. We could have done the job they were given but in order for us to have done so 1 PARA would have had to come into Londonderry and take over our regular duties. They would then have had to be relieved by us after the march.³⁹

5C-25 It is important to consider what the two other 8 Brigade Commanding Officers, Colonel (now General) Welsh of 2nd Battalion the Royal Green Jackets (2 RGJ) and Colonel Jackson of 1st Battalion the Royal Anglian Regiment (1 R ANGLIAN), have actually said on this issue. Of the two of them, only the Commanding Officer of 2 RGJ had any real reason for

³⁶ Day 266/049/06

³⁷ BSI Statcmnt, **B1122.10 paragraph 54**. This passage was not drawn to the attention of the Tribunal by Counsel to the Tribunal (on this occasion Mr Roxburgh) and was not challenged by any of the Interested Parties. See in contrast the interest in the evidcncc of Gen Welsh and Col Jackson to the contrary, discussed below.

³⁸ Corrected in oral evidcncc to 39 Brigadc: Day 272/002/11

³⁹ BSI Statcmnt paragraph 15, at C598.3. This passage was not drawn to the attention of the Tribunal by Counsel to the Tribunal (on this occasion Miss McGahcy) and was not challenged by any of the Interested Parties. See in contrast the interest in the evidcncc of Gen Welsh and Col Jackson to the contrary, discussed below.

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speaking up at the time, as it was his Adjutant who had complained about the conduct of one or two members of C Company 1 PARA at the Magilligan demonstration the previous weekend. While the journalist Peter Taylor has recorded⁴⁰ an anonymous officer assumed to be General Welsh as saying, 20 years after the event, that he had rung the Brigade Commander to say that it was 'mad' to bring the Paras in⁴¹, the context for that comment was no wider than what had taken place at Magilligan the previous weekend, and, as General Welsh himself pointed out in his evidence to the Inquiry, Magilligan was an event which resulted in no known casualties, to which he paid little attention at the time.⁴²

5C-26 General Welsh was specifically asked about the Peter Taylor passage at Day 282/33/5. The effect of his answers is that little weight can be attached to it as a record of his thoughts at the time. The General made two specific points:

Ms McGahey: You are the Royal Green Jacket senior officer who spoke to Peter Taylor, is that right?

A: I am, but I certainly did not say to Pat MacLellan that it would be mad to bring in the Paras. One does not speak to one's superior officer like that.

Q: Did you tell Peter Taylor that you had told Brigadier MacLellan it was mad?

A: I dare say I did. 20 years -- I think I saw Peter Taylor 20 years after the event. I might have -- I have no idea what word I used. Peter Taylor says I said "mad", that was very much hindsight at that stage. All I can promise you, I would not have said, "You are mad to do it" to Pat McClellan.

⁴⁰ Peter Taylor, "Provos", T234 page 117

⁴¹ The passage reads: 'Not all Army officers thought it a good idea given what had happened at Magilligan the weekend before. One of the Royal Green Jackets' senior officers had phoned the Brigade Commander, Brig Robert MacLellan, to say it was 'mad' to bring the Paras in, only to be told by the Brigadier that he had his orders and he was going to carry them out'.

⁴² Day 282/012/09, Day 283/030/09 and Day 282/014/24.

Q: Was it your view that it was mad to use the Paras?

A: No, I have told you that -- no. I tell you that I thought it possibly unwise after their behaviour at Magilligan, and anyway I wanted the job⁴³.

5C-27 And nothing should be read into the fact that the Brigadier responded by just saying that he had had his orders:

Q: Did you gain any impression as to whether Brigadier MacLellan was content with the orders he had received?

A: With the?

Q: Orders he had received?

A: I have no reason to think he was not and one is not used to discussing, not with your boss, whether he liked his orders or not. It was as much a personal thing as anything else. You know, one did not join the Army to do nothing and apart from one battalion -- one company under somebody else's command, we had more or less nothing to do on that day.⁴⁴

5C-28 Whatever the precise words he used were, General Welsh accepts that his own wishes - to be more involved⁴⁵ - had made a contribution to the view he was expressing. This is a problem which presents itself rather more acutely in the case of Colonel Jackson, who may well have had rather less insight. So far as any attack on the integrity of 1 PARA (rather than any complaint that a non Londonderry battalion was going to carry out the arrests) was concerned, Colonel Jackson's present day opinions are contained in the following passage from his evidence:

Ms McGahey: I would like to turn now to the co-ordinating conference. You have headed it the "Orders Group

⁴³ Day 282/037/13

⁴⁴ Day 282/036/08

⁴⁵ When Mr Harvey put it to Gen Welsh that he had contacted Brig MacLellan 'to ask why your battalion was not to be used in the arrest operation', Lord Saville intervened to point out that that was not what the General's BSI Statement said at paragraph 13, namely that he asked the Brigadier why 2RGJ 'could not take a more active role'. Day 282/059/13.

Meeting" of 28th January. Could I have paragraphs 34 and 35 on the screen, please. In paragraph 34 you identify those who attended the co-ordinating conference on 28th January. You say you had first learnt from the brigade order that 1 Para were to be in Londonderry for the march on the Sunday, and you were not happy with this. We know from your statement that you were not happy with the role given to 1 Para, but this rather seems to suggest you were unhappy with the fact they were going to be present at all. Is that right, or is that a wrong way of interpreting this?

A: No, I think you are right. I would have been rather more pleased if 1 Para had stayed in Belfast.

Q: Why were you unhappy about the fact that they were to be present at all?

A: We had heard about the previous confrontation the week before, and --

Q: Was that at Magilligan?

A: At Magilligan; from not only the military sources, but also civilian contacts we had, and they were not happy with what happened at Magilligan.

Q: Can I stop you there. Who were the civilian contacts that you had?

A: These would be through the RUC; this would be through me walking round, talking to people I knew, that I had previously known after -- previously known during the 16 months we had been there; people I had talked to. They did not like the idea, in the nicest way, of the red beret being in Londonderry. They thought that they would be in some way intimidated.

Q: Sticking for a moment with your civilian sources, do you remember now the names of anybody that you knew who could be a source of information about what was going on in Derry?

A: It is some years now, it is 30 years; and my wanderings around the Bogside and Creggan, I do not think they would be probably living in the area any more.

Q: Some individuals were prominent civilians within Derry, were they not? An obvious example is Mr John Hume. Did you know Mr Hume?

A: Yes, I did. I met Mr Hume on a number of occasions.

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Q: Did you know him at the time?

A: Yes, I had met him previously. Not on the 30th January, shall we say, but I had met him previously, yes.

Q: Did you discuss with him the events at Magilligan?

A: No, I did not.

Q: Did you discuss with him before the march on 30th January –

A: No.

Q: – what was likely to happen on that march?

A: No, I had no input at all on 30th January.

Q: Do you remember now any other prominent citizens of Derry with whom you held discussions in January 1972?

A: No, I do not.

Q: You have said that you had heard about the previous confrontation at Magilligan, and you had heard from various sources that people did not want the Paras back. Was that because the Parachute Regiment were alleged to have behaved with unnecessary force?

A: Yes, I think so. That would be correct⁴⁶.

5C-29 Colonel Jackson's attempt to give direct evidence of feelings against 1 PARA at the time is unconvincing, to say the least: it is based on speaking to civilians during his 'wanderings around the Bogside and Creggan', an activity that must have ceased some considerable time before January 1972. (It was a feature of Col Jackson's evidence to this Tribunal that he appeared to have difficulty in distinguishing the state of affairs at 30 January 1972 from the early days of his tour, when there was contact between the military and Catholic civilians). Col Jackson was in any event unable to name a single one of these contacts and did not discuss the march with John Hume. His unconvincing answer may have been

⁴⁶ Day 285/016/21

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because of the more realistic sentiment underlying his claim that 1 PARA were not wanted:

Q: Your objection was that it was not that the Paras would go in and do a bad job, but that your men were the most appropriate for the job?

A: We would do a better job, I think⁴⁷.

5C-30 The real basis for Col Jackson's current views emerged during the questions and answers on this issue:

Q: Was there any reason to believe that that would happen again?

A: Well, we were in Londonderry, and I think the newspapers we had covered Belfast, and I think a lot of people read into the general newspapers and the media that in fact, with due respect to the regiment, you know, they were a tough regiment. It was not just us in Londonderry saying it; I mean, it was the whole province saying it. By "tough", I mean they were tough, they were brought up to be tough. We were just as tough in Londonderry, but we were not allowed to be tough because we were restricted by Headquarters Northern Ireland for anything we might think of doing, shall we say.

Q: Was there any reason to think that the Parachute Regiment would not equally be restricted by HQNI from being tough if it had a role on 30th January?

A: I had no idea what the Parachute Battalion was told, and this, I think, is one of the gaps in my education, because I do not know what they were told and whether they had discussed anything on 30th January with either Brigadier MacLellan or General Ford. I was not privy to any discussion of how the action should be carried out.

Q: As far as you were concerned, it was perfectly possible that the orders given to the Parachute Regiment were: "We know that you are particularly tough; we know you have a reputation for toughness; but on 30th January you must act with restraint"?

⁴⁷ Day 285/021/08

*A: I would not like to comment on that. I have no idea.*⁴⁸

5C-31 The only evidence before the Tribunal of any attempt to report on this issue from the military perspective is the article by Simon Hoggart, to which reference has already been made. Colonel Jackson has presumably been reminded of it as a result of the proceedings of this Tribunal.

5C-32 Where there may have been genuine dissension from the two resident Commanding Officers is as to the wisdom of conducting the arrest operation with a battalion from outside the Brigade, that did not possess knowledge of the ground. And both now claim to have made contact with Brigadier MacLellan to express their concerns: General Welsh's evidence as to his effort to change the Brigade Commander's mind has been referred to above; Colonel Jackson's claim to have done the same thing is more problematic and less convincing. Although he claims in his BSI Statement⁴⁹ to have discussed the issue with the Brigadier after the Coordinating Conference, when interviewed for the Channel Four film 'Sunday' he said:⁵⁰

I kept trying to go in and see the MacLellan, knocking on his door, but I was told he was busy all day.

5C-33 This note is consistent with the fact that neither the Brigade Commander (who did remember being spoken to by the Commanding Officer of 2 RGJ) nor the Brigade Major can remember any discussion on the issue with Colonel Jackson.

5C-34 Whether or not both or just one of them said it in 1972, it is important to analyse what each of these officers is, and perhaps more importantly, is not saying. General Welsh has told this Tribunal that his complaint was that 2 RGJ did, and 1 PARA did not, know the ground on which the arrest

⁴⁸ Day 285/019/08

⁴⁹ CJ2.8 paragraph 40

⁵⁰ The typed note is at CJ2.55

operation was to take place; and that they knew, and liked, the people of Londonderry and understood how best to approach them (ie more sensitively, perhaps, than 39 Brigade did the people of Belfast).⁵¹

5C-35 But the primary factor was knowledge of the area, and General Welsh was certainly not saying that these factors were or should have been decisive:

Q. Did you consider, when you made your representation to the brigadier, when you made your communication to him, were you considering then the benefits of using local troops, quite apart from what you may have seen then as the detriment of using the Paras?

*A: The main advantage was the local troops knew the area, but then how overriding that should be, I do not know.*⁵²

5C-36 Furthermore, the General was sensitive to the fact that his opinions were coloured by the fact that he thought in any event that his Battalion should have been selected:

Q: Muddling up what was already on the ground is on the scales, if you like, on one side and the benefits of using what I might call the local troops was on the scale in the other; would that be a fair way of looking at it?

A: Yes, but I am prejudiced about the use of the local troops.

Q: Entirely understandably. Putting aside your prejudice if you are able to?

*A: I cannot.*⁵³

5C-37 Colonel Jackson could not put aside his prejudices either, but lacked the insight of General Welsh.⁵⁴ The extent to which his evidence has been relied upon during the course of the Inquiry necessitates a close

⁵¹ Day 282/034/25

⁵² Day 282/058/16

⁵³ Day 282/058/04

⁵⁴ An effect, perhaps, of the bitterness he still feels at the what he perceived as the lack of recognition his Battalion received at the end of its tour: see Day 285/81/17

FS7 . 704

examination of what Colonel Jackson has in fact said. His start point on this issue was that 'no military commander would place a battalion in a situation where the troops did not know the ground over which they may be required to deploy nor have any knowledge of local conditions'⁵⁵ (an ideal recognised throughout military history more in the breach than the observance), 'military madness' as he put it to Channel Four⁵⁶. But when asked about it during his oral evidence:

Q: ... As far as you were concerned, you thought a military commander would not make this decision?

A: Absolutely.

Q: Therefore you thought it must have been a political decision?

A: Correct.

Q: Did you have any reason, beyond your disagreement with the decision, to think that it was a political decision?

A: Well, I mean, that was it; I did not think a military commander would do it, so it must be political.

Q: As far as you knew this decision could in fact have been taken at a military level at HQNI?

A: It could have been.

Q: You say in paragraph 42 your belief that, with Brigadier MacLellan's short experience of operations in Londonderry, he had been sat upon by those also with little knowledge of Londonderry. Did he tell you anything to give you that impression?

A: No. It is probably a chap who served in Londonderry for quite a few months, and you get newcomers coming in. I mean, in the nicest way -- I mean, General Ford had only been in Northern Ireland for six months or so; Brigadier MacLellan less than that; and I think CO 1 Para had only arrived in July 1971 or something. That was after our -- if

⁵⁵ BSI Statement, CJ2.9 paragraph 41

⁵⁶ CJ2.56

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I may say so -- our nice quietish period in Londonderry. So they had only met hostile reaction, shall we say, in their period of -- period in Northern Ireland.

Q: Is it simply your view that decisions had been made -- and wrong decisions had been made -- by those who did not have the experience that you did of Londonderry?

A: Yes. I mean, you may think that rather peculiar, but I had been there and I had certain views. It is probably that I thought -- inaccurately, as it happens -- that I should have been consulted, or should have been asked to have an input -- only an input -- into what they were thinking⁵⁷.

5C-38 Colonel Jackson's feeling that he should have been consulted, when combined with his bitterness at the lack of recognition his Battalion received when they left Northern Ireland and his evidence about being excluded from the supposed meeting at Ballykelly on the evening of 30th January, (of which there is no other evidence and, given the overwhelming probability that someone else would have remembered a meeting attended by the officers who are said to have been there, can only be a figment of his imagination), provides the context for his evidence to this Inquiry. Nevertheless, the chain of command dictated that General Ford communicate with the Brigade Commander. This is the advice that Brigadier MacLellan would have received from his Brigade Major, who had been in the City longer than Colonel Jackson and who had a wider (ie Brigade level) perspective on its problems:

Q. ... Did you think there were going to be any difficulties associated with using a unit from another city as the arrest force?

A. No, I did not, so long as there was time for proper reconnaissance and so long as there was time for the

⁵⁷ Day 285/040/06

soldiers to receive proper orders groups at battalion, company and platoon level, I saw no difficulty about it.⁵⁸

5C-39 It is in any event clear that Colonel Jackson, contrary to his bold statements about military madness, would (as would the Brigade Major) have been satisfied with the selection of an outside battalion had there been provision for reconnaissance; and that reconnaissance, a standard step in battle procedure which General Ford was entitled to expect, would have remedied the problems he says he foresaw. It is also clear that, despite his insistence that he should have been consulted, consultation with Colonel Jackson would have produced nothing more than the obvious - the need for information and reconnaissance.

Mr Elias: You told the Tribunal yesterday -- I do not want to go back over the ground as to why it was inadvisable in your view for 1 Para to be used for the arrest operation, but you did answer Ms McGahey yesterday and tell the Tribunal, you may recall the exchange, you did not know what the Paras had been told before they went in. What I wanted to ask you, Colonel, is this -- it may be it is rolled up with another question which I will ask you at the same time so you can consider the two. You also had indicated you made the brigade major aware that you were prepared to speak with Colonel Wilford if it would assist him?

A: Correct.

Q: My questions, therefore, are these: what should the Paras have been told, if they were to be used as the arrest operation and/or what should or what could Colonel Wilford have been told or advised by you that would have assisted him?

A: If I could do the second one first: there were certainly routes into the area where the arrest operation was going to take place and the obstacles on those routes and the best way round the routes, through it, depending on what had been agreed with brigade of the arrest operation. From my

⁵⁸ Day 266/061/13

own point of view, if I could now revert to the first one very quickly, is that I would have discussed with the brigadier what my arrest philosophy was for the day⁵⁹, because it would not necessarily have been purely my own battalion involved, it would have been companies of other battalions in their blocking positions. One can always look in hindsight at, shall we say, a nice little battle area, and I would have preferred, of course, for my whole battalion to have been involved with me, rather than anybody else in blocking positions.

Q: Leaving that aside, because I am asking that you consider the position, the Paras having been directed to carry out the operation, what should they have been told?

A: Well, they should, they should have discussed with the brigade commander their modus operandi and how they intended to do the arrest operation.

Q: You have told us about the importance of the geography; I do not go back over that. At the end of the day, Colonel, so we know your position, are you saying that the use of the Paras for this operation was not in fact remediable, if you like, by any further detail that might have been given to them, or are you saying if they were going to be used, they could have been put right, as it were, by there being sufficient information?

A: Yes, I think it would have been rather nice, when I went to Belfast, for instance, the first thing I did was to get to know as much as I could about the area in which I was operating. I know the Paras were in and out in less than a day, but this is what should have been discussed virtually on the ground with the brigadier.

Q: Had that been discussed in sufficient detail, then the Parachute Regiment could appropriately have carried out the task; is that your position?

A: If they knew the access areas; if they had recce'd them. In Londonderry, as everyone will know, the access areas changed on a daily basis, because something – an alleyway may be blocked, a vital alleyway. People had to know. It had to be patrolled, so access must be. And there was this

⁵⁹ Despite the apparent strength of his views, Col Jackson does not appear able to answer the question, which is: what should 1 PARA have been told?

thing, I informed all battalions coming into Londonderry, was this business about the echo in Derry, because of the topography and geography, which I believe you know anyway, in that it is very, very difficult, without seeing the flash or a burst of smoke, to know the location of gunfire or explosions and in Derry it was terrible, you could look one way and the explosion is the other way and until you know about that, and you have to be very, very careful, you can get disorientated.⁶⁰

5C-40 Colonel Jackson also recognised the military reality that knowing the ground is an ideal that cannot always be met and that reserve units very often do not know the ground over which they have to operate (precisely the position 1 PARA were in as the 39 Brigade Reserve):

Mr Harvey: ... [referring to 1 R ANGLIAN end of tour report] Can you say what disadvantage a soldier would have in seeking to effect an arrest operation in the heart of the Bogside without any knowledge of the topography or the tactics of the local population, a section of whom may have been involved in unruly or disorderly or even riotous behaviour?

A: I know you are taking a specific instance in view, but the point is of course that the Army are deployed on many occasions in areas they are not conversant with, myself in Belfast in 1971; and there you have to learn quickly, if I may say, by reconnaissance, prior reconnaissance.⁶¹

5C-41 And had Colonel Jackson been consulted by the Brigadier, the likelihood is that so would CO 1 Coldm Gds and CO 22nd Regt. Their views have been set out at paragraphs 5C-23 and 5C-24 above. Both Mr Clarke and Mr Elias asked General Ford whether he had or should have consulted the Commanding Officers in 8 Brigade as to who should be selected to do the arrest operation. Both Colonel Jackson and Colonel Welsh might have said that they should do it, but not necessarily for the right reasons. In the

⁶⁰ Day 286/086/20 Col Jackson is talking about reconnaissance and the provision of information, both steps Gen Ford was entitled to expect as a standard step in battle procedure. This applies equally to Col Jackson's answers to Arthur Harvey QC at Day 287/008/10 and Day 287/016/12

⁶¹ Day 287/018/08

unlikely event that the General had received such views through the Brigade Commander, it was the General's task to weigh up the competing arguments and make the decision.

5C-42 There are two further similarities about General Welsh and Colonel Jackson: both have said that the outcome of the operation on 30th January 1972 could have been the same as it turned out to be had their battalions done the operation and both (although one now cannot accept it) thought in the wake of the event that they were glad that they had not got the job. As to the first of these issues, General Welsh put it this way:

*I dare say what happened might have happened, the same or worse, had we been there.*⁶²

5C-43 Colonel Jackson told the Tribunal:

*If we would have gone in, I am sure – well, I do not know what would have happened.*⁶³

5C-44 And even when pushed harder:

Q: And had the Royal Anglians been given the arrest operation, you have absolutely no doubt that they would have been able to carry it out with professionalism?

A: Yes. Of course, this is supposition.

Q: You do not wish to go there, Colonel; I entirely respect that.

*A. I was not there.*⁶⁴

5C-45 This evidence is entirely consistent with what he had written in his first statement to the Tribunal:

*But I do not say the results would have been any different.*⁶⁵

⁶² Day 282/059/05

⁶³ Day 285/048/14

⁶⁴ Day 287/023/23

FS 7. 710

5C-46 General Welsh dealt with the second issue as follows:

My reaction at the end was, "Thank goodness we did not have that job".⁶⁵

5C-47 It is not surprising that from his present standpoint Colonel Jackson cannot now see himself holding such a view, but his Adjutant of the time has a clear recollection that he did:

I do not recall there being any great concern at the time about the use of 1 Para. As Adjutant, I would have been involved in the making of the 1 Royal Anglian plan for the day, but I have no recollection of doing so. All I recall is talking to [Colonel Jackson] about what we were expected to do. I remember he was pleased that our battalion was to be holding the ring rather than mounting an arrest operation, because there was always so much work to do afterwards, taking rioters to court, etc. He was even more pleased after the events of the day unfolded that that was what we had been doing.⁶⁷

5C-48 Rather than denying that this was his view in 1972, Colonel Jackson was only able to say that he could not 'recognise himself' in the statement⁶⁸, after which he returned to his (in military terms, unprofessional) theme of affront, both personal and now collective in the form of the soldiers of 1 R ANGLIAN, in relation to whom he had later to accept he had no evidence⁶⁹ and none of whom expressed any such view to this Tribunal. His later answer, that he 'did not obviously broadcast the fact that I was not happy'⁷⁰ is equally unsatisfactory.

⁶⁵ BSI Statement, CJ2.14 paragraph 66

⁶⁶ Day 282/059/06

⁶⁷ BSI Statement, C1924.3 paragraph 11

⁶⁸ He used this phrase twice, at Day 285/038/08 and Day 285/038/23

⁶⁹ See Day 287/020/19, where, despite the leading questions from both Mr Harvey and Lord Saville, Col Jackson cannot say he has any evidence of such feelings on the part of the soldiers in his battalion.

⁷⁰ Day 286/067/13

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5C-49 When looked at carefully Colonel Jackson's presently expressed views on the selection of 1 PARA for the arrest task on 30th January 1972 do not amount to criticisms at all, certainly not at the level of General Ford. But even if they did, if there were valid arguments for and against General Ford has simply made a reasonable choice between two alternative views. The greater weight of the evidence of military opinion the Tribunal has heard on this issue is, moreover, in agreement with the General.

5C-50 Some specific arguments were raised with General Ford over and above, although related to, knowledge of the ground:

- (1) On the basis that once the barriers were closed no one would be permitted through, Mr Clarke expressed surprise at General Ford's evidence that it was better to have the local troops with knowledge of local personalities, particularly emergency personnel, on the barriers:

Q: The note of puzzlement in my voice arises because, from everything⁷¹ we have seen, it appears to have been the plan that, up to a certain point, the barriers would be open and people could go through them. They would then be closed and nobody would be allowed to go through them whether they were a nurse, a doctor or whomsoever; was that not the position?

A: That is the position.

Q: What is the relevance of 1 Royal Anglian, for instance, knowing who were local nurses and midwives?

A: Because if you have a strange -- a new unit who are in there, they will not know the local personalities.

Q: Why is it relevant if nobody is going to be let through once the barriers are down?

.....

⁷¹ While telling the General that this was the case Mr Clarke did not identify any document or evidence to which he is referring.

Q: But is the position not that there was a containment line, effectively, around where the march was going to go, insofar as you got close to the city centre, and either the barriers would be open -- in which case anybody -- good, bad or indifferent -- could go through; or they would be closed, in which case nobody could go through. And it did not matter what knowledge you had about who was good and who was bad.

A: I do not think it was as simple as that on the ground ...

⁷²

In fact, far from everything available to the Tribunal indicating that no one at all would be allowed through the barriers, the Operation Order for Operation Forecast (as approved by General Ford) provides:

Blocking Points

(1) Each blocking point must be constructed so that the road can be completely closed if required. There will be the odd exception, mainly on a medical emergency basis, when people will be allowed to pass through the check point one by one.

(2) No vehicles are to be allowed to pass through the blocking points once they have been established, except for those carrying passengers, necessarily, to or from a medical or bonafide civil emergency.⁷³

- (2) A number of Counsel⁷⁴ relied on the idea of the 'quite complicated geography of the Bogside' without ever explaining to General Ford the respects in which it was being said that the area over which the arrest operation might be conducted was complicated, and notwithstanding the fact that the essence of the case that they were

⁷² Day 254/013/24

⁷³ G95.568 paragraph 7(c)

⁷⁴ Mr Clarke at Day 254/020/05, from whom the phrase 'quite complicated geography of the Bogside' is taken; and Mr Elias at Day 256/025/01. Mr Elias bases his question on Gen Ford's memo to the GOC of 10th January 1972 at B1128 paragraph 2, but that is dealing with confining public movement and controlling it, neither of which 1 PARA was ever going to do during Operation Forecast.

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putting to him was that his plan had been for the arrest operation to be confined to the immediate vicinity of the junction of William and Rossville Streets. Neither the witness nor the Tribunal were referred to any evidence of military opinion to the contrary, an example of which is provided by General INQ 0598, at the time Commanding Officer 1 Coldm Gds (who had himself, as the Tribunal has seen in his photographs, conducted arrest operations down Rossville Street):

At the time, the Province Reserve Battalion was based in Belfast. It was not necessary to have a detailed knowledge of the streets for the scoop up operation which 1 PARA were to undertake. It was only a small area; about a quarter of a mile from the junction of Rossville Street and William Street to Free Derry Corner. Any commander in Northern Ireland would have used the Province Reserve for such an operation⁷⁵, it was just coincidental it was the paras. If the paras had been committed to do a night operation then local knowledge might have been needed. I remember when we were the Province Reserve Battalion based at Ballykinler we were sent to Londonderry to undertake a night arrest operation. We had to call at about 30 different addresses in the Creggan and arrest 30 people or so. I think that for that operation each vehicle had a guide from a local unit.⁷⁶

- (3) Mr Harvey asserted to General Ford that the local Battalions maintained a profile, including photographs, of rioters and that this profile would have been available to the soldiers on the barriers.⁷⁷

⁷⁵ This is a very different view to that of Colonel Jackson and stands unchallenged by any Interested Party.

⁷⁶ BSI Statement, at C598.3 paragraph 16. It is worth noting that the answer to the night problem was not that this battalion did not do the operation but that they were provided with guides.

⁷⁷ Day 258/067/07

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There was not in fact any evidence that any profile or photographs were "available to soldiers on the barriers". While on any particular occasion some of the soldiers attending a riot might recognise a few of the hooligans from previous occasions, this is a serious exaggeration of the position. The rotation of troops between the County and City tasks prior to December 1971 and, when in the City, between the different company base locations, together with the wearing of face masks by the hooligans, would have reduced any effective personal recognition to at most the odd hard core case. Furthermore neither 1 R ANGLIAN nor 2 RGJ had been in the City since 21st December 1971, and on 30th January 1972 the numbers of people involved and the ferocity of the attack would have made the recognition of individuals almost impossible. The Tribunal has seen the montage⁷⁸ which was issued to patrol commanders going on to the streets, and it was limited to photographs of those suspected of involvement in terrorist offences. The evidence of Captain 021, who was the Intelligence Officer of the City Battalion as at 30th January 1972, is that he would use the montage to brief the patrol commanders 'on the people shown and give instructions on their apprehension if any were seen when on patrol'. Such intelligence was not directed at rioters and hooligans, and there is no evidence that any equivalent document was produced that did.

Without identifying the basis for his theory, Mr Harvey attempted the same exercise with General Welsh, who had commanded his battalion during periods when it was carrying out the City task, with the following result:

Q: And your particular soldiers would have had specific advantages in that having served in the city, it would have

⁷⁸ Produced by Soldier 021 in his second BSI Statement as MONTAGE A at B1509.71. The montage has not been distributed to the Interested Parties by the Inquiry.

been part of their duty to be aware of those persons who would be of interest to the Security Forces, either because of paramilitary connections or because of their involvement in hooliganism?

A. No, I think you are putting that too strongly. There are so many hooligans around that you went probably by what they were wearing and their age, whether they were hooligans or not.

Q: Each soldier would have access to intelligence information about those persons who were regularly engaged in hooliganism, would they not; that is part of having an intelligence section attached to each battalion whose specific duty is to keep each individual soldier apprised of persons, their activities, sightings of where they are, friends they keep, that was part and parcel of being a resident battalion; was it not?

A: Well, perhaps it was or should have been, but I was not conscious that we did all that and our -- you see, the hooligans that we were used to, although it appeared on the streets, William Street, wherever it was, daily, and threw stones at us, but whether we had them down by name or had them photographed, I do not recollect that.

Q: There were photographers attached to each battalion, were there not?

A: I suppose we had -- yes, I mean, my memory is not as good as it should be but I dare say we had people who went round taking photographs. I think they are more for PR purposes than for the hooligans.⁷⁹

- (4) Mr Clarke showed General Ford the Standing Orders for Internal Security Duties in Northern Ireland of 1st Battalion the King's Own Scottish Borderers (1 KOSB)⁸⁰, and in particular the following provision⁸¹:

⁷⁹ Day 282/060/23

⁸⁰ Day 254/016/05

⁸¹ G24.187.020

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It is generally better to use reinforcing troops to man the baseline, and use those soldiers with local knowledge of the area to carry out flanking movements.

As the General answered, this is a document with no authority outside the unit that has created it⁸². It will have been written by the Operations Officer, a Captain, for the CO, and will reflect no more than the way in which the unit in question wishes things to be done, should that Battalion or any of its sub-units receive a reserve from another unit.

- (5) It was put to General Ford that a local battalion would have known about the difficulties of getting past the wall at the Presbyterian Church.⁸³ Whilst it is not at all clear that the local battalions would in fact have excluded the wall as a point of entry⁸⁴, this is an example of an issue which is at far too great a level of detail for General Ford.
- (6) While it is clear that it was General Ford who decided that 1 PARA would carry out the arrest role, there is also no doubt that this choice made sense so far as 8 Brigade's then deployment was concerned. General Ford⁸⁵, the Brigade Commander⁸⁶, the Brigade Major⁸⁷, the Commanding Officer of 1 Coldm Gds⁸⁸ and the Commanding

⁸² Day 254/017/05

⁸³ Day 256/050/16

⁸⁴ Captain INQ 1495, OC A Coy 1 R Anglian, has told the Tribunal that he recommended it as a point of entry to officers of 1 PARA in Londonderry for a reconnaissance prior to 30 January 1972. See C1495.2 paragraph 15 and Day 304/063/03.

⁸⁵ Day 254/015/19 and Day 258/072/07: 'It is much more complicated, and the fact that I chose 1 Para, in the end, was, in my mind, the best -- and still is, by the way -- the best solution taken overall'.

⁸⁶ See Brig MacLellan's evidence to Lord Widgery at B1264

⁸⁷ Day 266/048/01 and Day 268/151/12

⁸⁸ Gen INQ 0598, BSI Statement, C598.3 paragraph 15, and set out at paragraph 5C-24 above.

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Officer of 2 RGJ⁸⁹ have all made the point that it made sense not to disrupt current tasking and dispositions. The issue will be discussed in greater detail in a later section of this Submission, but with this degree of military opinion in its favour, there is no room for arguing that, other than offending the personal but not professional sensibilities of those commanding officers who wanted to do the operation themselves, the use of one of the additional battalions in this role was anything other than the right answer for 8 Brigade.

5C-51 And the selection of 1 PARA as the arrest force was the right answer for Belfast, part of the wider, Province-wide picture the Commander Land Forces had to take account:

But I can only say again that when I look at the whole picture, which is what I had to do, including denuding Belfast of its reserve battalion, to have demuded them for possibly five days, and I think that Brigadier Kitson would have found that unacceptable.

Q. Why would they have had to have been there for five days?

A. Because they would have had to have taken over one of the battalion positions and all that goes with it, which is a big task, as you have already described yourself, to get to know an area, to do it in under 36 hours, I think.

Q. But this was a specific operation, they could have maintained static positions, they could have occupied the periphery?

A. Which area would they have taken over then?

Q. Does it matter?

A. Yes, you have to find one which they can take over to meet those considerations.

Q. Surely the Army was up to that?

⁸⁹Day 282/034/12 and Day 282/057/02

*A. You cannot move the battalions around. They are in those set positions. I have not here got the boundaries and the areas of responsibility of the various companies. These can be explained no doubt in due course, and will be, to you.*⁹⁰

5C-52 Mr Harvey's question 'Does it matter?' in relation to which part of the 8 Brigade Tactical Area of Responsibility (TAOR) 1 PARA could have taken over, appears to have been based on a fundamental misconception as to the practicalities of installing one battalion in the place of another for a number of days, albeit on a temporary basis. This is an issue about which the Tribunal should accept the evidence of the very experienced military witnesses who were qualified to give it. Of the senior commanders (ie Commanding Officers and above) only Colonel Jackson resisted the idea that it was better for the troops to remain where they were, carrying out the tasks they were carrying out and would continue to carry out after the operation was over.

LOCATION FOR THE ARREST OPERATION

5C-53 It appeared to be evident from the very early stages of the military evidence before this Tribunal that the Tribunal (certainly the Chairman) and its Counsel had a very clear idea both that the location for the arrest operation was preordained and where that location was to be. It may be that this view is based on a misinterpretation of the terms of the Operation Order, which will be dealt with in a later section of this Submission. The only evidence of General Ford's thoughts at this much earlier stage is what is written in Brigadier MacLellan's note of their telephone conversation of 25th January:

CLF sees 1 PARA in reserve in City to 'counter attack' ie go round the back to arrest 300 – 400 rioters.

⁹⁰ Day 258/075/22

5C-54 It is unrealistic to attempt to view this "idea" as anything other than what it appears to be on the page – a very general concept of how the arrest force might achieve its task. It is not, and could never have been, an order. There is no attempt to descend to detail, as the detail is for those who would be responsible for carrying out the task. If it was not possible for 1 PARA to do anything that might be described as 'going round the back' and some other approach had to be adopted the Commander Land Forces could not (and would not) complain. And it certainly does not go into location, as that must depend on the location of the rioting:

LORD SAVILLE: Before you answer that question, you were asked did you involve yourself in the question of the routes that were to be taken, and you said: "No, I did not", and indeed you have told us that before. In those circumstances, can you really say, General Ford, that where they would go would not be in a complex area of the Bogside?

A. I think the answer, sir, is that in general terms I did not see them going deeply into the Bogside at the time that I gave the outline orders, no.⁹¹

5C-55 This is an idea, a starting point, aimed no doubt at dealing with the speed of the DYH once flight had been decided upon. 'Encirclement', 'envelopment' or 'cutting off', or even (had he heard of it) 'something along the lines of the Derry Hook' would at this stage have done just as well. The process must be seen flexibly, without the rigidity being applied to it by many who asked questions on this issue⁹²:

A (to Mr Elias): If the Brigadier wanted them to go down Rossville Street, they could go down Rossville Street, that was his decision.

⁹¹ Day 260/108/10

⁹² See, for example, Arthur Harvey QC at Day 257/020/21: 'The arrests are not now being made at Little James Street/William Street. This arrest operation has now moved into Rossville Street. That was not what was contemplated by the operational order that you both directed and approved.'

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Q. It was not the plan you envisaged, was it?

A. Ah, I did not envisage a plan as detailed as that. Nowhere in my orders did I give any such detail.

Q. I suggest there should have been, for 1 Para, quite detailed provision for withdrawal, or the potential for withdrawal if civilians were put at risk because of their proximity to the action?

A. I think I am not in a position to answer that question, the detailed plan was not made by me.⁹³

5C-56 This idea of a general initial concept, without any order to that effect, is consistent with the existence of any general impression that the Commander Land Forces may have had as to how such an approach might develop. It is known that he had visited Londonderry on at least two occasions before 30th January 1972 and that he had looked out over the Bogside and Creggan from the City Walls. A combination of what he had been told about the difficulties of catching the rioters and a knowledge of the geography of the area gained from these visits would have enabled him to form a general view of what an arresting force might need to do to effect arrests.

5C-57 The one thing that certainly cannot be read into this note is any notion that General Ford was laying down any boundaries, in particular a southern limit, for the operation. While he might have told Lord Widgery that what he had envisaged was a need for the arrest force to get behind the hooligans⁹⁴, it does not follow that that is what he was requiring of the Brigadier, with a prohibition upon arrests outside the general area he had had in mind:

Q: You were certainly of the view that the troops should not be deterred by any artificial boundary line from going into areas to which previously they were not going?

⁹³ Day 256/039/01

⁹⁴ B1202 at E

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A. The limits of the arrest operation were obviously to be decided by the Brigade Commander and I did not place any limits on it.⁹⁵

5C-58 The illogicalities that result from a rigid application of this early thinking, combined with the misreading of the Operation Order, can be seen from the following passage (with particular reference to the passages underlined), taken from Arthur Harvey QC's questions to General Ford:

Mr Harvey: And your expectation was that, so far as the plan, the plan would be that as defined in the operation order, namely, the arrests were to be made at the junction of William Street/Rossville Street?

A. Apparently so, yes.

Q. William Street/Rossville Street junction was covered by massive anti-sniper fire on the part of the Army, because that was part of the brigade operation order?

A. Presumably so, yes. Of course I was not aware of the locations, but obviously that was -- the part of the plan was to deploy them and no doubt either the brigade or the battalion commanders concerned would have deployed them appropriately.

Q. That in fact was part of your instruction to be included in the plan, because if one refers to the third draft of your statement at 1208.78, the very final line: "The maximum number of soldiers were to be 'in the shop window'. They were to be covered by deployment of observation posts and by a very large number of snipers, in the anti-sniper role."

A. Yes.

Q. The real problem with that is that the troops who were executing an arrest operation at the location of William Street and Rossville Street had the protection and the cover of anti-sniper fire, which had been specifically directed by you, was included in the brigade operation order and was also transferred into the orders of the resident regiments?

A. Yes, presumably so.

⁹⁵ Day 258/100/07

Q. But as soon as they went up Rossville Street they lost that cover?

A. There might have been other cover, I do not know.

Q. But your plan envisaged that these snipers were to be so located as to dominate the areas of the barricades where you anticipated the sniper fire would in fact take place?

A. That is true.

Q. So if one looks at the plan that you envisaged, the use of vehicles to go further up Rossville Street, jeopardised the lives of the soldiers because that movement denied them the protection that you envisaged for them when they were carrying out the arrest operation?

A. No, but if they went in their vehicles, they had the protection of the vehicles and -- may I finish --

Q. Sorry, General Ford.

A. And I do not know what the circumstances were at that time, whether a firefight had started or not, and I have said previously, once of course fire really opened, then, of course, the whole position -- the whole situation is changed.

Q. But General Ford, one of the important matters of planning is to try and maintain that zones of danger are not exceeded by soldiers so as to place themselves in greater danger?

A. Not necessarily so. If the situation developed differently from what was anticipated, then local decisions would have to be made.⁹⁶

5C-59 But it was not just the William Street/Rossville Street junction which was covered by the deployment of snipers and Observation Posts. What the Operation Order in fact provided was:

The Containment Line and the area within it are to be dominated by physical military presence, by OP observations and by sniper posts.⁹⁷

⁹⁶ Day 258/010/15

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5C-60 The result of this presentation of the evidence is a nonsense. The area within the Containment Line goes a lot further than just the junction of William Street and Rossville Street, and the protection of the counter-sniper posts would not be lost by a move down Rossville Street. It is difficult, moreover, to understand Mr Harvey's reading of the Operation Order as requiring that the junction itself would be covered by sniper fire, as that is precisely where Mr Harvey is proposing that the arresting soldiers (again according to his reading of the Operation Order) were to be operating: on that basis it was the one area where there would be no gunmen.

5C-61 The questions also ignore the obvious practicalities of the situation so far as fire from the Rossville Flats was concerned:

Q: In any event, if the arrest operation had been confined to what has been called Aggro Corner, the top of Rossville Street-William Street, would the troops have been exposed to fire from the same place, the Rossville flats?

*A: Yes.*⁹⁸

5C-62 The mischief of misinterpretation of the terms of the Operational Order is compounded by its vigorous application, as is illustrated by this passage from General Ford's evidence to this Tribunal (again the questions and answers which are important for these purposes are underlined):

Mr Clarke: You said, if I heard you rightly, that you envisaged that the troops would go into the Bogside a relatively small distance, perhaps 200 to 300 yards. We have a scale at the bottom of this map which shows what 200 yards amounts to. By my reckoning, depending slightly where you take it from, but if you were to take it from the junction between William Street and Rossville Street, 200 yards would take you to about the south of Block 1, and 300 yards would take you to Free Derry Corner.

⁹⁷ G95.568 paragraph 7(g)

⁹⁸ Brig MacLellan to Lord Widgery, at B1259

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A. Yes.

Q. *Is that what you envisaged, that the troops would go as far as the south of Block 1 or as far as Free Derry Corner?*

A. *Certainly not going as far as Free Derry Corner, no.*

Q. *What about going as far as the south of Block 1?*

A. *I did not really envisage that.*

Q. *Because that is what 200 or 300 yards would take you to?*

A. *Yes. I did say 200 to 300 yards without reference to the map this morning. I am now doing the same on my map here, and I do agree with the distances you have just given.*

Q. *Leave aside the distance, looking at the street names and the buildings on the map, are you able to say how far you envisaged the troops going into the Bogside?*

A. *No, I am not; not precisely, no.*

LORD SAVILLE: *Sorry to interrupt: if we take one of the two axes mentioned in the operational plan, one of them was described as the William Street/Little James Street area.*

A. *Yes, sir.*

LORD SAVILLE: *Do you recall that?*

A. *Yes, I recall that, sir.*

LORD SAVILLE: *In effect that would -- if you were trying to cut off people rioting, say at barrier 12 or even barrier 13, and you wanted to get behind them, if you got as far as the junction between William Street and Rossville Street, you would be about 100 yards behind the barrier, would you not?*

A. *Yes, sir.*

LORD SAVILLE: *As I think you were saying the other day, if you take the operational plan, if you take the two axes and you forget for the moment the axis for Little Diamond, which is off to the left of this map, the axis for the possible scoop-up operation, its southernmost boundary is approximately the south side of William Street and no further south, is it not?*

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A. It is, sir, yes, if you take it -- yes.

MR CLARKE: Is it likely that was as far as you reckoned the operation would go?

A. On that -- well, I think I envisaged going a little further than that; I would say a little further than the south side of William Street because I think it would be inevitable that you would have to operate, to some extent, south of William Street.

Q. A bit?

A. Yes, I am sure of that.

Q. That would not envisage, would it, going down into here or here or here? (Indicating).

A. No, not at that time, no, not when I gave out my outline orders.

Q. For the sake of the transcript, here was into Eden Place and Pilot Row, and the front of the Rossville Flats and Glenfada Park North.⁹⁹

5C-63 By the time Mr Clarke asked General Ford whether he was now able to say how far he had envisaged troops going into the Bogside the General had already correctly pointed out that (i) his planning did not descend to that level of detail: see paragraph 5C-55 above; and (ii) that the limits of the operation were to be set by the Brigadier: see paragraph 5B-57 above. The basis for the Chairman's suggestion that the southernmost boundary of the scoop operation was no further south than the south side of William Street is not clear. What is clear from Mr Clarke's follow up is that General Ford was not accepting the Chairman's suggestion.

5C-64 So far as the evidence is concerned, the only possible conclusion is that General Ford, while having a general impression of the area and how the operation might (all other things being equal) develop, was in no position to impose any boundaries and properly left that level of planning to those

⁹⁹ Day 260/139/22

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more closely involved in conducting the arrest element of the operation. This was the analysis of the process given by both General MacLellan¹⁰⁰ and General Steele.¹⁰¹

TACTICS

5C-65 General Ford was in no better position to dictate the tactics for the operation than he was its precise location. There is no evidence that at this (or any) stage he attempted to do so and there is no evidence from any military witness that he should have done so. Despite statements from the General to this effect he was asked for detailed information on tactical issues by a number of questioners, in particular in relation to how the arrest operation was to be carried out, including snatch squads, Containment Lines and Stop Lines, and provision for withdrawal in the event of shooting.

5C-66 A number of suggestions were made to General Ford in relation to the manner in which the arrest operation was to be conducted. It was put, for example, that C Company 1 PARA's move through Barrier 14, described by Arthur Harvey QC as 'a classic snatch squad operation' did not comply with the General's 'plan' that the arrest force should get behind the rioters:

MR HARVEY: General, yesterday morning before we broke we were dealing with the question of a scoop-up operation. As you indicated, that certainly the origins of the word was something that concerned you. Can I ask you to look at your own diary of events, which is at page 1208.57. If we could look at the second paragraph: "The mob, having been subjected to baton rounds and the water cannon and now seeing snatch squads of 1 Para in readiness, began to break up Chamberlain Street and William Street. At about 1610 barrier 14 was lifted and Company 1 Para went in after the mob in a 'sweep-up'

¹⁰⁰ Day 261/051/07

¹⁰¹ Day 268/156/10

operation." *That is a classic snatch squad operation, is it not?*

A. Yes.

Q. *That is not going in behind anyone; that is simply a mob which is behaving in a disgracefully unruly way in front of a number of troops who simply pursue them?*

A. *That is this element of this operation. It is only one element of a battalion operation.*

.....

Q. *Certainly so far as this part of the operation was concerned, there was absolutely no question of going round the back, it is a classic snatch operation?*

A. *No, I do not know if there is something going round the back or not, I do not know what instructions had been issued by the Battalion Commander or at a higher level, or what.*¹⁰²

5C-67 At no stage, however, did the General issue an *order* that the arresting force go round the back¹⁰³, or indeed that it go anywhere. Even if there had been such an order it could not possibly have required *all* of the troops involved to go round the back. The General has not been reminded that that 'going round the back' is a description which could be given to the actions of a different company, in a different part of the operation - Support Company getting themselves to the south of the rioters by using their vehicles.

5C-68 Both Mr Elias and Mr Harvey took the General through their own theories about Stop Lines. It is not clear on what instructions or evidence those theories were based. As there had been no mention of such lines in any

¹⁰² Day 257/001/09

¹⁰³ Gen Ford's evidence to Lord Widgery (at B1202) that unless the troops could get behind the hooligans there was no point in launching the operation reflected his understanding of the causes of 8 Brigade's failure to arrest them, not any notion that he had ordered that this was what the troops must do, regardless of circumstances on the ground.

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evidence of the officers involved in planning the operation, Mr Elias did so by reading such lines into General Ford's evidence to Lord Widgery:

Mr Elias: If we look at your evidence to Lord Widgery at B1202. I appreciate you remember little, if anything, now of the day, but this is what you were saying at the time, or shortly after at letter C to D: "Question: It says at sub-para(c) 'The scoop-up operation is likely to be launched on two axes [this is looking at the order, as you appreciate] one directed towards hooligan activity in the area of William Street/Little Diamond, and one towards the area of William Street/Little James Street'? "Answer: That is correct. "Question: Would that appear to be envisaging highly local operations for scooping up rioters at the two barricades, situated in those areas? "Answer: Yes. Of course, 'local' is a difficult term to define." Pause there, the questioner asked you whether it envisaged scoop-up rioters at the two barricades. You answered yes, making the point about local, a difficult term to define: "Question: Was it envisaged on the 26th January that the scoop-up operation would involve troops going to the northern end of the Rossville Flats? "Answer: The northern end of the Rossville Flats was not specifically mentioned, but the principle, if you would like me -- it was always intended that if an opportunity occurred the scoop-up operation would be such that someone would be able to get behind the hooligans. Otherwise there was no object in launching it." That was your belief too, was it not, you had to get behind them otherwise it was a fruitless, hopeless exercise?

A. That was true.

Q. Because once they had fled, chasing after them was not only what was not envisaged by the order, as we have seen, but it was not going to be the way that you wanted the operation efficiently to be carried out?

A. No, but if -- I am so sorry.

Q. Please?

A. No, but if gunmen intervened, which I believe they did, then the whole situation changes.

Q. I follow that. Can we read on, what you said at the time: "Question: That is what my Lord would probably have expected. You wanted to get behind them and then [please note these words] trap them between the troops and the barricades? "Answer: That is correct." You went on in the later answer, I point it out, you say here there was no

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discussion about the meeting of details about the scoop-up operation; a matter for Brigade Commander, is what you said at the time. What you were envisaging and what you said in those answers, I suggest, was that there would be a scoop-up operation, by sending in troops, the Paras, who would run a line, a stop line down, very close to William Street and trap hooligans between that stop line and the barricades, which we know as barriers 12 and 14 in particular?

A. Well, of course, by "very close" I do not quite know how I answer that question. Local, certainly. But how far back, I cannot say.¹⁰⁴

5C-69 Mr Elias then embarked on a whole series of questions based on the assumption that there had in 1972 been a requirement for Stop Lines, the effect of which is a number of meaningless answers from the General:

Elias: Was there a need, General Ford -- whoever gave them -- for there to be detailed orders outlining the stop lines which the Paras were to take up in order to fence in the rioters?

A. Again, after all this time it is very difficult to say, but I would have thought there possibly would be alternative plans.

Q. That may be so. Contingencies in the event of this happening rather than that?

A. Yes.

Q. But the need for the Paras to know precisely where they were going to form the stop line, in the event of a particular situation arising, is plain, is it not?

A. They would know that, yes.

Q. If they did not exist, whose fault was that?

A. If there was no stop line at all behind?

Q. Yes.

¹⁰⁴ Day 256/030/03

A. (Pause). But there was. A company went in behind; that was the stop line, surely, as I understand it. I do not know the detailed plan.¹⁰⁵

5C-70 Mr Elias then suggested that this interpretation of what General Ford had said to Lord Widgery was consistent with the evidence of his client, Company Sergeant Major Lewis:

We will look shortly at what one of the company Sergeant Majors says about the plan and its execution.

5C-71 Mr Elias later drew his Stop Line on a map for another witness, Brigadier MacLellan.¹⁰⁶ The problem with this exercise, and particularly the dangers of doing it with a witness who has already said he took no part in the process involved and has no recall of detail, can be seen when that exchange is compared with what Mr Elias' client, Major Lewis, actually said about it when he came to give his evidence:

Q. But as you were about to go through the barrier, did you have some notion in your own mind, Major, that there was some form of stop line –

A. No, sir, no.

Q. On that day, whatever may have happened on other days, you did not expect there to be a line of soldiers somewhere behind the rioters, stopping them?

A. No, sir, no.

Q. It would have been totally impractical to do that?

A. Yes.

Q. And you could not conceivably, in a situation where you anticipated the probability, or at a minimum the possibility of fire being directed from the Rossville Flats, it would have been madness to put a line of soldiers across the wasteground?

¹⁰⁵ Day 256/037/01

¹⁰⁶ Day 263/077/02. The marked plan was never in fact saved.

A. Yes, sir.

Q. *Waiting for you to come in; would it not?*

A. Yes, sir, yes.

Q. *You also -- whatever may have happened on other days -- you did not believe that you were going into an area which had in any sense been sealed off?*

A. No, sir.¹⁰⁷

5C-72 Despite what had been written in Major Lewis's statement¹⁰⁸, he did not expect to see any sort of Stop Line on 30th January 1972 and there are no grounds for arguing that General Ford either did provide or should have provided for one.

5C-73 Mr Harvey's exposition was equally confusing, starting with an assumption on his part that there was to be a 'Containment Line'.

Q: If the 1st Parachute Regiment was to be held centrally behind the blocking points, where was the containment line that the rioters were to be driven into?

A: At that stage I did not know what detailed plan Brigadier MacLellan would make and so I told him to hold the whole thing centrally, which would allow him the maximum flexibility to deploy them as he so wished when he made his detailed plan.

Q: Surely one of the most important matters to launch an operation would be to know where was the containment line?

A: Yes, well, I mean, the fact that I wanted the battalion to be held centrally was, that in the first stage of the planning. Then comes the detailed planning by the Brigadier and then he can -- he is aware of my overall intention; he then has to make a plan according to what he thinks is going to happen and so on, and the geography.

¹⁰⁷ Day 373/110/02

¹⁰⁸ BSI Statement, B2111.024 paragraph 165

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Q: But really if one looks at what you said, it is the regiment should be held centrally behind the blocking points in the William Street area. If an opportunity arose, launch, in a scoop-up operation, to arrest as many rioters and hooligans as possible; it makes absolutely no mention whatsoever of a containment line?

A: No, I would not make that mention myself because they would be held initially centrally and then the Brigadier would have made plans as to how he intended to carry out the arrest operation, if he decided to do so.

LORD SAVILLE: Mr Harvey, I am being a little slow. Can you tell me what you mean by a containment line?

MR HARVEY: A containment line in a standard riot¹⁰⁹, one has two ways of dealing with it. Firstly you simply launch an arrest operation through the lines of containment, that is the blocking points.¹¹⁰

LORD SAVILLE: Yes.

MR HARVEY: If you are looking for an arrest operation which is more complicated, you have a snatch operation launched forward at a number of rioters, but driving them into blocking points where they can be arrested, either by those pursuing them or those into whose arms they are being driven; is that not right? Is that right, General Ford?

A. Sorry, sir, I did not realise you were asking me. Yes, generally.

Q. There are two ways of conducting arrest operations: one is where you have a containment line such as the blocking points that existed in William Street, Little James Street, Sackville Street, Lower Road, where the troops come from behind the rioters and drive them into the containment line?¹¹¹

¹⁰⁹ Mr Harvey did not explain what he meant by a 'standard riot'. It was a similar question from Mr Harvey, in a similar although not identical context, that prompted Gen Welsh to say to him: 'I think you know a lot more about it than I do.' Day 282/072/04.

¹¹⁰ Confusingly the barriers are described as the lines of containment.

¹¹¹ Now it appears that the blocking points are the containment line, rather than the line of containment.

A. Yes, we do not always call it a containment line¹¹². What you mean is the forces who are endeavouring to get round the back of the rioters to stop them dispersing.

Q. Getting round the back of them still means that they can run forward, it depends what they are running forward into?

A. I am not quite with you there, I am terribly sorry.

LORD SAVILLE: I do not think I am, Mr Harvey. You have these barricades and what are we assuming, that there is likely to be some rioting in the vicinity and in order to mount an effective scoop-up operation you have to get behind those rioters; is that what you are --

MR HARVEY: No, I am not.

LORD SAVILLE: I am being slow this morning.

MR HARVEY: What I am suggesting is, you have two ways of doing it. You have chosen to use the word "containment line". I am simply trying to find out what does that mean. The vast majority of rioters are simply arrested by snatch squads who move forward from behind blocking points, pursue them and arrest them; that is right, is it not?

A: That is the normal way of doing it, but we know it did not work in Londonderry because they were too clever, too many alleys, et cetera, et cetera.

Q: If there was to be a special arrest operation on your instructions, holding the arrest troop centrally behind blocking points is just the old-fashioned snatch squad method, is it not?

A: No, that was a merely initial order. After that Brigadier MacLellan, he knew that the requirement was to envelop the rioters if possible. That would made quite clear, how he was going to do that was entirely up to him.

Q. As part of the concept of your operation, you have not even mentioned it in this particular draft statement?

¹¹² This is in fact the first time Gen Ford utters the words 'containment line', responding to correct Mr Harvey's use of it.

A. I would not need to. I had already said, I think it is right, over the telephone, in the first conversation -- although I am speaking from memory now -- that I said we wanted to envelop, or words to that effect, the rioters if it was at all possible to do so. That, I think, was earlier than this.

Q. That is so. But in this particular document what you are bringing together is information from a number of different sources, all of which are meant to encompass the instructions -- both written and oral -- that you have provided to Brigadier MacLellan. There is absolutely no mention of driving these rioters into a containment line?

A. First of all, as I said just now, I never used the word "containment line" as such. But there is no doubt in my mind that the aim of the arrest operation was to envelop these rioters if it was possible to do so, and I do not think there was any doubt in Brigadier MacLellan's mind either.¹¹³

5C-74 The problems demonstrated in this passage arise because of the questioner's desire to impose rigid (and poorly understood) concepts onto a situation that needed to be flexible and responsive, with a witness who has correctly said on a number of occasions that he was not part of the detailed decision making process.

5C-75 Mr Elias also put the proposition that there should have been provision for withdrawal in the orders to 1 PARA and, by implication, that such an order should have come from General Ford. This may be another example of the difference of approach between lawyers and soldiers, as withdrawal as an immediate response to incoming fire is a step available in all situations to commanders on the ground. While taking the decision to withdraw in such circumstances and putting it into effect may need to be justified later, no specific order is required from higher up the chain of command. General Ford initially answered that it all depended upon the

¹¹³ Day 256/070/08

circumstances¹¹⁴. On being shown what Colonel Wilford had said about withdrawal in his interview with Channel Four¹¹⁵, he ultimately agreed with Mr Elias's suggestion that it would have been appropriate for him to have 'discussed at least with the Brigadier this contingency that maybe there would be circumstances where 1 PARA would have to withdraw?'.¹¹⁶

5C-76 While in reality this formulation of the contingency under discussion is nothing more than a statement of the obvious, General Ford's concession also needs to be read in the light of the facts that (i) Colonel Wilford had not yet given his oral evidence about his interview with Channel Four; and (ii) the questions were asked (and, of course, Colonel's Wilford's answers to the interviewer given) with no regard to the practicalities of events on the ground or as to how any such discussion at the level of General and Brigadier might impact on events as they unfolded on the ground.

5C-77 Major Lewis, on the other hand, was asked about the practical implications:

Q ... the suggestion has been made, Major, that when the firing started at your men they should have withdrawn; what do you say to that?

A. It would not have been up to me at the time, sir, or, indeed, it is not up to me to comment now. If there had been a need to withdraw the men, it would have been the decision of the company commander or, indeed, the battalion commander --

Q. Is it what you would have expected?

A. Um, after time, yes, sir.

Q. After?

¹¹⁴Day 256/033/09

¹¹⁵X1.35.11

¹¹⁶Day 256/036/19

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A. After a time, yes.

Q. Are you able to say what sort of time?

A. I would say when it became known that we were consolidated in the Rossville Flats area, Glenfada Park area, then I would have expected, as there was, a decision to, to pull back.¹¹⁷

5C-78 While it is easy to assert that withdrawal of troops once firing breaks out should be discussed at the higher levels of command, a withdrawal in such circumstances is a step which carries its own dangers for the troops on the ground (how, for example, were the commanders to ensure that all the troops could move back, including those being engaged by gunmen and those involved in physical struggles with rioters?) and it cannot happen until the situation is sufficiently under control to enable it to be done safely. This reality is reflected in Major Lewis' answers to Mr Glasgow: the only time withdrawal would have been practically possible was once the incident which placed them in danger was over and, the position having been consolidated, the troops could be safely withdrawn. Contrary to Mr Elias' suggestions to witnesses on this subject, for his part Major Lewis was not able to contemplate a withdrawal until this consolidation of the position had taken place.

RISKS TO THE MARCHERS

5C-79 Two types of risk need to be considered: (i) the risk of people not rioting getting caught up in the arrest operation and getting arrested; and (ii) the risk of people not using firearms getting caught up in a firefight and sustaining injury.

5C-80 So far as the former is concerned there was without doubt a recognition on the part of General Ford¹¹⁸ and a number of other military witnesses that

¹¹⁷ Day 373/125/14

¹¹⁸ Day 256/059/22

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during the course of an arrest operation in a riot situation there was a risk that non rioters might get arrested:

... we were going to do a scoop-up operation, as I described, I think, yesterday that in a scoop-up operation you do not necessarily only pick up the rioters – did I say that yesterday? I cannot remember now. But that is an element of a scoop-up operation, that you may pick up other than rioters and so if there were people in the wasteground, then, sadly, they might get involved also.¹¹⁹

5C-81 This statement is no more than one of common sense: the exact course of such an operation once launched could never be precisely predicted. However much time may be allowed for “bystanders” to distance themselves from a riot, there are always people who stay in the area of a riot to watch it. Rioters might see those who are just watching as a source of refuge and the rioting is unlikely to stop just because an arrest operation has started: indeed there is a considerable amount of evidence available to this Tribunal, dealt with elsewhere in these Submissions, that shows that the rioters would retreat to what they saw as a safe distance from the troops and continue rioting from there. The use of dye in the water cannon was obviously and undoubtedly intended to make it easier to identify and exclude those who had not been involved in rioting but who might otherwise be arrested in a scoop-up operation.

5C-82 The position so far as innocent victims of a firefight is concerned is rather different: so far as General Ford was concerned, there would be no firing from the troops without firing from the IRA¹²⁰. What he and those advising him had to assess was whether the IRA would intervene. While there is no concrete evidence of the process that was undertaken (either at HQNI or as between General Ford and Brigadier MacLellan), the evidence indicates that the assessment was that (i) the IRA would not fire

¹¹⁹ Gen Steele at Day 267/077/25

¹²⁰ Used here so as to include all elements of violent republicanism with the inclination and the wherewithal to shoot at the troops.

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from amongst the peaceful element of the crowd¹²¹; (ii) if there was going to be armed intervention from the IRA it was likely to be related to the activities of the hooligans¹²²; (iii) the precautions that were being taken, including the provision of a large number of soldiers visibly in the counter-sniper role and the encouragement of the presence of the media, would be sufficient to deter the IRA from firing¹²³; and (iv) if there was to be firing at the troops it would be nothing more than sporadic sniping¹²⁴ or 'not substantial'¹²⁵. As at 25th and 26th January 1972, which is the relevant time for any consideration of this issue, there is no reason to suppose that this was anything other than an accurate assessment of the risk the IRA presented.

5C-83 This was the risk that had to be balanced against the need to provide for an arrest operation, already discussed above. It was not open to General Ford to omit to make such provision, necessary if the Army was to be able to fulfil its obligations to protect the lives of its troops, to maintain law and order and to protect property, on the grounds that the IRA might indulge in sporadic sniping at either the soldiers on the barriers or those attempting to effect the arrests.

5C-84 The likelihood must be that General Ford had received one further important piece of information from 8 Brigade:

Question: Some of the people in that area, for example, were journalists. Would you expect such a person to be arrested?

¹²¹ Day 258/010/11. This was a view shared by Brig MacLellan: see his 1972 statement, at **B1232 paragraph 18**

¹²² Day 255/009/15: 'Q: So is the answer to my question: that you did foresee that, when the arrest force came to arrest the hooligans, that would or might lead the IRA to shoot at the Army? A: It might well'.

¹²³ Day 256/043/14

¹²⁴ Gen Ford's evidence to Lord Widgery, at **B1203**

¹²⁵ Day 258/010/07

Answer: When you conduct a scoop-up operation of that kind you will arrest all those people who are in the area, including journalists.

Question: And I suppose it would follow from that, including local residents who just happened to have wandered out into the area?

*Answer: They would not be there, sir. Our experience is that the normal residents about their lawful business do not hang about when hooligans are there.*¹¹²⁶

5C-85 Despite the relatively small perceived risk of IRA intervention and the fact that there were likely to be few peaceful civilians in the area, further precautions (in addition to the deterrent effect of large numbers of soldiers 'in the shop window' and the encouragement to the Media already identified) could be, and were in the event, taken. The extent to which the following measures were discussed between the Commander Land Forces and the Brigade Commander on 26th January 1972 will never now be known, but the former would no doubt have known of them, and by definition given them his approval:

- (1) an attempt was made to minimise the risk of non rioting civilians being arrested by means of dye in the water fired by the water canon at rioters at the barricades;
- (2) the arrest operation was only to be considered in the event of serious violence (ie the throwing of stones, bottles or nail bombs) or an attempt to breach the containment line;
- (3) the arrest force could only move on the order of the very senior officer commanding the whole of the operation on 30th January 1972, Commander 8 Brigade;

¹²⁶ Lt Col Steele to Lord Widgery, at B1312

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- (4) the Brigade Commander would only give that order if he was satisfied that there was adequate separation between those whose actions necessitated the arrest operation and those who were demonstrating peacefully.

5C-86 This is the context in which the orders General Ford gave Brigadier MacLellan on 26th January 1972 must be considered, and it is to that topic which this Submission now turns.

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CHAPTER 5D

ORDERS TO 8 BRIGADE

5D-1 Brigadier MacLellan's note of the telephone conversation he had with the Commander Land Forces on 25th January 1972 includes the following:

Plan with marked map to be with CLF by 0830 WED 26 JAN (to include admin para).¹

5D-2 Having provided the Brigade Commander with an overall concept, the General now required 8 Brigade to fill in the detail. The detail was then discussed at the meeting between the commanders and their senior operational staff officers (the Brigade Major 8 Brigade, Lieutenant Colonel Steele; and the GSO1 Operations at HQNI, Lieutenant Colonel INQ 1877) on the afternoon of the 26th January.

5D-3 While this was the occasion at which the General gave his orders, there is no doubt that the meeting provided an opportunity for discussion:

My outline plan, based on the concepts given to me by the Commander Land Forces, was duly forwarded to Headquarters Northern Ireland during the night 25th/26th January. Having read my outline plan the Commander Land Forces telephoned me during the morning of 26th January and instructed me to attend a meeting with him at Headquarters Northern Ireland that afternoon to discuss the plan.²

5D-4 The plan with marked map has not survived, and it is not now possible to reconstruct the discussions that took place during the course of the meeting, as (as is to be expected) none of the participants has anything like a comprehensive memory of the deliberations.³ What can safely be

¹ G69.435

² Brig MacLellan's first draft Statement for Lord Widgery, B1279.015 paragraph 7

³ Gen Steele told the Tribunal that it was the CLF who used the term 'scoop up' and that that was a phrase which did not require explanation: see Day 266/048/14 and Day 266/049/01

assumed is that (i) the discussion was sufficiently wide ranging for the 8 Brigade officers to be able to produce the detailed Brigade order overnight; (ii) (on the basis that the Operation Order was to meet with the Commander Land Force's approval) the conclusions of the meeting were consistent with the terms of the written Operation Order dated 27th January; (iii) (on the basis that there was little point in keeping anything back and risking a subsequent failure to meet the approval of the Commander Land Forces) by the end of the meeting Brigadier MacLellan had given the General a comprehensive description of 8 Brigade's thinking and approach to the operation as it was at the date of the meeting.

5D-5 What is known is that, as one would expect, at some stage during the meeting the Commander Land Forces gave Commander 8 Brigade his orders. The Brigade Major made a note of these orders and they duly appeared in the Operation Order as it was finally drawn. The note the Brigade Major made at the meeting has not survived but its contents ultimately found their way into the first draft of Brigadier MacLellan's statement for the Widgery Tribunal.⁴

5D-6 Given the manner in which some of the issues were raised with or in relation to the military witnesses, in particular General Ford, these orders merit careful reading. They appear at paragraph 8 of the draft statement⁵, as follows:

- (1) The containment of the Creggan march would be a military operation with RUC in support, and the military in command at all levels;

⁴ See Gen Steele's evidence to this Tribunal, at Day 266/046/12

⁵ At B1279.015

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- (2) The dispersal of illegal marches in other parts of the City, and the control of the actual Meeting Point, in Shipquay Place, would be an RUC responsibility with the Military in support.
- (3) Any action required to deal with an organised protest sit-down would be an RUC responsibility, and that troops would not be used to disperse such a protest.
- (4) The event was to be handled in as low a key as possible, and for as long as possible. To this end:
 - (a) Troops were to take no action against the Marchers until either an attempt was made to breach the blocking points, or violence erupted, in the form of stone, bottle and nail bomb attacks against the Security Forces.
 - (b) CS gas was not to be used throughout the event, except as a last resort, and only if troops were about to be over-run, and the rioters could no longer be held off with baton rounds and water canon.
 - (c) Ringleaders of the March need not necessarily be arrested on the spot, but should be identified and arrested at a later stage.
 - (d) If the March took place entirely in the Bogside and Creggan it was to be permitted to continue unchallenged.
 - (e) Blocking points should be emplaced as late as possible before the arrival of the march to allow normal traffic to flow until the last possible moment.
- (5) Once the blocking points had been emplaced no Marchers were to be allowed to proceed through them, except in cases of genuine emergency.

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- (6) The hooligan element was not to be permitted to damage Business, Shopping and Protestant areas of Londonderry. To this end he directed that Tactical Headquarters and 3 companies of the 1st Battalion the Parachute Regiment should be held centrally behind the blocking points in the William Street area and if an opportunity arose launched in a scoop up operation to arrest as many rioters and hooligans as possible.
- (7) Blocking points were to be established as far forward as possible, to keep any violence in the Bogside and Creggan areas, and prevent it from overflowing into the Business and Shopping areas.
- (8) The maximum number of soldiers were to be 'in the shop window'. They were to be covered by deployment of Observation Posts and snipers in the anti-sniper role. These Observation Posts and snipers were to be deployed to every possible vantage point.
- (9) A full photographic record was to be made of the event, including cine colour photography from a helicopter. The developed and printed films were to be delivered to Headquarters Northern Ireland by 1800 hrs on 30th January.

5D-7 A number of points need to be made about these orders:

- (1) Sub-paragraph (1) above reflects the formal decision taken by the Director of Operations' Committee, which had taken place earlier in the day;
- (2) the provision at paragraph 7b(1) of the Operation Order⁶ that 8 Brigade intended to 'deal with any illegal marches in as low a key as possible and for as long as possible' originated with the Commander Land Forces. Suggestions to the contrary made by Mr Arthur

⁶ G95.567

Harvey QC during his Opening Statement⁷ do not appear to have taken Brigadier MacLellan's 1972 description of General Ford's orders into account;

- (3) a number of Counsel put it to Generals Ford and MacLellan that there was a degree of inevitability about the launching of the arrest operation on 30th January 1972. For the most part the proposition was based on a particular reading of the Operation Order for Operation Forecast, the precise terms of which will be discussed below in the section of this Submission which deals with the Order. For present purposes it is sufficient to note that the proposition appears to ignore General Ford's requirement that the event be handled in as low a key as possible 'for as long as possible';
- (4) despite suggestions made to him to the contrary (in particular by Mr Harvey⁸), it is clear that even at this early stage General Ford was drawing a very clear distinction between three groups of people: the marchers, who would be permitted to continue unchallenged if they remained within the Bogside and Creggan [sub-paragraph 4(d) above]; the ringleaders of the march, who (a concession from, and no doubt in recognition of the potentially inflammatory consequences of, the NISEC paper's recommendation of 'on the spot arrests of ringleaders'⁹) did not need necessarily to be arrested on the spot, but should be identified and arrested at a later stage [sub-paragraph 4(c)]; and the hooligans, who were not to be permitted to damage 'Business, Shopping and Protestant areas of Londonderry'. General Ford's orders for the hooligans and for the arrest force (Tactical Headquarters and 3 companies of the 1 PARA 'to be held centrally behind the blocking points in the William Street

⁷ Day 045/051/23

⁸ Day 256/081/05

⁹ NISEC 11 'Measures to Control Marches', G53.318 paragraph 4(b)

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area and if an opportunity arose launched in a scoop up operation to arrest as many rioters and hooligans as possible') appear in the same sub-paragraph [sub-paragraph (6) above].

- (5) in addition to expressly stating that the march was to be handled in as low a key as possible for as long as possible, General Ford included a number of measures clearly designed to (a) minimise the risk of violence: the troops were to take no action unless there was an attempt to breach the blocking points or serious violence was directed against them [sub-paragraph 4(a) above]; and there was no requirement for the immediate arrest of ringleaders [sub-paragraph 4(c)]; and (b) to encourage any prospects for a peaceful event by minimising the disruption to those demonstrating peacefully or going about their own business in the area: CS gas was only to be used in extremis [sub-paragraph 4(b)]; only the ringleaders were to be photographed for the purpose of later prosecution [sub-paragraph 4(c)]; and the barriers were to be closed as late as possible to permit normal traffic for as long as possible [sub-paragraph 4(e)].

5D-8 The list of orders is as important for what it does not include as for what it does. In particular:

- (1) there was no order that the arrest force 'go round the back'. While without doubt this was how by way of a general concept the General saw the arrest operation achieving a degree of success which had eluded 8 Brigade since the previous July, he did not legislate that they must do so. To have done so would have limited the options of the commanders on the ground unnecessarily with potential harm for the prospects of any operation that had to be mounted. No military witness before this Tribunal has subscribed to the idea that

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General Ford should have involved himself in the manner in which the arrest operation was to be carried out;

- (2) there was no order that 8 Brigade arrest three to four hundred rioters.¹⁰ The terms of the order from the General are clear: 'to arrest as many rioters and hooligans as possible' [sub-paragraph (6)]. This phrase later appeared in the Operation Order as the purpose of the arrest operation¹¹ and was passed on to Commanding Officer 1 PARA as his battalion's mission¹²;
- (3) there was no order that the marchers and hooligans be separated prior to the commencement of any arrest operation. Given the purpose of the meeting the probability must be that the issue of separation was discussed at the meeting (which is General Ford's evidence to this Tribunal¹³), though there was no requirement for an order to that effect. Again, the Commander Land Forces, who had provided a framework for a low key event, quite properly did not descend into the detail of how it was to be achieved:

Q: General [Steele], I want to move on now, if I may, to an issue about which you have been asked a lot already, that is the orders for the arrest operation on 30th January 1972. General Steele, so far as these orders are concerned, the start point is the meeting you and the brigade commander attended with the CLF on 26th January 1972, that is a meeting you have been asked about already. At that meeting, as I understand it, you were instructed to carry out, in the right circumstances, a scoop-up operation?

A: Yes.

¹⁰ And consequently there was no 'fatal flaw' in the planning, which the General would have 're-evaluated' had the Brigadier and Brigade Major informed him of it: see Day 268/001/09

¹¹ G95.568 paragraph 7(e)

¹² G.95.570 paragraph 9(f)(1)

¹³ Day 257/036/11 - 037/04

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Q: Did you receive from General Ford any more than that instruction, and I say "any more", by that I mean in terms of guidance, how you were to carry it out, what tactics were to be adopted?

A: No.

Q: Would you tell the Tribunal that that was how it should have been, or that the general should have given you such guidance?

A: I was content that, having been given the order to conduct an arrest operation and having been allotted the troops to do it, that it was up to 8 Brigade to execute his direction and write the order.¹⁴

- (4) there was no order to the effect that the arrest operation must take place, regardless of how things developed on the ground. Mr Clarke's questions on this issue were put from a legalistic perspective, based on the absence of a provision in the Operation Order for the operation not to take place once there had been violence at the barriers, in particular if there had been violence but it was dying down without the arrest operation having been launched¹⁵. The commencement of the operation did not require and was not in any event susceptible to legislation from higher command. It was (and had of necessity to be) a matter, as General Ford told the Tribunal¹⁶, of judgement for the commanders on the ground. The senior of those commanders, Brigadier MacLellan, was asked about inevitability at the Widgery Tribunal:

A: My intention throughout was to do everything to reduce the risk to the absolute minimum to the non-violent marchers and, to this end, I certainly was not prepared to

¹⁴ Day 268/155/18 See also Gen Ford's evidence to this Tribunal at Day 255/060/24

¹⁵ Day 254/067/07 – 072/12. This discussion was in any event somewhat academic as at the time the order was given rioting satisfying the criteria which did appear in the Operation Order was continuing: see, for example, Brig MacLellan's Supplementary Statement for the Widgery Tribunal, at B1226 paragraph 28

¹⁶ Day 254/072/11

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launch the arrest operation unless there was serious disorder and rioting and, indeed, we had gone up the scale and, furthermore, I would only do it if the rioters and the non-violent demonstrators were widely separated.

Q: To put it another way, ... was the launch of the arrest operation regarded before this day began as inevitable.

A: No.

Q: Would it have been launched at all unless the main body of peaceable marchers was well separated from the rioters?

A: No, sir.¹⁷

- (5) there was no order as to the location at which the arrest operation should be conducted. No military witness has subscribed to the idea that the Commander Land Forces should have involved himself in this issue. General Ford described the position so far as orders on this subject were concerned from his own and the Brigade Commander's perspective, in the following terms:

Q: Would you agree with me that if I have fairly stated the facts -- and somebody will certainly correct me if I have not -- the way in which the plan appears to have been executed seems to have been inconsistent upon the basis upon which it was to take place in the first place?

A. I mean, it is very difficult for me to answer that because you are now -- you are getting into the detail of the operation with which I was not concerned. I laid down certain parameters, which have been met. Now you are asking me to say whether what actually happened, as described by you, is in accordance with Brigadier MacLellan's orders, and I do not think -- the business of separation is essential, but he had -- he was in a position to know when separation was complete, and I cannot comment on the time that he made this decision. I do not know when the time was, in fact.

Q. The reason I am asking is that what took place is said to have taken place in accordance with operation orders that

¹⁷ Brig MacLellan's evidence to Lord Widgry, at B1252.

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you approved. Do you think that they ought to have provided that the arrest force was not to go down Rossville Street and into the car park of the Rossville Flats and as far as it did go?

A. No, I do not think so at all. No-one knew what the situation was going to be, and Brigadier MacLellan had to play it as the situation developed.¹⁸

5D-9 In receipt of their orders and having, it must be assumed, discussed any issues that arose out of them, Commander 8 Brigade and his Brigade Major returned to Londonderry to complete their plans for the march and to draw up the Operation Order.

¹⁸ Day 255/007/12

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CHAPTER 5E

PLANNING AT 8 BRIGADE

*'You see, nothing is perfect in this world of riots, all sorts of things can happen.'*¹

- 5E-1 The Brigade Commander and his Brigade Major were no doubt able to discuss the orders that had to be given during the return journey from Lisburn, and the Tribunal knows that the order was drafted by the Brigade Major that night and discussed with the Brigade Commander the following morning, before its dispatch to HQNI where it was approved by the Commander Land Forces.
- 5E-2 As is to be expected, the orders given by the General appear without alteration in the Brigade Order. The best record of 8 Brigade thinking in relation to the operation on 30th January 1972 is the Operation Order itself.

INTELLIGENCE

- 5E-3 The expectations of Headquarters 8 Brigade at the time the Operation Order was finalised are (in so far as it was felt that intelligence was going to impact on this particular event) summarised in paragraphs 1 and 2 of the Operation Order. So far as the march itself is concerned, the upper end of the available estimates of its size was that given by Chief Superintendent Lagan at his meeting with Brigadier MacLellan on 24th January 1972, as being between eight and twelve thousand.² The aim was to march to Shipquay Place. Whether based on actual intelligence or instinct formed by experience, it was anticipated that a hooligan element, almost certainly supported by snipers and petrol and nail bombers, would

¹ Col Derck Wilford, at Day 312/042/13

² G95.564 paragraph 1(e)(1)

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accompany the march³; and it was thought that bombers might intensify their efforts to destroy the business and shopping areas of the City Centre during the march while the attention of the Security Forces was elsewhere.⁴

5E-4 Crucial though any such information would have been to the Security Forces, there is no mention here (as there is no mention of it in any pre-march documentation) of any IRA plan to move its weapons out of the Bogside⁵, or to impose any sort of prohibition against firing at the soldiers, or to offer any assurance (for what any such assurance may have been worth) to the organisers of the march that its members would do no more than attend as marchers, if at all.

5E-5 The position was in fact quite the contrary. The 8 Brigade threat assessment included the following:

b. IRA terrorist activity, to take advantage of the event, to conduct shooting attacks against the Security Forces, and bombing attacks against Business, Shopping and Commercial premises in the City Centre.

c. Hooligan reaction to the general excitement of the event, in the form of stone, bottle and nail bombing of troops, arson of private premises and vehicles and a high degree of violence throughout the City. Although this violence is expected to continue throughout the event, it will intensify during the closing stages of the event, especially in the William St/Rossville St area; it is possible that hooligan activity may continue thereafter for several days.⁶

5E-6 Whether or not there was hard intelligence to support the fears set out in sub-paragraph b, there was an identified source for all that is in sub-

³ G95.565 paragraph 1(f)

⁴ G95.565 paragraph 1(g)

⁵ At Day 285/060/16 Col Jackson observed that 'We know that the majority of the weapons were up in the Creggan area, having been taken to the Creggan area.' When asked about this evidence by Lord Gifford QC Col Jackson confirmed that his apparent subscription to this story about IRA weaponry only occurred after the event, rather than before it.

⁶ G95.565 paragraph 2(b)-(c)

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paragraph c. The sub-paragraph elaborates on what Chief Superintendent Lagan had told Brigadier MacLellan on 24th January. As General Steele made clear in his evidence to this Tribunal:

A: Yes, it is, and all that information with regard to the march, which I recall is in the first page of the operation order, I would have received from the RUC, from Chief Superintendent Lagan.⁷

Q: I was going to ask you about that: you received your information through the Intelligence Services; did you not?

A: Mainly through the RUC, yes.

Q: You would get it through the Intelligence Services; you did not have any direct contact with either Chief Superintendent Lagan or any of his officers, did you?

A: No, that is not true. I did have contact with Superintendent Lagan and I believe that Superintendent Lagan -- I do not know if I am right in saying this -- but I believe he had contact with the NICRA organisation.

Q: Could you look at 1315.004, paragraph 16 of your statement, you say: "I was not involved in any meetings or discussions between Brigadier MacLellan and Chief Superintendent Lagan of the RUC, nor was I involved in any follow-up discussions between Brigadier MacLellan and the CLF." We know there was a meeting between Chief Superintendent Lagan and Brigadier MacLellan on 24th January, but you were not present at that meeting, as I understand it?

A: No, I was not, but I would have got the information from the brigade commander.⁸

5E-7 With the approval of the Commander Land Forces, 8 Brigade was listening to, and passing down the chain of command, the warnings of serious violence given by the local police.⁹

⁷ In other words, 8 Bdc listened to Chief Superintendent Lagan. And Gen Ford approved the order as drafted.

⁸ Day 268/124/04

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CONCEPT OF OPERATIONS

5E-8 As would be expected, much of the content of this section of the Operation Order, paragraph 7, originated with the Commander Land Forces in the form of the orders given to the Brigade Commander on 26th January: sub-paragraphs a(1) and (2) appear in the record of the General's orders which ultimately appeared at paragraph 8 a. and b. of Brigadier MacLellan's first draft statement for the Widgery Tribunal¹⁰; sub-paragraph b(1) of the Order appears in Brigadier MacLellan's draft statement at paragraph 8d; sub-paragraph c of the Order is Brigadier MacLellan's paragraph 8e; sub-paragraph d of the Order is Brigadier MacLellan's paragraph 8c; sub-paragraph e of the Order is Brigadier MacLellan's paragraph 8f; sub-paragraph h of the Order is Brigadier MacLellan's paragraph 8g; and sub-paragraph j of the Order is an elaboration of Brigadier MacLellan's paragraph 8h. The elaboration was required because of the way 8 Brigade were thinking about the arrest operation, and is addressed below.

5E-9 So far as the arrest operation is concerned, no concept is given, no tactics are laid down and no limitations or boundaries are imposed upon the arrest operation. The arrest force is to be held centrally behind the check points, which means no more than that it is to be kept in reserve in a location or locations central to the event and convenient for the fastest possible deployment whenever and wherever it is required. What is provided, to all readers of the Order but in particular to the commander who is to carry out the arrest operation if it is required, is the mission: to

⁹ The Tribunal has at G66.411 a police document containing the prediction 'no trouble anticipated' in relation to the Londonderry march. Whatever the status of that document (as to which see the footnote 3 to paragraph 5C-1(2) above), it had been prepared for the JSC meeting of 20th January 1972 and had clearly been compiled on 19th January at the latest, as the first entry in the document refers to an event in Cookstown on 20th January (G66.409). By 27th January 1972 the document had clearly been overtaken by events.

¹⁰ B1279.015

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arrest, not any particular number of rioters, but as many rioters as possible¹¹.

TROOPS TO TASK

5E-10 This section of the Order, paragraph 9, provides each unit and independent sub-unit with the role it is to take for the event, and is relevant to the controversy that has been created in relation to the selection of 1 PARA for the arrest role.

5E-11 Despite suggestions to the contrary¹², there has been no claim that the commitments of the units in 8 Brigade were the sole reason for General Ford's selection of 1 PARA as the arrest force. The General's position¹³ is that those commitments (complemented, of course, by 1 PARA's relative availability) were an important factor that weighed in favour of the use of a battalion not committed to the ongoing tasks that ordinarily went with responsibility for the security of a particular area of the City. To look at the issue from 8 Brigade's perspective, the use of one of the additional battalions for this particular, non area-specific task (i.e. the arrest operation) left the resident battalions in place, avoiding more disruption to the troops than was absolutely necessary and maintaining a seamless control of the City according to tried and tested operational procedures, both between and within units, from the period of the run up to the march to its aftermath.

5E-12 The tasks that are relevant here are not therefore (as questions from both Mr Harvey¹⁴ and Mr Clarke¹⁵ suggest) those which arose out of the roles

¹¹ Operation Order Operation Forecast, G95.568 paragraph 7(e)

¹² Arthur Harvey QC at Day 258/065/13: 'And it would be incorrect for anyone to state that 1 PARA were used as the arrest force because the other regiments had already been allocated their specific areas of responsibility?'

¹³ BSI Statement, B1208.031 paragraph 5.2

¹⁴ Day 258/065/13, set out at footnote 2 above; and Day 258/070/17

¹⁵ Day 254/019/04: 'The first reason you give is that "the units in 8 Brigade were already committed in areas which they knew around the perimeter of the City". That was only so, was

FS 7. 756

which the units in 8 Brigade were to be allocated specifically for the march on 30th January. The material tasks for these purposes are the duties the units of 8 Brigade ordinarily carried out within their own Tactical Areas of Responsibility, and which were no doubt seriously stretching them day after day, regardless of the march, and had been doing so since the reorganisation of the Brigade's deployment was completed on 21st December 1971¹⁶: 1 Coldm Guards the Creggan and the open countryside of the Enclave; 22nd Regt in the City, including the Bogside; 2 RGJ the whole of RUC Divisions O and P, including a two company¹⁷ task at Magilligan Camp and the Sperrins; and 1 R ANGLIAN the whole of RUC Division N, including a company task as far away as Strabane.

5E-13 While it is understandable that lawyers might underestimate the difficulties of lifting a battalion out of its permanent area and putting in another one for an unknown period¹⁸, and the time it would take to install its replacement, the officers who have given evidence to this Tribunal (Colonel Roy Jackson might be considered an exception; his position will be looked at further) did not. It should be borne in mind that Chief Superintendent Lagan's warnings about the length of time the violence might continue had resulted in a warning order to 39 Brigade that 1 PARA might be out of its area for up to 4 days, and that is the time scale upon which any change over would have to have been planned. If there had been no violence during the march 1 PARA would have been required back in Belfast within the day; if it had been required to take over the area of one of the resident battalions the change over would have to have been reversed before it could have been completed.

it not, if you assume that they were the persons who were going to be in the blocking positions, and nobody else?'

¹⁶ 8 Brigade Op Directive 4/71 of 10th November 1971, at G27.196

¹⁷ Operation Order Operation Forecast, at G95.570 paragraph 9(g)(1)

¹⁸ See for example, Mr Harvey at Day 258/070/17 'It is easily arranged, General Ford'

FS7.757

5E-14 The coincidence of General Ford's selection of 1 PARA and 8 Brigade's own requirements is reflected in this evidence from General Steele:

The two resident battalions of 8 Brigade were, of course, already committed on their own tasks in RUC Divisions N, O and P and so it made absolute sense that if there was to be an arrest force, then it should be a separate entity and the CLF felt that 1 PARA should be the people to do it.¹⁹

5E-15 This view was shared by General INQ 0598, who was the Commanding Officer of 1 Coldm Gds on 30th January 1972:

1 PARA were the [Province²⁰] Reserve Battalion, based in Belfast and it was entirely sensible that they would be involved. As the [Province¹⁹] Reserve Battalion their role was to support the resident battalions where and whenever needed. I did not think it was surprising at all that the paras were going to be involved. We could have done the job they were given but in order for us to have done so 1 PARA would have had to come into Londonderry and take over our regular duties. They would then have had to be relieved by us after the march.²¹

5E-16 General INQ 0598 explained some of the problems when he was asked about this evidence by Mr Harvey:

Q: I am not trying to get you to say anything, I am simply asking you to comment. Ultimately your regiment was well capable of carrying out an arrest operation; is that right?

A: Yes, but we would have had to have been relieved of all our posts we had and all the operations which we were doing the day before so we could be taken back, rehearse what we were going to do and then the following day we would have had to take over all those places again, very cumbersome.²²

5E-17 General Welsh, then Commanding Officer 2 RGJ, was of a similar view:

¹⁹ Day 266/048/01

²⁰ Corrected in oral evidence to 39 Brigade: Day 272/002/11

²¹ BSI Statement, C598.3 paragraph 15

²² Day 272/042/12

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Q: Was any reason ever given to you for the use of the Parachute Regiment instead of the Royal Green Jackets?

A: Oh, yes, I think -- I mean -- it was quite clear we, at that time -- I think the roles in the battalions had changed and we were in the county, and it would have meant taking us out of the county role and going into the city and it would have meant mucking up all the battalions, I think, so that was a plain reason, which I did not appreciate too much at the time.²³

5E-18 As was the Brigade Commander, who put it this way in 1972:

Q: ... why was it that [1 PARA] were selected particularly to carry out this operation, as opposed to other Units who had greater knowledge of the area and the rioters who would be involved?

A: First the units under my command already, not the reinforcements, were committed to tasks which they were carrying out. Secondly, there was no point in doing any juggling about, as I understood it.²⁴

5E-19 The one senior officer from 8 Brigade who now at least holds a different view is Colonel Jackson, then Commanding Officer 1 R ANGLIAN:

Q: Insofar as you are suggesting, sir, [1 PARA] could have taken over your role, the roles played by your regiment, would you reflect on that; do you think that was necessarily a bad thing, or something that could not have sensibly been done?

A: When was that, which roles are you talking about?

Q: The roles you were actually, now you have been reminded of the fact you were the County Regiment substantially working in Strabane at the time, at least 1 Company of 1 Para would have had to replace 1 Company Royal Anglians in Strabane?

A: Well, yes, I mean they could have done a county role as far as I was concerned, yeah.

²³ Day 282/033/10

²⁴ Brig MacLellan to Lord Widgery at B1264

FS 7. 759

Q: You really think it would have been, I do not mean to sound rude, it would have been sensible to bring in a very severe battalion, not only into the city for an in-and-out operation in a day, but to get them to replace an established regimental role in the county and Strabane, that would have been a sensible way of using a reserve battalion?

A: I would have preferred it to have had an in-and-out battalion, whatever its --

Q: Yes, but assuming they were to be used, whoever it was, whatever reserve battalion was going to be used, would it have been militarily sensible to swap over an established county resident battalion, working as you were principally in Strabane, with all the physical movement that that would have taken, to put at least one company of the Parachute Regiment there?

A: Well, it would only have been for a few hours. I mean, the Operation Forecast was only literally from 12 o'clock until that evening, it was only half a day.

Q: You could not sensibly have replaced a company in Strabane, could you, with the amount of physical rearrangement --

A: Oh, yes, we were sufficiently flexible to move at any time. I mean, we moved to Belfast in, I do not know what time, February 1971, no difficulty.

Q: That was the reason why the second soldier I was going to put to you on the ammunition point also deals with this, and I wanted, if I could, to deal with two points at the same time. I think I mentioned his reference, he is the warrant officer in command company, HQ Company, 216. We have him at B2153.1. I suspect, sir, you might remember -- again it does not matter at all if you do not -- 216 describes himself as the second class warrant officer of the Royal Anglian, who was the company sergeant major of command company and on the actual -- all that is listed as HQ Company; does that ring any bells?

A: No.

Q: The point I want to draw your attention to occurs on the second page, paragraph 8 right at the bottom. You see: "At that briefing ..." He is referring here of course to the briefing you would have given: "... the units were told where they were to be deployed. I cannot say that we were sorry that we were not deployed on any of the flash points

that day. In many respects the way we were deployed made sense." This is the company sergeant major speaking: "We knew the area, whereas the Paras did not. It was possibly better for us to be held in a reserve position because we knew the streets. Our job was to contain the situation, keeping it to the one area to prevent spreading out. That is why the battalion was blocking the side streets." I pause there. Of course, you had two companies that were in blocking roles, did you not, and one back in Strabane?

A: Yes.

Q: Going on with 216's statement: "If you are going to push crowds around you need to know where you are pushing them. The Paras would not have had that sort of information. It made sense for them to be placed in the more sensitive areas that did not require a detailed knowledge of the area. When we went to Belfast on occasions to assist the resident battalions, the battalion was generally put at the flash points as we were not familiar with the area. That happened on two occasions." Is the company sergeant major right to your recollection, that when you went to Belfast, I think you have referred to it yourself in your evidence, that your own regiment was used in the same way as the Paras were used when they came to Londonderry?

A: Not at all, we did not do scoop-up, we took over an area in the Clonnard.

Q: You think he is mistaken about that?

A: Yeah.

Q: I will come back to it in a second, sir.

.....

Q: The reason why, sir, I wanted you to have the opportunity of dealing with the troops-to-task exercise, as it has been referred to, is that the commanding officers of all the other battalions have already expressed a view on this, apart from, of course, the Parachute Regiment. If I can put them to you in summary, which would be the quickest way of doing it, and then ask you to consider again whether you would reconsider your evidence in the light of this. First of all the brigade major, who I think you accept was very experienced in Londonderry?

A: Yes, he had been there longer than we had.

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Q: His view was, he told the Tribunal in his evidence on Day 268, page 150, we need not turn it up, that the two resident battalions were already fully deployed on their roles on RUC divisions, and he has explained them. He considered that was the sensible way of using them. The commanding officer of the Coldstream Guards, you remember him?

A: Yes.

Q: We have a reference to him, so that you can keep a check on what I am putting, C598.3, one single sentence, he says: "1 Para were the Province reserve battalion based in Belfast. It was entirely sensible that they be involved. As the province reserve their role was to support the resident battalions wherever and whenever needed. I do not think it was surprising at all that they were getting involved. We could have done the job ..." The commanding officer of the Royal Green Jackets told the Tribunal in his evidence that he would have regarded the displacements of the resident battalions as unnecessarily "mucking up" the battalions, was the phrase he used on a number of occasions, simply "mucking up" their positions. Finally, the commanding officer of the 22nd Light Air Defence, do you remember him?

A: Yes.

Q: Jimmy Ferguson?

A: (Witness nodding)

Q: Told the Tribunal in his evidence that he saw no reason or justification to see that 1 Para should not be used in an arrest role. I thought it was fair to tell you what the other commanding officers had said, but does it remain your view that you think it would have been better for your regiment to have been reorganised so that the Paras could have been put, if necessary, as far away as Strabane and your regiment done the arrest operation?

A: Yes, I mean what you have told me now surprises me somewhat.

Q: That is why I thought you ought to have the opportunity of changing this?

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*A: But I will not change my mind. We did know the area, we did know the local population, I think, et cetera.*²⁵

5E-20 The problem with this evidence is that Colonel Jackson, who may in any event be talking merely about a personal preference (see the second passage underlined, his third answer), clearly does not retain (and to be fair to him, may never have had) a sufficient understanding of the planning that had been necessary in preparation for this march. While it is true that in the event 1 PARA were on the streets of Londonderry 'for a few hours', they had been warned that they might be required in Londonderry for a number of days. Colonel Jackson had begun his evidence (see his sweeping and superficial statement that 1 PARA could, so far as he was concerned, have done the County role) in the belief that as at 30th January 1972 his battalion were still operating under the old roulement system, alternating between three weeks in the City role and three weeks in the County role. When shown what the other senior officers in the Brigade had told the Tribunal Colonel Jackson would not 'change his mind', but was clearly returning to his argument that his battalion should have been given the arrest role: they knew the area and the local population. Colonel Jackson's evidence is far from impressive on this issue and he is moreover alone in taking the view he does.

5E-21 Despite his earlier evidence that, had he been given the arrest role, he would have wanted to have done it with his own troops²⁶, Colonel Jackson also agreed with a suggestion²⁷ that the arrest force could have been formed from more than one unit. There was inevitably some disruption of the unit formations. A Company 2 RGJ, which is likely to have been in the reserve or resting phase of its own battalion roulement, (leaving two 2 RGJ companies at Magilligan and one in the Sperrins), was placed under

²⁵ Day 286/067/25

²⁶ Day 286/088/03

²⁷ From Mr Elias, at Day 286/095/12

FS 7. 763

command 22nd Regt; and D Coy 1 PARA was given to 22nd Regt as an immediate, local reserve. However such an arrangement (as Colonel Jackson himself acknowledged in the earlier evidence already referred to) was far from ideal for the one unit that, if utilised at all, was going to have to be the most flexible and the most mobile.

5E-22 General Welsh was also asked about mixing up units, and agreed with the earlier of the views expressed by Colonel Jackson:

Q: The other is the deployment. If I can use your word you used a little earlier. Using companies of the Royal Green Jackets, would have, I think you said, mucked up the job that the battalion was at the time doing. There was, of course, was there not, in the deployment that in fact was ordered, a certain amount -- if I can use your word -- of mucking up because of course you had one of your companies taken off its regular task²⁸ and taken into the city?

A: Yes, but you would try to limit your mucking up, as we put it, to the smallest amount possible, I would think.

Q: I understand that might have been a consideration. Would there have been any reason, negotiation, why a company of Royal Green Jackets should not have operated with a company or two companies of Royal Anglians to form the arresting party?

A. No, there is no reason why that could not be so. Then you do not want to get -- you do not want to see how much you can mix-up the command and -- to try to test it to see if it will work.

Q: Of course not.

A: It is better if you can have Green Jackets -- to have them under the command of the Green Jackets and Royal Anglian under the command of the Royal Anglian.

²⁸ It should not be assumed that this task involved any ongoing or continual activity. It may well have been, as already suggested, in the rest and reserve phase of the rotation between battalion tasks carried out within 2 RGJ.

FS 7. 764

Q: Although there was on the day, as we know, Green Jackets put under 22 Light Air and so on. There was an element of mixing.

A: Not and so on, I think they are about the only ones who were on command moved. Otherwise the rest stayed in doing the jobs they were doing before.

Q: I am not going to go into the detail of that with you, General, but there was not, was there, if it had been the will of the CLF or brigade, there was not any reason why Royal Green Jackets or Royal Green Jackets and Royal Anglians together could not have constituted the arrest force?

A: No, except that you would have been muddling up what was already on the ground.²⁹

5E-23 The deployment of the Brigade for the march follows on from the principles set out above: the troops of the Creggan and City battalions remained where they were, albeit moving manpower forward from their usual company bases to man barriers; and although the responsibilities of the City battalion had to be divided in two in order to man and effectively control both the permanent company bases and the additional large number of barricades to be erected within its boundaries (barriers 12 to 26 inclusive), this was done by importing a battalion Tactical Headquarters and two rifle companies (1 R ANGLIAN) from just over the river in Ebrington Barracks into the southern half of the City and a single company of 2 RGJ into the northern. The units to which these elements belonged had both in the past carried out the City task themselves.

5E-24 It is worth noting that, in addition to the requirement for each of them to contain the march in the areas in which they were to operate, the units within the City were required to undertake or continue tasks for which 1 PARA, with their lack of knowledge of the area and the procedures for controlling it, would have been unsuitable. 22nd Regt was to 'maintain an intensive programme of anti-device patrols in the commercial area of the

²⁹ Day 282/056/18

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City' and to 'continue the City task ... in accordance with current policy'; 1 Coldm Gds were to 'mount VCPs to check and control all traffic moving through the enclave', locations to include the humped approved roads but otherwise at the discretion of the Commanding Officer; 1 R ANGLIAN (who had previously carried out the City task on a three week on three week off basis) were to 'carry out the City task ... in accordance with current policy', in particular to 'conduct anti-device patrols in the commercial and Protestant areas of the City'.³⁰

5E-25 The other reserve force, 3 RRF, which was to form the Brigade Mobile Reserve, was if called upon going to be operating in areas in which it had not previously operated: in the City, the Waterside, Strabane, Magilligan or elsewhere in the Brigade area³¹, all areas it did not know. This was precisely the position in which 1 PARA found itself.

ARREST OPERATION

5E-26 Despite the importance of these other provisions, the 1 PARA tasking has been considered before this Tribunal to the almost total exclusion of the remainder of paragraph 9 of the Operation Order. Furthermore, during the course of the evidence before this Inquiry the terms of paragraph 9f(1) were misrepresented to witness after witness, often inconsistently, and witnesses who gave evidence as to their meaning saw their evidence ignored, both in any further questions (in some cases in the very next question) and in questions to witnesses who followed.

5E-27 Paragraph 9f(1) of the Operation Order for Operation Forecast deals with the tasking of 1 PARA, as follows:

(1) Maintain a Brigade Arrest Force, to conduct a 'scoop up' operation of as many hooligans and rioters as possible.

³⁰ See generally Operation Order, Operation Forecast, G 95.568 paragraph 9.

³¹ Operation Order Operation Forecast, G 95.569 paragraph 9(d)

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(a) This operation will only be launched, either in whole or in part, on the orders of the Bde Comd.

(b) The Force will be deployed initially to Foyle College Car Park GR 434176, where it will be held at immediate notice throughout the event.

(c) The Scoop-Up operation is likely to be launched on two axis, one directed towards hooligan activity in the area of William Street/Little Diamond, and one towards the area of William Street/Little James Street.

(d) It is expected that the arrest operation will be conducted on foot.

(2) A secondary role of this force will be to act as the second Brigade mobile reserve.³²

5E-28 In common with the orders given to the other units covered by paragraph 9, this paragraph gives 1 PARA two tasks by way of numbered orders: (1) to maintain the Brigade Arrest Force, with the mission: to conduct a scoop-up operation of as many hooligans and rioters as possible; and (2) to fulfil a secondary role, to act as the second Brigade mobile reserve. Those are the only orders given to 1 PARA in this paragraph. The lettered sub-paragraphs of paragraph (1) are different: they are descriptive, providing information about the arrest operation not just to CO 1 PARA but to all readers of the Operation Order. While some information could be given clearly (the fact that it was always to remain a Brigade task and the location of its initial holding area), in some instances the information provided is no doubt the best information available at the time the order was drafted: the likely axis of the arrest operation if launched (which, combined with the location of the holding area, would give all readers of the Order the best understanding then possible of where the arrest force might be encountered) and an expectation that it would be carried out on foot (ie what type of arrest force the troops on the containment line might encounter).

³² G95.570

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5E-29 No military witness has ever accepted the proposition (an understandable one, perhaps, for lawyers accustomed to finding predictions of events and allowance for legally significant contingencies in documents) that paragraph 9f of the Operation Order dictated either the location in which the Arrest Force was to operate or the tactics it was to adopt. Such detail could not have been set out on the night of 26th January or on the morning of the 27th. A written Operation Order could never have catered for the fluid situation that would inevitably arise on 30th January (still three days away) and the planning that could be done would require the input of the Commanding Officer of the battalion which was to fulfil this role. He, of course, was to be just one of the recipients of the Order, and he would not even be able to carry out his Appreciation until 28th January.

5E-30 The failure to understand what could and could not be done by way of planning (and therefore orders) as at 27th January may explain what appears to have been a remarkable lack of communication between questioners and witnesses on this issue. There is in fact no inconsistency in witnesses telling the Tribunal that: (i) while they might, when planning the operation, have envisaged the arrest operation taking place in and around (or with its focus at) Aggro Corner, and (ii) that was not, and it was not desirable that it should have been, laid down by paragraph 9f(1)(c) of the Operation Order and (iii) that the Operation Order does not set out any sort of boundary or limit of exploitation.

5E-31 As a result of an insistence on the part of questioners to read boundaries for the arrest operation into paragraphs 9f(1)(c) of the Operation Order, General Steele, the author (subject of course to the Brigade Commander's approval) of the Order, clearly had difficulty making his evidence understood, despite the fact there has never been any military evidence indicating that he might now be misinterpreting his own order. The General's difficulties, and their causes, are illustrated by the following passage from his evidence:

LORD SAVILLE: In his evidence to Widgery, Brigadier MacLellan did say that the Support Company had gone

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much further down Rossville Street than he expected them to do³³; is your view the same?

A: Well, I would actually have to look at a map to see where they ended up. As I have said many times³⁴, it was always in my mind, from the point of view of the scoop-up operation, that it would be conducted in the wasteground in the area Eden Place/Rossville Street. So if the Pigs went down -- okay?

LORD SAVILLE: Sorry, yes.

A: If the Pigs went further down from that area -- and I do not know whether they did or not, to be honest -- then maybe they went further than I had expected. I do know from other evidence I have seen that some of the soldiers went much further south than I had thought, but that, of course, was as a result of the firefight and I am quite clear that once the firefight started, then the whole parameters of the arrest operation were changed.

LORD SAVILLE: One follows that entirely. Why did you envisage that the arrest operation would take place on what one could describe as the Eden Place wasteground, as opposed to Aggro Corner and Little James Street?

A: It was never in my mind that it was going to be done on Little James Street. I saw that the scoop-up operation would be done south of William Street and that was why I pointed that area out at the Widgery Tribunal and why, for Eversheds, I drew the circle on the plan.

LORD SAVILLE: You would not get that impression from the operational order; would you? (A)

A: The operational order did not specify exactly where the arrest area, the scoop-up area was to be.

³³ In his written evidence to the Widgery Inquiry, **B1235 paragraph 29**, Brig MacLellan wrote: 'The Company therefore that moved rapidly in their vehicles to the area North of the Rossville Flats acted in accordance with my instructions, in that such action would effectively place the troops between the rioters and the marchers.' During his oral evidence to Lord Widgery, when asked whether he knew that the plan involved or might involve troops going as far as the north end of the Rossville Flats, the Brigadier replied (at **B1279**): 'I knew they would have to get behind to cut off; I did not know they would go that far.' He also observed (see letter C at **B1259**) that in his view nothing had gone awry with the operation.

³⁴ Gen Steele was right: he had by now said this many times, to no avail.

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LORD SAVILLE: *I agree. My question was: you would not get the impression that there was to be an arrest operation on the wasteground comprising Eden Place and Pilot Row from the operational order?*

A: No, that is fair.

LORD SAVILLE: The impression you would get, would you not, leaving aside the Little Diamond axis, that the arrest area is going to be Aggro Corner and the wasteground adjoining Little James Street and Little James Street [sic.]? (A)

A: Yes, I think the operation order actually talks in terms of the axes of the arrest operation into those particular areas, because that is where the hooliganism occurred, but to be able to do a scoop-up, you have to be able to get behind them.

LORD SAVILLE: *I follow that, but you have to arrest rioters while they are rioting, have you not, otherwise you find enormous difficulties in taking them to Court?*

A: *Quite so, and that was always the terrific problem that we had with arresting rioters in Derry, that they ran away and it was very difficult subsequently to identify them if they were caught, if they were arrested, to identify them as a hooligan. So it was an enormous problem, and that is exactly why we devised the scoop-up arrest operation, to see if indeed we could arrest them in a swoop, so to speak.*

LORD SAVILLE: *I follow that, General Steele, and I can see – although I am not a soldier myself – I can see an advantage, for example, in sending some troops along the side, the northern side of the Eden Place wasteground, sending them west so that they could debouch on to that far end of Rossville Street and prevent rioters in the William Street/Little James Street area escaping down Rossville Street (D). I understand that entirely. What I cannot understand at the moment – perhaps you would like to think about it, because we will take a break for ten minutes now - - I can understand that idea in the light of the operational order, that that is the area, the William Street/Little James Street area (A), putting the troops down the wasteground going west so that they can turn right and prevent the rioters from escaping from that area; what I cannot understand from the operational order is why it should be in your mind that they would actually conduct the arrest operation itself in that wasteground (A). Could you think about that over the next few minutes?*

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A: Yes, certainly.

.....

LORD SAVILLE: Before we took a break, we were discussing my slight puzzlement, General Steele, about your statement that you expected the arrest operation to take place in what one has described as the Eden Place wasteground, as opposed to Little James Street/William Street and what one might describe as the Little James Street wasteground.

A: Yes, I have given some thought to it during the break and I think the concept that was going through my mind was always based on the fact that the hooligans run away and do not stand. So I had always thought that the only way to conduct a scoop-up was to get behind rioters who were indeed running away, and that is why I did not think that it could be done in that very small wasteground area at the junction of Little James Street and William Street, but in the much larger wasteground area where Eden Place and Pilot Row once used to be.

LORD SAVILLE: We do not want to go over old ground, but in those circumstances it is a little odd, is it not, that that did not appear in the operational order? (A)

A: Well, I go back to saying that the actual arrest operation itself was the province -- sorry, the details of the arrest operation was very much the province of the commanding officer and so much depended on where the hooligans were going to be, and I recall that in the order I used the expression, "likely axes of approach" of advance (A). It could well have been that the hooliganism could have been somewhere else, completely different. That was why I think we gave the commanding officer of 1 Para quite a difficult task, asking him to make a detailed plan for an arrest operation when he did not actually know exactly where it was to be mounted, because we did not know where the hooliganism was to be.

LORD SAVILLE: I take your point entirely about likely and if I may say so, speaking for myself, clearly you could not say more than "likely" at the time you were drawing up the operational order (A), for the very reasons you have given. Equally, you have told us that it was envisaged that it was likely that the arrest operation would take place on the Eden Place wasteground, in which case my comment remains precisely the same, which is that it is a little odd that it does not appear in the operational order (A).

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A: Yes, we did not go into that detail in the operational order. Whether this was a mistake or not, whether it was right or not to leave those sort of details to the commanding officer, I am not prepared to comment upon. I think we did the best that we could in the operation order to define what his task was as the commander of the arrest force and where it was likely to be.

LORD SAVILLE: When you finally did learn how far down the troops had gone into Rossville Street, as far down as the entrance to the car park, I asked you a few minutes ago whether you were surprised. You said you would like to look at a map. Perhaps Mr Rawat could put a map up on the screen and indicate in broad terms where the troops got to as they came in with the Pigs.

MR RAWAT: Certainly, sir. In fact, perhaps we could be best assisted by putting up the map on which you have indicated where you anticipated the scoop-up operation would occur. Could we have B1315.133, please. We will use it as it is at the moment. General Steele, in your statement, when you discuss this map, you cross-refer to your evidence to Widgery. I would like to show you that in a moment. But to deal with the Chairman's point, and as you will know, Support Company travelled down Little James Street in a series of vehicles which then travelled into Rossville Street, and it was a line of ten vehicles. The first was a Pig which ended up just about here, Eden Place, facing towards the alleyway that led into Chamberlain Street. (Marked with yellow arrow - B1315.0155) The second vehicle in the line of vehicles continued on and turned to eventually end up facing into the car park of the Rossville Flats and you had then, following those two vehicles, a sequence of vehicles which began with the command car, containing the commander of Support Company, a Ferret scout car, two more Pigs, two soft-top lorries and two Pigs after that and they stopped in a line along the north end of Rossville Street. (Marked with red and mauve arrows - B1315.0155) That is, broadly speaking, where the Support Company vehicles that came into the Bogside ended up. I would take it that the Chairman's point relates particularly to the vehicle indicated by the red arrow, which ended up deep into the Bogside and at the car park of the Rossville Flats?

A: It is, of course, the first time I have seen that and I have to say I find it very interesting, particularly the yellow Pig, which you say had turned in towards the alleyway, which of course would be exactly what you would expect it to do if it

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was taking part in a scoop-up. The red Pig, I have to say, looks to me as though it has gone too far.

LORD SAVILLE: *The other thing about this drawing and your circle is that, looking at it from the point of view of the operational order, bearing in mind the word "likely," that appears for what seem to me perfectly sensible reasons in the operational order (B), bearing in mind also, as you say, you have to get behind the rioters, why is not this circle about three squares to the north of where you have put it, because it does not in fact cover Little James Street at all?*
(B)

A: *I would agree with you entirely, sir. This circle was done for Eversheds, sort of on a map on my knee. I know there is no excuse for it, but it is not an accurate circle by any manner of means and I just got a pencil and made a circle, and I agree with you entirely, that it would be much better and more accurate of both the operation order and what I had in mind if the circle was certainly a couple of good squares north.*

LORD SAVILLE: *That would accommodate your point – whether we accept or not we have to wait to the end of the day – that one of the ways of getting round behind rioters in William Street and Little James Street would be to send troops up the northern edge of the Rossville Street wasteground (C), because that would still be encompassed if you moved your circle two or three squares up, but it would move the general area where you expect there to be arrests more or less precisely to the position which was described as "likely" for one of the two axes of the arrest operation as described in the operational order.* (B)

A: *Quite so.*

LORD SAVILLE: *You would accept that?*

A: *I would.*³⁵

5E-32 At the passages marked (A) Lord Saville has assumed that paragraph 9f(1)(c) of the Operation Order is providing for an arrest operation in (and only in) a particular area ('Aggro Corner and the wasteground adjoining

³⁵ Day 267/130/24

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Little James Street and Little James Street'), whereas in fact this subparagraph of the Operation Order is providing nothing more than an indication that the arrest operation is likely to be directed towards hooligan activity in that area (or a different area altogether). Because the first of these questions was put in terms of an absence of an impression that the arrest operation was to take place on the Eden Place wasteground, General Steele is able to answer 'that is fair'. Only when the next question suggested that the Order gave the impression that arrests were to take place in a specific area was General Steele able to see the need to explain, and he did so by emphasising both that the area identified was where the rioting was likely to take place, and that 'to be able to do a scoop-up, you have to be able to get behind him.'

5E-33 In the underlined passages marked (B), which relate to the circle drawn by General Steele over the Eden Place/Pilot Row wasteground on the plan attached to his BSI statement, Lord Saville reveals the strength of his own views by indicating to the witness that, what he describes as the witnesses' 'point', may not be accepted: 'whether we accept or not we have to wait to the end of the day'. The point in question, phrased as 'one of the ways of getting round behind rioters in William Street and Little James Street would be to send troops up the northern edge of the Rossville Street wasteground' (marked (C)), was in fact a suggestion made by Lord Saville, marked as (D). The lack of communication has continued: both the Chairman's and the witness's interpretation of the Operation Order can be accommodated within the circle as redrawn.

5E-34 The difficulties of the insistence that the Operation Order dictates an area for arrests (which it does not) rather than indicating an area where hooligan activity was likely take place (which it does) have been compounded by an inconsistent approach to the meaning of this provision of the Operation Order. Disagreeing with a suggestion from Mr Rawat that it meant that there was a line between the two specified points (William Street/Little Diamond and William Street/ Little James Street)

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'along which arrests would take place'³⁶, Lord Saville gave an interpretation that allowed for action in either or both of two areas:

A: No, no, that was not the conception at all. The conception was of two separate areas...

Q: That is indeed how I have read it to date, that you were expecting the possibility of hooligan activity in the Little Diamond/William Street area and in the Little James Street/William Street area, so that you might have to mount an operation in each of those areas or the one or the other, depending whether or not there was hooligan activity in the one area or both areas?³⁷

5E-35 The following day, however, the Chairman challenged the accuracy of General Steele's evidence to Lord Widgery. The Chairman did so by insisting that the Operation Order only envisaged an operation in both the Little Diamond/William Street and the Little James Street/William Street areas:

LORD SAVILLE: Can we take it in stages? Can we go back to E for a moment on this page. You were asked a question: "Question: The order was to launch the arrest operation which was envisaged by the brigade order? "Answer: Yes." Is that right?

A. I think that was rather a poor answer, to be honest because --

LORD SAVILLE: I think you see the point.

A. Absolutely, because the brigade order says "in part or in whole".

³⁶ Day 266/069/11. Despite Gen Steele's response to this question, and Mr Rawat's rephrasing of it ('... that proposal of two axes of arrest creates a line beyond which you would not have envisaged the arrest force needing to progress'), it is almost precisely what Christopher Clarke QC put to Col Wilford at Day 312/020/05 '... did you appreciate that the order appeared to be contemplating an arrest operation in the area of William Street/Little James Street and around here, in the Little Diamond area, on broadly speaking, as it were, a horizontal axis or axes along William Street?'

³⁷ Day 266/069/13

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LORD SAVILLE: *It also says two axes, one Little Diamond and one the William Street/Rossville Street junction, if I remember correctly. So the order was not to launch the arrest operation envisaged by the brigade order, that is to say one axis up by Little Diamond, another one down by Aggro Corner; that is right, is it not?*

A. *No, I do not think that is quite right. I did not say in the order that I gave anything particularly about Little Diamond. The orders that were given were to launch the arrest operation and specifically to put one of the sub-units through barrier 14. So I did not actually mention Little Diamond at all.*

LORD SAVILLE: *No, you did not, but if you go back to C: "The orders that I gave to 1 Para ... were to launch the arrest operation straightaway; that they were to arrest any hooligans in the area of the wasteground at the junction of William Street and Rossville Street." That is only part of the arrest operation envisaged by the brigade order; is it not?*

A. *Yes.*

LORD SAVILLE: *So when you were asked the question: "The order was to launch the arrest operation which was envisaged by the brigade order?" Your answer, "yes," was not wholly accurate?*

A. *No, I agree with that.*

LORD SAVILLE: *In addition, of course, the arrest operation as envisaged by the brigade order was an arrest operation on two axes and it was those two axes together that would have occupied three companies.*

A. *Yes.*

LORD SAVILLE: *But here we only have part of the arrest operation envisaged by the brigade order. Where do the three companies come in in that context?*

A. *What was --*

MR RAWAT: *I am sorry to interrupt, would it assist to have that part of the brigade order side by side with this passage?*

LORD SAVILLE: *If the General would like to, of course.*

A. *No, I am perfectly happy not to see it there, because I can remember the brigade order. But the order I gave to 1 Para is quite clear in my mind, that it was to mount the*

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arrest operation and, as we know, the orders that had been given to the commanding officer of 1 Para was that he could use -- that he could make his own plan and use his companies as he thought fit. So I do not think there is anything wrong in not mentioning Little Diamond so long as the commanding officer of 1 Para was quite clear that he was able to use his three sub-units.

LORD SAVILLE: *I am not suggesting that there is anything wrong. All I was suggesting, General Steele, I think you rather agreed, was that your answer to the question: "The order was to launch the arrest operation which was envisaged by the brigade order," the answer "yes" is not wholly accurate.*

A. *Yes, I would agree with that.*

LORD SAVILLE: *Going back to C again, the order as you there described it: "... that they were to arrest any hooligans in the area of the wasteground at the junction of William Street and Rossville Street; that they were to use all three sub-units for that task ..." Did you expressly state that or, again, is that something -- I think you do give the answer to that, you did not expressly state that the three sub-units would be used; is that right? If we look at the next question and answer, Mr Gibbens: "Why was it necessary to mention all three? Were they not all one force? "Answer: To be honest, my recollection is that I said that they were to launch the arrest operation, which I knew of course consisted of three sub-units." Then you are given a slight ticking off in the next question. I understand from that and the answer you gave to Mr Rawat a few moments ago, that you did not expressly inform 1 Para when the order was passed on by you that they were to use all three sub-units?*

A. *No, I did not say "three sub-units" in the order, that is quite right. The expression that I used was, "to mount the arrest operation", it was "to launch the arrest operation," to be honest.*

LORD SAVILLE: *Can we go back to C, that part of what you say the order was: "... that they were to arrest any hooligans in the area of the wasteground at the junction of William Street and Rossville Street." Was that something that you expressly mentioned when you passed this order on?*

A. *Yes, I think I did -- I said that because I had used the expression that they were to put one sub-unit of their arrest force through barrier 14.*

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LORD SAVILLE: It is difficult to disentangle what happened from what you were thinking immediately before it happened, but there was no contemplation that afternoon, as the march proceeded and the hooligan activity took place, that there would be an arrest operation in the area of Little Diamond at brigade headquarters.

A. No.

MR RAWAT: General Steele, I know that you cannot now, with the distance of 30 years, remember the words that you gave, but you have told us that what you were doing was passing on, in terms, Brigadier MacLellan's order; that is right, is it not?

A. Yes.

Q. What it comes down to is that you did not make mention of three sub-units, what you said was, "launch the arrest operation"?

A. That is correct.

Q. The only reference you made to a sub-unit was to the sub-unit that was going to go through barrier 14. All you said was, or all you can say is that that part of the order was the request from 1 Para was now being agreed?

A. No, no, no, I did not say that.

Q. What I am saying is that what you said was, "launch the arrest operation, one sub-unit to go through barrier 14"?

A. With one of the sub-units to go through barrier 14.

Q. Do you have a recollection of saying, "one of the sub-units"?

A. I do.

Q. You have a clear recollection that you, at least implicitly, alluded to the use of other sub-units?

A. Of one sub-unit through barrier 14, yes.

Q. Maybe I am confusing you: do you think you said, "one sub-unit to go through barrier 14," or, "one of these sub-units to go through barrier 14"?

A. One of the sub-units.

Q. How can you be sure of that?

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A. Because I know that I gave the order for the arrest operation.

LORD SAVILLE: I am a bit puzzled as to why you should identify barrier 14 as the place for one of the sub-units to go through.

A. Well, I particularly wanted one sub-unit to go through barrier 14 because, of course, that is where we knew the hooligans were, and I was well aware that 1 Para had a company there, ready to be launched into barrier 14, because they had wanted to do it at 3.55.

LORD SAVILLE: Another way of looking at it, General Steele, would be it would be particularly important to send another sub-unit through another barrier so you could get round behind the hooligans at barrier 14, which you could not do if you sent them straight through barrier 14.

A. Well, I think that was up to the commanding officer with his plan. I did not know what his detailed plan was. One thing I did know was that the hooligans were at 14; that one of his companies was there ready to be launched at 14 and so that is why I included it in the order. But I just want to make it quite clear here that I am absolutely clear in my mind that I gave the order for the full arrest operation to take place, which meant three sub-units.

LORD SAVILLE: Forgive me for saying this, you keep saying you gave the order for the full arrest operation to take place, but you agreed with me five minutes ago that the full arrest operation order envisaged by the brigade order was not going to take place, but only one part of it.³⁸

5E-36 If the paragraph 9f(1)(c) of the Operation Order did not lay down a specific location for the arrest operation it follows that it did not lay down any boundaries either:

Q: ... What I am suggesting, General Steele, is that that proposal of two axes of arrest creates a line beyond which you would not have envisaged the arrest force needing to progress?

³⁸ Day 267/088/03

A. No, I do not think that follows at all. I saw, in the Little Diamond, that the arrest would have to take place in the area of the Little Diamond and, in the William Street/Rossville Flats area, I saw the actual arrest taking place south of William Street.³⁹

5E-37 The suggestion that the Operation Order did lay down an area for the arrests to take place and/or limited the area in which it could operate fails to take any account of the fact that the Security Forces, did not know, either (most importantly for these purposes) at the time the Operation Order was being drawn up or before the march began, what the respective intentions of the marchers and those intent on violence were and what routes were going to be taken. While some options were more likely than others, the commanders in 8 Brigade had to be ready for it to take any route (or routes) and concentrate at any number of points on the various approaches to the City (hence the extensive containment line). On the day 8 Brigade could not work on the basis that the march was always going to do what in the event it did do, and the Tribunal cannot do so now.

5E-38 Had the march as a whole, or even just those seeking violent confrontation decided to direct their efforts up Waterloo Street the guidance in paragraph 9f(1)(c) of the Operation Order would of necessity have been discarded, 1 PARA would have had to alter its deployment and different barriers (on this scenario Barriers 15, 16 and 17) would have been used as access points. It is unlikely, to say the least, that anyone in 8 Brigade would have protested at such an adjustment on the basis that it would have meant a failure to comply with the terms of paragraph 9f(1)(c).

5E-39 Two further factors, which appear to have been omitted from the considerations of those putting questions on this issue, need to be taken into account. In support of his proposition to General Steele that the Operation Order required the arrest operation to take place on William

³⁹ Day 266/069/24

Street or to the north of it, Lord Saville relied upon the need to be able to identify people rioting in order to arrest them:

*I follow that, but you have to arrest rioters while they are rioting, have you not, otherwise you find enormous difficulties in taking them to Court?*⁴⁰

5E-40 This was precisely why coloured dye was used in the water canon: if the arrests were to take place out of sight of the barriers, to the south for example of Aggro Corner, dye would be of great assistance in making the necessary identification. And the contrary applies: dye would not have been required if it had it been envisaged (let alone ordered) that arrests would only be carried out in sight of the barriers or by troops trapping the rioters up against the barriers.

Q: Can you remember, General Steele, what the thinking was behind the deployment of those vehicles; what was your purpose in their use?

A: Well, again, it is the same as baton rounds. What we were hoping to do was to disperse rioters using those internal security weapons, and of course if there had been a dispersal of hooligans using those weapons, then it would not have been necessary to have had the arrest operation, which in turn would have followed the overriding principle of the whole of the event, which was that we would do it in as low a key as possible.

Q: The water cannons contained coloured dye?

A: Yes.

Q: And what was the purpose of that?

A: To be able to identify rioters subsequently, if there was to be an arrest operation.

Q: Can you remember, General Steele, what the thinking was behind that; why would you need coloured dye to identify rioters?

⁴⁰ Day 267/132/21

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A: This goes back to the point that was covered earlier this afternoon, that it was of great assistance to soldiers to be able to arrest those who had been rioting and one method of identification was the dye.⁴¹

5E-41 In the event, of course, some of those who had been rioting at Barriers 12 and 14 continued to attack the soldiers on the Eden Place/Pilot Row wasteground and the soldiers were able to (and at least in some cases did, prior to the shooting) see who was continuing to riot and concentrate their efforts on arresting those who merited arrest.

5E-42 The second factor that needs to be taken into account is a different provision of the Operation Order, paragraph 7j⁴²:

The Containment Line and the area within it are to be dominated by physical military presence, by OP observation and by sniper posts.

5E-43 Comment has already been made about the omission of the underlined words when this passage has been referred to witnesses. The protection afforded by the counter-sniper positions was clearly intended to extend beyond the containment line, which ran along (to the north of) William Street and down the eastern boundary of the Bogside. On any view the area within the containment line includes the wasteground to the north of the Rossville Flats, and the possibility of troops being on that wasteground had been taken into account:

Lord Gifford: In relation to the snipers, we recall that in the co-ordinating conference agenda⁴³, the snipers were to be deployed where the troops would be in the open, to cover where the troops would be in the open?

General Steele: Yes.

⁴¹ Day 268/165/04. See also Day 268/038/06: 'That is why at Widgry the points were brought out about dye and white cloths.'

⁴² G 95.568

⁴³ Serial 5 Remark 3, the serial of the agenda that relates to paragraph 7j of the Operation Order at G88.538.

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Q: That would include the area of the wasteground?

*A: Yes.*⁴⁴

5E-44 The serial of the notes for the Co-ordinating Conference to which Lord Gifford was referring reads:

Aim is to cover troops in open with counter-sniper fire.

5E-45 It is difficult to see how troops carrying out an arrest operation at Aggro Corner or on the small piece of waste ground to the north east of it, still less moving along the northern edge of the Eden Place/Pilot Row wasteground, could be referred to as in the open.

5E-46 In contrast to the difficulty the lawyers appear to have had in aligning paragraph 9f(1)(c) of the Operation Order with General Steele's evidence that he did envisage circumstances in which the arrest operation might take place south of the junction William Street/Rossville Street, and that the Operation Order he drafted allowed for such an eventuality, the practical realities were obvious to the senior military witnesses:

Q: Does it follow that when you went up in the helicopter, you had -- although you might have had ideas of your own, you had no instruction or indeed no knowledge in detail of, geographically, where it was proposed that the arrest operation, the pincer operation should take place?

A: I think that is correct, but it had to be somewhere in the open ground to the south and to the right, to the east of Aggro Corner, I would think between that and the Rossville Flats.

Q: Between Aggro Corner and the Rossville Flats, somewhere in the wasteground. That would have been your general impression, would it?

A: Yes, or it could have been going down Chamberlain Street, depending which -- if they are after the yobbos, the

⁴⁴ Day 268/111/04

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yobbos running away, whoever ran faster and where they ran.

Q: I understand.⁴⁵

5E-47 The position is the same in respect of the notion that the Operation Order imposed any sort of boundary on the movements of the arrest force. The series of questions of which this is a part started with reference to the arrest force provisions of the Operation Order, ie paragraph 9(f), and the map⁴⁶.

Q: Going back to the plans for the day, was it your understanding that any scoop-up operation was likely to be confined to the roads identified?

A: No, I do not think so.

Q: Did you have any idea of any confinement to a geographical area that was planned?

A: No.⁴⁷

5E-48 By definition, the Operation Order for Operation Forecast being the Brigade Commander's orders to his subordinates, a number of issues did not fall within the terms of the Operation Order, either because they concerned the Brigadier himself or because they were matters which in accordance with military practice were left to one of those subordinates, here the Commanding Officer of 1 PARA as the officer commanding the arrest force.

5E-49 The major issue for the Brigade Commander that was certainly not left, by his orders, for his subordinates, was the timing of the launch of the arrest operation⁴⁸, not least because of the risk of arrest or injury to innocent

⁴⁵ Gerard Elias QC to Gen Welsh, at Day 282/054/22.

⁴⁶ See Day 282/018/08

⁴⁷ Ms McGahey to Gen Welsh, at Day 282/020/24.

⁴⁸ Arthur Harvay's attempt at Day 268/024/20 to equate this issue (in the form of Separation) as a condition for the launch of the arrest operation with the provisions of paragraph 7(b)(1) of the Operation Order can only arise from a misreading of those provisions, which are

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civilians that that operation had the potential to pose. The principal mechanism decided upon was that the arrest operation would not be launched until there was sufficient separation between the peaceful protesters and the rioters, determined with the aid of an observer flying over the City in a helicopter.

5E-50 A number of the senior officers were asked questions about the adequacy of separation as a method of protecting the interests of those not involved in the rioting. The witnesses accepted that separation was unlikely to be perfect, in that there always remained the possibility that some people, although not themselves involved in the criminal conduct of the hooligans, might remain in the vicinity and become caught up in the arrest operation and/or in any firing that might result from an armed response to an arrest operation.

5E-51 The adequacy of separation cannot however be looked in isolation from (i) the seriousness of the threat faced by the Security Forces; (ii) the degree to which it could or should be anticipated that those without criminal intentions would remain in the area; and (iii) the extent of the risk of gunfire of a nature that might involve the peaceful protesters.

5E-52 The military assessment of the nature and extent of the risks to peaceful marchers has been dealt with at paragraphs 5C-79 to 85 above. The assessment of the seriousness of the threat posed by the rioters, shared by both the military and the police in Londonderry (with the resultant need for an arrest force to be made available) has also been discussed, at paragraphs 5B-4 to 18. And 8 Brigade, of course, had particular experience of the manner in which people behaved when rioting was taking place in Londonderry:

headed 'Dispersal of the Marches' and apply to the Security Forces in general, including those involved in the containment operation. The arrest operation is dealt with at paragraph 7(c), under the heading 'hooliganism' (see G95.567-8).

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Question: Some of the people in that area, for example, were journalists. Would you expect such a person to be arrested?

Answer: When you conduct a scoop-up operation of that kind you will arrest all those people who are in the area, including journalists.

Question: And I suppose it would follow from that, including local residents who just happened to have wandered out into the area?

Answer: They would not be there, sir. Our experience is that the normal residents about their lawful business do not hang about when hooligans are there.⁴⁹

5E-53 The balancing act required is clear from these two passages from Brigadier MacLellan's evidence to Lord Widgery (in relation to the decision he took to launch the arrest operation on the day):

Q: It has been suggested, Brigadier, that one criticism that might be made of this whole operation was that it involved going into the area of Rossville Street to apprehend rioters under the risk of enemy sniping, IRA sniping, to which you would have to reply, when a lot of people were about who might be hit by the rifle fire. Was it, say, in your contemplation that that might be so?

A: Certainly not. My intention throughout was to do everything to reduce the risk to the absolute minimum to the non-violent marchers and, to this end, I certainly was not prepared to launch the arrest operation unless there was serious disorder and rioting and, indeed, we had gone up the scale and, furthermore, I would only do it if the rioters and the non-violent demonstrators were widely separated.⁵⁰

A: I had not that advice [Lagan's advice that the march should not be stopped] in mind but the advice about hooliganism. The situation as I saw it about the hooligans was this, that if we had not done anything about it there

⁴⁹ Lt Col Steele to Lord Widgery, at B1312

⁵⁰ B1252

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would have been arson, hijacking of cars, and so on, in William Street. This would then have led at the end of the meeting, which would have presumably been fairly emotional, to a number of people at the meeting joining with the hooligans with a grave risk of them breaking through the barricades or a barrier into the City centre, rioting going on in the commercial areas, my reserve having to be launched and general control being lost of the situation. This was a factor I considered.

Q: I think that leads on to the next question, in other words, you considered that it was essential in the interests of security to order the arrest operation?

A: I did.⁵¹

5E-54 There has also been considerable debate during the course of the evidence as to whether or not separation was in the Brigade Commander's mind during the planning stages of this operation or at all⁵². Generals Ford, Steele and MacLellan have all said (both to this Tribunal and in 1972 to Lord Widgery) that it was. General Steele's evidence that separation was discussed at the Co-ordinating Conference⁵³ is supported by some of those who attended⁵⁴. Colonel Jackson is one of them:

Q: One particular matter that the Tribunal has been hearing evidence about, sir, is the question of whether or not anything was said about separation between rioters and marchers. The evidence you gave yesterday was that that was standard operating procedure. I wanted to ask you

⁵¹ **B1277**

⁵² Much of the debate has involved using conflicting evidence as to the timing of the creation of the separation mechanism to attempt to show that it was not in fact in anyone's mind until after 30th January 1972. While it is certainly Gen Steele's recollection that this mechanism had been decided upon at the time the Operation Order was drafted, provided the Tribunal is satisfied that the need for separation was in the Brigadier's mind before he launched the operation the precise time at which he decided that separation was necessary is immaterial.

⁵³ See, for example, Day 266/084/19, Day 268/023/23 and Day 268/024/12

⁵⁴ Mr Harvey attacked Gen Steele on this issue on the ground that separation did not appear on the notes for the Co-ordinating Conference: see Day 268/024/01. What went in the notes may have depended of course on when and by whom it was prepared: see Gen Steele at Day 266/083/25. The point was not put to Col Jackson or Col Ferguson.

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whether you have any recollection of it being actually discussed or raised at all at the briefing session?

A: I think it was, yes, but the scoop operation would not be launched until there was separation.

Q: You have some recollection of that actually being raised, do you?

A: I think so, yes.

Q: I was not criticising, I was trying very carefully not to lead you in any direction, sir, but I noticed, indeed it is right to say there is some evidence to that effect, sir, I am certainly not criticising you. I did not want to read too much into your own statement at CJ2.37, because of some brackets, and I hope I am not just being legally pedantic. Could we look at it together. CJ2.37. You are there discussing, in your supplemental statement at CJ2.37 – it will come on the screen, sir – this is your supplemental statement?

A: Yes.

Q: You said at the bottom in paragraph 6, where you are discussing whether the operation should have been launched, and your sentence reads: "Although I did not question the, then, need to arrest the hooligans, the actual arrest operation needed careful planning in that (all agreed) there had to be separation." What I wanted to ask you about, despite the brackets, is it your recollection that all did agree?

A: Oh, yes, I mean this was an SOP for anything to try and arrest the hooligan element, there had to be separation from the main marchers.⁵⁵

5E-55 And Colonel Ferguson still has the notes he took at the time:

Q [of Colonel Ferguson's post Co-ordinating Conference notes, number 6, 'isolate – hooligans'] : To complete the picture, when you say you have read other people's evidence, the Tribunal has heard evidence from the brigade commander Brigadier MacLellan and the brigade major,

⁵⁵ Day 286/081/09

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Colonel Steele, are those the people you are thinking about; is it their evidence you have recently seen?

A: I have seen their evidence. Yes, I have seen their evidence on the Internet.

Q: They have told the Tribunal, you will have seen, that separating the separation of hooligans or rioters from the civil rights marchers was discussed at the co-ordinating conference; is that the evidence to which you refer?

A: That was the point when you talked about isolating, which is the separation. I answered it that I cannot recall why I made that note and why I made the qualification and I do not remember what that note referred to at that time and it is only from reading their evidence that I would remember this point about separation, but from their evidence it does not – it did not stick out in my mind and I have written down "isolate" rather than "separate".

Q: You yourself do not remember any such discussion; that is right?

A: Correct.

Q: But your speculation would be that such discussion would be to what that note relates?

A: (Witness nodding).⁵⁶

5E-56 That there was discussion of the notion of separation at the Conference is reflected in the fact that call signs other than 61 Yankee did in the event report on the movement of the crowd in relation to the activities of the hooligans: see, for example, 90 Alpha (Colonel Ferguson's, 22nd Regt) at approximately 1603-04 hrs:

Hello Zero, this is 90 Alpha. There is now a crowd of about 500 on Foxes Corner being addressed from a loudspeaker van. These appear to be normal civil rights people. There's still a crowd of about 150 hooligans at junction Rossville Street/William Street. Over.⁵⁷

⁵⁶ Day 281/096/12

⁵⁷ W128

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5E-57 Whatever General Welsh's present memory as to the time at which he received his own task for the operation on 30th January 1972, the requirement for separation had clearly been decided upon by that Sunday morning at the latest:

I think it was at this [ie the Co-ordinating] conference that I was asked to act as an observer in a helicopter. Having looked at the statement that I gave at the time and my evidence to the Widgery Tribunal I can see that I volunteered, but my memory when I look back is that I was asked by the Brigade Commander. I cannot be sure which is correct.⁵⁸

I made a statement for the Widgery Tribunal dated 1 March 1972. I have the following comments: ... As I have already stated I thought I was asked to go up in the helicopter and I can see here that I volunteered. I cannot now be sure but my recollection is that I was asked to act as an observer at the O Group Conference, rather than volunteering myself on the Sunday of the march, as the statement suggests.⁵⁹

5E-58 The risks to the peaceful marchers were also to be minimised by a swift operation:

Q. But you envisaged -- and you say that Brigadier MacLellan would probably have been closely involved in drafting this part of the operation order -- that this arrest operation would be a quick in and out operation?

A. Yes, most definitely. I saw it being quickly mounted; a scoop arrest and then out. And I think a good reflection on that is that I start to fuss about whether they have done a scoop-up operation or not only four or five minutes after they have been launched. I did not envisage this arrest force hanging around in the Bogside; I saw them going in, conducting a swift arrest through a scoop-up operation and then out.⁶⁰

⁵⁸ BSI Statcmnt, B1340.004 paragraph 13

⁵⁹ BSI Statcmnt , B1340.004 paragraph 27

⁶⁰ Gen Steele at Day 266/067/17

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5E-59 The military witnesses to this Tribunal are agreed that it was not for the Brigade Commander to dictate the tactics to be adopted by the commander of the arrest force. The concept of the operation was provided in the Operation Order:

Hooliganism. An arrest force is to be held centrally behind the check points, and launched in a scoop-up operation to arrest as many rioters as possible.⁶¹

5E-60 Thereafter, while the Brigade Commander needed to know in broad outline what the approach was to be (and until a final decision had been taken, of course, there was little to know; in the operation required on 30th January 1972 that decision would of necessity be made at a late stage), military practice was to leave the detail to the commander on the ground.

5E-61 There has, however, been some misunderstanding as to the type of operation the scoop-up was going to be:

MR ELIAS: I do not want to go into the detail, but you had been responsible for drawing up an operational order in July of the previous year, Operation Hailstone?

A: Yes.

Q: Where you had put in stop lines, as they were called in the order, as you may recall, showing where troops should go in order to form lines to pick up hooligans who were driven into them?

A: Yes, that was a very different sort of operation.

Q: I understand that --

A: No, I must finish. It was a different sort of operation, in that it was not a scoop-up, it was very much more of a drive. We were driving into a containment line and that is a very different type of arrest operation to what we were conducting here.

⁶¹ Operation Order for Operation Forccast, G 95.568 paragraph 7(e)

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Q: There would have been nothing to prevent either a provisional plan, at the very least, that the Paras would mount a line which effectively stopped up the junction of William Street and Rossville Street, Aggro Corner, the alleyway that runs down adjacent to Chamberlain Street and Chamberlain Street itself in order to endeavour to pen the hooligans into that area of William Street and the north; nothing to prevent such a provisional plan, would there?

A: And then driven from, where?

Q: And driven from that line north into the barriers where they could be arrested; that is what the scoop-up envisaged, was it not?

A: Yes, but it was not envisaged that it would be on such a line as that. I saw the scoop-up being much further south than that.⁶²

5E-62 This misunderstanding may be another example of the problematic interface between those with a legal and those with a military training. The former may not always be able to appreciate the practical implications of what is being, or even what has been, suggested:

Q: You have been asked some questions about the possibility of carrying out an operation which involved inserting stop lines into a particular area; do you remember those questions?

A: I do.

Q: General Steele, as I understand your evidence, you draw a distinction between an operation of that nature and the scoop-up operation you were being given instructions about on 26th January 1972?

A: Yes, there is a distinction, the distinction being that in previous operations where we have used a containment line, you have, so to speak, driven the hooligans into an arrest area, whereas with the scoop-up it was necessary to get behind the hooligans without the benefit of a stop line, and I think that one of the reasons for this was because it

⁶² Gen Steele at Day 267/166/23

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*would be impractical to put a stop line across the Bogside in the context of the march.*⁶³

5E-63 General Steele's evidence on this issue is supported by Major Lewis, then the Company Sergeant Major of Sp Coy 1 PARA:

Q. On that day, whatever may have happened on other days, you did not expect there to be a line of soldiers somewhere behind the rioters, stopping them?

A. No, sir, no.

Q. It would have been totally impractical to do that?

A. Yes.

Q. And you could not conceivably, in a situation where you anticipated the probability, or at a minimum the possibility of fire being directed from the Rossville Flats, it would have been madness to put a line of soldiers across the wasteground?

A. Yes, sir.

Q. Waiting for you to come in; would it not?

*A. Yes, sir, yes.*⁶⁴

5E-64 There have also been some surprising observations about the use of helicopters during the event:

MR HARVEY: What significance was placed upon the presence of a helicopter?

A. I do not know, that was part of the Brigade Commander's plan. It was not my idea, it was his, I think.

Q. You see, Mr Mooney has really indicated that it was part of the information and policy research group's suggestion that a helicopter should be there?

A. I know nothing of Mr Mooney, I am afraid. He was a junior officer somewhere who worked in the headquarters.

⁶³ Day 268/156/17

⁶⁴ Day 373/110/06

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Q. I entirely appreciate that. Are you saying that you were not aware of the essential role that the helicopter was to play as of your meeting on 26th January?⁶⁵

MR MANSFIELD: I want to ask you a detail which you have not been asked yet about being down there for a moment: the helicopter that was there, you ordered it to return, did you not?

A. I ordered my helicopters to return. I had two; I had flown up in the morning; it was getting dark; I am well aware of the dangers of flying over the Sperrins in the dark, indeed the helicopters at that time could not do it. And so I despatched, either I or my ADC, I cannot remember who but the message is well recorded, told brigade to tell them to send them back, they were my helicopters.

Q. Nothing to do with observing?

A. No, nothing to do with that, they were other helicopters.⁶⁶

5E-65 Far from bringing to an end any observation by helicopters of events on the ground, General Ford had simply sent back the helicopters in which he and those who had accompanied him had travelled from Lisburn.⁶⁷ 8 Brigade made its own provision for helicopters, in its tasking for the event from its own resources (its supporting Air Squadron⁶⁸), on 27th January 1972:

A Avn

(1) One sioux is to be be aval for City recce under Bde HQ con at Grey 01. Two further sioux to be in reserve at base loc at 15 mins notice from 301300Z Jan.

⁶⁵ These questions arose during Gen Ford's evidence, at Day 256/089/04

⁶⁶ These questions arose during Gen Ford's evidence, at Day 260/061/04

⁶⁷ The order that they do so can be seen on the transcript of Mr Porter's tape, W136 Serials 498 - 501

⁶⁸ Kangaw Flight 3 Cdo Bdc Air Sqn

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(2) Aerial photographic record is to be made of the event, either by cine colour camera, or by still camera. G3 Int at this HQ will be responsible for coord this photography, and for delivering the developed and printed film to HQNI by 301800 hrs.⁶⁹

5E-66 It can safely be assumed that the helicopter from which the Commanding Officer of 2RGJ observed the event was provided for in the first of these sub-paragraphs, in all probability the primary rather than the reserve tasking.

CONSULTATION

5E-67 Some criticism has been made of the planners at 8 Brigade on the basis that they failed to consult the commanding officers of the Londonderry units. For example:

Ms McGahey: Could we go back to your statement, please, CJ2.8, paragraph 36. Going back now to what you were told at the co-ordinating conference, you say: "I had assumed, as I was the longest serving commanding officer in Londonderry at the time, that if anything unusual was planned for Londonderry, I would, at least, have been consulted beforehand." Was it Brigadier MacLellan's practice to consult you beforehand when making plans for the deployment of your battalion?

A: The change of command, of course, happened in October, and we were away in November; we returned to the city in December. So I did not have a great deal of opportunity to get to know the brigadier, nor did he me. Prior to that, with Brigadier Cowan, any operation that I was involved in would have been discussed with him beforehand. And I had assumed that, as I said here, that if anything unusual were to happen, I may have an input.

Q: Was this march regarded as unusual?

A: No. Well, it was a march. No, I had no idea. I had no idea what had been discussed between the Brigadier and Headquarters Northern Ireland, and Headquarters

⁶⁹ Operation Order Operation Forecast, G 95.570 paragraph 9(i)

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Northern Ireland and the Northern Ireland Government, and Northern Ireland Government upwards. We were just poor old chaps on the ground.

Q: Assuming for a moment that all that was planned at HQNI or brigade was the policing, if you like, of this march, would you still have expected to be consulted?

A: I would have thought it was nice to have been consulted before an official operational order had been issued. I mean, I was only 100 yards away from brigade headquarters, and it would have been nice for me to have been asked to walk over and have said, "This is what we intend to do, Roy"⁷⁰.

5E-68 There is a large degree of hindsight at work here. Colonel Jackson had not been involved in the planning of Operation Huntsman, an earlier Brigade operation in which his battalion was to play a role, either.⁷¹ Given that fact, and the terms in which the criticism was ultimately put, (ie it would have been 'nice' if the Brigade Commander had called him over and told him what was intended), it is difficult to see where this criticism really goes. It is also difficult to see what the Brigade Commander could at this stage have consulted him about, as the description Colonel Jackson gave of the consultation he would have expected (being told what was intended) probably acknowledges. The containment operation was such that there was little room for discussion; 1 PARA were by order of the Commander Land Forces to do the arrest operation; and the detailed tactical planning for that operation would not begin until the Commanding Officer of 1 PARA arrived in Londonderry the following day (28th January).

5E-69 There is no reason in any event to suppose that, despite his being located in the same barracks as Headquarters 8 Brigade, Colonel Jackson would have been the only commanding officer consulted. Colonel Ferguson's views, had he been consulted, would probably have been that 1 PARA

⁷⁰ Col Jackson at Day 285/030/03

⁷¹ Day 286/047/03

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should take up the forward positions it in the event did, with its central company at the Presbyterian Church, at about the mid point along William Street between the two flanking companies, able to move east or west to meet either of the other companies as the situation dictated:

... if I may just explain the general form of violence, is that in my time there, it did not take place at what is, I see often in evidence, called Aggro Corner. As far as we were concerned, the time that we were there, the violence tended to take place further up William Street, in the vicinity of the crossroads near the cathedral. That is where the young hooligans would foregather and sometimes we would try and ignore them to see if they would go away, but they would start throwing stones or perhaps find a car and try and hijack it, or set fire to it, and quite close to that junction, near the cathedral, there is a place called Stevenson's bakery which backed on to William Street, and for reasons I do not know, that was a target for the hooligans; they obviously had some grudge against Stevenson's bakery and so we had – it had steel shutters on the back, facing on to William Street and they would try and climb over these and set fire to things, and that is where the majority of the violence, hooligan violence would take place.⁷²

5E-70 Consultation with the Commanding Officer of 2 RGJ would have produced the same views:

MS McGAHEY: Looking at both the map and that order, where did you understand that any arrest operation was likely to take place?

A. I am looking at it now and I do not think at the time I looked to consider that, but Little Diamond was always a difficult place and Little James Street – well Little James Street was just about Aggro Corner, I am sure it would be more down towards Aggro Corner than Little James Street.

LORD SAVILLE: When you say the Little Diamond was always a difficult place, do you mean there was frequently

⁷² Day 281/027/03

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hooligan activity or rioting in that area or did you have something else in mind?

A. No, I had that in mind, but funny(sic) all along William Street and especially, I suppose it is the east end, as opposed to the west end, was most of the hooliganism took place during the week.

LORD SAVILLE: Yes, thank you.⁷³

5E-71 In any event there may well have been a degree of discussion, now long forgotten in the wake of the controversy:

On 28 January I received written and oral orders from Commander 8 Infantry Brigade for operations on 30 January 1972. These confirmed various discussions and planning conferences which had taken place previously ...

⁷⁴

SECURE COMMUNICATIONS

5E-72 Communications for the operation are dealt with at the 'Command and Signals' paragraph of the Operation Order⁷⁵. The Signal Instructions was issued separately⁷⁶ and has not survived.

5E-73 A significant amount of the Tribunal's time has been spent on an apparent attempt to prove that 8 Brigade and 1 PARA did not have a secure link on 30th January 1972, presumably in an effort to show that (despite the entries on the 8 Brigade and 1 PARA radio logs) 8 Brigade never gave an order for the launch of the arrest operation. The overwhelming weight of the evidence (including now that of INQ 1927, then Officer Commanding 8 Brigade Headquarters and Signal Squadron: see the Tribunal's letter to the Interested Parties dated 27th February 2004) is that such a link was in operation. And the Brigade Commander's evidence, fundamental to this

⁷³ Day 282/019/11

⁷⁴ Col Ferguson's SA statement, B1112 paragraph 10

⁷⁵ G 95.575 paragraph 11

⁷⁶ See G95.575 paragraph 11(a)

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issue, in 1972⁷⁷ and now⁷⁸, that his order was given to 1 PARA over the secure radio was not challenged by any of the Interested Parties.

5E-74 Criticisms of the effectiveness of this link may have been a part of the attempt to show that there was no order to launch the arrest operation. Those involved in setting up the link however have never been anything other than realistic about what could be achieved:

... we were achieving as much surprise as we possibly could under the circumstances. We wanted to give 1 Para as great a benefit of surprise as we could and the one way we knew we could do it was by using a secure link for the actual deployment order. Now it may well be that you could argue that: well, that was not much of a surprise element, but it was the best that we could achieve, and so we did it.⁷⁹

5E-75 The equipment being what it was (large, heavy, noisy, in short supply and highly classified) it was not possible for the troops on the ground, including the Commanding Officer of 1 PARA when forward, to be equipped with it. The limited aims of the exercise presumably explain why the Brigade Major was not critical in 1972 of the radio indiscipline alleged against 1 PARA during questions of some of the witnesses before this Tribunal. (These allegations were not in the event put to the two witnesses who had been the watchkeepers in the Gin Palace and whose actions had been the subject of the allegations).

APPROVAL OF THE OPERATION ORDER

5E-76 The Order, having been drawn up overnight, was discussed at Commander 8 Brigade's morning meeting⁸⁰ and signed off by him. And, despite the suggestions made before this Tribunal of a divergence of approach

⁷⁷ Statement for the Widgery Tribunal, B1235 paragraph 28

⁷⁸ BSI Statement, B1279.036 paragraph 57

⁷⁹ Gen Steele at Day 267/040/05. See also Day 267/016/05: 'What we were trying to achieve here was to make sure that we had an element of surprise for as long as possible.'

⁸⁰ Day 268/161/15

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between the Commander Land Forces and Commander 8 Brigade (and the absence of any orders that the arrest force go round the back and/or arrest three to four hundred rioters), it received immediate unqualified approval at HQNI.

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CHAPTER 5F

THE BRIGADE COMMANDER'S ORDERS

5F-1 The Operation Order for Operation Forecast was sent to the units and personnel on the Distribution List¹ on 27th January 1972. The List included Chief Superintendent Lagan, as Comd N Div RUC. On receipt of the Order each of the units involved had their orders.

BRIGADE PLANNING FOR THE ARREST OPERATION

5F-2 The Commanding Officer of 1 PARA, whose battalion was effectively to become a part of 8 Brigade for the purpose of the march, had no difficulty in understanding what his orders were:

The Operation Order was quite clear in its definition of my task: 1 PARA were to 'Maintain a Brigade Arrest Force, to conduct a 'scoop up' of as many hooligans and rioters as possible', but would only be launched at the orders of the Bde Comd.²

5F-3 While forming an arrest force was his primary role, he would also have seen that his secondary role was to act as a second Brigade Mobile Reserve. His warning order from his own Brigade Headquarters had told him that he should be prepared to be in the 8 Brigade for up to 4 days³.

5F-4 He was also required to attend the Brigade Co-ordinating Conference at 1430 hours on 28th January.⁴ During the morning of that Friday he carried out his reconnaissance of the City. This was done on the ground, when he was conducted on a tour of the parts of the City that were thought by 8 Brigade to be necessary and were accessible to the Security Forces (his guide was the 8 Brigade GSO3 Intelligence & Security); and from the air,

¹ At G 95.576

² Col Wilford's 1972 Statcmnt, B944 paragraph 3

³ Gen Ford's BSI Statcmnt, B1208.035 paragraph 7.9

⁴ Operation Order Operation Forecast, G 95.575 paragraph 11(c)

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when he could obtain an understanding of the layout of the relevant parts of the City and no doubt look at areas he had not been able to visit on foot or by car. The helicopter would have been provided by 8 Brigade from within its own air resources.

5F-5 During the course of his reconnaissance and afterwards Colonel Wilford would have started to carry out his Appreciation. He would have required assistance from 8 Brigade and there is no reason to suppose that he did not get it. He would certainly have been discussing the forthcoming march with Captain INQ 1803; and, although the details are now long forgotten, it is not plausible to suggest that he did not have discussions with the Brigade Commander:

Q. Aside from meeting Colonel Wilford at the conference, did you yourself have any further discussions with Colonel Wilford?

A. I really cannot remember. I have been thinking about this point a lot because he went off to do a reconnaissance by helicopter on the Friday morning and he also did a reconnaissance in the car with the G3 Int and I am trying to recall whether, having come back from his reconnaissance, he then came and saw either myself or the Brigade Commander to give his views on what he had so far seen during his reconnaissance. For the life of me I cannot remember whether he did or not. I would have expected him to, but I cannot remember whether he did.⁵

5F-6 There is in any event good evidence that there were discussions⁶ between the Brigade Commander and the commander of his arrest force:

⁵ Gen Steele at Day 267/008/17

⁶ At Day 268/022/18 Arthur Harvey QC attempted to equate CO 1 PARA's position vis a vis 8 Bdc on 28th January (and possibly thereafter) with Comd 8 Bdc's vis a vis CLF on 25th January, asking Gen Steele why Brig MacLellan did not do as the CLF had done to him and require a written plan from CO 1 PARA. This is an easy point to make, but only on a careful consideration does the comparison does stand up, and then in Brig MacLellan's and Col Wilford's favour. Gen Ford (as the record of the orders he gave shows) was legislating for the whole operation, the containment being the most important and complex aspect and involving the largest number of troops. He also left the detail of the arrest operation out, it being the mobile element, the least predictable and requiring the most flexibility. Both CLF and Comd 8 Bdc therefore took exactly the same approach to this aspect of the operation. Perfectly

Q: Had Colonel Wilford discussed his plan with you or not?

A: Not in detail, because we did not know (a) where there would be any hooligans on the day for sure, or rioters; or (b) where they would be. We could merely make an outline plan.

Q: Did you yourself know that the plan involved or might involve the Parachutists going sufficiently far down into the Bogside as to be at the north end of the Rossville Flats?

A: I knew they would have to get behind to cut them off; I did not know they would go that far.⁷

5F-7 As would be expected, there had been discussions, although the planning could not be detailed at this stage. And that planning, albeit outline, had been of a joint nature.

THE PURPOSE OF THE COORDINATING CONFERENCE

5F-8 Paragraph 11c of the Operation Order reads:

Coordinating Conference. Will be held at Bde HQ at 281430 hrs Jan for all COs.

5F-9 Although the passage of time has resulted in some of the attendees remembering the Conference as an Orders Group⁸, this was a conference provided for in the written orders for the purpose of clarification. While he could not remember the detail, this was General INQ 0598's understanding of the procedure:

I think if they could do it, they would get the written order to you first and then it would be a confirmatory session, the order group, so to speak, where anybody could ask questions or raise doubts on what was in the order. I

sensibly, Brig MacLellan did not require written plans from any of his other unit commanders either.

⁷ Brig MacLellan, questioned by Mr Stocker, to Lord Widgery, at B1279

⁸ See, for example, Col Ferguson at Day 281/058/04, correcting Mr Roxburgh's use of the term 'brigade orders group conference', by saying 'an orders group is not a conference'. While Mr Roxburgh had mixed the two and was happy to accept the correction, paragraph 11 of the Operation Order makes it clear that this was indeed a conference. The orders on this occasion had already been delivered, in writing.

cannot remember which came first, I am afraid, but I do remember going to the confirmatory orders.⁹

5F-10 In addition to the Commanding Officers who had received orders, this conference was also attended by both Assistant Chief Constable Corbett and Chief Superintendent Lagan, thereby achieving liaison between the military and the police at the highest level:

This conference was attended by: all Commanding Officers and Officers Commanding or their representatives, all my principal staff officers, Assistant Chief Constable D A Corbett, Chief Superintendent Lagan.¹⁰

THE CONTENT OF THE CONFERENCE

5F-11 Whether at the beginning or at the end of the Conference, the Brigade Commander clearly used it to make certain announcements. One was his decision as to the location from which he would command the operation (a decision clearly linked to the need for ongoing liaison with his police counterpart):

I stated my intention to exercise command from my main Headquarters in Ebrington Barracks where I should be co-located with Chief Superintendent F Lagan.¹¹

5F-12 The Brigade Commander also explained that the Commander Land Forces would be present, with others from Belfast, and the purpose of his visit:

I also announced that the Commander Land Forces intended to observe the event and that his Rover Group would include the Assistant Chief Constable (Operations) D A Corbett and the Colonel GS (Information Policy) Colonel M A J Tugwell.¹²

⁹ Gen INQ 0598 at Day 272/004/20

¹⁰ Brig MacLellan's 1972 Statement, B1232 paragraph 14

¹¹ Brig MacLellan's 1972 Statement, B1232 paragraph 16

¹² Brig MacLellan's 1972 Statement, B1232 paragraph 16

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5F-13 The substantive business of the Conference was to ensure that everyone had the information they needed to carry out their allotted task:

At the Co-Ordinating Conference ... I went through the operation order passage by passage to see if there were any queries.¹³

5F-14 This was also Colonel Wilford's recollection of the exercise upon which the Brigade Commander embarked:

The conference went over the deployment of the troops taking part and the Brigade Commander gave his Appreciation. He thought that once the marches were confronted violence would erupt and this would be in the William Street area where the confrontation was bound to take place if the marchers insisted on going through to Ship Quay Place.¹⁴

5F-15 Some of the detail of what was dealt with can be seen from the notes that were prepared in advance¹⁵. Clearly these do not amount to an agenda: while they have been referred to as 'an agenda' by some questioners during the evidence to this Inquiry – particularly with General Steele¹⁶ - they are not headed as such, they were not distributed in advance of the meeting and General MacLellan, who gave evidence to the Tribunal before General Steele, described them as an aide-memoire¹⁷. And neither are they comprehensive: there is no mention of the Brigade Commander's announcements that he would command the operation from Ebrington Barracks, accompanied by his police counterpart, or of the attendance of the Commander Land Forces.

5F-16 Combining Brigadier MacLellan's 1972 description of what he did and the existence of the notes, the process is most likely to have been a

¹³ Brig MacLellan's 1972 Supplementary Statement, **B1225 paragraph 15**

¹⁴ Col Wilford's 1972 Statement, **B944 paragraph 4**

¹⁵ **G 88.537**. It is not possible to say now when they were made or by whom.

¹⁶ See, for example, Arthur Harvey QC at **Day 268/024/08**: 'Threc page agenda'.

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journey through the provisions of the Operation Order as necessary with updating where possible, emphasis¹⁸ and supplementary comment¹⁹ prompted by the notes.

5F-17 The Intelligence update appears at Serial 1 of the notes, where its location corresponds to where the assessment as at 27th January appeared in the Operation Order. By 28th January 1972 Brigadier MacLellan had of course received the Signal from the Director Intelligence at Lisburn²⁰, and while this was only one source of information, (there is no reason to suppose that 8 Brigade were not receiving information from the RUC as it became available), the contents of the Signal are (as would be expected) where appropriate reflected in the information that is being provided to the Conference. In particular:

- (1) Serial 1f reads 'Hooligan violence inevitable', no doubt taking account of both past experience and the information as to the hooligans contained in paragraph 4 of the Signal (armed with sticks and stones etc.);
- (2) The notes record (at serial 2) no change to the threat. The Signal included a warning that the IRA would use the crowd as cover (ie those elements of the crowd who will have armed themselves with sticks and stones: see paragraph 4 of the Signal²¹). That eventuality

¹⁷ Day 261/075/19

¹⁸ There is nothing new, for example, in serial 3 of the notes, 'Concept of Ops'; this all appears to be emphasis of the low key approach that is to be taken to the event. At Serial 5 there is emphasis that the aim of the snipers is 'to cover troops in open with counter-sniper fire.'

¹⁹ To the section of the Operation Order 'Background', for example, is added, under heading 'Background to Event': 'Significance of event in eyes of remainder of Belfast'. And while a number of military witnesses have accepted that there was a risk of arresting non offenders in a scoop up, it was clearly hoped that the dye in the water canon would achieve its aim: Serial 9 of the notes, which deals with arrests, reads 'Importance of Legality'. Gen Welsh remembers being told that 'if the march reached the shopping centre it would cause havoc': see his BSI Statement, B1340.001 paragraph 7

²⁰ G81A.511.1

²¹ G81A.511.5

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had already been catered for in paragraph 2b of the Operation Order²²;

- (3) paragraph 3 of the Signal and Serial 6 of the notes are clearly dealing with the same issue:

*3. The organisers are considering a possible diversion in the Brandywell area using young hooligans whom they would prefer out of the way of the March.*²³

*6. Vulnerability of Bligh's Lane and Brandywell. 1. Int received of threat to Brandywell. 2. Pre-stocking with ammo. 3. Threat to these locs to be taken very seriously.*²⁴

5F-18 It is also clear that Brigadier MacLellan still had the warnings he had received from Chief Superintendent Lagan (who was in attendance) on 24th January²⁵ very much in mind. Paragraph 3 of Serial 2, the Threat, reads:

*Hooligan reaction – continuing after event.*²⁶

5F-19 There were further subjects of discussion over and above what can be seen in the notes, in relation to which there has been an inconsistent approach by some of those who questioned the military witnesses. In particular, some questioners tried to establish that neither the separation of marchers and rioters nor the action to be taken in the event of firing at the troops were discussed at the conference. Neither (like the chosen location of the commander and the attendance of the Commander Land Forces) are referred to in the notes.

²² G95.565

²³ G81A.511.5

²⁴ G88.538

²⁵ Recorded in Brig MacLellan's Signal to the Commander Land Forces of that date, at G70A.441.001

²⁶ G88.537

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5F-20 General Steele has a very clear recollection that separation was discussed at the Conference.²⁷ General MacLellan, in only marginally less confident terms, agreed:

*I am pretty certain, I am almost sure that I talked about separation and that on no account were people to get mixed up with the marchers and so on.*²⁸

5F-21 As has already been discussed, this evidence from those holding the Conference is supported by some evidence from at least some of those who attended²⁹: Colonel Jackson remembered the discussion and Colonel Ferguson thought, having seen the debate before this Tribunal on the internet, that the notes he made immediately after the Conference referred to it.³⁰ Further support for the proposition that separation was discussed comes from serial 365 of the Porter transcript, in that 22nd Regt (of which Colonel Ferguson was of course the Commanding Officer) were clearly reporting in terms of separation at 1603 or 1604 hours:

*Hello Zero, this is 90 Alpha. There is now a crowd of about 500 on Foxes Corner being addressed from a loudspeaker van. These appear to be normal civil rights people. There's still a crowd of about 1500 hooligans at junction Rossville Street/William Street. Over.*³¹

5F-22 It is clear that many of the lawyers at this Inquiry hold expectations of the Co-ordinating Conference which differ from those held by those who attended it, both now and then. General INQ 0598 was asked whether any detail of the arrest operation was provided at the Conference:

²⁷ Day 266/084/19

²⁸ Day 261/075/21

²⁹ Mr Harvey attacked Gen Steele on this issue on the ground that Separation did not appear on the notes for the Co-ordinating Conference: see Day 268/024/01. What went in the notes will have depended on when and by whom it was prepared: see Gen Steele at Day 266/083/25. The point was not put to Col Jackson or Col Ferguson.

³⁰ Gen Welsh, at Day 282/022/07 did not remember any discussion about the circumstances in which the arrest operation would be launched. While he hoped it was not the case, indicating a possible lack of attention, he volunteered the possibility that that might be because the arrest operation was not a part of the operation in which he was involved.

³¹ W128

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Q: Was there any discussion at the co-ordinating conference as to how barriers would be lifted or how the instructions would be given for barriers to be lifted if an arrest operation was launched, in whole or in part?

A: I do not remember that at all.

Q: Was there any mention at the co-ordinating conference that it might be necessary in the course of the arrest operation to move units at specific times; that one unit may have to move ahead of another in order to co-ordinate; what was the ultimate objectives?

A: What do you mean by "units"? "Unit" is a battalion in the Army. Are we talking about a battalion to be moved?

Q. No, units from different battalions³². For example, 1 Company of the Parachute Regiment to move through barrier 12; one to move through barrier 14; one to move through barrier 11 and whether it was necessary, for example, if the paratroopers going through barrier 11 were to assist in an arrest, that if they left at exactly the same time as those from barriers 12 and 14, they would have considerably much more ground to make up if the arrest operation was to be at the junction of William Street/Rossville Street. Was there any discussion of anything like that?

A: No.

Q: Any discussion?

A: Not that I recall.

Q: Any discussion, for example, just about synchronising times, so that people are not operating at different timescales?

A: No, there was not, and I can quite understand that, because it is so difficult to foretell what the situation on the ground is. It is a contingency plan and you would -- it would become a mile long if you dealt with every possible contingency.

Q: I entirely appreciate that.³³

³² These are sub units.

³³ Questioned by Mr Harvey at Day 272/043/20

5F-23 General INQ 0598's battalion was manning barriers through which elements of 1 PARA might have to pass. General Welsh explained that Conferences of this nature are not used to go through practices and procedures which fall into the category of standard operational procedures:

Q: And his [Col Ferguson's] second concern was in fact that given that there were different regiments operating in different ways --

A: In different, what is the last?

Q: In different roles, and an arrest operation for which there was no detailed plan, that one particular grouping of soldiers who went in as part of a flanking movement or part of co-ordinated movements with a number of groups, that a shot discharged by one group might be mistaken as hostile fire by another; is that the type of thing you would expect to be dealt with at a co-ordinating conference?

A: (Pause). I do not think so.

Q: You do not think so?

A: No.

Q: Why not?

A: If you are talking, if somebody fires and you need to have somebody to report back to the other regiments, that would be a perfectly normal thing to do on the brigade net, on the (inaudible) net and the brigade net and I do not think -- I mean it is an awful long co-ordinating conference if you looked on every eventuality.³⁴

5F-24 The Co-ordinating Conference was not a forum for discussion of the tactics to be adopted for the arrest operation:

Q: What I am really asking you, General, is whether you can remember any detail, if it was discussed in your presence, for example, of just how that arrest operation would be mounted?

³⁴ Questioned by Mr Harvey at Day 282/070/06

A: No, because I do not think it was discussed in detail, the operation at the conference. I think that would presumably -- I mean, 1 Parachute Regiment were told to get on with it and it was the commanding officer's plan would be the detail of it.

Q: That would have been unlikely to have been discussed in your presence anyway and at the co-ordinating conference?

A: Very, yes.³⁵

5F-25 In considering whether the Conference ought to have dealt in detail with the arrest operation it is necessary to consider what has actually been proposed by way of the subjects of such a discussion:

Q: There does not seem, as a result of this co-ordinating conference, to be any way formally for the instructions in relation to the operation to go forward, namely the launch of the arrest operation, and to how the barriers were to be lifted; that seems to have been left to 1 Para to use the brigade net to give orders to other battalions?

A: Yes, and that is quite right and proper, I mean that is exactly the way the brigade net is run and, as we did not know where the hooliganism was going to be, it had to be a very flexible plan and I think it was quite right and proper that 1 Para were using the brigade net in order to prepare for wherever it is they might have to go. That is exactly what the brigade net was for³⁶

5F-26 It is very difficult to see what this questioning means in practice. There was a means for the instructions to be given for the arrest operation to go forward: communication by radio, as all those attending the Conference would expect since the Brigade Commander was not going to be physically situated with the arrest force; and any requirement for the barriers to be lifted would also inevitably be accomplished by radio communication. As General Steele says, that is exactly what the brigade net was for. These senior officers did not require - or request -

³⁵ General INQ 0598 at Day 272/025/09

³⁶ Arthur Harvey QC to Gen Steele at Day 268/039/03

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documentation or further elucidation of these standard operational procedures.

5F-27 The superficiality of the argument is demonstrated by the practical common sense of the military witnesses. First, Colonel Ferguson at Barrier 14:

Q: Were there any arrangements made as to who would be in charge of giving instructions between various regiments and battalions at the co-ordinating conference or subsequently?

A: No, and I made reference in my evidence that I had asked this question, were there to be any special arrangements for liaison and again I did not get any response, but I made it clear that I could just as easily have made those arrangements myself without having waited for instructions from brigade.

Q: Normally if you have a brigade operation, brigade will be responsible for co-ordinating the activities of the various battalions; is that not correct?

A: Correct.

Q: In other words, if the Paras are instructed to go in and mount the arrest operation, that instruction should come from brigade headquarters?

A: Correct.

Q: If the Paras -- rather, if the 22nd Light Air Defence Regiment or the Royal Green Jackets are required to take action as a result of the mounting of the arrest operation, the instructions for that action should also come from brigade?

A: That is perfectly true, but I think to put this into context, I would remind you that I was in charge of the William Street area and had been for the previous 30 days and would indeed be responsible for the next 30 days. Therefore, I had always anticipated that at some stage, in the normal course of events of my responsibilities, I might have to deal with rioting and with trying to arrest hooligans.

Q: I entirely accept that, Colonel, but on that day you did not receive any specific instructions from brigade to lift

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barrier 14. The instruction came over the brigade net via the Parachute Regiment themselves?

A: That is correct.

Q: That is irregular; is it not?³⁷

A: I would not say it was irregular. We all knew that there was to be an arrest operation. I assumed -- I did not know where they would mount it from; they could have come from through the Coldstream Guards area; they could have come down William Street from that direction; some of them indeed came from the next barrier, barrier 14. I mean, I did not know. But when we got the request, it was not an order, the request to lift the barriers, because they were going to go through and do the arrest operation, it just seemed to me to be a perfectly logical and reasonable thing to do and I think I would have been very much out of order if I had gone to brigade headquarters to say, "Is it okay to remove the barriers to let the company go through?"

Q: That is precisely why the orders should come from brigade, is to ensure that there is proper liaison and co-ordination of all of the different groups?

A: That is perfectly true. In a perfect world that is the way it would have happened³⁸, but being, you know, a fairly experienced soldier, I understood what was happening and, I hope, made the right decision.

Q: That may as well be, Colonel, but ultimately when you are preparing a plan, one of the matters which did concern you at the co-ordinating conference -- you have already dealt with this in a paragraph in your statement -- was the difficulties and complexities of different battalions with different detachments, that that is a perfect state for causing confusion, unless there are proper plans to deal with it by way of liaison and co-ordination and instructions coming from brigade; is that not so?

A: I think that is a fair statement, yes.³⁹

³⁷ Mr Harvey did not explain to the witness or the Tribunal the basis for this suggestion.

³⁸ Col Ferguson was not told or reminded of, and may not be taking account of, the arrangement 8 Bdc had with 1 PARA for the use of the BID 150. The Bdc Ops Room did not deal with the arrest operation on the insecure net until after the order for the commencement of the arrest operation had been given.

³⁹ Day 281/104/09

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Colonel Ferguson may in any event have known more than he presently remembers:

Q: [of the notes the Colonel made after the Conference] Eleven is "wire cutters"?

A: Yes, we had to have wire cutters so we could cut the barbed wire quickly when we wanted to let people⁴⁰ through⁴¹

And then General Welsh:

Q: Could we go back, please, to your statement to the Inquiry at 1,340.002, paragraph 10. You say in paragraph 10: "I am not sure whether I was aware of the detail of the arrest operation. I think I was probably aware in general terms that it would involve some form of pincer movement and the fact that it would go ahead if the opportunity arose." You seem to be speaking there of your state of knowledge at and after the co-ordinating conference; is that right?

A: I suppose so. I cannot remember.

Q: In 1972 your evidence was that you did not know, on the day, the details of the orders given to 1 Para; is that correct?

A: Yes.

Q: You just said in evidence a moment ago that separation was obviously very important for an arrest operation to be mounted. You were going to be the person, were you not, who was going to give advice to those on the ground as to when separation had taken place?

A: Yes. I took it as my job to explain from up there exactly what I saw happening on the ground and, yes, there was separation, but separation is a -- I am not sure quite the right term, because in my mind there was never going to be complete separation because while the crowd moved south, some people hang back; other people run and join them, so it was always going to be a moving item, but it was

⁴⁰ This must mean an arrest force: see his use of this word in respect of his own idea of an arrest force at Day 281/138/16

⁴¹ Day 281/060/23

obviously important to get -- and for the brigade commander to give the order for the arrest operation when there was a gap as definite as possible.

Q: A gap between the peaceful marchers and those still left rioting?

A: Yes.

Q: Surely, in order to advise usefully on whether that separation had taken place, you needed to know where the arrest operation was likely to be launched?

A: I think that is -- I do not think so. I could describe what was happening down below on barricade 14 when the march turned right down Rossville Street; when the rioters -- if and when they left barricade 14 and then I do not think it was for me and I do not think I knew exactly where they would strike or make their arrests.

Q: In that case, how were you ever going to be able to say that the area in which an arrest operation might be launched was clear of peaceful marchers?

A: I do not think I said that the area where it might be launched; I was saying where -- where there were gaps and where there was separation and from that I would think that the arrest operation was flexible enough to do -- make their arrests there.⁴²

5F-29 While the arrest operation may therefore have been mentioned (Colonel Jackson's complaint, a little premature given the uncertainty that existed as at 28th January 1972, was that 'it was not really explained whether this was a scoop operation or, as it happened to be in the end, was merely a frontal assault'⁴³), there was no need for any detailed discussion, or discussion as to tactics, at the Co-ordinating Conference. Indeed, any such discussion would have been unproductive as much depended on how things would develop the following Sunday.

5F-30 Certainly none of those present felt at the time they required more information, not even Colonel Jackson:

⁴² Day 282/026/15

⁴³ Day 285/045/05

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Q: Do you remember any officer at that conference asking for more details of the arrest operation?

*A, No, I do not, no.*⁴⁴

5F-31 There is a degree of controversy as to the time at which the Commanding Officer of 2 RGJ received his instructions. The Brigade Commander's evidence in 1972 was as follows:

*This co-ordinating conference concluded the preparatory orders and arrangements to cover the Northern Ireland Civil Rights Association event on 30th January. The only additional instruction I gave, on the morning of 30th January, was that Lieutenant Colonel P M Welsh MC, the Commanding Officer of 2 RGJ, should observe and report on the event from a Sioux helicopter.*⁴⁵

5F-32 In 1972 Colonel Welsh had written: 'Before I took off I had an informal briefing from the Brigade Commander.'⁴⁶ While this issue has been used in the attempt to undermine the evidence of the witnesses that separation was discussed at the Conference (as to which see above), it is clear that Colonel Welsh was given his instructions at some point before the march began, and that separation was on any view very much in the mind of the Brigade Commander on the morning of 30th January 1972.

⁴⁴ Day 285/046/03

⁴⁵ Brig MacLellan's 1972 Statement, B1232 paragraph 17

⁴⁶ 1972 Statement, B1334 paragraph 4

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CHAPTER 5G

PLANNING AND ORDERS IN 1 PARA

5G-1 1 PARA received its Warning Order in respect of the operation in Londonderry from (as the chain of command dictated) its own Brigade Headquarters, 39 Brigade, on Monday 24th January 1972 (the day Commander 8 Brigade signalled to the Commander Land Forces Chief Superintendent Lagan's assessment of the levels and duration of violence 8 Brigade could expect on 30th January).

5G-2 In addition to the battalion's operational tasks within the Brigade area at the time, the Warning Order set Battalion Headquarters' standard preparatory procedures in motion:

From receipt of a warning order a CO would start to think forward. His staff would be expected to get on with their jobs without the need for detailed or specific instructions. The Signals Officer would have to liaise with other Signals Officers and deal with such things as frequencies, call signs, particular radio black spots etc. The Quartermasters would be expected to make arrangements for accommodation, fuel, feeding the troops, and as the Intelligence Officer I would have been expected to get relevant maps, photographs and any other information I could about the area of operation.¹

5G-3 There is evidence from two entirely separate sources, one from 1 PARA and one from 1 R ANGLIAN (and therefore unlikely to have influenced each other in a mistake), that some of the officers went to Londonderry for reconnaissance during that week. Major INQ 0010 was the Officer Commanding A Company 1 PARA:

I cannot remember exactly what happened prior to the march but I think I must have received a warning order

¹ INQ 0007 (IO 1 PARA), BSI Statcment , **B1238 paragraph 10**

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because I went on a Battalion recce to Londonderry prior to the event. This was my first visit to Londonderry: lack of familiarity with the area was one of the reasons why a recce was required. I cannot say exactly when it took place, whether a few days or a week before the march.... I only remember the recce vaguely: I do not remember where I went. I am certain that I did not go onto the City Walls as I would have remembered that. I do not remember seeing the cathedral².

5G-4 Major INQ 0010 told the Tribunal that he is certain that this visit took place, as he can remember that they were wearing civilian clothing³ Captain INQ 1495 was the Officer Commanding A Company 1 R ANGLIAN:

I do however remember, shortly before Bloody Sunday (I could not say exactly when) being involved in escorting some officers from 1st Battalion the Parachute Regiment around the area north of Waterloo Place. I cannot remember exactly how many officers there were, but I would say there were a handful of them. I could not say what their ranks were, nor could I in any way identify them now⁴. They were in Londonderry to carry out a reconnaissance in preparation for Bloody Sunday because 1 PARA were likely to have to come into the city as reinforcements. I must have known that the march was due to take place and it was quite usual for different battalions to be moved around to support others. For example, our battalion had travelled to Belfast in 1971 to reinforce the resident troops there⁵.

5G-5 At some stage on 27th January 1972 Battalion Headquarters received its copies of the Brigade Operation Order for Operation Forecast. 1 PARA's tasks (the principal of which would become, of course, the Mission of the Commanding Officer's own orders) are at paragraph 9f:

² B1343.001 paragraph 3

³ Day 289/067/17

⁴ This may indicate that the CO was not present. Capt INQ 1495 could not remember whether he was or was not: see Day 304/047/22

⁵ BSI Statement, C1495.2 paragraph 14

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(1) Maintain a Brigade Arrest Force, to conduct a 'scoop up' operation of as many hooligans and rioters as possible.

(2) A secondary role of this Force will be to act as the second Brigade mobile reserve.⁶

5G-6 By paragraph 6 of Annex B to the Order only three of its companies were to remain under command: from 1200 hours on 30th January one company was to be detached to under command 22nd Regt.⁷

5G-7 In the operation Order Colonel Wilford, as were all of the Commanding Officers involved, was provided in addition to numerous administrative provisions, with background information relevant to the event in question⁸, 8 Brigade's assessment of the threat⁹, its concept of operations¹⁰ (including the low key approach to be adopted by the Security Forces, the fact that the march would be permitted for as long as it remained within the containment area and the location of each of the barriers which formed the containment line¹¹), 8 Brigade's requirements so far as the media were concerned¹² and a timetable for the event (1 PARA under command 8 Brigade from 0800 hours on the Sunday)¹³. 8 Brigade also provided a Signals Instruction, ensuring effective communications between all of the major and minor units working together during the event¹⁴.

5G-8 Colonel Wilford was also provided with further information in relation to his own task:

⁶ G95.570

⁷ G95.578

⁸ G95.564 paragraph 1

⁹ G95.565 paragraph 2

¹⁰ G95.566 paragraph 6

¹¹ Annex D, which does not appear with the copy of the Operation Order in Bundle G but is elsewhere, eg at B1279.101

¹² G95.573 paragraph 9(p)(6)(b)

¹³ G95.572 paragraph 9(p)(2)

¹⁴ G95.575 paragraph 11(a)

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(a) This operation will only be launched, either in whole or in part, on the orders of the Bde Comd.

(b) The Force will be deployed initially to Foyle College Car Park GR 434176, where it will be held at immediate notice throughout the event.

(c) The Scoop-Up operation is likely to be launched on two axis, one directed towards hooligan activity in the area of William Street/Little Diamond, and one towards the area of William Street/Little James Street.

(d) It is expected that the arrest operation will be carried out on foot¹⁵.

5G-9 As has already been observed, it is upon sub-paragraph (c) that attention has been focused. Some of the problems encountered by the military witnesses in relation to the approach of the Tribunal, its Counsel and Counsel for some of the Interested Parties have been discussed. That these problems continued at the level of command now under consideration is demonstrated by this question from Christopher Clarke QC, to Colonel Wilford:

When you looked at that order, and a map which presumably would have shown you something similar to the map that is on the right hand side, did you appreciate that the order appeared to be contemplating an arrest operation in the area of William Street/Little James Street and around here, in the Little Diamond area, on, broadly speaking, as it were, a horizontal axis or axes along William Street?¹⁶

5G-10 By phrasing his question in this way Mr Clarke not only told Colonel Wilford what this provision means, but did so in terms that are inconsistent with the both the terms of the provision and the evidence of the Brigade Major who drafted the order. The directional, mobile element of the provision ('towards') is not referred to at all and the two areas identified are given as areas in which the arrest operation is to take place,

¹⁵ G95.570 paragraph 9(f)(1)

¹⁶ Day 312/020/03

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whereas the terms of the provision are clear that it is hooligan activity in those two areas towards which the arrest operation is likely to be launched. Furthermore, the word axis, omitted by Mr Clarke in his description of the likely movement of the arrest force, is now being given the meaning of a static horizontal line, beyond which (it is implied) the arrest force is not to go. Even if this interpretation of the provision is possible (and the senior officers' case is that it is not), General Steele had clearly given an alternative interpretation of the provision which Colonel Wilford was not told about.

5G-11 So far as the military witnesses are concerned, no geographical limits for the arrest operation were laid down by this, or any other¹⁷, provision of the Operation Order. Had there been such limits, the orders given on the day for the launch of the arrest operation (given by the very same officers who had drafted the Operation Order), would not have contemplated the need for any prohibition against 'running battles' or any other activity 'down Rossville Street'.

5G-12 On Friday 28th January 1972 Colonel Wilford travelled to Londonderry and, under the auspices of Headquarters 8 Brigade (with on hand assistance from the GSO3 Intelligence and Security, Captain INQ 1803) carried out his reconnaissance of the relevant part of the City from the air and, in so far as was possible, on the ground.

5G-13 In the afternoon Colonel Wilford attended the Brigade Co-ordinating Conference. While his thinking at this still very early stage (given the nature of his task), was quite properly not a subject for discussion at the Conference, it is inconceivable that he did not have some form of discussion with the Brigade Commander. That he did so in relation to his plan (albeit in general terms) at some stage before the march, and that (as

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is to be expected) there was a joint approach by Headquarters 8 Brigade and the Commanding Officer of 1 PARA, can be seen from this passage from Brigadier MacLellan's evidence to Lord Widgery:

Q: Had Colonel Wilford discussed his plan with you or not?

A: Not in detail, because we did not know (a) whether there would be any hooligans on the day for sure, or rioters; or (b) where they would be. We could merely make an outline plan.¹⁸

5G-14 At the conclusion of his visit to Londonderry Colonel Wilford then returned to Belfast and called his own Orders Group for 1030 hours the next day.

5G-15 In 1972 Colonel Wilford described the orders he gave in the following terms.¹⁹

a. I went through the Brigade Operation Order in detail to ensure we all understood the Situation the Mission and Execution. Annex A.

b. My own mission 'To arrest as many rioters as possible'.

c. The Execution of our mission. I explained that until the rioting started it was not really possible for me to be specific in my plans and I therefore gave a general idea on how I thought it could go. The marchers has (sic) two routes from Bishops Field: Route One would bring them in from the South along Rossville Street into William Street with possible filters through to Waterloo Place and Magazine Street. If rioting broke out from this approach I considered that two companies would come in from North and one from the East to pinch them out from a retreat West and South. Route Two would bring them into William

¹⁷ Boundaries (shown on the map at Annex A) are provided for at G95.571 paragraph 2(p)(1)

¹⁸ Brig MacLellan questioned by Mr Stocker, to Lord Widgery, at B1279

¹⁹ 1972 Statcment, B945 paragraph 5

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Street at the Junction with Lonemoor Road and although confrontation would not take place until the William Street barrier it would likely spread backwards and it would be necessary to put in two companies together to get the maximum impact and achieve mutual support. I thought that the best approach would be from behind the Presbyterian Church. I was going to be forward where I could see the crowd and get an early view of its behaviour. On this I confidently expected to move the companies forward to jump off points.

d. I spoke about the Derry rioters and our lack of experience against them, the fact that they were quite used to rubber bullets and gas, but not to the quick use of snatch squads which would tell against them. However, I warned that we must look to our flanks and front particularly in the open area of Rossville and William Street where there had been so much sniping during previous rioting.

e. I then described the breakout which I intended from the Presbyterian Church and how Support Company would be reinforced with a Composite Platoon to prepare the route. This route would be recced and protected prior to any action by us.

5G-16 Neither this paragraph nor the Notes of the Orders given (which are considered below), indicate that Colonel Wilford had been given (or that he believed he had been given) a limit of exploitation, still less William Street as any such limit. If anything the words he used in this statement raise the possibility that some troops would be operating to the south of William Street: at sub-paragraph c he anticipated a company might move in 'from the East' in order to 'pinch [the rioters] out from a retreat West and South'; and the Group was warned to look to their flanks and front, 'particularly in the open area of Rossville and William Street. The Notes are even more explicit, as they include the following:

g. Concept of the battle

(1) The parade will come into contact with SF Barricades at William Street. There are two approaches.

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First. From Rossville. This will cause the crowd to attempt a bypass through to Waterloo Street. In this event I would want to put a coy down the Strand into Waterloo Street and two coys in William Street from Lower Road and the Presbyterian Church²⁰

5G-17 Waterloo Street runs from Waterloo Place south east to Butcher Gate, past High Street and Harvey Street, which themselves run south west to Chamberlain Street.

5G-18 This is entirely consistent with the thinking of Headquarters 8 Brigade as at 28th January 1972:

Q: I would like you to go back to the circle that you have drawn and corrected. Can we have B1315.133. Assuming that you were discussing this with Colonel Wilford on the 28th and having explained that the rioting may well take place at barrier 14 or barrier 12, or both, do I understand that this circle would still represent the general area within which you would expect the arrest operation to take place?

A: Yes.

Q: You made a correction, which we will come to, but that was more as you would have modified it in the light of events on the day?

A: No, I think I modified it because it was such a roughly drawn circle and was inaccurate.

Q: There are two different issues, General Steele, which I would like you to separate in your mind. The issue I am directing your mind at the moment to is what you would have thought on the 28th, looking forward to the operation and assuming rioting at barriers 12 and 14. There I understand you would have expected the operation to centre upon the area of that circle?

A: The amended circle?

Q: Well, you talk of amended circle, I would like to give you a chance to do it. Could we have Q8, please. It is up to

²⁰ B966 paragraph 3(g)

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you, General Steele. I am going to ask that you be given control and if you put your fingers on the screen, you can in fact draw a circle. Since you amended it slightly by reference to squares, I would rather if, with the Chairman's leave, that you draw the circle you feel happy with?

LORD SAVILLE: We can try that, but let us understand precisely what the witness is being asked to do. He is being asked to draw a circle of the area in which, before the event, he thought the arrest operation would take place. We have to qualify that slightly, have we not, because in the operational order there are two quite separate places and so you are asking the question in relation to what was described, I think, as the William Street/Little James Street axis. In relation to that part of the operational order, what you are being asked to do, by touching the screen, is to draw a circle encompassing the area, if you are able to do it, which, at that time, that is to say before the event, you envisaged -- if indeed you did envisage it -- that the arrest operation would take place.

A: Yes, I am happy to do that. (Marked with blue circle - B1315.156)

LORD SAVILLE: That would not be in Little James Street at all, would it, then?

A: I have to say, Chairman, I find it very difficult to draw these circles here to encompass what I had in mind. I always had in mind that the arrest operation would be a scoop-up and that the scoop-up would be conducted in the wasteground south of William Street and where I think my difficulty in this particular question is, is that of course at the time that I drafted the order, not only did I not know where the hooligans were going to be, but nor did I know where the marchers were going to be and where the marching meeting was going to be and nor had the brigade commander given the order of "no running battle down Rossville Street". So I am finding it difficult to, in isolation, so to speak, to draw these circles.

LORD SAVILLE: I follow that, but the difficulty I find, is that, if you remind yourself of the operational order: "The scoop-up operation is likely to be launched on two axes, one directed towards hooligan activity in the area of William Street/Little Diamond and one towards the area of William Street/Little James Street." I just find it odd -- you may be able to explain it to me -- as to why the expected arrest operation, described in the operational order as "one towards the area of William Street/Little James

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Street," you draw a circle on the map which, to all intents and purposes, completely excludes Little James Street?

A: Well, of course, the actual point of hooliganism, in our experience, was at the junction; I mean, that is why it was called "Aggro Corner." So although there might have been hooligans between Aggro Corner and the barrier at 12, generally speaking the hooliganism was in that area of the junction. So, I think it is right to say that a scoop-up operation would have had to have come south of that.

LORD GIFFORD: Part of the answer to the Chairman's question lies in the fact that that junction, according to your own order, is where you expect the hooligan activity but not necessarily where you expect the arrests.

A. Yes, I think that is right, and of course it was compounded, as we all now know, by the fact that the hooligan element actually ended up at barrier 14.

Q: Still staying with what you would have discussed with Colonel Wilford on the 28th. In relation to the Little Diamond axis, the likely area of arrests, can you help us at all as to that?

A: No, I am having trouble with your assumption here because of course I cannot recall whether or not I did have such a meeting with Colonel Wilford.

Q: It is because of that I put the question in the form I did: if you discussed it, it would be in your mind, in the same way that is a rough circle for one of the axes, what would be the circle, if you can give it, in relation to the other?

A: This is what would be in my mind.

Q: What, in relation to the Little Diamond; could you draw it?

A: I do -- I beg your pardon, I missed that point entirely. (Indicating)

Q: Can that red be taken off and he be given control to draw a similar circle?

A: (Marked with red circle - B1315.156)

LORD SAVILLE: Are you happy with that, General Steele, or do you want another go?

A: No, no, that is ...

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LORD SAVILLE: I think we can proceed on that basis.

LORD GIFFORD: May we save that image at the appropriate number.

MR RAWAT: B1315.156.

LORD GIFFORD: Looking at that, while that was the area that you might have expected, you would accept that Colonel Wilford had a discretion to go further towards the south within the terms of the operation order, if that was necessary to effect the arrests.

A: Yes.

Q: So it is clear that Colonel Wilford would have appreciated that he was authorised to go into the Bogside as far as was necessary, to comply with the order which has been given?

A: Yes, and that is quite right on the 28th, but on the 30th –

Q: Still on the 28th?

A: Yes, quite so.

Q: Indeed, the rubble barricade itself would not necessarily be out of his range on the 28th?

A: Well, now, I cannot say that, because of course that was not what was in my mind as to where the arrest area would be.

Q: Indeed, chasing into side streets would again not be out of the question?

A: Exactly.²¹

5G-19 So far as the tactical thinking is concerned, both Colonel Wilford's statement to Lord Widgery and the Notes for his orders stress the outline nature of what could be said. This was no more than what his audience, the Officer Commanding A Company amongst them, expected:

²¹ Day 268/104/19

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Q. Given what we have just seen from the content of Colonel Wilford's written orders, would you accept that your orders would only have been finalised on the day itself?

*A. Most certainly.*²²

5G-20 Major INQ 0010 explained:

*You cannot lay down -- well, you can and always attempt to lay down a plan as to what will happen. But all you can do in reality is to make sure that everybody is aware what the task is, the main task, and then you deploy according to the situation.*²³

5G-21 Underlying the approach is the understanding of those with a military training that commanders cannot predict and control everything, but they can rely upon the training of the soldiers to use their initiative within their understanding of the task they had been given:

MR HARVEY: Just dealing with the last point you were making, is the situation that, if soldiers are to move beyond the tactically optimum which is recommended by the operation order, that that decision is one that really should be made by the commanders, rather than the individual soldiers themselves?

A. May I begin by querying a point? If you are asking: is this -- everything that I have referred to refers to my company.

Q. I entirely understand that.

A. Okay, and in my regiment an initiative is a requirement and the task has to be carried out and therefore individual soldiers in group form, in this case, would be expected to take the initiative. But they would, nevertheless, understand that they were under command, for example to section commander, and he in turn under his platoon commander and/or platoon sergeant. Have I answered your question?

²² Maj INQ 0010 at Day 289/016/13

²³ Day 289/018/15

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Q. I think you have, if I have interpreted it right. It simply means that within your regiment soldiers are expected to exercise initiative but that initiative still itself is subject to a chain of command. Would that be right?

A. Wherever that is possible.

Q. Wherever that is possible. In fact, that is one of the important considerations of forward planning: one plans ahead on the understanding that it may well have to be offered, but you are dealing with the most probable outcome, and therefore trying to predict behaviour beforehand for soldiers for their safety and their protection.

A. I do not like the word "prediction" when we are talking about operations. There can be no prediction.

Q. Then what is the point of forward planning?

A. I have been on a large number of operations in various parts of the world and in my experience a plan goes out of the window the moment the operation starts.

Q. Does that mean there is no point in forward planning?

A. No, it does not.

Q. What is the point of forward planning?

A. The point I am making is that if you are suggesting that there is some way through the plan -- through a planned form of controlling something, the answer is there is not. If however, which is what I am referring to, you prepare soldiers and they understand what the aim is and they understand how they should operate within that aim, fine.

Q. Yes. I do not think I was asking any more than that.²⁴

5G-22 In the absence of any express limitation upon the task, movement would be in tactical bounds, as follows:

Q: Could we look again please at B1343.008. We have looked at the mission and execution at the top of the page. Paragraph 1, under "Execution," you were asked a few

²⁴ INQ 0010 at Day 289/037/14

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minutes ago about crowd control and movement: "In tactical bounds of no more than 20 metres." I just want to ask you this: should we understand that to be a geographical limitation on the snatch squad carrying out the arrests, that is to say it should not go further than 20 metres from the point at which the arrest operation is presumably commenced; or should we understand that to mean that any arrest squad should move in tactical bands (sic) of about 20 metres at a time and together as a snatch squad?

A: My soldiers were pretty experienced and we had done this many times. That is a guidance, a reminder to them not to go too far. So the aim is to move in -- picking up your second point -- bounds of a distance, limited distance, dependent on the situation.

Q. So movement would be in bounds of no more than 20 metres as a snatch squad group?

A. Not necessarily. As a guide, in terms of guidance, yes.

Q: I understand.

A. But if, for example, the particular individual they were after was another 10 metres on, they would go for him.

Q. Perhaps it is me, but it does not quite answer the question I am putting to you. I understand that therefore movement of the squad should not be in bounds of more than about 20 metres. But was this in any sense to be interpreted as a geographical limitation, that is to say the snatch squad may not go 60 yards, albeit in bounds of three at a time. Do you follow?

A. I apologise, I misunderstood you. Situation dependent.

Q. So in other words, if there were someone to be arrested who happened to be 50/60/70 yards away --

A. It is possible, but unlikely.

Q. But if it were executed in that way, you would still expect the snatch squad --

A. As long as cover could be maintained.

Q. I follow.

A. In other words, protection.

Q. And that would be --

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A. Unusual.

Q. -- a decision to be taken by the soldiers on the ground?

A. Yes. Not the individual soldiers. It would be those commanding -- controlling them.

Q. Of course. So that we are clear about it, therefore 1(b)²⁵, you would not have interpreted as being a geographical limitation that soldiers should not move more than 20 metres from the point at which they commenced the arrest operation?

A. Forgive me. I should have picked up on "geographical", you are correct. But it is always dependent on a number of variables.

LORD SAVILLE: Let me make sure I understand you. Again, a general limitation of about 20 metres: the reason behind that being so that the cover could be maintained for the snatch squads, they could continue to work in a unit, rather than being scattered many dozens or hundreds of yards around the area, is that right?

A. The aim is always soldiers' safety.

LORD SAVILLE: Yes. So I am reading this as being, and you must tell me if I am wrong, that general limitation -- so if you take a specific instance -- they might move about 25 metres, and then, having regrouped, they might move another 20 or so metres, is that right?

A. As long as they were being covered and it was a general movement, yes.

LORD SAVILLE: That is what I meant by "regroup," to provide the cover in the general group, yes.

A. I think in answer to your question, sir, the important point is that soldiers understood that they did not get themselves out on a limb. It would be extremely costly, potentially.

²⁵ B1343.008 paragraph 1(b): "Movement -- in tactical bounds of no more than 20m."

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*LORD SAVILLE: Yes, I follow.*²⁶

- 5G-23 And the mechanism of a number of snatch squads moving in tactical bounds within a larger – Company or Battalion – operation is not to be confused with the notion of smaller snatch squads operating in isolation²⁷.
- 5G-24 Colonel Wilford's aim in his Orders was therefore to inform his Company Commanders of the essentials: the Battalion's (and therefore their) mission²⁸, the nature of the operation²⁹, their grouping and individual Forming Up Positions³⁰ and a general outline, subject to further orders, as to how they might expect to be deployed (A Company on the right flank, Support Company in the centre and C Company on the left). What would have been clear to all of them is that all three companies remaining under command 1 PARA were going to be working together: in both of the scenarios identified in the notes the battalion arrest operation comprises three companies converging on the rioters from one or more directions.
- 5G-25 The members of the Orders Group would not have been dismayed by the fact that they were going to operate in an area neither they nor their soldiers knew:

MR HARVEY: Coming in from the rear, do you mean by moving along the Little Diamond then going down using Abbey Street or are you simply not familiar enough with the ground to know what that implies?

A. I certainly cannot recall and I certainly did not know the ground. That would not have prevented me from going, but that is academic, because it did not happen.

²⁶ INQ 0010 at Day 289/034/10

²⁷ A confusion displayed, for example, by Arthur Harvey QC at Day 257/012/13 when questioning Gen Ford: 'We know now two of those companies were involved in a regular snatch operation.'

²⁸ Notes, B966 paragraph 2

²⁹ Notes, B966 paragraph 3(a)

³⁰ Notes, B966 paragraph 3(b)-(e)

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Q. No, but again you did not know the ground and your troops did not know the ground?

A. That is frequently the case and was the case in Belfast.³¹

5G-26 What is clear from the Notes is that Colonel Wilford was thinking of using the Presbyterian Church as one of his points of access to the rioters. Given the recognition amongst commanders in 8 Brigade of the difficulties of getting close enough to the rioters, this may have been suggested in Londonderry. Captain INQ 1495, referred to above, has told this Inquiry:

15. My Company Sergeant Major, a couple of signallers and I walked around the area with an armed escort and the para officers. I remember showing the para officers two walls, one on either side of the Presbyterian Church each marked A on the attached map (grid reference L05 and K05). At that time we were having difficulties with the regular Saturday afternoon riots which would take place at the north end of William Street. The army's job in this situation was to stop damage being caused to local properties and shops. We would deploy people at William Street and at Waterloo Place. Snatch squads would run forward but the rioters would run away too quickly and no arrests would be made. I was therefore always trying to think of ways to carry out more efficient arrests. One way I had thought of, but not actually tried, was to send troops in around behind the rioters in a pincer movement. I mentioned the possibility of this manoeuvre to the para officers and suggested that the route in through the Presbyterian Church would be suitable for this purpose.³²

5G-27 INQ 1495's recollection was that the wall was eight to ten feet high and he was not suggesting that the approach was an easy one. It would have required preparation. Colonel Wilford was planning for Support Company

³¹ INQ 0010 at Day 289/047/08

³² C1495.2

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to be 'reinforced with a Composite Platoon to prepare the route'³³, and in the event Support Company took ladders with them to the Church.

5G-28 General Ford, General MacLellan and Colonel Wilford were all questioned from a critical standpoint about the lack of consultation with the local units. To put it at its lowest, INQ1495's evidence is evidence that had there been some sort of formal consultation exercise, beyond what Headquarters 8 Brigade were able to tell Colonel Wilford on 28th January, and that crossing over the walls to the sides of the Presbyterian Church was not an approach that would have been ruled out.

5G-29 The reason for not ruling it out, despite its inherent difficulties, was the tactical benefits it had the potential to offer. Any rioting would, initially at least, have been against one or more of the barriers, and the access through the Church, if it could be achieved, would enable the troops to get into the rear of such a riot: they would not have to go through any of the barriers. Furthermore, the Church occupied a central position along William Street between what Colonel Wilford had been told were the most likely areas of hooligan activity: the area of Little James Street/William Street and the area of the Little Diamond/William Street. This would have enabled him to move troops from the centre point towards either of those areas, depending on which of them became the centre of any rioting.

5G-30 The Church offered the commander of the arrest force the perfect pivotal position if 8 Brigade was right in its assessment of the two areas in which trouble was most likely to occur: Support Company would be able to move west to link up with A Company or east to link up with C Company. This positional advantage is obscured if the Operation Order is read so as to anticipate two separate operations rather than a single operation that

³³ 1972 Statemnt, B945 paragraph 5(e)

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might have to be used in either of the anticipated likely directions, or indeed in any other direction:

LORD SAVILLE: I am sorry, Ms McDermott, I am confused again. On the operational order you have one axis in the Lower Road/Little Diamond area; and the other, if I remember the order correctly, in the Little James Street, William Street area. I have always assumed, but I am perfectly prepared to be told I am wrong, that the idea of going over the wall at the Presbyterian Church was part and parcel of that second axis for the scoop-up operation, namely the scoop-up operation axis in the Little James Street/William Street area -- if I am wrong, please tell me straightaway -- and that the Lower Road Company A were on the other axis all together.³⁴

5G-31 Furthermore, a number of questioners have attacked the Presbyterian Church plan on the basis that the troops using it would have to have crossed open ground in the form of the empty space immediately to the south of the Church³⁵. But that is just not the case: by turning left immediately after descending from the wall the troops could have followed walls north east and then south east, around the edge of the piece of ground. There was no need to cross open ground at all. And the maps and aerial photographs³⁶ raised the possibility of a more covered route than that: around the perimeter of the GP Sorting Office complex, between that perimeter and the rear of the buildings on William Street north of the open ground to the front of the Church. If that route was open there was a covered approach for the troops all the way to Aggro Corner.

5G-32 It would appear that the only or deciding fact which ruled out the church wall as providing one access route was the fact that ground level on one side of the wall was significantly lower than on the other. The Tribunal might fairly consider that this was just the sort of fact which is all too

³⁴ Day 259/090/08

³⁵ Scc, for example, Arthur Harvey QC to Gen Ford at Day 257/054/25

³⁶ Scc, for example, P199.

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obvious with the benefit of hindsight but which might well not have been anticipated, even with the benefit of careful preparation and/or local knowledge. Only those who had actually climbed the wall and looked at the ground on both sides were likely to have appreciated the problem.

5G-33 In any event, the need to alter the plan on 30th January 1972 away from the idea of inserting troops onto William Street over the wall, was not the dramatic change which a number of questioners painted it as³⁷. Attractive though that route appeared to be from the maps and the reconnaissance carried out thus far,³⁸ it would require further attention once 1 PARA were on the ground and could get closer to it:

I then described the breakout which I intended from the Presbyterian Church and how Support Company would be reinforced with a Composite Platoon to prepare the route. This route would be recced and protected prior to any action by us.³⁹

5G-34 Captain 200, who attended the Battalion Orders Group in his capacity as Officer Commanding Administrative Company, remembers the Presbyterian Church being described in terms of a potential access point rather than one that had been finally decided upon:

From the overhead photographs and maps of the area it had been decided by Colonel Wilford and the Company Commander that this was a potential area from which Support Company could gain entry into the Bog side and make arrests. Obviously therefore we needed to check out this area in advance to make sure that this was in fact feasible.⁴⁰

³⁷ Gerard Elias QC, for example, to Gen Ford at Day 256/050/04

³⁸ Aerial reconnaissance, on 28th January

³⁹ 1972 Statement of Col Wilford, B946 paragraph 5(e)

⁴⁰ BSI Statement, B2022.003 paragraph 18

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5G-35 The companies had in any event been told that, although they had a general outline and had been allotted Forming Up Positions, they would have to be flexible:

... I had been warned by my Commanding Officer that my Company might have to climb over [the wall at the east side of the Presbyterian Church], in order to gain access to William Street. This was the pre-arranged route for my Company, although I was also warned that I might have to enter the area via any of the Army Barriers.⁴¹

5G-36 Captain 200's understanding was very similar:

Colonel Wilford's briefing could only contain so much detail about deployment. In order to maintain the maximum possible flexibility the orders were not too rigid in this respect and in effect much would not be decided until we had actually arrived in Londonderry. However, Colonel Wilford's orders were very good and very thorough, as was usually the case. We would have been fully briefed about communications, administration and timings ...⁴²

5G-37 Colonel Wilford appears also to have told his company commanders of the need to take account of the safety of peaceful marchers. Major Loden said in 1972:

It was clearly understood that the peaceful element of the march was to be left undisturbed.⁴³

5G-38 Major 221A was the Officer Commanding C Company, whose orders were passed onto the soldiers at the Platoon Orders Groups:

Q (reading paragraph 11 of the BSI Statement of Cpl INQ 1799, a section commander in C Company): "We travelled from Long Kesh into Londonderry in the armoured vehicles. I remember that as I was section commander, I thought about how I would deal with a situation if gunmen

⁴¹ 1972 Statement of Maj Loden, at B2218

⁴² BSI Statement, B2022.002 paragraph 9

⁴³ 1972 Statement, at B2216

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were to open fire. I was trying to construct a mental picture of the area. My line of thinking at that time would be that I would have two roles. Firstly, to make sure that my men and innocent civilians were okay and, secondly, to resolve the situation decisively and to our advantage if possible. Taking decisive action would be to either put the gunmen out of action or alternatively to close on them and make their position untenable." Do you recall whether you had in mind a serious possibility that gunmen would be encountered on that afternoon?

A. No, as I have said. I cannot recall the details of either receiving orders or of giving orders.

Q. It may be in the light of your recollection you are unable to answer this, but can you say whether you would have sought to brief either your company as a whole or your platoon commanders about a risk that gunmen would be encountered and the way in which they should deal with that situation, if it arose?

A: We could well have talked it through, yes.⁴⁴

5G-39 The Company Commanders also relied on the considerable experience they had acquired during the long period they had been carrying out such operations in Belfast. Major INQ 0010 was commanding the remaining company, A Company:

LORD SAVILLE: If there are people around when you come under fire from a gunman, there may well be a risk, if you attempt to fire back at gunmen, of hitting some innocent people. Was that appreciated as a possibility and, if so, what was the practice with regard to that possible situation?

A. Chairman, I understand the point that we are trying to get at here, and I am sure you will understand my position: it is extremely difficult to put these things in black and white. But to answer your question, experience has shown us that gunmen tend to fire from positions where they are not immediately identifiable, and where they can see soldiers which takes them out of the direct line of, in this

⁴⁴ Day 294/135/15

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case, marchers. You are quite correct: it is definitely appreciated, and was definitely appreciated, that on occasions, because the crowd was -- a crowd was being used as cover, that there could be a risk. And one had to take care. That is why it was always the case, certainly in my company and I suspect in all others, that the Yellow Card was elaborated to the point that it was only fired at identified gunmen. I am sorry I cannot be more definite than that, but it -- each and every situation is different. But the point is made.

LORD SAVILLE: Thank you.⁴⁵

5G-40 That experience had resulted in an understanding of the behaviour of the peaceful element in crowds which was very similar to that acquired by 8 Brigade in Londonderry:

MR RAWAT: You have told the Tribunal that you contemplated that mixed in with the rioters and the gunmen there might be peaceful marchers?

A: No. That was -- you used that term. I did not -- I do not mean that at all. I expect that the moment that any activity -- serious activity started, whether it was rioting or shooting, then the peaceful elements of the crowd, or the march, tend to disperse pretty rapidly.⁴⁶

5G-41 Having made such preparations as were possible 1 PARA set off for Londonderry on 30th January, with much of the tactical thinking that would be necessary still ahead of them.

⁴⁵ Day 289/011/12

⁴⁶ Day 289/010/05

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CHAPTER 5H

OPERATION FORECAST

*'One can always look in hindsight at, shall we say, a nice little battle area ...'*¹

5H-1 1 PARA were under command 8 Brigade from 0800 hours on 30th January 1972² and were due in the BSR Factory at Drumahoe by 1100 hours³, a requirement with which they complied⁴. The move into the FUP at the Foyle College Car Park was to start at 1200 hours⁵ and was to be complete by 1300 hours⁶.

PREPARATIONS IN LONDONDERRY

5H-2 Some preparations would no doubt have had to wait until they reached Londonderry: certainly the Intelligence Officer and the Regimental Signals Officer (not least to collect the cards necessary to run the secure net) both visited Headquarters 8 Brigade in Ebrington Barracks.

5H-3 Although no one has remembered it now, it may well be that the Commanding Officer did too⁷. Tactically, however, his position as commander of the Brigade Arrest Force was one all the senior military witnesses who have appeared before this Tribunal understood:

¹ Col Roy Jackson, at Day 286/088/02

² Operation Order Operation Forecast, G95.572 paragraph 9(p)(2)

³ Operation Order Operation Forecast, G95.573 paragraph 10a(3)

⁴ 8 Brigade recorded the completion of 1 PARA's move from Belfast in its Log at 1104 hours: see W39 serial 28

⁵ Operation Order Operation Forecast, G95.572 paragraph 9p(2)

⁶ Operation Order Operation Forecast, G95.572 paragraph 9p(2)

⁷ The CO and the IO were certainly together by the time the officers of 1 PARA began their reconnaissance of the barriers: Col Wilford's 1972 Statement, B947 paragraph 7.

... the orders that had been given to the commanding officer of 1 PARA was that he could use --- that he could make his own plan and use his companies as he thought fit.⁸

5H-4 While the Main Body made the move to the FUP⁹ Colonel Wilford and his company commanders set out on the reconnaissance which would enable them to advance their tactical planning for the day. All of the company commanders were instructed to reconnoitre barriers 7, 9, 11 and 12 to 17 (those at which there was most likely to be trouble, no doubt, and those most likely to be used for access to deal with any such trouble) and Colonel Wilford carried out his own reconnaissance with the Intelligence Officer. The Officer Commanding Support Company began his reconnaissance at 1220 hours.¹⁰

5H-5 No doubt one issue of great interest to the Commanding Officer and the Officer Commanding his centre company was the viability of the access route at the Presbyterian Church. Given the fact that the need to establish whether troops could or could not be moved over the wall had been identified at the Battalion Orders Group in Palace Barracks¹¹, it is no surprise that the two met at the Church. It had now been possible to look at the wall closely¹² and the outcome of the discussion was that in all the circumstances¹³ the wall could not be used.

⁸ Gen Steele, at Day 267/090/05

⁹ The last of the companies, Support Company, got there at 1250 hours: see the 1 PARA Log, W89 serial 5 ; Battalion HQ was sufficiently established there by 1312 hours to have established a telephone link with Brigade: see the Brigade Log, at W40 serial 46

¹⁰ 1972 Statement Maj Loden, at B2217

¹¹ 1972 Statement Col Wilford, at B946 paragraph 5(e)

¹² In that they could now get up to the top of it and look down the other side, which provides the answer to Christopher Clark QC's question to Col Wilford, at Day 312/049/02: 'Maj Loden appears to have told you that there were difficulties in getting soldiers over the church wall. Can you help us as to why this was a defect or a difficulty that had not been apparent before?'

¹³ Which may have been updated at HQ 8 Brigade: the larger the riot the larger the number of troops that would have to go over the wall. See Col Wilford at Day 312/049/04

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5H-6 The difficulty was not access of itself, but the number of troops that might need to use it:

*Major Loden commanding Support Company met me at the Presbyterian Church and informed me that he thought it too difficult to pass a large number of troops through the wire. I agreed with him ...*¹⁴

5H-7 A number of questioners have sought to portray the outcome of this discussion as a reflection of a lack of professionalism on the part of the officers in 1 PARA¹⁵. These questions display a lack of understanding of the process in which these officers were involved and (presumably) a failure to appreciate that reconnaissance of the wall, and therefore a further tactical appreciation (including any new information) on the day, had been anticipated from the outset. And that is precisely what happened. Colonel Wilford continued:

*I agreed with him but asked him to recce a route forward over the wall to the West of the Church. This he did and found it was possible with difficulty to get forward to the derelict house at 43241701. I told him to be prepared to filter up to one platoon this way and made up my mind then that I would have to use the Little James Street approach if I was to get any number through in time to catch the rioters.*¹⁶

5H-8 Colonel Wilford was therefore still hoping to get at least some troops onto William Street from the area of the Church and was clearly continuing to think of troops moving from more than one direction towards the rioters.

5H-9 Subject to the obvious need to retain flexibility, the Officer Commanding Support Company was, not surprisingly, thinking in the same way in

¹⁴ 1972 Statcmnt Col Wilford, at B947 paragraph 8

¹⁵ See, for example, Arthur Harvey QC (in fact asking questions of Gen Ford), at Day 257/056/11. See also Gerard Elias QC (also to Gen Ford) at Day 256/049/05

¹⁶ 1972 Statcmnt Col Wilford, B947 paragraph 8

terms of the numbers of troops that could use the wall and the need for more than one access point:

During this reconnaissance I paid particular attention to a wall on the east side of the Presbyterian Church because I had been warned by my commanding officer that my Company might have to climb over it, in order to gain access to William Street. This was the pre-arranged route for my company, although I was also warned that I might have to enter the area via any of the Army barriers. During this reconnaissance I was met by my Commanding Officer and it was decided that a platoon should deploy forward, if required, to the disused building at 42341703. At 1245 hours my Platoon Commanders joined me at the junction of Queen Street and Great James Street and I warned the Platoon Commander of the Machine Gun Platoon that he might be required to deploy into this disused building. I had by then decided that the disused building would provide a second route into William Street, in addition to the one over the wall on the East side of the Church. From my position of observation East of the Church, I saw that there were windows in the East wall of the disused building which were partially boarded up with corrugated iron. My plan was that the MG Platoon should get inside the disused building from which it could then gain access to William Street from these windows. In this way I hoped to be able to surprise any rioters and also provide myself with an additional route which would enable me to deploy two platoons simultaneously. The route over the wall by the East side of the Church was narrow and exposed and was not suitable for deploying men quickly.¹⁷

5H-10 Given the outline nature of the planning as at the time of the 1 PARA Battalion Orders Group, understood by all those who attended it, it is inconceivable that Colonel Wilford did not have contact with his company commanders once the Battalion deployed onto the streets of Londonderry. This contact may not have comprised a formal Orders Group, as some questioners appear to have wished it to (relying no doubt on the words that appear in the Notes to the orders given at Palace Barracks: 'I will give the coy deployment in our FUP and then give my concept of how I think

¹⁷ 1972 Statement Maj Lodcn, at B2217

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the battle can go'¹⁸), but all the company commanders were carrying out their reconnaissance at the same time in what was a relatively small area.

5H-11 There was in any event little needed in either A or C Companies for an update although both, it is safe to assume, would have been expecting the order to move to the forward locations which was given at 1516 hours.¹⁹ Although there is now no record of any orders to this effect, the commanders of both A and C Companies must at some stage have been told that in the event of an arrest operation they would be moving through the barriers they did in fact move through. C Company, for example, were in Waterloo Place during the rioting at barrier 14 (they must presumably have been there when their Commanding Officer made his request at 1555 hours or thereabouts to move them through that barrier²⁰), ready to move up to Barrier 14 when the order for the arrest operation was given.

5H-12 In addition to face to face contact with the Commanding Officer, the battalion net was also available if, at the time the orders were needed, it was an appropriate (even if insecure) method of giving orders. While after thirty odd years he cannot remember them, the Officer Commanding C Company, Major 221A, clearly received orders:

Q. You carry on in your statement to deal with the movement to Waterloo Place. Can we go on to paragraph 12, please. You say at the beginning of paragraph 12: "Not long after I arrived at Waterloo Place, an order came over the battalion net that C Company was to prepare to go in to the Bogside to mount an arrest operation through barrier 14. I therefore got ready to send my vehicles through barrier 14." Should we understand from that that at that stage, after you had arrived at Waterloo Place, you were planning to send your company through in vehicles?

A (221A). That would appear to be the intention.

¹⁸ B966

¹⁹ 1 PARA Log, W90 serial 23

²⁰ Porter Transcript, W126 serial 336

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Q. You say "that would appear to be the intention," I mean that is undoubtedly what is written in your statement. Can you remember whether that was your intention, or not?

A. No, I cannot.

Q. You say a little further on in paragraph 12, after referring to the order being for C Company to move simultaneously with Support Company: "My recollection is that the intention was that both companies would then carry out arrest and scoop-up operations against rioters in the area around the junction of William Street and Rossville Street and the wasteground to the east of Rossville Street." Do you have an actual recollection as you sit here today, that the intention was as you have described it in this paragraph?

A. No, I do not have an actual recollection, no.

Q. Did you have an actual recollection at the time when you made this statement?

A. This is supposition, possibly, by the sequence of events that followed, that is where I get the recollection from.

Q. Leaving aside what is written in the statement and just thinking back, are you able to help us as to who told you or who decided and when you were told what the intention was as to what your company should do when it went through the barrier?

A. Right, we would have received orders from battalion headquarters on the battalion net.

Q. Can you say at what stage in the proceedings you received those orders, or not?

A. I would think whilst we were in the Waterloo Place, but I cannot be sure.

Q. Would details really have been given over an open radio net of the area into which your troops would be deployed?

A. If it was an immediate move, yes.

FS7. 845

Q. That would seem to indicate that they would only have been given at the moment when the troops were being sent in?

A. Yes, when I say "immediate" I am talking within half an hour or so, immediate in that respect.²¹

THE BUILD UP

5H-13 Once his reconnaissance had been completed the Commanding Officer of 1 PARA established his Tactical Headquarters in an Observation Post from which he could monitor the development of any violence and, as he would have been expected to do, attempt to maintain the initiative he required if he was to succeed in his task. This he did by moving his companies closer to the containment line at 1530 hours²², warning (through his Main Headquarters) the barrier holding units that they needed to be prepared to lift their barriers in the event of a need for 1 PARA to move through them²³, reassessing his options and keeping the units controlling the barriers and 8 Brigade (who were able to hear all transmissions, even if not directed at them) informed of his thinking.²⁴

5H-14 As the commander of the arrest force was watching how things developed the commander of the whole operation and his staff were monitoring events by listening to the transmissions made over the Brigade net. Mr

²¹ Day 294/139/19

²² 1 PARA Log, W90 serial 23

²³ Porter transcript, serial 286. The element of forward planning in this message is what is important, not the precise phrasology used by the watchkeepers in the Gin Palace, young officers speaking off the cuff as events developed, rather than preparing carefully the wording of each transmission. There is no basis for suggesting either (as Mr Harvey has repeatedly done) that this message was an order from 1 PARA to 22nd Regt or that it represents improper or irregular conduct by 1 PARA. See for example Col Ferguson's answer to Mr Harvey at Day 281/105/21: 'I would not say it was irregular. ... when we got the request, it was not an order, the request to lift the barriers ... it just seemed to me to be a perfectly logical and reasonable thing to do and I think I would have been very much out of order if I had gone to brigade headquarters to say "Is it okay to remove the barriers to let the company go through?"'

²⁴ See, for example, Porter transcript, at W124 serial 294, discussed in more detail below.

FS7. 846

Porter's tape permits the Tribunal to hear what was heard by all those with access to the Ulsternet.

SERIAL 294²⁵

5H-15 This serial reads:

65, from our Sunray. Be prepared for movement through serials 12, 14 and 16. Over.²⁶

5H-16 While Mr Rawat appeared to want to pass over it with the comment 'perhaps another breach of the concept of the element of surprise by 1 PARA', General Steele recognised the importance of this transmission:

Could I interrupt here for a second. ... It is quite an important serial, that, because it shows that the commanding officer's thinking at that time was in fact he would use 12, 14 and 16 rather than 11, 12 and 14 that he subsequently did. So that is an important serial, that, because it indicates that the commanding officer had a very flexible plan to try and use his forces as best he could in relation to where the hooliganism was taking place.²⁷

5H-17 Barrier 16 was located at Castle Gate, to the south of William Street and east of High Street. Far from any concern on the part of himself or anyone else at 8 Brigade at the notion of 1 PARA moving that far south, the Brigade Major reads it now as Colonel Wilford giving a good indication of what his up to date intentions were:

Q: Moving now to the events of the day, could we have on the screen W124, please, serial 294 you have looked at briefly already. It is a message to 90 Alpha, 22nd Regiment, from 65: "... from our Sunray. Be prepared for more through serials 12, 14 and 16." Do you remember that?

A: I do.

²⁵ W124

²⁶ There is no basis for adding the word 'now' to the word 'movement' in this serial, as Mr Harvey sought to do at Day 268/018/06

²⁷ Day 267/042/04

FS7. 847

Q: Could we have on the screen Q9, please. General Steele, you can see on the screen where barrier 12 is, where barrier 14 is; barrier 16 was at Castle Gate, there, do you see that?

A: I do.

Q: CO 1 Para having given a warning for troops to go through barriers, including barrier 14²⁸, must, must he not, have been anticipating inserting troops south of William Street?

A: Yes.

Q: Do you recall any particular reaction on your part when you heard that on the brigade net?

A: No, but maybe I should have done, because it is a very good indication that the commanding officer of 1 Para was thinking very much of how he was going to get his troops behind rioters.²⁹

5H-18 There was, in any event, a practical need for transmissions such as this:

LORD SAVILLE: Coming back to this: some slight criticism for destroying the element of surprise perhaps, General Steele, I gather from your answers over the last few minutes, but how else was Colonel Wilford expected to warn those manning the barriers that he may be ordered to come through them?

A: There was no other way.

LORD SAVILLE: So on the face of it, it would have seemed quite sensible for the commanding officer of 1 Para to warn the people at the barriers that there may be orders that require him to come through?

A: Indeed.

LORD SAVILLE: Otherwise, of course, you get the position where he is given an order and he cannot comply with it?

²⁸ Transcript says '14'. Must be '16'

²⁹ Day 268/166/09

FS 7. 848

*A: Quite so.*³⁰

SERIAL 315³¹

5H-19 In his Statement to this Tribunal General Welsh wrote:

*I have been asked by Eversheds to comment on which of these transmissions I now think indicated that the necessary degree of separation had occurred. I would say that serial 348, taken together with the earlier messages, indicates that the peaceful marchers had separated from the rioters.*³²

5H-20 The importance of this passage is its recognition of the need to consider the developing picture. The approach of a number of questioners, in particular those who have sought to persuade the Tribunal that the peaceful and the violent elements of the crowd never became separated, has been to look at each Porter tape transmission in isolation. That approach is flawed in that it omits from the consideration of each individual transmission the material that has been provided in earlier serials, and therefore the dynamics of what was happening on the ground.

5H-21 Serial 315 is the first of the messages identified by General Welsh. It was sent at about 1547 hours:

Zero, this is 61 Yankee. Reference the state of the crowd, apart from the hooligan fringe, the vast majority of the people now in the area of the waste ground by the Flats and on the ... on Aggro Corner look as though they're not quite sure what they're going to do next. Over.

5H-22 For 8 Brigade, whose experience was that generally those not involved in violence did not remain in its vicinity, this was the beginning of the move of the peaceful protesters away from those intent on violence:

³⁰ Day 267/042/14

³¹ W125

³² B1340.004 paragraph 21

FS7 · 849

At 1547 hours Commanding Officer 2 RGJ, airborne in a Sioux helicopter, indicated that the separation of the hooligan element from the bulk of the marchers was beginning to take place.³³

5H-23 The process was in its early stages, but the vast majority of people had cleared the junction of William Street and Rossville Street:

Q: You are speaking there of the vast majority of people being now in the area of the wasteground by the flats. Do you now recall what that wasteground was?

A: Being what its substance was?

Q: Or where it was geographically?

A: Geographically it was --

Q: Would you like to see a map, could we have this on the left-hand side of the screen and Q8 on the right. Could you highlight the middle section, please, from William Street downwards?

A: I would think it was down Rossville Street, it is marked "wasteground" on the map, around Eden Place and Pilot Row.

Q: Certainly at this stage, 1547, it appears that there are people on the Eden Place wasteground and the area of Aggro Corner.³⁴

Q: The first serial we have is 315, as we know, that was at 1547. I think at that serial you were reporting on the state of the crowd and specifically drawing attention to the fact that the majority of the people were in the area of the wasteground by the flats?

A: I think that is correct.³⁵

³³ Brig MacLellan 1972 Statcmnt, B1234 paragraph 24

³⁴ Gen Wclsh at Day 282/044/02

³⁵ Gen Wclsh at Day 283/046/16

FS 7. 850

SERIAL 320³⁶

5H-24 At about the same time (the Brigade Log records it at a minute later, 1548 hours³⁷) 22nd Regt, controlling barriers 12 and 14, provided not only information about the rioting but also about the movement of the crowd:

Hello Zero, this is 90 Alpha. Our call signs confirm that general movement of the crowd, although there is a hooligan fringe at serials 14 and 15. Some CS gas has been used, but this was used by them. I repeat: used by them. Over.

5H-25 This message is significant in terms of the doubts that have been raised as to whether or not separation was discussed at the Co-ordinating Conference: 22nd Regt provide their information in terms of confirmation of information provided from the helicopter, an unlikely thing for them to have done in the absence of an understanding of the importance of the issue of separation to the Brigade Commander.

5H-26 For 8 Brigade the information from 22nd Regt contributed to what was a developing picture:

Q: Serial 320, a message from 22nd Regiment, and this message, you have seen already, confirms: " ... general movement of crowd ... hooligan fringe at serials 14 and 15." The crowd as previously described is now eventually moving; do you see that?

A: I do.

Q: What would you have understood that to mean, General Steele?

A: That it was following the -- following on from the situation report from the helicopter; that the majority of the people were, so to speak, on the move, that is to say from the area of the wasteground and the flats, is the way I would have assessed that message.

³⁶ W125

³⁷ W45 serial 134

FS7. 851

Q: When you say "general movement," would you have got any impression from that message of the direction in which they were or might have been moving?

A: Yes, I am quite clear that in fact the direction of the movement was, of course, towards Free Derry Corner and maybe towards the Lecky Road, although it does not say that at item 315.

Q: It does not say that, but I asked you whether you would have gained an impression from it?

A: I certainly would.³⁸

SERIAL 324³⁹

5H-27 This transmission by 1 R ANGLIAN, entered in the Brigade Log at 1549 hours⁴⁰, marks the first use of firearms on 30th January 1972, and the fire came not from the Army but from the IRA⁴¹:

Hello Zero, this is 54 Alpha. We've just had two shots fired at call sign Hotel 3 from the area of Kildrum Gardens. Strikes seen on the ground in front of their location. No casualties and no fire returned. Over.

5H-28 The target of these shots was 15 Missile Battery, under command 1 R ANGLIAN and located in the Brandywell. While during the course of this Inquiry many have found it easy to ignore these shots altogether, or to dismiss them because they were fired before the arrest operation began and out of its immediate area, it is unlikely that they were treated with such a lack of concern at 8 Brigade when they were reported. Had any promises been made by the IRA to the organisers of the march that they would stay away or that they had removed their weapons from the Bogside, and had any attempt been made to pass on any such promises to

³⁸ Day 268/173/01

³⁹ Porter transcript at W125. See also 8 Bdc Log, W45 serial 136 and 1 R ANGLIAN log, at W102 serial 68.

⁴⁰ W45 serial 136

⁴¹ Used here, as above, without attempting to differentiate between the different groups supporting violence.

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the Security Forces, this message would have stood as a timely reminder as to the unreliability of any such information. There were gunmen in the area prepared to shoot at the troops and prepared to risk military retaliation.

SERIAL 329⁴²

5H-29 This is the second transmission identified by General Welsh as an indicator of the developing separation on the ground. It was entered in the Brigade Log at 1552 hours⁴³:

Zero, 61 Yankee. The general movement of the main body of the crowd seems to be down Rossville Street towards the area of the Flats. There is a flat-top lorry down behind the Flats. Whether or not this is going to be used as a speakers' platform I wouldn't like to say just yet. Over.

5H-30 The two groups, the violent and the peaceful, are (to Hawkeye's relief) becoming distinct:

Q: Five minutes later we have serial 329. You then report general movement of the body of the crowd down Rossville Street towards the area of the flats. Is it right to say that the crowd then are still in the area marked on the plan as the wasteground, substantial numbers to the north of the Rossville Flats?

A: I would think so. This -- what was being reported was being reported by me with considerable relief because this was the described route of the march and in theory people who went up to barricade 14, therefore, were those who were going to be a nuisance.⁴⁴

5H-31 And the dynamics of the situation on the ground were clear to those listening in the Brigade Operations Room. There were people on Rossville Street, moving down it, towards the Rossville Flats:

⁴² W126

⁴³ W46 serial 141

⁴⁴ Gcn Welsh at Day 283/047/04

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Q: Over the page, please, 329, another message from the helicopter: "The general movement of the main body of the crowd seems to be down Rossville Street towards the area of the flats." There is a description of a flat-top lorry; you see that?

A. I do.

Q: You have been told earlier about crowds from Aggro Corner across the wasteground to Rossville Street and you are now being told they are moving down towards the flats; is that right?

A. Yes.⁴⁵

SERIAL 336⁴⁶

5H-32 At about 1555 hours, by which time the rioting at barriers 12 and 14 had been going on for between ten and fifteen minutes⁴⁷, 1 PARA updated 8 Brigade on the move forward of its companies, in readiness for 8 Brigade requiring them:

Hello Zero, this is 65. My Sunray has deployed his units slightly forward from their original positions in preparation for any orders which you may have for him. Over.

5H-33 The Brigade Major understood the purpose of this message:

[CO 1 PARA's] forming up point was down in the Strand in the Foyle car park, I seem to remember, and what he has done there is to move them forward to a forward forming up point. So he has not actually moved up into his

⁴⁵ Gen Steele at Day 268/173/25

⁴⁶ W126

⁴⁷ If he was to stand any chance of carrying out his task this was the important issue for CO 1 PARA, not the fact, as Mr Harvey suggested, that the crowd was still in Rossville Street. What Col Wilford was doing was letting the Brigade Commander know that he was there; the Brigade Commander would keep his eye on the separation between the rioters and the peaceful protesters.

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deployment area; he has moved them forward so that they could be deployed, a very right and proper thing to do.⁴⁸

SERIAL 338⁴⁹

5H-34 This is the third transmission from which General Welsh formed the view that separation was taking place. It was entered in the Brigade Log at about 1554 hours⁵⁰:

Zero, this is 61 Yankee. General state of the crowd. It now stretches between Aggro Corner, which has just had some more gas put on it, down to about 100 yards beyond the Flats. People are generally spreading out and the drift of people is definitely down to beyond the Flats and back the way they came. Over.

5H-35 And it was understood at Brigade Headquarters:

Q: 338, please, at the bottom: "General state of the crowd [another message from the helicopter]. It now stretches between Aggro Corner ... down to about 100 yards beyond the flats. People are generally spreading out and the drift of people is definitely down to beyond the flats and back the way they came." The description is very clearly between Aggro Corner and somewhere about 100 yards beyond the flats; so what picture does that give you in terms of your wait for separation, General Steele?

A: The picture it paints for me, or painted for me then, was that the crowd was moving down Rossville Street towards Aggro Corner and beyond, and that, at that point, at 1554, they were ready 100 yards beyond the flats.

MR TOOHEY: I am not sure you meant what you said.

A: Did I say something wrong?

MR TOOHEY: It is not a matter of whether it is right or wrong, it is a matter of perhaps whether you intended it. Your answer was: "The picture it paints for me was that the

⁴⁸ Day 267/049/07

⁴⁹ W126

⁵⁰ W46 serial 146

FS7-855

crowd was moving down Rossville Street towards Aggro Corner."

A: I do beg your pardon, I meant, of course, Free Derry Corner. Thank you.⁵¹

SERIAL 343⁵²

5H-36 This serial was entered in the Brigade Log at 1555 hours⁵³:

65, from my Sunray. He would like to deploy one of his sub units through barrier 14 around the back into the area William Street/Little James Street. He reckons if he does this he will be able to pick up quite a number of yobbos. Over.

5H-37 It is not surprising that Colonel Wilford cannot now assist with the precise meaning to be attached to this transmission.⁵⁴ What is clear is that there are dangers in attempting to take this transmission at face value: in some respects the message, as it was written down, does not actually make sense, as it is difficult to see how a move through Barrier 14 would result in a move 'around the back' into the area William Street/Little James Street⁵⁵; the suggestion that a single company could be used for the job did not make sense to the military witnesses⁵⁶; the message has in any event gone through the agency of the Battalion Main Headquarters, where the watchkeepers are trying to repeat what they hear from their Commanding Officer verbatim but there is now no means of gauging their success; and its terms may tempt the reader into relating it back to paragraph 9f(1)(c) of the Brigade Operation Order, particularly if that provision is being

⁵¹ Gen Steele at Day 268/174/13

⁵² W127

⁵³ W46 serial 147

⁵⁴ Day 313/023/20

⁵⁵ See Lord Saville at Day 267/097/05 in relation to going round the back: 'whatever that means'.

⁵⁶ See Gen Steele at Day 267/052/05: 'It is very difficult to say what he had in mind to do with just that one company.'

FS7. 856

misread so as to require the arrest operation to take place in (as one of two locations) the area of William Street/Little James Street.

5H-38 Furthermore, the message as it stands does not appear to take account of what was actually going on on the ground:

MR RAWAT: We have barrier 14 here (indicating). At this stage we know that, from the serials we have looked at, that the hooligan activity was occurring at barrier 14. Could the request to send one sub-unit through that barrier be a request for -- and the sub-unit we are speaking of, C Company, who we know were behind and did go through barrier 14 -- to move west up William Street in a frontal assault⁵⁷ towards Aggro Corner and in order to catch any yobbos who were in, as this serial identifies, the area of Little James Street/William Street and this wasteground here; that would be a proper interpretation of this serial, would it not?

A: I really do not know what was in his mind, to be honest. It is very difficult to say what he had in mind to do with just that one company. I mean, this is all hypothetical because, of course, permission was not granted for him to do it. So I cannot really say what was in his mind, to be honest.

LORD SAVILLE: Except that he seemed to be thinking he could pick up some yobbos, as he called them in the William Street/Little James Street area, because that is what the message says?

A: Yes. And yet, if I could follow that up, previous serials have shown that in fact the yobbos were at barrier 14. So driving through barrier 14 and then going up William Street, I do not think would have achieved anything. As I say, this is all hypothetical.

LORD SAVILLE: I think, to be absolutely accurate, the serials gave that as the position and that may well indeed have been the position, but the position was, I think on any view, pretty fluid?

⁵⁷ The use of the phrase 'frontal assault' highlights the difficulty of this interpretation: the message uses the words 'around the back', which have to be ignored for the phrase 'frontal assault' to make any sense.

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A. Yes.

LORD SAVILLE: At all events, from that message, it would seem, on the face of it, as though the commander of 1 Para thought there was an opportunity to pick up yobbos in the William Street/Little James Street area?

A. Yes.⁵⁸

5H-39 What can be said is that the terms of this transmission do not exclude a concurrent move elsewhere. One thing that Colonel Wilford was able to be clear about was the fact that, as General Steele had anticipated, he would not have moved beyond the containment line with a single company.⁵⁹ It is perfectly possible that this message contained not only a notice that the order for the arrest operation be given but also for Barrier 14 to be opened. No such advance request to open a barrier was required for a move from the Presbyterian Church, which was still the location of the Mortar Platoon, or the derelict building on William Street, which now contained the Machine Gun Platoon. A move from either or both of these locations (certainly Major Loden saw using them both simultaneously as a method of increasing the rate at which soldiers could get onto William Street: see paragraph 5H-9 above) would satisfy both the military view that more than one company was required if the operation was to be of any effect and the apparent intention of going 'around the back'.

5H-40 This message has also been relied on in the attempt to argue that separation was an afterthought, in particular on the basis that it shows that Colonel Wilford, who was at the Co-ordinating Conference, appears to have known nothing about it.⁶⁰ Separation was of course an issue for the Brigade Commander rather than Colonel Wilford, whose focus had to be on the success of his own task. The implication that he had to attempt to

⁵⁸ Day 267/051/18

⁵⁹ Day 313/018/16

⁶⁰ See, for example, Arthur Harvey QC to Gen Ford at Day 256/084/02 and to Gen Steele at Day 268/030/16

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second guess the Headquarters 8 Brigade by making his own decision on whether or not separation had occurred before seeking permission to commence his operation is absurd. In addition, the argument in any event ignores the information about separation that 8 Brigade had already received from Colonel Welsh and 22nd Regt.

5H-41 Those who claim that separation was an afterthought would appear to have forgotten that Colonel Wilford's request was refused:

... the Brigade Commander decided that he did not have the necessary separation and so I, using the BID 150, told 1 PARA that they could not mount it then. My problem is that I cannot actually remember doing all this today, but I am sure I did and certainly at Widgery, six weeks after the event, I said that I did.⁶¹

SERIAL 348⁶²

5H-42 This is the fourth and final message upon which General Welsh relied. It was recorded in the Brigade Log at 1559 hours⁶³ and reads:

Zero, this is Kilo 61 Yankee. General crowd movement now is down into the Lecky Road from the area of the Flats. It seems as though a lot of people feel that they've made their protest and are now returning back to their homes.

5H-43 The problems caused by looking at these transmissions in isolation are clearly demonstrated by these questions from Arthur Harvey QC to General Ford:

Q: It does not say anything about where the crowd is, it just says about general crowd movement; is that right?

A. I am reading what you are telling me.

⁶¹ Day 267/018/19. The Widgery evidence is at B1303, from C

⁶² W127

⁶³ W46 serial 150

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Q. That is the only information 8 Brigade had from the helicopter up and until 1559, which is one minute before 4 o'clock. You could not conclude from that, those two radio messages, that there was separation between the rioters and the crowd; could you?

A. It does not appear so, but perhaps he had other information, I do not know.⁶⁴

5H-44 Contrary to the description of it given in the first of these questions, the transmission does say where the crowd is, it says in terms that it is moving 'down into the Lecky Road from the area of the Flats.' Even more fundamentally, this message, or this message any other single message, did not constitute 'the only information 8 Brigade had from the helicopter up and until 1559.' From the transmission at serial 315 Brigade Headquarters had been told that the vast majority of the people were on the waste ground by the Flats and at Aggro Corner, where they looked as if they were not sure what they were going to do next; the transmission at serial 329 informed Brigade Headquarters that there were people on Rossville Street, moving down towards the area of the Flats; and from serial 338 they knew that the crowd stretched from Aggro Corner to about a hundred yards beyond the Flats and the drift of people was down to beyond the Flats and back the way they came.

5H-45 Now, by serial 348, Brigade Headquarter learns that the movement of the crowd is down into the Lecky Road *from* the area of the Flats. 61 Yankee has described a dynamic, developing picture, not a series of static pictures. The movement of the crowd has been followed from Aggro Corner, down Rossville Street to the Flats and now from the Rossville Flats into the Lecky Road.

5H-46 That the then Colonel Welsh had this developing picture is clear from his evidence to Lord Widgery:

⁶⁴ Day 257/040/19

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After the water canon was used I saw the bulk of the crowd move down Rossville Street. Activity continued in William Street and I saw CS gas fired. The bulk of the crowd moved down Rossville Street. I reported when the tail of the crowd had passed the northern end of the Rossville Flats.⁶⁵

Underhill: Did there come a point when the back of the crowd, the whole of the crowd had passed Rossville Flats?

A: Yes, it passed Rossville Flats and I was conscious of a gap between Rossville Flats and what we call Aggro Corner, which is the Rossville Street-William Street corner.

Q: Did you make a report about that on the wireless?

A: Yes I did.⁶⁶

Lord Widgery: When you passed that message, the tail of the crowd had passed over the north end of the Rossville Flats, the tail of the crowd was beyond the open space and going down to Free Derry Corner?

A: Yes.

Q: When you passed the appropriate message to indicate that the tail of the crowd had passed that point, at that moment were there people in the car park area of the Rossville Flats but virtually no people in the open area at Eden Place and Pilot?

A: I wasn't conscious of people being in the bottom of Rossville Flats, but I wouldn't like to say there was nobody there, but I am almost prepared to say that there was nobody, because I was up at a great height, in the open space around Eden Place.⁶⁷

McSparren: ... "Zero, this is 61 Yankee. The general crowd movement now is down into the Leckey Road from the area of the flats. It seems as though a lot of people feel they had made their protest and are now returning back to their homes, over." Do you remember saying something to that effect?

⁶⁵ SA Statement B1334 paragraph 5

⁶⁶ B1338, at D

⁶⁷ B1339, at D

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A: I don't remember saying that, but I do remember the crowd which moved to Derry Corner being very small, and wondering where everybody else had gone to.

Q: Your impression was that they had gone home, had moved out?

A: Yes, it was.⁶⁸

5H-47 The cumulative effect of these serials was recognised by the Brigade Major:

Q: ... How do you conclude that, looking for example at serial 348, that that illustrates the kind of separation that General MacLellan was looking for?

A: What he was seeking was separation between the hooligans on the one hand and the marchers at Free Derry Corner on the other. The distance between them is about 400 yards and the hooligans of course were also round the corner at barrier 14. So there was, in my estimation, from the report at 348 and also the reports that we have looked at on the other page, that in fact we had a situation where the Brigadier's separation between marchers and hooligans had been achieved.⁶⁹

5H-48 Although Counsel to the Tribunal demonstrated to General Welsh that he did not in terms report either that the tail end of the crowd had passed the north end of the Rossville Flats or that the gap existed, the messages he did send demonstrate that these were developments he saw and provide the explanation for the messages that, thirty years after the event, he was unable to provide:

I cannot think back, nearly 30 years, why I said what I did, but I believe what I said.⁷⁰

⁶⁸ B1340, at E

⁶⁹ Day 267/064/14

⁷⁰ Day 282/049/09

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5H-49 General Welsh was therefore able to say (in a passage not shown to General MacLellan or General Steele) to this Tribunal that separation had, within the accepted limits, been achieved:

I can see from looking at the evidence I gave to the Widgery Tribunal, from my statement made at the time and the Porter tape that it appears that I was briefed to look for separation between the peaceful marchers and the rioters. This was something I had in fact forgotten until recently.

I think my role would have been simply to report what I could see and it would have been a matter for those on the ground to interpret my reports. It is probably for that reason that I never expressly said that separation had occurred. Having listened to part of the Porter tape and having read an excerpt of the transcript, it is clear from the messages that I transmitted that the vast majority of the peaceful protesters had separated from the hooligans before the arrest operation was launched at 1607 hours. It would have been a matter for those on the ground to decide the exact moment to launch the arrest operation.⁷¹

5H-50 What Colonel Welsh had seen was in the event understood by 8 Brigade:

Q: ... Movement from the area of the flats down into the Lecky Road. There is no description in that paragraph, General Steele, as we see, of crowds either at Aggro Corner or on the wasteground; do you see that?

A: I do.

Q: Does that have any significance so far as your wait for separation is concerned?

A: Yes, indeed, and it is an important message as far as I was concerned at a minute to 4.00, because it definitely painted a picture in my mind that the march was over; that the general crowd movement, as it says, was now down into the Lecky Road, in other words beyond Free Derry Corner, and that people, having made their protest and having done their marching, were returning back to their homes and I felt that that message indicated -- painted a picture for me

⁷¹ BSI Statement B1340.003 paragraphs 18-19

FS7 . 863

that the march was over and that people had moved away from beyond the flats.⁷²

At 1559 hours, Commanding Officer 2 RGJ reported that there was a general move of the crowd from the Rossville Flats into Lecky Road and two minutes later⁷³ I received the first report that a crowd was being addressed at Foxes Corner. The estimated number was 200 and four minutes later⁷⁴ this estimate was raised to 500.⁷⁵

SERIALS 353 TO 359⁷⁶

5H-51 This series of messages was summarised in the Brigade Log as serial 153⁷⁷ at 1602 hours:

Hello 90 Alpha, this is 65. Is there still a hooligan element in the area above barrier 14? Over.

.....

90 Alpha. Send. Over.

65. Is there still a hooligan element in the area William Street/Little James Street and around barrier 14? Over.

90 Alpha. Yes. Over.

65, roger. Would you mind informing Zero of this, as they don't appear to believe us on this point? Over.

90 Alpha. Wait. Out.

5H-52 The Commanding Officer of 1 PARA, who has no doubt heard the rioting at barriers 12 and 14 and seen those not involved in violence leave down Rossville Street, is understandably keen to proceed with his task; and

⁷² Gen Steele at Day 268/175/19

⁷³ Porter W127 serial 351. See below.

⁷⁴ Porter W128 serial 365. See below. This transmission also provided the estimate of 150 for the hooligans at Aggro Corner.

⁷⁵ Brig MacLellan's 1972 Statement, B1234 paragraph 26

⁷⁶ W127

⁷⁷ W47

FS7. 864

General Steele, recognising the sentiments behind the phraseology, understood this use of the Brigade net⁷⁸:

A: The serial 356 is perfectly right and proper, they are using the brigade net to get on to 22nd Regiment, who were at barrier 14, to say: is there still a hooligan element around barrier 14, it is a very right and proper thing to ask, and they are told "yes".

LORD SAVILLE: Of course you have to use the brigade net for that purpose?

A: Quite so, sir. Serial 358 is a bit cheeky, to be honest, on behalf of 65. They are using the opportunity of saying: "well, please let Zero know," that is to say brigade headquarters, "as they do not appear to believe us on that point" and that indicates to me that they were, indeed, raring to go.⁷⁹

SERIAL 365⁸⁰

5H-53 Very shortly after this series of messages, further confirmation of the division of the crowd into two groups was provided (again illustrating 90 Alpha's awareness of the need for separation). This transmission was recorded in the Brigade Log at as two messages, at 1603 and 1604 hours⁸¹:

Hello Zero, this is 90 Alpha. There is now a crowd of about 500 on Fox's Corner being addressed from a loudspeaker van. These appear to be normal civil rights people. There's still a crowd of about 150 hooligans at junction Rossville Street/William Street. Over.

5H-54 Anxious to proceed with his task as the commander of the arrest force may have been, only the Brigade Commander could order the launch of the operation. This check within the system enabled Brigadier MacLellan to allow more time for the consolidation of the division of the crowd on

⁷⁸ As did Gcn Ford: Day 257/044/09

⁷⁹ Day 267/060/12

⁸⁰ W128

⁸¹ W47 serial 155-156

the ground. The dash in the second sentence of this passage explains the terms in which the information that separation was complete had been provided to him:

At 1604 the number of hooligans at the junction William Street/Rossville Street was reported as 150. I was now told that the separation of the hooligans was complete – 150 were in William Street, while the Northern Ireland Civil Rights Association meeting was 300 metres away at Foxes Corner.⁸²

5H-55 Mr Rawat and General Steele agreed with the picture the transmissions presented as at 1604 hours – two groups, the violent at Aggro Corner and the non violent at Free Derry Corner, with some movement home, down the Lecky Road from the Rossville Flats:

Q: ... What you have General Steele, please disagree, is a picture taken from these logs that there are hooligans at Aggro Corner; that the crowd at Free Derry Corner has grown to 500 and that some people are beginning to make their way home; would you agree with that?

A. Yes, indeed. You have missed out the fact that some of them are going down the Lecky Road, which is beyond Fox's Corner.

Q. Of course, it is from the area of the flats which I read as the Rossville Flats?

A. Yes, I agree. So, yes, I agree with your summary of the situation at 1604.⁸³

SEPARATION

5H-56 Having heard the message from 22nd Regt at 1604 hours⁸⁴, the Brigade Major took the view that separation had, within the accepted limits, been achieved and went in to the Brigade Commander's office:

⁸² 1972 Statcmnt, B1234 paragraph 27

⁸³ Day 267/063/16

⁸⁴ Day 267/082/06

FS7 . 866

Q: ... You went in and had one conversation with the Brigade Commander; is that right?

A: I did.

Q: What was the discussion about separation?

A: As I have described in my statement, I went in at four minutes past and gave him the situation report. He asked me then to give confirmation of separation, but it is quite right, as Lord Saville asked him, that his information was the same as my information because it was based entirely upon the brigade net. As to the question of getting on the radio to the helicopter, if I had done so, of course he would have heard that too because the helicopter was also on the brigade net. So what we come down to is that the confirmation that I gave to him, my assessment of separation was based on those serials in the Ulsternet that we have already been through.

Q: Were you satisfied that there was adequate separation?

A: In my mind, yes.

Q: There was no question, therefore, of going back to Lieutenant Colonel Welsh and asking for an update on the position?

A: No, I did not.⁸⁵

Q: Returning, please, to this discussion that you had at 1604 on the day: you have told us that, in your view, adequate separation had been achieved. Did you convey that view to General MacLellan?

A: I did.⁸⁶

5H-57 The Brigade Commander was of the same view:

At 1607⁸⁷ hours when it was confirmed by the troops on the ground⁸⁸ that the hooligans in William Street had become

⁸⁵ Day 267/068/08

⁸⁶ Day 267/071/07

FS7. 867

isolated from the NICRA marchers, who were moving and slowly dispersing 300 metres away down Rossville Street, I gave orders that the pre-planned hooligan arrest operation should be launched.⁸⁹

5H-58 The sequence of events emerges from the evidence of General Steele:

Q: ... The last relevant serial that contained information which you were able to give Brigadier MacLellan as part of the sitrep in his office was logged at 1604. You would have gone just after 1604, I assume, into the office and had the discussion. Looking at the last line of the paragraph, you then left the office without having received a decision from Brigadier MacLellan?

A: That is correct.

Q: And without Brigadier MacLellan actually having expressed a view on separation?

A: That is correct.

Q: Or, indeed, expressed a view as to your opinion that adequate separation had been achieved?

A: Correct.

Q: You say that three minutes later he walked into your office and said he was going to mount the operation and you assumed that he had then formed the view that his conditions had been met: "... and he said he did not want 1 Para to engage in a running battle down Rossville Street. Brigadier MacLellan stood beside me as I repeated this order to 1 Para over the secure net. I do not remember my exact words, but I do recall today the two important elements of the orders – that 1 Para should mount the arrest operation straightaway and that they were not to conduct a running battle down Rossville Street." You have a clear recollection that the order was acknowledged?

⁸⁷ This is of course the time at which Brigade MacLellan gave the order, which he refers to at the end of this sentence.

⁸⁸ It would be a mistake to read this literally, as troops with their feet on the ground. The distinction in military terms is between the Headquarters in the rear and the troops forward, involved in the incident in question.

⁸⁹ Brig MacLellan's statement of 31.1.72 at B1222 paragraph 6.

FS 7. 868

A: Yes.

Q: Given that the order was transmitted at 1607, it must have been transmitted within seconds of Brigadier MacLellan arriving in your office?

A: I think I have got those minutes wrong. I start off paragraph 47 by saying: "About three minutes later ..." It may well have been a minute or so because, chronologically, the first -- the last message which I put into my sitrep was at 1604; I walked into his office at 1605; I gave my sitrep, 1606; and the order was passed at 1607. I mean, I do recall that it all seemed to happen very quickly.

Q: What we can be sure of is that we are really talking about a three-minute sequence?

A: Yes.

Q: It was transmitted with General MacLellan standing beside you?

A: Yes, in my office, using the BID 150.

Q: You would have spoken down the telephone to 1 Para?

A: Yes.

Q: The Brigadier would have been able to hear you give the order to 1 Para?

A: Yes.⁹⁰

5H-59 During the course of his evidence to this Tribunal Brigadier MacLellan was asked why he did not give the order at 1555 hours, when the commander of the arrest force had asked for permission to move against the rioters, instead giving it at 1607 hours:

The difficulty we are finding is to find anything that could reasonably have caused you to change your mind between five to 4 and nine minutes past.⁹¹

⁹⁰ Day 267/082/06

⁹¹ Lord Saville at Day 262/056/25

FS7 · 869

5H-60 The direct answer is the developments on the ground: Brigade Headquarters had by 1607 hours received both Colonel Welsh's message at 1559 hours⁹² and 22nd Regt's message at 1604 hours⁹³. To these must be added the Brigadier's intention to ensure as complete a separation as possible: while the riot was ongoing at Barrier 14 and the speeches had started at Free Derry Corner, he may have been giving any stragglers time to move clear:

A: First I confirmed with Colonel Welsh the separation was complete, as I have just mentioned. Then I decided an arrest operation was necessary.

Q: But did you put it into effect immediately?

A: Some minutes later, at 1607.

Q: Why did you wait the three or four minutes?

A: I wanted to make quite sure that the non-violent people were right clear of it.⁹⁴

5H-61 But in reality he could not, and did not, delay long: as General Steele explained, the last message to be taken into account was received at about 1604 hours. The Brigade Major then had to walk through to the Brigadier's officer, the two had a discussion and after Colonel Steele left there was a short pause before the Brigadier arrived in the Brigade Major's office, where the order was given at 1607 hours:

Q: At 1607 you passed the order for the 1st Paras arrest force to move in?

A: My Brigade Major passed it; I was standing beside him.

Q: On your order?

A: On my order.⁹⁵

⁹² Porter transcript at W127 serial 348

⁹³ Porter transcript at W128 serial 365

⁹⁴ Brig MacLellan's evidence to Lord Widgery, at B1258

FS 7. 870

5H-62 That Headquarters 8 Brigade was correct in its assessment that separation had indeed been achieved is demonstrated by:

- (1) the heli-telly film;
- (2) the photographs at EP28, now that they have definitively been put into their correct sequence⁹⁶;
- (3) serial 375 of the Porter transcript⁹⁷, a message sent by Colonel Welsh at a time when he would not have known that the arrest operation had been ordered:

Zero, this is 61 Yankee. The crowd as I see it is about 70 in Chamberlain Street. The people on Aggro Corner have been driven away by the last fusillade of gas cartridges, are moving down towards the meeting, which has now in strength to I think about 200 people on the corner behind the Flats. Over.

- (4) serial 379 of the Porter transcript⁹⁸, a message sent by 22nd Regt after the order for the commencement of the arrest operation had been given:

Zero. Roger. There are 70 hooligans in Chamberlain Street. Ah, most of those who have dispersed from Aggro Corner are moving down ... moving down Rossville Street. Over.

5H-63 It has been possible to see from the helicopter that it is the people from Aggro Corner who are moving down towards the meeting at Free Derry Corner, down Rossville Street. These are rioters on the move.

⁹⁵ Brig MacLellan's evidence to Lord Widgery, at **B1258**

⁹⁶ See the report dated 25th March 2002 of Dr Steven A Bell of H. M. Nautical Almanac Office, at **E26.1** and the analysis of the photographs given by Edwin Glasgow QC at **Day 265/009/07 - 016/21**

⁹⁷ **W129**

⁹⁸ **W129**

FS 7. 871

5H-64 In the face of this evidence questioners adopted various methods in attempts to persuade witnesses that separation was not in fact achieved. See, for example:

- (1) Mr Harvey's misdescription of serial 348 of the Porter transcript to General Ford, who was not listening to the transmissions from the helicopter or anyone else in 1972 and was not part of the discussions about separation at 8 Brigade:

It does not say anything about where the crowd is, it just says about general crowd movement; is that right?⁹⁹

- (2) Mr Harvey's attempt to use the arrests made in Glenfada Park to show that there had been no separation, despite the fact that those arrests took place after the most of the shooting, when on any view the situation had changed:

Mr Harvey: And in fact if many of those who were arrested, far from being rioters, but the vast majority of them were just simply marchers, that would tend to indicate that if separation was a feature of this particular arrest operation, it singularly failed to achieve its objective?

A. I do not know whether there were rioters or not.

Q. We have seen further pictures, and I do not intend to go into them, but there were two Catholic priests arrested at the wall, a middle-aged woman who screamed her head off, another middle-aged man who was shot in the shoulder at the wall, young boys?

A. I cannot comment on that, I did not see it myself.

Q. It was just a scoop-up operation, to lift anyone who was there and separation was not part of the plan, General Ford, was it?

A. I do not agree.¹⁰⁰

⁹⁹ See paragraph 5H-43 above

¹⁰⁰ Day 256/088/12

FS7 . 872

- (3) Mr Harvey's attempt to disabuse General Ford of any idea that a helicopter was used on 30th January in connection with separation:

Mr Harvey: What significance was placed upon the presence of a helicopter?

A. I do not know, that was part of the Brigade Commander's plan. It was not my idea, it was his, I think.

Q. You see, Mr Mooney has really indicated that it was part of the information and policy research group's suggestion that a helicopter should be there?

A. I know nothing of Mr Mooney, I am afraid. He was a junior officer somewhere who worked in the headquarters.

Q. I entirely appreciate that. Are you saying that you were not aware of the essential role that the helicopter was to play as of your meeting on 26th January?¹⁰¹

5H-65 General Ford was also asked about the fact of separation by Christopher Clarke QC:

Q: What I am suggesting is that, even assuming that there was a separation between marchers and rioters at the time when the Paras went in, the effect of going at 20 or 30 miles an hour down Rossville Street in vehicles down along the line of where the blue arrow is and, in one case, to the spot where the red arrow is, and another to the spot where the green arrow is, would have the effect of destroying the separation between the marchers and the rioters, which was the whole basis upon which the operation was to be launched in the first place.

A: Well, it depends where the marchers were at this moment. I am afraid I do not know.

Q: The problem is that they were in various different places. Some of them had got down as far as Free Derry Corner; some of them were in Rossville Street; a substantial number of people were in and around the car park; some of them were in the wasteground; some of them down Chamberlain Street; they were all over the place?

¹⁰¹ Day 256/089/04

F57. 873

A: I am sorry. Then what exactly is your question?

Q: The point I am putting to you, is this: you have said that the basis upon which the operation was to be launched was that there had to be a separation between the rioters and the marchers.

A: Yes.

Q: So that, I assume, when the arrest takes place the soldiers can be engaged in arresting only rioters and not marchers.

A: Yes.

Q: If you have an operation where soldiers go in on foot and arrest people along this William Street axis¹⁰², it may, depending on the circumstances, well be the situation that the soldiers are dealing only with the rioters who are left.

A: Maybe.

Q: Maybe, yes, I agree. (sic).

A: Maybe.

Q: But do you agree, if in fact what you do is to go down Rossville Street in force in vehicles, which obviously travel much faster than humans can, the likelihood is that you will get yourself in the middle, not of people who have been rioting at the barriers, here and here, but a whole lot of innocent people, marchers, who are here, here, here and here (indicating).

A: First of all, I really have to ask you a question. What you are giving me now are facts which are not being disputed by anyone?

Q: Yes, I think so.¹⁰³

5H-66 The basis upon which Mr Clarke suggested that there were non violent demonstrators in Rossville Street, Chamberlain Street, the wasteground, 'all over the place', has not been explained. The suggestion is certainly

¹⁰² This, it has already been submitted, is a misreading of the Brigade Operation Order.

¹⁰³ Day 255/005/04

FS7. 874

contrary to the content of the messages from Colonel Welsh and from 22nd Regt that appear at serials 375 and 379 of the Porter transcript.

SERIAL 367¹⁰⁴

5H-67 This message was recorded in the Brigade Log five minutes later, at 1609 hours.¹⁰⁵ It has been ignored by those attempting to persuade this Tribunal that the riot had either finished or was no longer serious at the time the order for the commencement of the arrest operation was given (even, on occasion, showing the video of C Company moving through barrier 14 without identifying which element of C Company is shown on the film):

Hello Zero, this is 90 Alpha. People at the moment are advancing on House Martin – wrong, on serial 14, using a corrugated iron shield. Have you any idea yet what time it was 65 was going in? Over.

5H-68 Quite apart from the fact that 22nd Regt clearly had sufficient information about the arrest operation to know that it could provide relief to its barriers, it is clear that one of those barriers, number 14 was, under pressure.

5H-69 A large number of soldiers have given evidence that there was still rioting at the time the arrest operation was ordered. One example is the Officer Commanding C Company 1 PARA, whose company only arrived at Barrier 14 because he had been ordered to move through it. The violence was serious, and impacted upon the deployment:

Q. At paragraph 17 of your statement, B2168.3, you describe the reason for the delay at barrier 14 and the conversation that you had with the officer in command of the Royal Green Jackets. You say that: "He was reluctant to expose his men to the ferocity of the rioters as they could not move the barricades aside whilst protecting themselves by their riot shields." As a result you told him firmly that if

¹⁰⁴ W128

¹⁰⁵ W47 serial 157

FS7. 875

he would not move the barriers aside, then you would go through on foot. Do you have a clear recollection of this conversation?

A. No, not a clear recollection, no.

Q. Are you sure that this is an accurate description of it?

A. As far as I can be, yes.

Q. You decided to send two platoons through the barrier on foot; is that right?

A. That is correct.

Q. Was the barrier opened for them or did they have to climb over it?

A. Climbed over it, through it or partially round it, but it was not opened up for vehicles to drive through and certainly we did not wish to go into the area in single file. After all, we were facing rioters.¹⁰⁶

THE ORDER TO LAUNCH THE ARREST OPERATION

5H-70 The question as to what orders were given to 1 PARA cannot be considered fairly other than in the context of the situation on the ground as 8 Brigade (accurately) considered it to be. The Brigade Commander knew that, within the accepted limitations (and he had allowed time to pass in order to given any straggler on the waste ground the opportunity to continue out of the area), there was serious violence taking place at barriers 12 and 14 and the body of marchers had moved south of the Rossville Flats.

5H-71 Furthermore, those with a legal rather than a military training must also be wary of a natural inclination to find refuge in, and thereby attach too great a significance to, words either recorded or recalled weeks (let alone years) after events which themselves took place in an extremely short period of time and no doubt carried their own stresses for the individuals involved.

¹⁰⁶ Day 294/149/09

FS7 - 876

In these circumstances the broad thrust of the record or recollection must be of more value than any attempt at recording or recalling precise detail.

5H-72 There are also very real dangers in an analysis that breaks events down into such detail that their overall scheme – and therefore meaning - is lost. 1 PARA's role in Operation Forecast, for example, was to maintain a Brigade Arrest Force, to be available to carry out an arrest operation to scoop up as many rioters as possible. It might have had to do that in any number of locations (although, of course, some were more likely than others); and it might have had to use any different combination of its constituent elements in order to achieve its aim (two whole companies, three whole companies, elements of one company – the Machine Gun Platoon and the Mortar Platoon of Support Company, for example, in concert with C Company).

5H-73 Overanalysis results in questions such as this, the basis of which appears to be that 8 Brigade were in a position to be able to choose between a number of different arrest operations:

Which arrest operation did you have in mind; was it the one that had been requested by Colonel Wilford at 3.55?¹⁰⁷

5H-74 The fundamentals of Brigadier MacLellan's 1972 evidence as to the order he gave are clear:

I therefore gave orders at 1607 that the 1 PARA arrest operation should be launched. My Brigade Major conveyed those orders in my presence to 1 PARA on the secure radio – the orders were that: a. The operation was to be launched forthwith to arrest as many rioters as possible in the area of the junction William Street/Rossville Street. B. 1 PARA were not to conduct a running battle down Rossville Street and not to get involved with the Northern Ireland Civil Rights Association marchers.¹⁰⁸

¹⁰⁷ Lord Saville, at Day 267/095/02

¹⁰⁸ Brig MacLellan's 1972 Statement, B1235 paragraph 28

FS 7 . 877

Q: In your order to 1st Para to go in did you add any caution or prohibition about going down Rossville Street?

A: Yes, I did.

Q: What did you say?

A: That they were not to conduct a running battle down Rossville Street and not to get involved with the NICRA crowd.

Q: What did you mean "not to indulge in a running battle down Rossville Street"?

A: I meant that they should not get tied up with the crowd. The situation as I saw it was this: at the junction of William Street and Rossville Street there was a mob of 150 or so rioting. 300 metres or more away past the Rossville Flats there was a large crowd of non-violent people. The scoop up, the arrest, was being launched at the hooligans.¹⁰⁹

Q: Your order recorded in item 159 of the log was for one sub-unit of 1 PARA to go through barrier 14?

A: Yes. That was not in fact the order. What I said was 'you are to arrest rioters on the William Street/Rossville Street junction. You are not to conduct a running battle down Rossville Street and not to get involved with the NICRA marchers.' One sub-unit wanted to go through Barrier 14, but it was an arrest operation mounted by Colonel Wilford's battalion.

Q: Did you know that in fact two sub-units were going to be used?

A: I knew three were going to be used.

Q: And you knew they would be going not only through Barrier 14 but also through the Great James Street Barrier as well.

A: Yes¹¹⁰.

¹⁰⁹ Brig MacLellan's evidence to Lord Widgery, at B1259

¹¹⁰ Brig MacLellan's evidence to Lord Widgery, at B1279

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5H-75 Two issues have arisen: with what resources was this operation to be carried out; and where was it to take place?

THE SIZE OF THE ARREST FORCE

5H-76 As to the first of these, those seeking to establish that 1 PARA acted in breach of the Brigade Commander's order by using more than a single company for the operation rely upon the Brigade Commander's express reservation to himself of the right to order the arrest operation 'in whole or in part'¹¹¹, the terms of the 1 PARA message to 8 Brigade at 1555 hours¹¹² and the record made in the Operations Room of the order¹¹³ (which had been given in the Brigade Major's office), as reflected in large part by the record made in the 1 PARA Log¹¹⁴

5H-77 While this analysis may be attractive as offering a degree of tidiness, it does not stand up on close examination. The Operation Order did not define what it meant by part of the arrest operation. Given the view amongst the military witnesses that a single company was unlikely to have been able to carry out the mission, it is more than likely that the 'in part' refers to the axes of approach rather than the number of companies to be involved. (The companies were not in any event, as the deployment of Support Company in the area of the Presbyterian Church demonstrates, absolute entities: they could be divided and sent in different directions just as the battalion could).

5H-78 As it stands the record of the request made by 1 PARA at 1555 hours does not, either in its own terms or in terms of what was at the time happening on the ground, make sense (see paragraph 5H-37 above); and a fair reading of what is available does not exclude a move not requiring the

¹¹¹ Operation Order Operation Forecast at G95.570 paragraph 9(f)(1)(a)

¹¹² Porter transcript at W127 serial 343

¹¹³ W47 serial 159

¹¹⁴ W90 serial 31

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lifting of any of the barriers (see paragraph 5H-39 above). This interpretation consistent with (provided it is transcribed accurately) the message sent by 1 PARA at 1609 hours, after the order had been given:

*Hello 90, this is 65. Can you lift barrier 14, where one of our call signs will be coming through?*¹¹⁵

5H-79 Although it may not much matter (the terms in which the order was recorded do not exclude other entry points, including entry points that did not necessitate the lifting of any of the barriers), there is (apart from the fact that Barrier 14 appears as the identified entry point in both) little reason to take the view that 8 Brigade were at 1607 hours answering a request made at 1555 hours, even had they been able to understand what the request meant. This was an assumption which had clearly been made by Counsel to the Tribunal:

Mr Rawat: The only reference you made to a sub-unit was to the sub-unit that was going to go through barrier 14. All you said was, or all you can say is that that part of the order was the request from 1 Para was now being agreed?

*A: No, no, no, I did not say that.*¹¹⁶

5H-80 General Steele was correct: he had said no such thing. There was in any event a long pause between Brigade's refusal to act on the request and it ordering the arrest operation (twelve minutes, a long time in the scale of the events now under consideration), during which time the Brigade Commander was making his own assessment of what was going on on the ground in the knowledge that the commander of his arrest force was doing the same thing. The Commanding Officer of 1 PARA had been altering his thinking as the afternoon had gone on, reacting to his assessment of

¹¹⁵ Porter transcript **W128 serial 370**, the transcription of which presently reads: 'Can you lift barrier 14, where our call sign will be coming through?'

¹¹⁶ Day 267/092/22

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the behaviour and movements of the rioters, and there was no reason to suppose (it was his professional obligation to continue to do so) that he had stopped doing so now.

5H-81 There is furthermore no evidence to suggest that the Brigade Commander had ever indicated to Colonel Wilford that any operation might be limited in the way suggested. In the unlikely event that this is what the Operation Order was providing for, Colonel Wilford would have needed sufficient warning that the provision was, or was likely, to be activated. At all times Colonel Wilford had been fully entitled to work on the basis that he would be able to use his companies just as he wished: in concert, either two working together or three, depending on the circumstances and his assessment of how best to deal with them. The Brigade Commander could never have thought (and, given the prevailing view that one company would not suffice and would be exposed and vulnerable, would never have thought¹¹⁷) that he could, at the very moment he was ordering this operation, limit the number of companies permitted to participate. To have done so would have placed the commanding officer of the arrest force in an impossible position, and (had he complied with such an order) the troops in a potentially dangerous one.

5H-82 The fact is that none of the military witnesses able to give evidence on this issue thought that the Brigade Commander either would have wished to act to limit the number of companies involved or did in fact do so. Their evidence is supported by the lack of reaction at Headquarters 8 Brigade to reports from 1 PARA of the movements of its Call Sign 5, Support Company.

5H-83 The first such report was made before 1613 hours¹¹⁸:

¹¹⁷ Col Wilford's BSI Statement, B1110.032 paragraphs 85 and 87

¹¹⁸ Bcforc 1613 hours, as the message logged on the Brigade Log at that time, as serial 164, is clearly the message at serial 388

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*Hello Zero, this is 65. Our call sign Bravo 3 has moved through barrier 14 to the junction Rossville/William Street. Our call sign Bravo 5¹¹⁹ has moved down south to the area of the William Street. Over.*¹²⁰

5H-84 Before any real opportunity is provided for 8 Brigade to react, the message was repeated, with a little more detail (and without the interference):

65. Our Call Sign Bravo 3 has moved south down Strand Road into William Street past barrier 14 and is at the junction Rossville Street/William Street. Our Call Sign Bravo 59 has moved down south through the Church to the area of William Street, directly south of the Church. Over.

5H-85 The Brigade Major was concerned for the safety of the troops and wanted to get them back¹²¹ and , perhaps in too much haste, as he told this Tribunal¹²², spoke only in terms of the company which he knew was to move through Barrier 14 (he actually described it as a move 'to' rather than a move 'through' Barrier 14¹²³):

*If you have not conducted any scoop-up then you should withdraw your Call Sign Bravo 3 back to its original position ... for any further operation.*¹²⁴

5H-86 This was not a prepared speech: this was an officer speaking ad hoc, attempting to supervise a swift movement of troops in dangerous circumstances.

5H-87 In the event, of course, this instruction did not need to be met, as 1 PARA had been carrying out the scoop-up; and it could not be met, because the scoop-up had been interrupted by IRA gunfire.

¹¹⁹ There is clearly interference at precisely this point in the message, which the transcriber has omitted. When the message is repeated, at serial 387, there is a '9' in here.

¹²⁰ Porter transcript at W129 serial 383

¹²¹ Day 267/117/21

¹²² Day 267/116/07

¹²³ Porter transcript, W129 serial 388

¹²⁴ Porter transcript, W129 serial 390

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LOCATION OF THE ARREST OPERATION

5H-88 So far as the location for the arrest operation is concerned, the point has already been made that, when its provisions are properly read, neither the Brigade Commander nor the commander of the arrest force were hampered by the Operation Order. What is equally clear is that in none of the his three statements on this issue (set out at above) did Brigadier MacLellan identify the waste ground to the north east of the Little James Street/William Street junction as the location to which he understood he was launching the arresting troops. In each of those statements his description of Aggro Corner was the William Street/Rossville Street junction, and while his formulation during his oral evidence to Lord Widgery was that the arrest force was being launched at the hooligans at that junction, in his written evidence the target had been described as 'in the area of the junction William Street/Rossville Street.'

5H-89 This all goes to show that this issue needs to be considered practically, just as the officers involved had to consider it at the time. The focus of the operation was the rioters at and around Aggro Corner, and given the number of rioters, the attempts that they would make to avoid arrest and the number of troops required to deal with them, it was inevitable that this operation would move south of the junction¹²⁵, onto the Eden Place/Pilot Row wasteground, which is exactly where General Steele repeatedly told the Tribunal he had anticipated that the arrest area would be.

5H-90 As with the number of companies which were to be involved in the operation, there has been a determination on the part of some questioners to show that that 1 PARA's actions in moving, in some instances, into and, in others, down Rossville Street was also in breach of 8 Brigade's

¹²⁵ Mr Harvey's suggestion to Gen Steele, at Day 268/048/02 that 'You initially were telling Lord Widgery that the area you expected the scoop-up operation was no more than the width of the road at the junction of Rossville Street/William Street' lacks any understanding of the practicalities of putting this number of troops on the ground.

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order. The prohibition against conducting running battles down Rossville Street is not a geographical limitation: although some questioners paraphrased it as such, it cannot on its own terms mean that 1 PARA were not to move into Rossville Street. It was a limitation on what 1 PARA could do in Rossville Street - they were not permitted to conduct running battles down it - and the limitation would have been pointless had there been an overriding prohibition against being in Rossville Street at all.

5H-91 Both (i) the common understanding of those at Brigade Headquarters and the commander of the arrest force; and (ii) the confusion caused by the questioning on this issue before this Tribunal are demonstrated by the passages that follow, taken from Gerard Elias QC's questions to General Steele:

Q: You see, when you agreed, as I understood you to do -- forgive me if I have got it wrong, perhaps you can confirm it -- with the question put to you by the Chairman, that when the Paras went in, there was a limitation on the area of arrest operation, that was a limitation confined to William Street and Little James Street, and when you said a little later that it would have been a breach of the order if they had gone further than Aggro Corner, as I understood it you were combining two pieces of material together; you were putting together your own concept of the plan, that there would be an arrest in that area, and you were adding to it the order given, you say for the first time, there were to be no running battles down Rossville Street as the Paras were about to embark upon the operation; is that right?

A: We come back to the discussion that we had with the Chairman ten minutes ago and now you have confused me, because I thought that we had agreed, the Chairman and I, that the area of arrest operation would now be a re-adjusted circle, which was indeed south of William Street and not just confined to that area.

Q: Insofar as you may have given any answer earlier that suggested it would have or might have been a breach of the order to go beyond Aggro Corner, you would not wish to abide by that answer?

A: I do not believe it was a breach.

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Q: Of course you, as the author of the operation order, would know as well as anyone how you intended it should be interpreted?

A: Yes.

Q: And your interpretation six weeks after the event might be better than your interpretation 30 years after the event, might it?

A: Certainly.

Q: Look at page B1312 with me, please. Can we have letter B, to the foot of the page. You have been asked questions by Mr Stocker. Before letter B: "Question: Did anybody, Colonel Wilford or anybody else, tell you what his tactical plan was at any time before it was actually put into operation?" "Answer: I knew the outline of the plan but not the detail. "Question: He did not know what it could be until the rioting took place, if it took place?" "Answer: In the brigade operation order we had in fact given him two axes as to where we thought the rioters would be. "Question: Just one other matter ... if you would look now back again to the executive order that you gave, serial 159, what did you mean by the phrase 'not to conduct a running battle down Rossville Street'?" "Answer: What I meant was that I in fact repeated exactly what the commander had said to him, that he did not want the arrest operation to go on down Rossville Street in such a way that they would start a running battle with the main group of the demonstrators which were back at Fox's Corner? "Question: In that context what do you mean by 'running battle'? Do you mean chasing after them and perhaps having to knock them down in some way, or do you mean exchanging shots?" "Answer: I mean both exchanging shots and moving down [note the words, please] into the area where the non-violent protesters were. "Question: As far as we know they [that is the non-violent protesters] were at or moving to Free Derry Corner. Would you regard that as an instruction, that they were not to go as far as the northern end of the Rossville Flats? "Answer: No, sir, I believe that to do the scoop-up it might be necessary for them to go as far as Rossville Flats. That is what you were saying six weeks after the event, General Steele; was that correct?

A: Yes, indeed.

Q: That was your interpretation, then, of the order that you had effectively drafted: that it was wide enough for Colonel Wilford to conduct a scoop-up arrest operation over the

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whole, what I will call the whole of the wasteground to the north of the Rossville Flats?

A: Yes.

Q: When you have amended that today by re-drawing the circle, is that in the light of what you now think it might have been wiser to have ordered, or what in fact the order meant at the time?

A. I think I have been rather confused by that wretched circle which I had to draw for Eversheds, which was done in a very, very haphazard way and I believe now that the circle that I have re-drawn, together with the Chairman, a couple of grid squares up north of where I did it for Eversheds, is probably the most accurate in my mind today. But at Widgery I definitely did say, "it might be necessary for them to go as far as Rossville Flats".

Q: If that was your own interpretation -- because you were not suggesting that would have been a breach of the order?

A: No.

Q: If that was your own interpretation of the order at the time, or within a few weeks, unless Colonel Wilford was told something different, there is no reason why he should not have operated upon the same assumption; is there?

A: I agree.

Q: If we look at your statement made to this Tribunal at page 1315.010, made in October 2000, at paragraph 52, please, you refer to Brigadier MacLellan's additional caution: "Although it was not one of the preconditions set out in the planning of the operation, he insisted that there should be no running battles down Rossville Street. This meant that the arrest force should not engage in a hot pursuit of the rioters, chasing them south along Rossville Street ..." If we pause there, any suggestion they should not go beyond Aggro Corner might have held water, but of course you add the words: "... south along Rossville Street beyond the flats." Which is effectively what you were saying at the time of Widgery?

A: Yes.

Q: "The arrest operation was envisaged as a scoop-up, that is to say an encircling operation ..." Had there been an intention to prevent, for reasons of separation -- and there may have been very good reasons to do it -- to prevent 1

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Para from going further south than a line ten yards to the south of William Street or a line taken from Eden Place, its corner with Chamberlain Street up to William Street/Rossville Street, Aggro Corner, such a line could have been demarcated and put into the operational order; could it not?

A: Yes, but it was not.

Q: That could simply have been done, could it not?

A: Yes.¹²⁶

LORD SAVILLE: If you will forgive me interrupting again, Mr Elias, the map on which Mr Rawat drew the picture of the lined up vehicles on Rossville Street, of the Pig down by the Rossville Street car park entrance and the Pig by Eden Place as something that had happened a very few minutes after you gave the order, would I be right in supposing that you had no idea that that at the time would be the result of your order; I say "your order," the order that you conveyed.

A: Of course I had no idea at the time that I passed the brigade commander's order that there would be vehicles involved at all.

LORD SAVILLE: Correct me if I am wrong, we do not want to keep going over old ground: I have understood your evidence this afternoon to be that when you passed on the order, you almost certainly said something about an arrest operation in the William Street/Little James area. You then have the injunction not to go down Rossville Street. I think you have accepted this afternoon, a very few minutes ago, that that meant not go down Rossville Street to any significant extent. If you had known some three or four minutes after you had passed on the order that there were a large number of vehicles in the first 100 yards of Rossville Street, that there was a vehicle right down by Eden Place and another vehicle even further down, right at the entrance to the car park flats, that would, or would it not, have come as an enormous surprise to you, as being the result of the order that you have conveyed?

A. Yes.

MR ELIAS: *Of course, if no running battles meant what you have told the Tribunal it did mean to you, and if the Paras had in their mind that they were going to flood most of the wasteground, if you like, with Pigs, and use the whole of it as part of the arrest operation, it would not have been surprising, would it, if the interpretation they had put upon it was, "We will carry out our arrest operation, but beyond that, there is to be no running battle down Rossville Street pursuing hooligans and the like"?*

A: *Yes, and, as we have already just agreed, it would have been very much better if in fact, coupled with the, "no running battle," there had been "beyond a certain point".*

Q: *Can we look at what Colonel Wilford says about the matter, briefly for your point. B988, please, his evidence to Lord Widgery, letter D down to the bottom, please, I am reading from just above letter E: "Question: You were told by the brigadier that there were no running battles down Rossville Street? "Answer: Yes. "Question: In fact your troops went down Rossville Street and on to the wasteland. What do you say about that? "Answer: I received a message to say that there were to be no running battles. I understood this perfectly and I understood it and had discussed it with my troops. It was hardly a matter for discussion because our methods of operation do not allow running battles. If you have a running battle and the end the resistance becomes very strong, you could run into a great deal of trouble. So we know that we chew off not more than 200 or 250 yards at any one go. This was perfectly understood and this is what happened." If I understand that answer to mean, "we were going to go in to the extent of 200 yards," do you follow, which would take him certainly down to the north of Rossville Flats?*

A: Yes.

Q: Either he was contravening orders or he had not been given any order which suggested he should not do that; do you agree?

A: I think the latter¹²⁷.

¹²⁷ Day 267/172/22

Q: At page 1110.032, Colonel Wilford's statement to this Inquiry, paragraph 88, comes to the question of -- I want to go to the middle of the paragraph, if I may: "I would have interpreted those words as a prohibition against chasing rioters wherever they went eg down to Free Derry Corner and way beyond that. I had no intention of doing any such thing. I expected my companies to arrest using standard procedures which would involve getting behind the crowd and arresting them. There was nothing in the orders to say that we could not go into Rossville Street at all." Is he right about that?

A: Yes.

Q: "I had no intention of conducting a running battle chasing the rioters wherever they went, and this did not happen."

A: Could I just interrupt a second, there in that sentence of course he explains entirely what he reckoned a running battle was.

Q: He does. "I had no intention of conducting a running battle chasing the rioters wherever they went, and this did not happen. Whilst I cannot therefore remember the detailed terms of the order, I can say that there was nothing surprising in it, and nothing limiting the way I was intending to act which might have justified the need to go back to brigade." Do you agree with that?

A. I do.¹²⁸

5H-92 Colonel Wilford's understanding, both in 1972 and now, was read to General Steele by Mr Elias. As Colonel Wilford said, his troops understood the concept in the context of the type of operation in which they were engaged. This is confirmed by the Officer Commanding A Company, Major INQ 0010:

Q: Can we please go to W90. This is a page from the log for 1 Para. You have a copy attached to your statement. It

¹²⁸ Day 267/177/25

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is of course, as we know, a copy of the log that would have been typed up after the operation, because during the course of the operation entries would have been recorded by hand. It is also a composite log in that it records communications at battalion level but also at brigade level. But if I draw your attention, please, to serial 31, at 1610 what you see is an entry from plus, which is I think a reference to the tac HQ, the Gin Palace, to call sign 9, Colonel Wilford, which reads: "Move 3 now through K14." And that is a reference to bravo 3 C Company moving through barrier 14: "Also call sign 1 ..." Reference to your company: "... no running battles." Does the phrase "no running battles" trigger any recollection with you?

A. No, except to say that it does not surprise me in the least. It would just be a reminder not to get drawn in.

Q. Does this go back to your description of the way a snatch squad worked, that you would move no more than a distance of about 20 metres?

A. That is – that is the guide. The aim is to retain control.¹²⁹

5H-93 The Brigade Commander, the officer who gave the order, was in 1972 of precisely the same view as his subordinates:

The purpose of my order was to ensure that the arresting force only 'scooped up' those actively engaged in riotous behaviour in the William Street/Rossville Street area, and NOT those other persons engaged in a non-violent meeting which had already started at Foxes Corner. To achieve this 'scoop up' it was necessary for the troops to get beyond the rioters and place themselves between the rioters and those already at the meeting place at Foxes Corner. The company therefore that moved rapidly in their vehicles to the area North of the Rossville Flats, acted in accordance with my instructions, in that such action would effectively place the troops between the rioters and the marchers. ... Immediately the troops were attacked by gunfire and bombs, it was necessary for their tactics to change and for the Commander on the spot to take such action as he thought appropriate. In the circumstances therefore he was

¹²⁹ Day 289/024/01

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obliged to engage those attacking him and to open fire. In my view it became inevitable that the troops whom I had expected to be facing North, having cut off the rioters, should now have to turn to meet the attack, from the gunmen and bombers. The actions of the Support Company did not therefore contravene my orders which related only to the arresting of those creating a disturbance.¹³⁰

5H-94 That is why, just as when it received the SITREP from 1 PARA referring to both Call Sign 3 and Call Sign 59, 8 Brigade did not react when they learnt, very soon after ordering the arrest operation (this message was recorded on the 8 Brigade Log at 1612 hours¹³¹), that there were vehicles in Rossville Street:

Ah Zero, the appearance of the pigs and four tonners in Rossville Street has now effectively moved all the crowd out of Chamberlain Street and they are now forming behind the Flats.¹³²

THE ARREST OPERATION

5H-95 When the Commanding Officer of 1 PARA received the order to mount the arrest operation from 8 Brigade there were (as has been discussed above, in relation to both the written Operation Order and the order 1 PARA were given on the secure net on the day) no basis for him to take the view that he was being limited in either the number of troops he could use or where he could go in order to carry out his task.

5H-96 By the time the order was given the reading of the situation within 1 PARA was that the troops moving through Barrier 12 would require the speed of movement afforded to them by their vehicles to get them past the rioters and therefore in a position to cut them off.

¹³⁰ Brig MacLellan's 1972 Statement, B1235 paragraphs 29 and 31

¹³¹ W47 serial 162

¹³² Porter transcript, , W129 serial 381

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5H-97 There has been an attempt to argue that Colonel Wilford's order to 1 PARA was not directed at Support Company at all, and that (for some reason, not explained to the witnesses) Support Company moved anyway:

MR HARVEY: When Support Company did go through, if they went through as a result of a radio communication from their tac headquarters or from their Brigade Commander, then their tac headquarters ought to have been aware of that?

A: I am sorry, I do not quite follow your – Support Company would not have received an order from the Brigade Commander.

Q: Sorry, their own Company Commander?

A: Yes.

LORD SAVILLE: I have lost you a bit, Mr Harvey, it is no doubt my fault. Do you mind starting again.

MR HARVEY: Yes. For Support Company to move forward as part of an arrest operation, that would have to be communicated to them?

A: Yes.

Q: If it was communicated to them by radio, that would have been on their battalion net?

A: Yes.

Q: If it was on their battalion net, then their tac headquarters the Gin Palace ought to have been aware of it?

A: Well, they would have sent it.

Q: Do you not find it, then, absolutely extraordinary, when the tac headquarters of the 1st Parachute Regiment contact you to tell you that they have gone through the Presbyterian Church to the south of William Street when, if

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their tac headquarters ordered them forward, they must have known it was through barrier 12?¹³³

A: Well, that is not the message that we received in brigade headquarters.

Q: No, but we are trying to deal with what ought to be the position. If it was an official authorisation by radio to Support Company to go through barrier 12, that had to be on their battalion net?

A: Yes.

Q: And, therefore, their Gin Palace or tac headquarters ought to have been aware of that?

A: Yes.

Q: Because their tac headquarters would have been the people who sent them through barrier 12?

A: Yes.

Q: So it is extraordinary, is it not, that the people who would have sent them through, who would have known they had gone through barrier 12, are telling you that in fact they have gone through the Presbyterian Church to the south side of William Street?

A: Yes, I cannot comment on that because in the brigade Ops room, all we received was that one message which we discussed yesterday. Now, clearly that message was inaccurate. Whether that means that tac headquarters themselves did not know or whether it was a mistake in sending the report, I cannot comment.

Q: It is an extraordinary mistake?

A: That is why I cannot comment on it because I just do not know.

¹³³ Given the manner in which 1 PARA were organised by the time the order was given, there is nothing extraordinary about this at all. Gin Palace pass Bdc order to CO and then hear CO's order to the coys, which is just 'Go, go, go' or similar. So the Gin Palace, which has not been privy to the afternoon's senior level discussions, have no idea what is going on. Not great, but not extraordinary.

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LORD SAVILLE: I think what Mr Harvey is giving you the opportunity to agree with or disagree with is that, on the face of it, it is extraordinary that the headquarters -- which on the face of it should have known that Support Company were going through barrier 12 -- should communicate to brigade that they had done something completely different; that is the point Mr Harvey is putting to you.

MR HARVEY: It is.

LORD SAVILLE: On the face of it, it is an extraordinary situation.

A: What can I say, but --

MR HARVEY: You either agree with it or disagree.

A: I agree, but I cannot comment in any other respect.

LORD SAVILLE: I do not think you are being asked to, General Steele, as you pointed out, there may -- we will have to wait and see -- be other explanations. That is why I put the question as I did and why Mr Harvey put the question as he did. On the face of it, this would seem extraordinary, I think you agree; on the face of it, it does?

A: On the basis of that, I agree.¹³⁴

5H-98 There are a number of problems with this passage from the evidence. Although no doubt confused by the framework he was originally given, General Steele (who was not of course at 1 PARA Main or Tactical Headquarters at any stage of the day) is probably wrong in his suggestion that the 1 PARA order for the arrest operation was sent from the Gin Palace. The likelihood is that it was sent to the companies by the Commanding Officer, although the watchkeepers would of course have heard it in the course of listening to the net.

5H-99 More fundamentally, it is almost certainly not right to suggest either that it was the watchkeepers in the Gin Palace who ordered the arrest operation, or that they *must* have known that Support Company had moved through

¹³⁴ Day 268/042/18

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Barrier 12. While it is not suggested that the arrangements were ideal, the situation only appears extraordinary in the absence of any consideration of the way in which 1 PARA were organised for the operation and the manner in which they are likely to have been preparing for their task during the early part of the afternoon.

5H-100 Having had the Brigade order to move relayed to him by his Main Headquarters, the Commanding Officer in his OP was able to pass that order on to his companies on the battalion net. He has told the Tribunal that he did so by way of a short exhortation¹³⁵, which would have been possible thanks to the discussions he no doubt had with all of his company commanders when they were all on the streets earlier in the afternoon. Where further detail or adjustment was required the watchkeepers, who were not party to the conversations between the senior commanders, would not necessarily have understood the significance of what was being said, particularly if Colonel Wilford had gone out of his way to abbreviate what he was saying so as not to waste time.

5H-101 So far as tactics were concerned, the commander of the arrest force had a free hand. Save that he was not to permit his battalion to get embroiled in a running battle down Rossville Street, he had (rightly, the military witnesses all agree) been given no orders which went to the manner in which he was to conduct the operation. While commonsense dictated that he was going to have to get behind the rioters, he had quite properly received no orders which might tie his hands or commit him to one particular course or another. The battalion had its own standard operational procedures, which he could be confident it would follow: it would not over stretch itself, for example, by attempting to operate over a distance greater than about two hundred metres. And his aim was always

¹³⁵ Col Wilford's BSI Statement, B1110.033 paragraph 89

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to effect a pincer manoeuvre if he could, closing in on the rioters from more than one direction.

5H-102 Although it has clearly been difficult for many to accept during the course of the military evidence to this Inquiry, in ordering Support Company to switch its point of access from the Presbyterian Church to Barrier 12 Colonel Wilford was not doing anything controversial. He was in fact doing no more than satisfying his duty to do all he properly could to secure the success of his mission. Although there is some evidence of an idea to demolish the wall to the east of the Presbyterian Church with one of the Pigs (and consideration of such a possibility might be expected of professional soldiers turning their minds to ways of solving problems as they presented themselves), as a point of access the Presbyterian Church meant that the troops would be entering the Bogside without their vehicles. The alternative of Barrier 12 imposed no such limitation.

5H-103 Perhaps at the cost of a degree of surprise (a relative concept, worth nurturing, but without an enormous prospect of success once the first steps in the operation had been taken), the vehicles also meant speed. Colonel Wilford had no doubt been grappling with the problem posed by the desire to get behind the rioters. The vehicles would enable him to move past the rioters and place troops across their line of retreat. With C Company in Chamberlain Street, the forward elements of Support Company across the Eden Place/Pilot Row waste ground and the rear elements of both companies on William Street he would be in a position to round some of the rioters up (some, those who got away early and those able to run through the gaps while the soldiers were committed to arresting particular individuals, would get away).

5H-104 Such a plan might not have been described by the purists as a pincer manoeuvre, but no dogma would ever have suited the needs of the task 1 PARA had been set. This thinking involved both Colonel Wilford's centre and his left hand companies, and was certainly a method of getting behind the rioters, an encirclement or a cutting off. And provided the troops maintained their discipline, stayed within the two hundred metres area the

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battalion set itself, and tried to catch the rioters on the waste ground as they attempted to come past, Brigade's prohibition against running battles down Rossville Street would be satisfied.

5H-105 Attempts to test this thinking against the strategic thinking (not orders, as General Ford did not and was in no position to give any such orders) which had taken place at HQNI five or six days earlier fail to appreciate the fundamental difference in the roles and responsibilities of the officers at the different levels of command, Division, Brigade and Battalion. Tactical thinking along these lines by the commander on the ground was in no way 'inconsistent upon the basis upon which [the operation] was to take place in the first place'¹³⁶ or 'radically different' from any orders that had been approved by General Ford.¹³⁷

5H-106 Due to the culture of some parties in this Inquiry of looking for fault at every turn rather than explanation for the purpose of understanding, it was put to a number of the officers that the soldiers carrying out the operation would have needed very detailed instructions before they deployed. A number of the soldiers were asked whether they knew in detail where they would be going and what they would be doing when they got there. These questions simply do not reflect reality.

5H-107 This was a very simple operation. The officers in Support Company needed to get the troops into positions where they could attempt to arrest those who were running away from the riot, some soldiers ahead of the rioters and some behind. Once the troops were on the ground the means of identifying those who had been rioting, although not perfect, was as good as it could be: if 8 Brigade's experience was right the vast majority of those now running would have been either involved in the riot or close observers willing to take the chance of getting arrested; the rioters would

¹³⁶ Christopher Clarke QC to Gen Ford, at Day 255/07/14

¹³⁷ Arthur Harvcy QC to Gen Ford, at Day 257/057/25

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be wearing their makeshift gas masks and some would have been coloured with dye; and a number would (and in the event did) continue to act violently and render themselves properly susceptible to arrest by attacking the troops.

5H-108 This is precisely the exercise upon which 1 PARA embarked. Support Company's lead Platoon moved down Rossville Street and the two Pigs moved off the road to stop at positions on the wasteground, one (Lieutenant N's Pig) forward and the other (Sergeant O's) in a deeper position, further away from the oncoming rioters. It may be that the second of these vehicles, by finishing up on the car park of the Rossville Flats, went further than 8 Brigade had anticipated. However, precision in these vehicles in these circumstances, with people running on the wasteground, would have been difficult and the vehicle remained broadly within the battalion's two hundred metre limit. (No southern limit had in any event been laid down by brigade and the Brigade Major on no occasion accepted that this amounted to a breach of the order he had given).

5H-109 When the troops left their vehicles they concentrated their efforts on those amongst the crowd running past them who offered them violence. This arrest operation was interrupted by gunfire. Until the troops were fired at they did not move south or west of the open area bounded by the Columbcille Court complex to the west, the Rossville Flats and the rubble barricade to the south and the rear of the Chamberlain Street houses to the east. In particular, they made no effort to close on the crowd who had chosen to listen to the speeches at Free Derry Corner.

5H-110 Having made the necessary tactical decisions and given their orders, Colonel Wilford and Major Loden, each from their own vantage points, had to allow the platoon commanders, the NCOs and the soldiers to carry out their roles and discharge their own responsibilities, never more so than when they were being fired at. In the opening stages of the arrest operation, and then of the firefight, the Commanding Officer and the

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Company Commander were effectively witnesses to such of the many incidents taking place near them that they were able to watch.

5H-111 As the situation stabilised, however, they were both able to reassert the degree of control appropriate to their level of command. Having experienced incoming fire himself as he crossed the wasteground¹³⁸ and having visited the wall at Kells Walk, Colonel Wilford supervised the consolidation of his battalion and its eventual withdrawal from the wasteground. Major Loden did exactly as he should have done and asserted personal control over the firing, even to the extent of momentarily overriding the provisions of the Yellow Card by forbidding any return fire regardless of the threat that might exist to the lives of the soldiers. He too set about the re-organisation.

5H-112 Both of these officers would now be involved in the post operation reporting of events on the ground, including, for Colonel Wilford, an interview with the media.

¹³⁸ Col Wilford's BSI statement at B1110.034 paragraph 97. See also Gen Sir Mike Jackson's BSI statement, CJ1.5 paragraph 39.

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CHAPTER 5I

REPORTING OPERATION FORECAST

- 5I-1 The first report 1 PARA made after the arrest operation was started was in the following terms:

Hello Zero, this is 65. Our call sign Bravo 3 has moved through barrier 14 to the junction Rossville/William Street. Our call sign Bravo 5¹ has moved down south to the area of the William Street. Over.²

- 5I-2 The timing '1613' with a question mark against it appears on the Tribunal's transcript of the Porter tape, as does the suggestion (also with a question mark) that this is the message that resulted in Serial 164 of the 8 Brigade Log. Serial 164 reads:

B3 at aggro corner ordered to return to initial location.³

- 5I-3 It is clear is that the 1 PARA message has not been separately recorded. It must have been sent prior to the Brigade Major's inquiry as to whether or not any arrests had been made,⁴ which (accepting of course, that the timings are approximate) was recorded at 1613 hours. The Officer Commanding Support Company, Major Loden, gave that as the approximate time at which his convoy began to move⁵ (he had not received his final order to do so until 1610⁶).

MR RAWAT: ... Can you help us at all as to why or how brigade came to be given such an inaccurate message as to where two units of 1 Para were?

¹ There is clearly interference at precisely this point in the message, which the transcriber has omitted. When the message is repeated, at serial 387, there is a '9' in here.

² Porter transcript, W129 serial 383

³ W47

⁴ Porter transcript at W129 serial 388

⁵ 1972 Statement, at B2220

⁶ 1972 Statement, at B2220

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A: No, I cannot, and of course you must remember that that was the information that we had at the brigade headquarters. I mean, we are not blessed with the hindsight that we have here today and so all I knew in the operations room, manning the brigade net as I was by then, that is the situation, as serial 387.

LORD SAVILLE: The very significant one, of course, is our call sign Bravo 5, area of William Street, whereas in fact they were way down Rossville Street. The other one might be slightly inaccurate, Bravo 3 has moved down Strand Road into William Street past barrier 14, he is at the junction of Rossville Street/William Street, because some at least of Bravo were probably in Chamberlain Street.

A: Yes, well, you see, again I cannot really comment on it, because that is the information that we had in the Ops room with which we had to work, but I agree with you entirely, I would have thought that C Company would have gone down Chamberlain Street.

LORD SAVILLE: I think one of the reasons we are asking you is whether you have any recollection afterwards that somebody inquired as to how what, on the face of it, was pretty inaccurate information, came to be sent to brigade.

A: No.⁷

5I-4 As the Support Company vehicles had yet to be delayed at Barrier 12, the criticism implicit in the questions about the message is misplaced. There was no inquiry as to the accuracy of this message, not only because it was sent very early on in the operation when nothing would have been clear, but also because no inquiry was necessary. At the time the message was sent it was entirely accurate: elements of Support Company had indeed moved south into the area of William Street (the Machine Gun Platoon were in the derelict building on William Street) and C Company had moved through Barrier 14, elements to the junction of William Street and Rossville Street.

⁷ Gen Steele at Day 267/114/02

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5I-5 The only problem with the message is that it was not comprehensive: it did not inform Brigade Headquarters that the remainder of Support Company was about to move, approaching Barrier 12; and it did not tell them that although a platoon of C Company had indeed moved to Aggro Corner, a second platoon was moving down Chamberlain Street. The reason for this is that those sending this message probably did not know of those facts for the reasons already explained: as two junior captains carrying out a watch keeping role they had not been part of the decision making process during the afternoon and they were not by design, forward with the Commanding Officer at the moment he made his final decisions as to how the battalion was to deploy.

5I-6 It has already been conceded that this was not ideal, but its importance can be overstated. The Brigade Commander and his Brigade Major knew the number of companies that made up the arrest force and they knew the commander's outline plan, for the execution of which there were not on any view limitless possibilities. It went without saying that more than one access point would be required, to allow both for the numbers of troops involved to be deployed quickly and the need to approach the rioters from more than one direction. They knew the approximate area in which the arrest force would have to operate – a concentration of rioters at Aggro Corner feeding violence at Barriers 12 and/or 14 would mean elements at least of the arrest force moving onto the Eden Place/Pilot Row waste ground. And they had made it clear that the arresting soldiers were not to get caught up with the crowd at Free Derry Corner.

5I-7 The one disadvantage of 8 Brigade receiving no confirmation that 1 PARA was going to use Barrier 12⁸ was that time was lost at the barrier because the troops there were not ready to open it. Just as 8 Brigade did not react, either with surprise or at all, when they were told that there were

⁸ There had been a preparatory message at about 1540 hours to the effect that it might: see the Porter transcript, at W124 serial 294

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vehicles in Rossville Street, there is no reason to suppose that they would have done so had the 1 PARA watch keepers had this additional information to give them.

5I-8 Given the time it had taken for Support Company to get into the Bogside, General Steele's suggestion that his inquiry about the progress of the arrest operation had been made too early⁹ in fact holds true - the General would not of course have been aware of the time it took for Support Company to be in a position to move. The inquiry had of course to be passed on from the Gin Palace to the companies¹⁰ and there would then have been a need for the operator at company level to have attempted to find the answer. That an answer was provided can be seen from the Remarks column on the 1 PARA Log, which reads, against Serial 32: 'Yes we have', although whether that answer was relayed to Brigade or simply became a part of the reporting of the fire fight is unclear. The very next serial in the 1 PARA Log¹¹ reads:

Gunman. Pistol. Returned fire.

And in the Remarks column:

Passed Brigade.

5I-9 No military witness expected wholly accurate reporting of what was going on on the ground in the initial phase, when the troops were being engaged by the gunmen. Some information was made available: Corporal 033 in charge of the Support Company Signals Detachment, for example, made his contact report in relation to the Thompson sub-machine gun fire¹², which was heard by the Signals Sergeant, Sergeant INQ 0720 in the Gin

⁹ Day 267/117/17

¹⁰ Which can be seen happening at the 1 PARA Log, at W90 serial 32

¹¹ W90 serial 33

¹² B1621.005 paragraph 39

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Palace.¹³ But there was, and once the troops were engaged was always going to be, some period of time before reporting was possible. Once equipped with the knowledge that the troops had been engaged. Brigade Headquarters would have expected no more immediately; and even if they had received more they would in any event been powerless to influence events.

5I-10 While the unit committed was not able to report, the Brigade deployment was such that its headquarters did have other sources of information in relation to the arrest operation:

*Zero, this is 76. Two high velocity shots heard in the area of Free ... the Rossville Flats. People are lying on the ground there now.*¹⁴

5I-11 Brigade Headquarters also knew, as they were told by one of the units involved in the static containment operation, that minutes after the arrest operation was ordered in, the gunmen had attacked the troops again:

*Hello Zero and 90 Alpha and 76, this is 54 Alpha. We have just had four shots fired at our Call Sign Quebec 21 on the Walls. Two high velocity shots were returned.*¹⁵

5I-12 This message was recorded in the Brigade Log at 1617 hours.¹⁶ The message would of course have originated at the point at which the rounds arrived at the Walls, would have been passed to Company Headquarters, and then on to Battalion Headquarters before its final transmission to 8 Brigade. The 1 R ANGLIAN Log, in which it was also recorded at 1617 hours,¹⁷ provides more detail:

¹³ C720.3 paragraph 14

¹⁴ Porter transcript at W130 serial 394

¹⁵ Porter transcript at W130 serial 396

¹⁶ W47 serial 168

¹⁷ W102 serial 74

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4 shots fired at 21 from Bogside Inn. 2 HV returned. No cas. [illegible] shot returned at gunman at rear of Bogside Inn. Man seen to fall.

5I-13 This gunman was at the Bogside Inn, an area in which there were civilians (not least those who had been reported moving out of the area south down the Lecky Road) and an area which was only a short distance to the west of the meeting which was taking place at Free Derry Corner. 8 Brigade were given these additional details at approximately 1621 hours:

Hello Zero, this is 54 Alpha. Reference two shots returned at gunman near Bogside Inn. Man seen to fall. At 1620 hours one further shot was fired from the area of the Bogside Inn towards our Oscar patrol on the wall. Over.¹⁸

5I-14 By then Brigade Headquarters had received information that the Observation Post on the Embassy Ballroom had also been attacked by gunmen, at 1611 hours.¹⁹ This related to a round which must have passed at least roughly over the heads of the soldiers of C Company 1 PARA, and certainly not one that can be left out of account on the ground that it was out of the area under consideration:

Zero, this is 90 Alpha. At 1611 hours, one shot at Echo. No strike. Over.²⁰

5I-15 At about 1618 hours 8 Brigade HQ had learnt of more shooting at the troops on the containment line:

Hello Zero, this is 90 Alpha. SITREP at 1615 hours on William Street. Seven Pigs of Call Sign Hotel – wrong Call Sign 65 are in the area of Rossville Street in the Rossville Flats. William Street and Rossville Street are clear and

¹⁸ Porter transcript at W131 serial 421

¹⁹ Porter transcript at W130 serial 399. See also 22nd Rcg Log at W97 serial 58, where the time of this attack is given as 1612 hours.

²⁰ Porter transcript at W131 serial 399

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*relatively quiet. We just had two shots at one of our patrols on the City Walls at 1614 hours. Over.*²¹

5I-16 Gunmen had opened fire on the troops, certainly from one position where peaceful demonstrators were located and very close to Free Derry Corner where there were many more, three times since the commencement of the arrest operation. There was (and is) no reason to suppose that the gunmen would have had any qualms about shooting at the arresting force out in the open, about whom the Brigade Major now no doubt became concerned. While it has been all too easy during the course of this Inquiry to treat these shooting attacks on the troops as entirely separate from the arrest operation, it is most unlikely that the officers running the operation from Brigade Headquarters either saw them as separate or felt they were in a position of such luxury.

5I-17 Brigade had already been told that there was a company's worth of vehicles 'in the area of Rossville Street in the Rossville Flats'. The Brigade Major now asks about Call Sign Bravo 3:

*Hello 65, this is Zero. What is the current deployment of your Bravo 3? Over.*²²

5I-18 This question was asked at about 1619 hours,²³ only six minutes after Support Company 1 PARA had started to move. Battalion Headquarters had not itself at that stage been given an update:

*Hello Zero, this is 65. Our Call Sign Bravo 3 ... wait. William Street/Rossville Street. Await confirmation. Over.*²⁴

5I-19 It was to be expected that the period after the fire fight would see a gradual increase in the amount of information being sent back and

²¹ Porter transcript at W130 serial 407

²² Porter transcript at W130 serial 411

²³ It was not logged at 8 Brigade, but this is where it lies between transmissions that were.

²⁴ Porter transcript at W130 serial 413

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therefore an improvement in the accuracy of the information that could be passed back up the line to Brigade.

5I-20 Once the engagement in which Support Company became embroiled was over the troops, who were still in relatively vulnerable positions and where there could be no safe assumption that they would not be fired at again, set about the next phase of their standard operational procedures: reporting those matters which were of operational importance. Although a number of questioners appear to have expected something different, at this stage the information the commanders on the ground needed was whether there had been military casualties and what the ammunition states were, as these were the issues that impacted upon the continuing operational effectiveness of the platoons.

5I-21 Thereafter what had happened, still in operational terms, began to emerge – insofar as it could then be ascertained from troops still spread out over the Eden Place/Pilot Row waste ground, down Rossville Street and Kells Walk and in the car park of the Rossville Flats. At about 1626 hours²⁵ the watch keepers at 1 PARA Main Headquarters, having attempted to pass the message over the secure net,²⁶ reported on the Brigade net that:

*Hello Zero, this is 65. SITREP boils down to the fact that the two sub units moved in, got involved in a fire fight, the shots appearing to come from the area of the Rossville Flats. The two sub units have now gone secure in that area. The two civilians are lying wounded or dead, we are not sure yet, in the area of Chamberlain Street. Who shot them we don't know. Over.*²⁷

5I-22 Given the circumstances on the ground and the time at which this information was being provided there is nothing remarkable about the inaccuracies in this message at this stage of the operation. 8 Brigade now

²⁵ The Brigadc Log at W48 serial 175

²⁶ See Porter transcript at W132 serial 442

²⁷ Porter transcript at W132 serial 442

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knew the essentials: a fire fight (which it had in any event received a number of reports about and it knew that there had been high velocity firing in the area of the Rossville Flats²⁸) as a result of which there were casualties;²⁹ and 1 PARA now firm in the area. It already knows that 'Seven Pigs of Call Sign ... Sign 65 are in the area of Rossville Street in the Rossville Flats.³⁰ Brigade knew what it needed to know and the fact that the source of the information was not solely 1 PARA is neither surprising nor material.

5I-23 Gradually the watch keepers were able to provide Brigade Headquarters with more information. At 1627 hours³¹ the first thirty arrests were reported; at 1633 hours³² the bodies reported earlier are now confirmed to be dead; by 1703 hours³³ the companies of 1 PARA were re-organising along William Street and its headquarters had been able to send a SITREP, detailing the known casualties amongst the troops and amongst the civilians: '5 dead (3 gunmen 1 nail 1 petrol)³⁴; and at 1706 hours³⁵ there was more detail about the casualties sustained within its Support Company. These were all matters of operational importance.

²⁸ Porter transcript at W130 serial 394, set out above.

²⁹ There had already been other information about casualties in the messages in the Porter transcript at W132 serial 435 and 437, which refer to ambulances arriving in the area.

³⁰ Porter transcript at W130 serial 407, set out above. This serial was ignored at Day 267/130/07 when the Chairman was asking Gen Steele about a later serial, 444:-

LORD SAVILLE: When did you realise that in fact the Support Company had gone right down to, in one case, the entrance to the car park of the Rossville Flats.

A: (Pause). I am trying to recall whether I received a report on the brigade net. If not, it will have been later in the evening.

LORD SAVILLE: Mr Rawat can no doubt help us; is there anything on the brigade net that would indicate or provide that information?

MR RAWAT: No.

³¹ Porter transcript at W133 serial 458

³² Porter transcript at W134 serial 473

³³ Porter transcript at W139 serial 550

³⁴ 1 PARA Log, W90 serial 41

³⁵ Porter transcript at W140 serial 567

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5I-24 While the companies were sending this information back to the Gin Palace, from where it was being sent back up the chain of command to Brigade headquarters, two of the senior officers, General Ford and Colonel Wilford, agreed to be interviewed by the Press.

5I-25 General Ford, whose only contact with 1 PARA during the day had been (i) as the arrest operation began, when he took the opportunity to give some words of encouragement to the soldiers of C Company³⁶; and (ii) a brief conversation with Colonel Wilford when the latter returned to the William Street area from the car park of the Rossville Flats. He had himself heard firing shortly after the paratroopers moved south. The fact that he heard this firing was recorded in his Diary of Events:

MS McDERMOTT: When you were writing out your account of the events of that day -- you wrote it out on 31st January, if B1126 could be put up for a moment, please. Five lines down from the top, you say: "At about 1610 barrier 14 was lifted ... It was about this stage that I heard shots fired from the direction of Rossville Flats." I want to ask you one thing in relation to this. At the bottom of the page, the last paragraph: "I spoke to CO1 Para who confirmed my view that his troops had been fired upon first and had returned fire." You only having heard shots fired from the direction of Rossville Flats, I suggest to you that you could not possibly have had a proper view that the troops had been fired on first?

A: I had no view, but I meant my mental view. My mental view was that the 1 Para would have been fired on first before they opened fire, because that is the normal way in which they would operate.

Q: You did not know who would open fire. You had only heard shots coming from the direction of the Rossville Flats; you did not know whether they had come from a civilian or a soldier.

³⁶ 'As the arrest force went through or over the barrier, Gen Ford shouted some words of encouragement, like: 'Go on boys, go on the Paras!'. In my view, this was a perfectly normal thing for him to do and did not have any of the sinister connotations that have been applied to it since': Col Ferguson in his BSI Statement, B1122.14 paragraph 86.

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A: No, but I knew that the soldiers do not open fire without good reason. Therefore as that, I assume, was the first shooting, I therefore assumed the shooting had come from the other side, shall we say.

Q: That was an assumption on your part?

A: Yes.

LORD SAVILLE: It would be the case, would it not, General Ford, from these diary entries as a whole, that you would not know who had fired first; or, indeed, whether 1 Para had fired at all; is that not right?

A: That is true, sir.

LORD SAVILLE: I am a bit puzzled by this part of the diary: "I spoke to CO1 Para who confirmed my view that his troops had been fired upon first and had returned fire." ... because you did not know whether the troops had been fired on, or whether they had fired, or whether, indeed, probably it was 1 Para?

A: That is true, sir. I do not know why I wrote it that way. I had only a mental view. I saw nothing, as I have stated.

LORD SAVILLE: It could be suggested, could it not, that you wrote that, General Ford, because it would assist the Army's case?

A: I hope I did not, sir, and I do not believe I did.

LORD SAVILLE: Can you give any other explanation for writing that?

A: No, sir. Well, just this: that of course this was written in great haste, and I know that is no excuse for accuracy, but perhaps the words I chose were not very sensible.

MS McDERMOTT: I understood you to say this morning, General Ford, not that this had been written in great haste, but that a great deal of care had gone into the preparation of it.

A: Of this particular diary?

Q: Yes.

A: Yes, my ADC and my personal assistant were very careful to keep records as they moved with me, and that was where the care was taken.

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Q: The care was taken in the preparation of it; that is what you said earlier?

A: Yes.

Q: It was an important document, was it not?

A: It was an important document, yes, and therefore I think this spelt my movements out, and what I did and said is written rather fuller than anywhere else I have seen on one of these operations.

Q: Is there anything you want to change now about that sentence: soke to CO1 Para who confirmed my view that his troops had been fired on first.?"

A: In the light of Lord Saville's drawing my attention to that first sentence, I should have said that -- different words definitely, missing out the part "... who confirmed my view". I mean, I was talking of a mental view and not of an actual view.

Q: I appreciate that, but this was part of the story that the Army had decided to put out to cover up what happened, was it not?

A: No, it was not.³⁷

5I-26

While General Ford when challenged in this way was unable to think why the Diary entry had been made in the terms it was, one answer may be that, for reasons now lost in time (possibly the sound of the weapons from where he was standing, the direction from which the sound was coming) it was indeed the General's impression, right or wrong, that what he had heard was not military fire. That this had in fact been his impression was picked up David Phillips of ITN whose reaction to the General's comment 'That was awfully heavy firing' was:

His demeanour to me, he looked concerned, and he certainly did not think it was his own men firing.³⁸

³⁷ Day 259/110/24

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5I-27 And Mr Phillips formed that view at a stage in the event when it cannot be, and was not, suggested that General Ford could even have been thinking of doing anything to meet a case that might be made against the Army.

5I-28 There is no doubt that when General Ford gave his interview his information was incomplete (no doubt under the pressure of the media repeating the untrue allegation that the troops had fired indiscriminately into a fleeing crowd³⁹). He was not on the top of the Embassy Ballroom when the fire fight was taking place,⁴⁰ as became plain from the evidence of Colonel Ferguson:

... when we arrived at the corner of William Street and Strand Road ... we heard a burst of [low]⁴¹ automatic fire. Hearing the burst it took me back to my days in Palestine where the Thompson submachine gun was in common use. I recall that General Ford said it was very heavy firing, but I do not recall that I said anything. We continued walking, a matter of 50 yards or so, to the door of the Embassy Ballroom building where I confidently expected to gain immediate access. It was a further embarrassment to me that there was nobody there to let us in. A radio message was sent by one of my party to get the door opened. I cannot recall exactly how long it was that we were waiting outside the door, but it was in the order of five minutes.⁴²[See addition at FS7.912.1]

5I-29 General Ford's own evidence on this had been:

³⁸ M66.12. Units in the containment line did of course report fire at them at (22nd Regt) 1611 hours and (1 R ANGLIAN), from the Bogside Inn, shortly before 1617 hours.

³⁹ See for example Mr Fry at B1208.002

⁴⁰ Michael Mansfield QC put it to Gen Ford that he was 'plainly there at some point between 4.20 and 4.35 and if you were there watching those areas that are specified, [he] would have seen what is alleged on Major Loden's list took place between those times.' Arthur Harvey QC took the opposite line: 'It looks as though -- and that is before you go into the Embassy building. General Ford, at one time, in some of the documents you refer to estimates that the whole of the shooting lasted approximately 7 minutes?

A. I do, sir. I do, I do not remember that.

Q. Whatever it was, it was a very short period of time during which the bulk of the firing occurred?

⁴¹ Col Ferguson deleted this word at the commencement of his oral evidence: Day 281/002/02

⁴² BSI Statement, B1122.15 paragraphs 88-89

[This is added to paragraph 5I-28 at FS7.912]

Colonel Ferguson, having thought about this issue since giving his evidence, has now (at paragraph 6 of his statement of 19th June 2004 **B1122.123**) provided further confirmation that General Ford was not on the roof of the Embassy Ballroom when the shooting took place:

"I would also confirm that the main shooting occurred before General Ford and I reached the roof of the Embassy Ballroom."

[Continue at 5I-29]

Q: Can we then go back to 1,208.057. You describe there, at 1620, arriving at the Embassy Ballroom. You had earlier described in this diary how the barrier was lifted about 1610, and then you followed to the junction between Chamberlain Street and William Street. It looks, therefore, as if you took five minutes, possibly more, to arrive at the Embassy Ballroom; is that right?

A. It looks like that, yes.

Q. Do you remember any delay in getting to the top of the Embassy Ballroom?

A. Well, I remember, in a document which I have read for this Inquiry, in one of the documents apparently I say there was some delay with the lift, I think.

Q. I think you do, yes. What you recorded in your diary was that, when you got to the top of the ballroom, you were able to observe the following, in Chamberlain Street: "Approximately one platoon in fire positions at the end of Chamberlain Street looking on to the Rossville Flats. The remainder of the company were rounding up people and leading them back to the waste ground on the junction of Chamberlain Street/William Street ..." When you used the expression "at the end of Chamberlain Street looking on to the Rossville Flats," should we understand that to mean at the end of Chamberlain Street which is nearest to the Rossville Flats, the far end from the Embassy Ballroom?

A. I should think it must be, I think.

Q. This may seem a silly question: "in fire positions" means what, exactly?

A. They had their rifles to their shoulders, presumably, and they probably had one knee down on the ground or resting on something, yes.

Q: The second thing that you describe seeing: "Rossville Street: company moving tactically into positions overlooking Glenfada Flats and Rossville Flats." What exactly does "moving tactically into positions" signify?

A. Well, it moves -- there would be some people moving, covered by others. In other words, there was "fire and movement", as we call it in the Army.

Q. "At the same time other troops were rounding suspects up in Rossville Street and moving them to the waste ground at the junction of Little James Street/William Street where

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they were searched and held. I then spoke on the radio to HQ 8th Brigade and asked if D Company 1 Para had been transferred to under command 1 Para. It was confirmed." Again, if we look at W136, if we have a look at serials 495 to 500, this is 74 reporting to brigade: "I hope that the spare call sign of 65 which was under command 90 is now under command 65 [meaning thereby: was under command of 22nd Light Air Defence, is now under command of 1 Para]. From where I am I can see that 65 requires its full three sub-units. Over." The reply is: "Yes, that is correct. That instruction has been given and call sign Bravo 4 is now under call – under command of Bravo call sign. Over." Is that you speaking yourself? A: I think it must be. I mean, it could be my ADC speaking for me, who was a signals officer. I mean, without the recording I cannot really add to what is written there, I am sorry.

Q. But that is the message.

A. Yes.

Q. I do not think it matters who spoke. You did not, of course, get to the Embassy Ballroom until approximately 4.20, by which time it looks as if a very large proportion of what did occur had already occurred. When you got there, there must have been, as we can see from this, a Radio Ulster net at the observation post?

A. I think there must have been, yes. I mean, I cannot remember it, of course.

Q. Do you know whether there was a radio on the battalion net or any of the battalion nets?

A. I am afraid I do not know, but -- I just do not know.

Q: Presumably there was signal traffic going on whilst you were at the observation post, was there?

A. Presumably so, yes. But again, I have not specified, I would not hear it.

Q. When you were at the observation post, did you get any idea, apart from what you had seen literally by looking out onto the Bogside, what had been going on?

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*A. I do not think so, no. The signaller presumably had his headphones on. I am afraid I am just guessing, I do not know.*⁴³

5I-30 And there is some evidence that he did not get as full a briefing as he might have done once he did get to the top, as is clear again from Colonel Ferguson's evidence:

*I then [after Ford had left and after making the transmission re return of D Coy to 1 PARA] went to the front of the roof and got more information about what had happened. I recall BC 53 Battery starting to tell me what had happened when he was interrupted and corrected by one of his soldiers. I do not remember who this was or the particular point but there had not been time from the cessation of shooting until our arrival to collate what each of the observers had seen. I do not recall any details, but it became clear that more people had been hit by gunfire than General Ford had been told. At this stage the only indication I had was that there had been a gunfight with the IRA. But as I listened to the various accounts of the observers it became clear that more than three people had been shot. I also gained the impression that there was some concern about the circumstances in which some of the people had been shot. I do not know exactly why I had this feeling but I felt I had to go after General Ford and tell him that there had been more casualties than had been reported to him. I therefore left the Embassy Building and sent to Waterloo Place. There I found General Ford pinned against the wall by a journalist and speaking on camera about what had happened. It was too late for me to update him.*⁴⁴

5I-31 As it was, the General gave his interview on the basis of what he then knew, from his own experiences and what he had by then been told by both the Commanding Officer of 1 PARA and his ADC (neither of whom would have had a complete picture of events either⁴⁵), without waiting to

⁴³ Day 255/045/04

⁴⁴ BSI Statement at B1122.17 paragraph 100

⁴⁵ The ADC in fact obtained the figure for the number of dead from a member of the Media: BSI Statement Capt INQ 0002, C2.13 paragraph 65

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see what information would ultimately be provided to Headquarters 8 Brigade. It is not at all surprising that the information was 'wildly out':

MR CLARKE: Do you know why the information that you had was so wildly out?

A. I do not know why, but I can only say this: from my own experience of fire fights -- and this, as I understand it, was in a very short period -- you very rarely get the picture right on the spot. And I have taken part in a number of fire fights, may I say. There is always confusion and, even immediately afterwards, there are differences of opinion as to what actually happened. And I could quote one or two famous examples if you so wished.

Q. I think we have the point.⁴⁶

5I-32 Although Colonel Wilford had been forward with his soldiers in the Bogside, he had not been with them from the beginning of the incident and was only in a position to report - cautiously - details that he had heard at the time of the interview:

Well I'm told from my quick SITREP and you must understand that it's only a very quick SITREP that three gunmen were hit. We have not got the weapons but this is the usual thing. We saw people come forward. I'm not going to say that I saw weapons taken away because I don't know yet. I have not spoken to the men on the ground.⁴⁷

5I-33 He had, however, experienced the fire from the gunmen himself:

If you're being fired at you return fire and they know that perfectly well.⁴⁸

5I-34 At about the time of these interviews with the media the Officer Commanding Support Company⁴⁹ was interviewing those soldiers whom he understood to have been all of the soldiers who had opened fire. He

⁴⁶ Day 255/050/18

⁴⁷ B1110.001

⁴⁸ B1110.001

⁴⁹ Who had not been exposed to the media and did not know what was being said.

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conducted this exercise in order to inform his commanding officer of the engagements that had taken place during the fire fight, not to institute an investigation to run at the same time as that which, soldiers having discharged their weapons, would inevitably be carried out by the Royal Military Police. It was an exercise he carried out on his own initiative. At the time at which he was interviewing the soldiers Brigade had not yet required statements from the senior officers in 1 PARA, and he had no reason to even anticipate at 1700 hours or thereabouts on 30th January 1972 that he was going to be quoted in Parliament the following day. This exercise would enable him to provide a prompt report on the number and nature of the engagements in which the soldiers of his company had been involved.

5I-35 Major Loden recorded what the soldiers told him of the details the Commanding Officer would need, and which in turn the Brigade Commander would no doubt require from the Commanding Officer: the grid references (firer and target) and the nature of the engagement. For the purposes of this exercise the names of the firers were irrelevant: many of them would have meant nothing to the Commanding Officer and none of them would have meant anything to the Brigade Commander.

5I-36 While the names of the firer would have been recorded somewhere⁵⁰ for the purpose of the RMP investigation, at this stage these senior officers needed to know what had happened, not the names of those who had been involved:

I was not of course the originator of the List and cannot therefore explain why the names of the soldiers were not included. I would observe, however, that this was what might be called an operational reporting process, a Company Commander providing his Commanding Officer with details of the number and type of engagement in which his company had been involved. That is information a

⁵⁰ Presumably by the Company Sergeant Major

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Company Commanding Officer would have needed at an early stage (I note that the number of rounds fired by each soldier is not recorded either). It must be remembered that this was a reporting process, a totally different process to the investigatory process that would in any event be carried out – and probably was already by the time I was doing these statements – by the RMP. Once Brigade asked for statements later in the evening I imagine that I or Major Loden or both of us decided that the most practical way to include the information on the list would be to attach a copy of it by way of an Annex to Major Loden's statement. For the purposes of operational reporting names were not in any event relevant and they would have meant nothing to anyone outside the battalion.⁵¹

...in an operational report required very quickly, it is of no importance for operational reasons whether it was Private Jones or Private Smith who did this or that; that is meaningless to a brigade commander. It has every meaning, of course, when it comes to the investigative side and the two things are quite different and separate.⁵²

5I-37 There are of course inaccuracies in the list that was produced. It may be that these resulted from the circumstances in which the discussions took place (in the cramped back of the Pig, with only a small light with a 12 volt bulb,⁵³ Major Loden using a map which the majority of the soldiers would not have used during the afternoon and would probably not have seen before) and/or the speed with which the exercise had to be carried out:

It was my best attempt at the time to find out what had been going on. It was very important for me to ascertain what had happened as quickly as possible and to report this to my Commanding Officer.⁵⁴

⁵¹ Gen Sir Mike Jackson, BSI Statement, CJ1.63 paragraph 14

⁵² Gen Sir Mike Jackson, at Day 384/041/08-15

⁵³ Day 344/013/24-014/05

⁵⁴ B2283.009 paragraph 53

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5I-38 During the course of the evidence to this Inquiry, the exercise Major Loden undertook and the list which resulted from the notes taken by him⁵⁵ have been subjected to a process so creative as to make it unrecognisable. With General Ford:

You must have been -- pausing for a moment -- somewhat amazed that in a very short time the paratroopers had moved into a highly fortified area of the Bogside and managed to, as it were, kill snipers at the top of flats who might not be, as it were, making their positions clear with white flags and had therefore come out with really an amazing tally of at least 13 people; did it not strike you as a rather successful raid?⁵⁶

5I-39 In fact, contrary to what Mr Mansfield told General Ford, the list, when typed up, was headed 'Gun Battle' and identified in terms those of the engagements where the targets were thought to have been killed. There are four of them. In ten instances the target is described as 'hit', and one of these was 'hit in thigh); one other was 'possibly hit'. One gunman is described as 'unhurt' and one incident listed is '1 gunman with pistol fired 2 rounds at a soldier armed only with a baton gun at GR 43231688 (Alleyway). Soldier fired one baton round and withdrew swiftly'.

5I-40 General Steele, whose evidence that he was the operational staff officer at Headquarters 8 Brigade appears to have been ignored, was told quite wrongly that there was a supplemental list, containing the names of the soldiers:

MR MANSFIELD: Yes. I appreciate that. Was your function to do more than merely collect?

A: It was to collect and then send on to Headquarters Northern Ireland.

Q: Going back to this list on ED49.12, you read it on the evening of the 30th?

⁵⁵ **B2283.020**

⁵⁶ Michael Mansfield QC to Gen Ford, at Day 260/038/17

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A: So I recall.

Q: And it must have occurred to you, when you read it on the evening of the 30th, that this was an extremely important document because it indicated something which had not come over the radio in detail, the details of the alleged fire fight, or at least the trouble encountered by 1st Paras in detail; did it not?

A: Yes, but had I not also received earlier a report, a sitrep, which I think is in the log which indicates the figure 15 dead and so one would link in with the other in my mind.

Q: I am not going to the log for the moment. Yes, the log does relate, not to 15, but to 14?⁵⁷

A: Very good.

Q: Concentrating on this document. One of the most significant things would be, as you will see as you run down that list, a lot of grid references are given and places and description; you see that, it is obvious?

A: I do.

Q: But the real question is: who are the soldiers at the grid references?

A: I mean, I have no idea. It came -- my only knowledge would have been, presumably, that as it was given to me by Major Loden, that they were soldiers of his Support Company.

Q: The real question is: which soldiers?

A: I have no idea then or now.

Q: Did you ask him?

A: No.

Q: Why not?

A: I really cannot answer that question, I have no idea.

⁵⁷ In fact the List of Engagements lists only fourteen engagements in the true sense, as the entry at serial 7 is of a gunner firing a pistol at a baton gunner who fired a baton round and withdrew: see B2283.020

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Q: I would like you to think very carefully, please: this was an operation over which it would appear, it has already been put to you, that you had in fact very little control, and at the end of the day you discover a large number of people have been shot and you are collating a report to hand on, in other words a series of reports. Kindly explain why you asked no questions about which soldiers it was that had in fact shot dead a number of people?

A: Maybe it was because it was not my particular responsibility as the Brigade Major to look into the investigation of a round being fired; that was done by the Royal Military Police and I suspect that I thought to myself that each of these incidents would be properly examined by the RMP in the normal way.

Q: You see, the thing that is missing from Major Loden's report is the list which goes with this, indicating which soldier was at which grid reference; that is missing, is it not?

A: Yes, I cannot help you there, I have never seen it.⁵⁸

5I-41 And it was General Steele who was wrongly told that Colonel Loden's evidence had been and would be that he marked what the soldiers told him on a map:

MR MANSFIELD: Again, the reason for asking you these questions is that Major Loden will say -- and has said -- that he marked up a plan himself that very evening when he interviewed the soldiers who claimed to have done the shooting. Did you ever see that map?

A. No⁵⁹

5I-42 At no stage had Colonel Loden said or indicated that he would say any such thing, rather the opposite:

I had a map with me in the command vehicle and the soldiers did the best they could to identify where they were and what they shot at. I wrote down what they told me in

⁵⁸ Day 268/073/25

⁵⁹ Day 268/082/02

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my note book with grid references taken from my map and my notes were subsequently typed up and appended to my statement dated 31 January 1972. I do not recall checking the typed document against my hand written note or against the map.⁶⁰

5I-43 Between 1706 hours and 1743 hours, when the Brigade Major entered the details onto the Brigade Log, 1 PARA were able to discuss the afternoon's events in some detail, producing the information that appears at Serial 233 of the Brigade Log.⁶¹ 1 R ANGLIAN sent the details of the shooting incidents in which they had been involved, in which two gunmen were seen to fall, shortly thereafter, at 1820 hours.⁶²

5I-44 By 1810 hours, it is safe to assume after Major Loden had completed his notes, 1 PARA were able to draw up a list of casualties, ammunition expenditure and engagements for each of the companies.⁶³ Mr Mansfield told Colonel Loden that this list does not match the engagements he recorded:

The point I am going to make is: if you have done the interviewing between 5.30 and 6.10, or thereabouts, to provide battalion with a sitrep report – and I suggest you are the only one who would be providing this information in compendious form, if you did – then the sitrep report does not tally with your list, and that is why I am going to suggest once again the list had not been drawn up. Now do I make myself clear?⁶⁴

5I-45 In fact the two documents do tally. The entry in the 1 PARA Log lists fifteen engagements (all of course involving Support Company): six nail bombers, one petrol bomber, seven gunmen and an acid bomber. The list of engagements has fifteen numbered entries. And if the multiple engagements (in the sense that there was more than one target) in the list

⁶⁰ BSI Statement at B2283.009 paragraph 52

⁶¹ W52

⁶² 8 Brigade Log, W53 serial 241

⁶³ 1 PARA Log, W91 serial 45

⁶⁴ Day 348/008/18

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of engagements (the three nail bombers at at the same grid reference, for example, at serial 9) are read as single engagements, the two lists each contain the same numbers of each type of target (seven gunmen, one petrol bomber, one acid bomber – the bomber at the top floor of the flats – and six nail bombers).

5I-46 After a further period of time (it is not possible to tell how much: the time 1945 hours in the Brigade Log⁶⁵ could be when the recording of the message was complete, and it is possible that the information was taken to Ebrington Barracks from the City), 1 PARA were able to provide a narrative of their operation to accompany the number and type of engagements. 1 PARA were claiming five hits.⁶⁶ By that time 8 Brigade knew more than 1 PARA did: at 1746 hours it had been told that there were seventeen individuals with gunshot wounds at Altnagelvin Hospital, five of whom were dead⁶⁷; at 1840 hours it had been told that there were eleven dead at Altnagelvin and was provided with some of their names and addresses⁶⁸; and at 1855 hours it had been told that there were eleven dead and fourteen with gunshot wounds⁶⁹.

5I-47 By the evening of 30th January (and it is perhaps irrelevant whether or not General Ford had the information before he left for Lisburn), the senior officers knew that a very serious incident had taken place. It is however dangerous to apply too much hindsight and to assume that they must then have concluded that something had gone wrong.

⁶⁵ W56

⁶⁶ W57 serial 11

⁶⁷ 8 Brigade Log, W52 serial 234

⁶⁸ 8 Brigade Log, W54 serial 249

⁶⁹ 8 Brigade Log, W54 serial 253. Gen Ford's Diary of Events noted that when he returned to Headquarters 8 Brigade at 1720 hours he discovered that the total dead had risen to eleven (B1127). This does not appear to be correct: 8 Brigade did not know that there were eleven dead until after half past six, by which time the General had left for HQNI.

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5I-48 As at the evening of 30th January 1972 Colonel Wilford and Major Loden had no reason not to accept what their soldiers were telling them: both of them had personally experienced the IRA fire that afternoon and both of them had seen their soldiers behaving as if reacting to incoming fire. 1 PARA had been in Northern Ireland for a long time; the soldiers had been fired at and had dealt with serious rioting before, and had not fired their weapons without justification. On 30th January there were allegations that the troops had fired into the backs of a fleeing crowd, but Major Loden knew first hand that that was not true, and it would not have been the first time that Nationalist Ireland, both media and people, had made serious - and untrue - allegations against the Army. And both officers knew that, whatever their own opinions, the RMP would be carrying out an investigation. For the immediate future 1 PARA were still the 39 Brigade Mobile Reserve, and none of the officers could afford themselves the luxury of undermining its operational efficiency with some sort of inquiry of their own.

5I-49 General Ford, Brigadier MacLellan and Colonel Steele were in a similar position, albeit at varying degrees of remove, to the officers in 1 PARA. The troops who had been involved in the action were saying that they had engaged gunmen and bombers. The officers could not just assume (as is being assumed by certain parties now) that that was not the case. General Ford was asked why he did not make inquiries as to what had gone wrong. No suggestions were made as to how he might have gone about it. Mr Mansfield suggested that he could have gone and spoken to the Commanding Officer of 1 PARA if he felt that the Brigade Commander was not getting to the bottom of things rapidly enough, but it cannot be assumed that the General would have been in any better position than the Brigadier: Colonel Wilford could only have told him what he knew the troops on the ground were saying.

5I-50 And if the General had taken the extraordinary step of interviewing the soldiers himself, they would presumably have told him what they had already told their company commander. No questioner has considered

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whether such a process would have affected, or would subsequently have been alleged to have affected, the RMP investigation,⁷⁰ or whether a statement would or should have been taken and if so by whom. And how much time is it envisaged the General would have spent on this task, when his responsibilities were Province wide operations and there were others whose responsibilities included discipline? Was he expected to read any documents before speaking to the troops and put discrepancies between their evidence and that of others to them?

5I-51 Like many of the questions these witnesses have been asked during long periods in the witness box during this Inquiry, these are easy questions for lawyers to ask in 2002 or 2003. They take no account however of the military structures and procedures to which all of the witness were subject in 1972, the realities of holding a senior command or staff appointment in the Army on operations.

5I-52 These problems are compounded by an approach to the military evidence which has focused on finding fault to the minutes detail rather than seeking facts which would promote an understanding of how the Army in Northern Ireland in 1972 operated and sought to deal with the problems it faced:

LORD SAVILLE: I am bound to say my own view, it may be completely wrong, General Ford, is that when you got back that night, the very first thing you would ask -- which anyone would ask, but particularly the person who was in overall command -- is: "what happened?" If you had asked the question "what happened", it would surely have soon transpired that vehicles had in fact come in, in what one could describe as a frontal assault down from barrier 12, radically different from the plan to try and encircle rioters, for example, by coming in from the Presbyterian Church

⁷⁰ 'As a matter of principle, I did not interview any of the soldiers who gave statements to Widgery. My view was that if I had done so, it could later be said that I was potentially interfering with witnesses and I did not want this suggested': Col Ferguson, BSI Statement, **B1122.18 paragraph 108**

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one way and up from barrier 14 the other; surely you would have been most anxious to discover what had happened that evening?

A: Sir, I was most anxious, I am sure, to find out what had happened and after having what information was available there, I then decided that the best way of handling it was for the Chief of Staff to try and get together all information that was available, I think up to midnight. But I retired so that I would be fresh next morning to handle the inevitable consequences.

MR HARVEY: Even apart from that night, General Ford, thereafter the question of the use of the APCs was a major factor that would have to be dealt with during the course of the Widgery Tribunal; you were aware of that. You were aware of that because there were discrepancies between what was supposed to have happened and what actually happened?

A: (Witness nodding).⁷¹

5I-53 The difficulty is, that there was no prohibition against the use of vehicles and there were no orders to 1 PARA to try and encircle the rioters. General Ford was in any event in no position to judge whether the operation had been executed as planned, as he had not been involved in any of the tactical planning for the arrest operation. So far as that operation was concerned, there were no discrepancies between what happened and what was supposed to have happened, because there were no orders as to tactics from either General Ford or Brigadier MacLellan. The situation demanded that the commander of the arrest force have the freedom to decide how to tackle the riot consistent with his mission to arrest as many rioters as possible.

5I-54 The assumptions highlighted by this passage, and others like them, have no basis in the evidence (rather, in some cases, they have met with a unanimous denial from the military witnesses, who have repeated their

⁷¹ Day 257/061/16

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denials on numerous occasions), but have run through the whole of the senior officers' aspect of this Inquiry. They disclose a fundamental misunderstanding of the evidence, which can only ever be considered fairly if they are abandoned.

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CHAPTER 5J

THE CONSPIRACY ALLEGATION

5J-1 THE CASE FOR THE EXISTENCE OF A PLAN WITHIN A PLAN

5J-1 We have, in the preceding sections, set out the essential evidence and attempted fully to analyse the contemporary documents relating to: (i) the background to the military planning for the day; (ii) the planning itself and; (iii) the role of the senior officers in the execution of that planning, to the extent that those matter are not addressed in other chapters. We have also sought to address and respond to the principal criticisms directed at those matters.

5J-2 There have, however, been far more serious, but largely unformulated, and in part mutually inconsistent, criticisms made of the planning, which in their various forms appear to represent allegations that all the disclosed planning was, in reality, an elaborate concealment of what were the true intentions of politicians, civil servants and senior army officers.

5J-3 It is not clear to what extent those allegations subsist, or may be permitted by the Tribunal to be pursued, against the politicians, the civil servants or the soldiers. All that we can attempt to do in these submissions is to record those allegations which have variously been raised and explain why, in our submission, the Tribunal should not permit them to be pursued. If attempts are made to revive or pursue any of these submissions, we wish to reserve our right to require the Tribunal to serve clear and unambiguous notice of those allegations which they are satisfied our can properly be required to answer, and to permit us to respond to any such notice.

5J-4 In his opening Christopher Clarke QC addressed the issue of whether there was some ulterior purpose concealed behind the Army's plan for dealing with the civil

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rights march on 30th January 1972.¹ Prominent among the many, varying and sometimes inconsistent allegations and theories which have been advanced from many quarters – but it must be emphasised not from the Tribunal – are the allegation that the Army intended to use the march as an opportunity to "draw out" the IRA and the allegation that the march was to be used as an excuse to teach the residents of the Bogside and the Creggan a lesson, whatever that may mean. Mr. Clarke rightly emphasised the particular need for precision in defining allegations of this sort.

*It is important not to get tied up in the semantics of the expression "teaching them a lesson", since that begs the question as to what the lesson was to be about and who was to be taught.*²

5J-5 It is clear from the evidence and documents analysed in the preceding part of this chapter that if, as was feared, rioters were to attack the security forces, it was the intention of the Army to respond with an arrest operation. In one sense this would have involved teaching the rioters a lesson. Thus General Ford observed to Desmond Hamill that: the emphasis on the arrest part of the operation

*The emphasis on [the arrest] part of the operation was not written into the orders, but stressed verbally. The object of teaching the hooligans a lesson would be lost unless a good number were caught.*³

and he added:

*The main object of the operation was to stop the NICRA march. The Army hoped to take advantage of the anticipated action by the hooligans to seize them as well.*⁴

5J-6 In his opening Mr. Clarke was dismissive of the suggestion that there had existed a plan within a plan. He addressed in considerable detail the linked questions of whether there existed a plan to draw out the IRA in order to engage with them or

¹ Day 003/097 ct scq.

² Day 003/105/03

³ B1208.004.007 paragraph 3

⁴ B1208.004.007 paragraph 4

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to teach the citizens of the Bogside a lesson.⁵ (Day 3/97 et seq.) He undertook a comprehensive analysis, in particular of the secret and confidential documents provided to the Tribunal by the Government, and observed:

The content of this material is important, both for what it says and for what it does not say. There is no reference in it to any plan or anything that looks like a plan to draw out the IRA in order to engage with them or to teach the citizens of the Bogside a lesson.

On the contrary, important parts of this material are inconsistent with such a plan.⁶

Later he observed:

Similarly, as we shall see later, and in one respect now, in the high level documentation that followed Bloody Sunday no indication is to be found, or has yet been found, of the existence, fulfilment or non-fulfilment of an such plan.⁷

and later still concluded:

It seems clear that the plan was to arrest as many hooligans as possible if, as seemed highly likely, they caused trouble and to do so in a big scoop-up operation using the 1st Battalion of the Parachute Regiment.

The wisdom of the concept and of the operation as planned is one of the questions which the Tribunal will have to address.

A quite separate question is whether in truth there was some other and different plan, different from and inconsistent with the documents.⁸

5J-7 Nevertheless, the representatives of the families and those injured on Bloody Sunday in their opening statements made allegations that there was a concealed plan. These allegations were ill-defined and unparticularised. This unsatisfactory state of affairs was recognised by the Inquiry in its letter to the Interested Parties

⁵ Day 003/097 ct seq.

⁶ Day 003/097/18

⁷ Day 003/100/16

⁸ Day 003/105/006

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dated 19th December 2000 in which it referred to allegations in opening statements "that persons at the highest level in the military and political establishments in London and Northern Ireland (in particular at a level above that of General Ford) authorised or condoned either a policy to draw out the IRA or engage with them, or a policy to shoot-to-kill ringleaders or rioters, or to teach the people of Derry some form of lesson." The Tribunal required those seeking to make such allegations to give notice in writing to the Tribunal, giving full particulars of its basis and the evidence which is said to justify it. It added:

...the Tribunal, itself, will need to be satisfied as to whether there is a sound basis for any such allegation to be investigated.

5J-8 Following this ruling, various Interested Parties lodged documents in which they made allegations including allegations of conspiracy to murder. These documents, which are analysed below, are open to the same objections as the statements in opening. However, the Tribunal has never given a ruling on whether these allegations were properly maintainable.

5J-9 Furthermore, the Tribunal has declined to serve Salmon letters indicating to individuals criticisms which it may be minded to make of them in its final report. As a result, despite these observations by counsel to the Tribunal in his opening on 29th March 2000 and the lack, so far as we are aware, of any new evidence since that date which might support a case of conspiracy to murder, none of those we represent has been made aware of whether these very grave allegations remain live issues in the proceedings or, if so, what case there may be to answer.

5J-10 In these circumstances we have attempted to extract from the opening statements and notices of allegations made on behalf of the families, against politicians and senior officers, those allegations which may be made in respect of this issue and to respond to them on behalf of those we represent.

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ALLEGATIONS MADE ON BEHALF OF THE FAMILIES

The clients of Madden and Finucane

5J-11 In the course of his opening on behalf of the clients of Madden and Finucane, Arthur Harvey QC contends that General Ford was pursuing an ulterior motive. While other senior Army Officers such as General Carver, General Tuzo and Brigadier MacLellan are presented as moderate, fair and anxious to keep within the law, General Ford is portrayed as having a “natural repugnance to the idea of the military standing idly by and tolerating what was going on in Derry.”⁹ According to the submissions of Mr. Harvey, General Ford had fallen under the influence of extremist Unionist politicians on the Joint Security Committee and the extreme Unionist Strand Traders Association on his visit to Londonderry on the 7th January 1972. Later in his opening, however, Mr. Harvey seems to be saying that General Ford, inspired by his meeting with the Strand Traders Association on the 7th January 1972, imposed his will on the plan for the march by insisting on the use of 1 PARA and a scoop-up operation and that this was approved at a high level by the Westminster Government.

5J-12 General Ford is criticised for taking “the very simplistic soldierly view, that if there is disorder then order should be restored, if there are breaches of the law, then the law should be enforced.”¹⁰ It is said that General Ford disapproved of the headquarters’ attitude to the position in Londonderry and actively supported the programme for the re-imposition of the rule of law in Derry in a firm and resolute way.¹¹ General Tuzo resisted the pressure from persons within the Stormont Government for the Army to take harsh and repressive measures.¹² Undeterred by the fact that in his Assessment of 14th December 1971 General Ford recommended the adoption of Course 1 (the least proactive, as fully set out in Section 5B above)

⁹ Day 044/092/18

¹⁰ Day 044/004/03-06

¹¹ Day 044/013/03-09

¹² Day 044/014/23 – 044/015/21

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Mr. Harvey alleged that he planned "a military operation of less long-term significance than the occupation of Derry in terms of the Bogside and Creggan, but a lesson to the people of Derry and a foretaste of what was to come when the forces were available to them."¹³ Similarly, General Ford's Memorandum of the 7th January 1972 is claimed to demonstrate that he "had come to the conclusion that the stage had then been reached where the only solution was to shoot and shoot to kill those persons who were involved in rioting."¹⁴ We have set out what we respectfully submit is a more accurate and careful analysis of that document in Section 5B above.

5J-13 According to Mr. Harvey, Brigadier MacLellan and Chief Superintendent Lagan had a sensible view of the best method of dealing with the situation in Derry by the use of local troops "a policy which personally and professionally offended [General Ford]."¹⁵ However, "their recommendations were simply overborne by the military approach of General Ford and the implementation of his policies by use of the 1st Battalion of the Parachute Regiment." ¹⁶

What disturbed General Ford about his visit was the attitude of his Brigade Commander and, of course, Chief Superintendent Lagan and the commander of one of the resident battalions. What did not seem to disturb him was the concept emanating from the Strand Traders' Association of the ethnic cleansing of 5,000 people from the area in which they lived, and lived in that area because they were compelled by the political necessities of Unionist rule to live in one ward and one ward only and that the military curfew should be imposed and that they should be shot on sight.

What one could say is that any civilised person responding to such attitudes would, one would have thought, made common cause with General Tuzo in that one had just met with such a reactionary group and one would be deeply concerned in relation to any

¹³ Day 044/093/08

¹⁴ Day 044/023/14

¹⁵ Day 044/098/22

¹⁶ Day 044/097/22

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*suggestions that they might make in relation to requirements for the imposition of law and order.*¹⁷

5J-14 Referring to the meeting of GEN 47 on 11th January 1972 Mr. Harvey states:

*At this particular meeting again it seems to be the position that no one is really averting to that matter which General Ford has allowed himself to be particularly exercised by, that there is such a problem in Derry at this moment, that shooting to kill unarmed people is the only answer for law and order compelled by a sense of duty to commit murder for the greater good. But within the meeting there is a recognition that the further alienation of the Catholic population at this stage is something that ought not to be contemplated.*¹⁸

...

*Certainly at this meeting one can say that there is no sense of what was happening in the mind of General Ford, but also the embargo on a large military operation.*¹⁹

It is submitted that this concession by Mr. Harvey is totally inconsistent with the various conspiracy theories propounded by Interested Parties.

5J-15 However, Mr. Harvey then refers to the minutes of the meeting of the JSC on 27th January 1972 which include the statement: "The operation might well develop into rioting and even a shooting war"²⁰ and to the memorandum of Colonel Dalzell-Payne dated 27th January 1972²¹ which, Mr. Harvey suggests, shows "the MoD preparing for the fallout in public relations if the march goes disastrously wrong".²² On this slender basis he concludes:

What it does, I respectfully submit, is further raise the question: on 27th January and just prior to it, the Government and politicians had been anxious to ensure that there was co-ordination and consistency of line being taken. Why then does it simply evaporate

¹⁷ Day 044/107/24

¹⁸ Day 044/133/09

¹⁹ Day 044/134/07

²⁰ Day 045/030/06 – 045/031/08

²¹ G82.512

²² Day 045/038/8-21; see generally: Day 045/030 – 045/043

*from the papers and these bald statements suddenly arise without comment?*²³

He contends that there were

*... discussions involving Mr Faulkner, General Tuzo and the British Government, and that these had turned on the expectation of very serious violence in connection with the Derry march. In the absence of other Cabinet papers and other documents which deal with the fringe meetings that may have resolved issues before they find their way into these documents, it is simply not possible to say.*²⁴

When members of the Tribunal put to Mr. Harvey that the operation order stated that the concept of the operation was to be "lowest possible key"²⁵ he responded with the following unparticularised allegation:

*The answer, I respectfully submit, is: yes, the lowest possible key is right in relation to the march, but it is not the concept of General Ford and it is not the concept of the politicians and the officers in the MoD in relation to arrests.*²⁶

According to Mr. Harvey the operation order merely indicated "a divergence of understanding of what is happening by Brigadier MacLellan and those who were above Brigadier MacLellan..."²⁷ and he questioned whether the arrest operation was genuine.²⁸

5J-16 The true nature of the allegation made on behalf of the clients of Madden and Finucane is confused further by Mr. Harvey's subsequent statement:

The point that I am making is that in the employment of 1 Para, General Ford was perfectly aware that their reputation was the reputation of a regiment which would behave in an exceptionally harsh way to anyone to whom they had been ordered to attack. He

²³ Day 045/041/16

²⁴ Day 045/046/23

²⁵ This comes from G88,537

²⁶ Day 045/055/06

²⁷ Day 045/056/09

²⁸ Day 045/056/17 – 045/057/01

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*also knew that, so far as he was concerned, he was saying that the position in Derry had reached a critical time and unless fundamentally the people of Derry or the rioters in Derry were taught a very severe lesson, which he did not have confidence in the resident battalions to do, then this position would develop, and develop along the lines that he had seen where you would have to simply, on a regular basis, shoot persons for stone-throwing.*²⁹

5J-17 When asked directly by Lord Saville whether he was in fact suggesting that that shooting was anticipated by General Ford, Mr. Harvey replied:

*I respectfully submit, that that was anticipated by General Ford but not by the resident battalions under the command of Brigadier MacLellan.*³⁰

5J-18 On 10th December 1999 there was lodged with the Inquiry on behalf of the clients of Madden and Finucane a document signed by Kevin Finnegan QC and Patricia Smyth, in which they make the following allegation "against the MoD":

(m) Soldiers acted without authority when they entered the Bogside on Bloody Sunday.

This allegation is, of course, totally inconsistent with any suggestion that the soldiers who entered the Bogside on Bloody Sunday did so pursuant to some nefarious plan of any of the varieties advanced on behalf of the families. In particular, it is impossible to reconcile this allegation with the case advanced by Arthur Harvey QC in opening.

5J-19 In a document dated 12th February 2001 signed by Seamus Treacy QC and others "those represented by Madden and Finucane" make a number of allegations against senior military and political figures. The allegation of a plan within a plan is not expressly repeated. However, the following allegations are made against General Tuzo, Lord Carver, Colonel Dalzell Payne, Mr. Heath, the members of the JSC who attended the meetings of 13th and 27th January 1972, the members of

²⁹ Day 045/108/07

³⁰ Day 045/111/16

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GEN 47 who attended the meetings of 11th and 27th January 1972 and all members of the United Kingdom Cabinet and the Northern Ireland Cabinet.

- (1) It is alleged that "those responsible for the planning and control of the operation in fact contemplated the use of unlawful lethal force."
- (2) "It is our contention that the prevailing culture, politically and militarily in which the planning and control of Operation Forecast took place was one in which no adequate weight or consideration was attached to the Article 2 rights of the citizens of Derry. It is further contended that this prevailing culture was one which endorsed the perception that the citizens of Derry were hostile to the State and consequently were not to be regarded in the same light as the State would normally regard its own citizens, rather they were to be treated as enemies of the State."
- (3) "It is initially contended that the operation was not an arrest operation and we rely on the opening of Arthur Harvey QC in this regard."
- (4) "It is further contended that their conduct [i.e. the conduct of 1 Para on Bloody Sunday] evidences a plan which envisaged the use of lethal force. Thirteen acts of murder and a similar number of attempted murders constitutes strong circumstantial evidence of a plan which contemplated the use of unlawful force. Circumstantial evidence which is corroborated by the failure of the state authorities to take any action, disciplinary or criminal, against the soldiers responsible and further corroborated by the cover-up which was the Widgery Inquiry."
- (5) "It is contended that this conduct by the soldiers, in the absence of justification, raises a reasonable inference that the shooting of the deceased and wounded was either pre-planned or had the tacit acceptance of those involved."

5J-20 It is submitted that in a matter of this seriousness such imprecision is objectionable.

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5J-21 Finally, in questioning General Ford, Mr. Harvey appeared to withdraw an allegation of intention to kill.

Q. ... This operation to a large extent was coming at a time when you yourself felt there was a definitive moment which provided an opportunity, if it arose, to deal a fatal blow to the Derry hooligans?

A. I think "fatal" is a little over the top, Mr Harvey --

Q. Perhaps it has connotations beyond --

A. -- if I might say so.

Q. -- and I might say that I did not intend, but to deal a significant blow to them? ³¹

The clients of McCartney and Casey

5J-22 Lord Gifford QC, in his opening statement on behalf of the family of James Wray, dissented from Mr. Clarke's suggestion in his opening that, as Lord Gifford put it, "because no ulterior plan is referred to in the secret documents which have been disclosed there was therefore no ulterior plan."³²

We say that on the contrary there is a body of evidence already available which does point to the formulation and implementation of a plan, a plan to kill young people in Derry and to teach Derry Catholics a lesson, not a plan to draw out the IRA. That, we will be submitting, was not the plan. I shall refer later to the issue of the intelligence reports which we will be submitting would have indicated to those who were responsible for planning that the IRA would not be using the march, but on the contrary would be staying away from it. ³³

This is a clear allegation of conspiracy to murder. However, Lord Gifford did not see fit to particularise his allegation.

We are not expressing a concluded view either as to the details of the ulterior plan or as to all the persons who made it and were

³¹ Day 258/023/06

³² Day 049/050/09-13

³³ Day 049/050/19

*party to it; these are issues which have to be examined in this Inquiry.*³⁴

Having made an extremely grave allegation, but having reserved his position in this way, Lord Gifford then proposed that:

*when we come to the end of all the evidence we will then be able to see with greater clarity what was being planned, both from the documents that we will have from before the event and from an analysis of the events of the day itself.*³⁵

That point has now been reached but neither Lord Gifford, nor any of those representing Interested Parties making such allegations, has been able to provide sufficient particulars of their various allegations to enable us to respond on behalf of our clients.

5J-23 In his opening Lord Gifford drew attention "for the moment" to six matters which he suggested point very strongly "to the inference which we at present are minded to draw that there was a plan".³⁶ He later suggested that "it is legitimate to infer that there was indeed a plan to do precisely what General Ford had wished to do in his memo [of] 7th January":-³⁷

(1) The statements of General Ford and the development of his thinking between December 1971 and January 1972. In particular he refers to the Appreciation of 14th December 1971³⁸ and the Memorandum of 7th January 1972. This leads to the following submission by Lord Gifford:

So that, sir, while course 3 in its wider entirety had been rejected, the inference can be drawn that an element of course 3, the shooting of unarmed Derry youths, had been incorporated into the Bloody Sunday operation in order to achieve the objective which was postulated by General Ford in the 7th January memorandum.

³⁴ Day 049/051/05

³⁵ Day 049/051/15

³⁶ Day 049/051/22

³⁷ Day 049/116/16

³⁸ G41.270

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How does it look to those who look at the memorandum and then at the events? It looks like this: the desire to kill ringleaders among the rioters had been expressed on 7th January; the opportunity to kill presented itself with the Bloody Sunday March; a tough killing force, the 1st Battalion of the Parachute Regiment, was brought into Derry for the occasion. Killing in fact took place on a considerable scale; General Ford was personally on the spot to oversee the operation. Is it not reasonable to infer that the killing may have been deliberately planned in order to fulfil the stated and desired objective? ³⁹

- (2) The evidence of Soldier 027 that he was encouraged to "get some kills". In opening Lord Gifford made the following claim:

What we will have to probe is the way that the briefing came down the line. What we know is of course that the briefing came from the High Command through to the Battalion, down to the Company and then finally the ordinary soldiers were briefed, as 027 was, and he was briefed by Lieutenant 119 and we will await his evidence with interest. ⁴⁰

Despite Lord Gifford's assertion, we are not aware of any evidence implicating anyone above the level of Lieutenant 119 in such a briefing and the only evidence against Lieutenant 119 comes from 027. Whether any reliance is still placed by anyone on his evidence is unclear.

- (3) The statement of Guardsman INQ1141 that a couple of nights before Bloody Sunday he had been ordered to investigate the rubble barricade in Rossville Street to find out whether it was rigged with explosives.
- (4) The evidence which suggests that the IRA had agreed to stay away from the march and that this intelligence was known to the Army.
- (5) Lord Gifford's claim that that the Loyalist community in Derry had received information from the Government which satisfied them that the march would be stopped by force and that riot and bloodshed would result.

³⁹ Day 049/056/07

⁴⁰ Day 049/059/14

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- (6) The events of the day show that this, while purporting to be an arrest operation, was not an arrest operation.

*Another reason for believing that the killing of unarmed civilians may have been authorised in advance is that as the events in fact unfolded, soldiers fired in various circumstances in which, we will be submitting, they had no reason to feel threatened and they were therefore in flagrant breach of the Yellow Card and indeed of the law.*⁴¹

and later:

*It was not an arrest operation, it was a killing operation.*⁴²

...

*The events, we submit, may become more easily explained by the hypothesis that, far from being indisciplined, the soldiers were disciplined; they were following their orders; they were following a plan which authorised them, or at least some of them, to shoot as they did.*⁴³

This leads to the suggestion that:

*We must therefore have our minds open, we suggest, to the real possibility that there were in fact two plans: the official plan, an arrest operation, conceived by Brigadier MacLellan and possibly not even ordered by him, and the real plan from the point of view of those in the high command, a killing operation which had been adumbrated by General Ford in his memo 7th January, which was too sensitive to divulge to any but those who really needed to know it on the need to know principle and was on the day ruthlessly implemented by Colonel Wilford and the soldiers of the 1st Battalion of the Parachute Regiment.*⁴⁴

⁴¹ Day 049/068/22

⁴² Day 049/069/10

⁴³ Day 049/069/18

⁴⁴ Day 049/070/21

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5J-24 Lord Gifford then turns to the question of how far his alleged plan was “discussed and approved by those in the military and political hierarchies to whom General Ford was subordinate.”⁴⁵

*we submit there are further indications within the evidence that the plan to shoot selected ringleaders of the DYH, to use General Ford's phrase, that plan was not confined to the cerebrations of General Ford's mind, but was implemented and approved by the highest members of the political and military hierarchies. This of course is probably the most sensitive issue with which the Tribunal will have to grapple and for the purposes of this opening we propose simply to set down a number of facts and suggest that it may be inferred from those facts that the most senior political leadership up to and including the Prime Ministers of the United Kingdom and of Northern Ireland, as well as their most senior military advisors, knew that it was intended as part of the military response to the march that firing would be directed at young people who were not gunmen and who, at worst, were rioters. We will need to probe those facts in cross-examination; we may need to supplement them by further evidence.*⁴⁶

5J-25 Lord Gifford, in his opening, relies on the following matters:

- (1) He refers to General Ford's Appreciation of 7th January 1971, points to the fact that it was addressed to General Tuzo and suggests that it is inconceivable that it did not go to General Carver and other senior personnel in the Ministry of Defence. He refers to the lack of evidence that General Ford was ever rebuked or criticised for "his proposal that ringleaders should be killed".
- (2) He refers to the meeting of the JSC on 13th January 1971, the minutes of which record that the GOC reported that certain measures were in mind with a view to putting down the troublesome hooligan element.⁴⁷ The document states, "It was a very difficult problem to solve within the law."

⁴⁵ Day 049/071/17

⁴⁶ Day 049/073/13

⁴⁷ G52.316

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- (3) Lord Gifford refers to the fact that the minutes of the Director of Operations meeting on 26th January do not refer to the arrest operation and concludes that the decision to carry out an arrest operation was taken “outwith” that Committee.⁴⁸ Similarly he suggests that there is no indication that anything that could be described as a “shooting war” was anticipated.

*What has happened by the 27th? Is it that General Tuzo has finally agreed to implement the certain measures which he referred to on the 13th and which directly reflect the plan advocated by General Ford? We need to know, and we need to resolve the contradiction between Sir Graham Shillington's view that nothing really had to be decided at the Joint Security Committee meeting at all, all that he and General Tuzo were doing was reporting what the Directorate of Operations had decided, and not to ask approval for anything. There is a clear contradiction in that and the crucial importance that was given to the meeting in the other documents, to resolve that dilemma and that contradiction, the Tribunal must, we submit, seek evidence from whatever sources are now surviving and available as to the proceedings at that meeting.*⁴⁹

- (4) Referring to the meeting between Mr. Heath and Mr. Faulkner in London on 27th January Lord Gifford asks:

*Is it a coincidence that Prime Ministers Heath and Faulkner met, so far as these documents are concerned, met for the first time since 7th October 1971 on a date some three days before the march?*⁵⁰

and observes with regard to the note of the meeting at G81.511:

*Again we have to ask ourselves what was really said, given the serious worries that had been voiced in the morning, for whatever reason, about what might happen at the Derry march.*⁵¹

He then makes the following submission to which we draw particular attention:

⁴⁸ Day 049/094/02-05

⁴⁹ Day 049/094/23

⁵⁰ Day 049/096/17

⁵¹ Day 049/099/22

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But the point is that the note for the record is a note for the record; it does not purport and is not a verbatim report. So that when it is noted that the meeting with the Prime Ministers does not record any evidence of a plan made or approved whether to arrest or to kill ringleaders of the DYH, that does not mean that no such decision was discussed or approved, it just means that in order to draw correct inferences from all these meetings and the events which followed them, we have to look at the whole picture through different documents and we cannot simply say, as we submit Mr Clarke tried a little facilely to do, to say because there is no evidence we cannot conclude there was any sinister plan. ⁵²

In our submission it is Lord Gifford's approach which is facile.

- (5) Lord Gifford refers to the statement made by James Callaghan M.P., as he then was, in the House of Commons on 27th April 1972:

These tragic events belong in the past. They took place when there was divided responsibility for security and when it is fair to say that very heavy pressure was being brought to bear upon the army commanders to step up their attitude. I do not suppose any of us will ever know whether they were acting on their own judgment or whether they yielded to the judgment of others. ⁵³

- (6) Lord Gifford relies on the memorandum by Colonel Dalzell-Payne at G82.512 and draws the following conclusion:

One sees Colonel Dalzell-Payne referring to a "shoot to kill" policy as a measure of last resort, implying perhaps that it may not have been decided for this march, but at the same time clearly having in mind that some additional measures, some measures having serious consequences had been and might lead to a serious public relations situation on 31st January. ⁵⁴

⁵² Day 049/101/01

⁵³ It was referred to by Lord Gifford at: Day 049/102/03 (In fact, Mr. Callaghan was unable to recall the source of this information: KC2.1)

⁵⁴ Day 049/105/17

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- (7) Lord Gifford relies on a television interview⁵⁵ in which Lord Carver refers to rioting in Londonderry:

General Carver: And of course there were immense protests from the Protestant population about what was going on. I mean, it was agreed in the British Government. I mean, it was agreed that something had got to be done.... It was decided by Faulkner ... if this march attempted to come out of the Bogside into the William Street area and towards the Protestant part of town, that not only must it be stopped -- and after all an order had been issued when these anti-internment riots started, that all marches were banned, all the illegal marches were banned, that an attempt should be made, if they came, to arrest at least some of those taking an active part. I thought, I thought it was a perfectly reasonable plan. ⁵⁶

He made the following submission in relation to this interview:

We accept that in the last part of the interview Lord Carver describes the decision as an arrest operation, but we ask: is that the whole truth? If it was just an operation to arrest hooligans, would that require a decision of the British Government? We would submit clearly no. In any case, as Lord Carver himself says in the early part of the interview, the arrest operation, arresting the young people did not work because once you arrested them, you could not get the charges to stand up in court.

So we submit that in this important interview, which is more explicit than anything said by Lord Carver in his statement, Lord Carver did begin to lift the carpet and uncover the dirty truth. ⁵⁷

- (8) Lord Gifford made the following submission:

The next factor ... that we pray in aid to show that we can infer that there was not only a plan, but a plan approved in London, is that if, as we have submitted, General Ford, with the approval of his Commander, General Tuzo, had decided to implement on 30th January the plan which he had outlined on 7th January and which General Tuzo himself had been mulling over on 13th January, he could not have done so without the approval first of superior officers, who in turn would need the approval of the political

⁵⁵ X1.28.28

⁵⁶ Day 049/107/15

⁵⁷ Day 049/109/14

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*leadership of the country. The best reason for inferring that the plan was approved by the political leadership is that it could not in all reason have been implemented without such approval.*⁵⁸

He states that there is no evidence of any level in the chain of military command having acted in a maverick way by implementing such a plan without authority and that to have done so would have been an act of gross indiscipline against the normal functioning of political and military structures.⁵⁹ He appears therefore to contend that this supports the existence of a secret plan which was approved at a high level in Westminster. This argument is totally circular and self-fulfilling. It seeks to construct a conspiracy to murder from nothing.

(9) Lord Gifford contended that the desire to see law and order imposed by the shooting of rioters was not something which was novel or unthinkable to the members of the British Cabinet at the time. In support of this submission he relies on a statement allegedly made by Lord Hailsham at a meeting of GEN 47 in April 1971. In developing his case Lord Gifford states that "if the reasons for shooting enemies of the Crown appeared justifiable to Lord Hailsham in April 1971, they might have seemed far more compelling to him and his colleagues by January 1972..."⁶⁰

(10) While accepting that it is "indicative rather than probative" Lord Gifford further relied, in support of his conspiracy theory, upon the "cold and merciless" response of Mr. Heath to the concerns of the Taoiseach in a telephone conversation on the evening of Bloody Sunday. Mr. Heath's attitude, Lord Gifford claims, is that of "a leader who had no pity for those who had been slain."⁶¹

5J-26 McCartney and Casey state in a letter to the Inquiry dated 15th January 2001:

⁵⁸ Day 049/110/03

⁵⁹ Day 049/110/24 – 049/111/05

⁶⁰ Day 049/113/12

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In most cases where one interested party accuses another party of wrongdoing, that accusation is based on evidence within the direct knowledge of the accusing party. However, in the present case, the Interested Parties whom we represent must depend almost exclusively on the Inquiry's staff to unearth all relevant material on the basis of which adverse inferences may be drawn against senior military and political figures. For this express reason, in our opening statement rather than making direct allegations against senior military and political figures, we confined ourselves to indicating areas of questioning and further investigation that we believe likely to lead to evidence supporting such allegations.

We would make two observations in relation to this passage. First, any fair reading of Lord Gifford's opening shows that he was maintaining a positive case of conspiracy to murder. Secondly, such an allegation should not be made without evidence to support it.

5J-27 Whatever inhibitions Lord Gifford may have felt in opening his client's case, McCartney and Casey make the following allegations in their letter of 15th January 2001 to the Inquiry:

- (1) All the members of the JSC present at the meeting on 27th January 1972 knowingly approved a course of action adumbrated by General Ford in his Appreciation of 7th January, namely to shoot selective ring leaders amongst the DYH, after clear warnings have been given. In support of this they rely on:
 - (a) The Ford Appreciation of 7th January 1971.
 - (b) The timing and agendas of the JSC meetings.
 - (c) The fact that certain members of the JSC harboured strong views.

⁶¹ Day 049/116/13

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- (d) The fact that the operation actually carried out was one in which persons seen to be rioters were deliberately shot.
- (e) The absence of any disciplinary action after the event.
- (f) The false story deliberately concocted to excuse the action taken.

They also rely on the fact that no document shows that any high level decision had resulted in abandoning that proposal.

- (2) The plan adopted by the JSC had the approval of "the most senior echelons of the military command", of whom they have to date, so far as we are aware, identified only Lord Carver and Colonel Dalziell-Payne. In support of this allegation they rely on:

- (a) The Ford Appreciation of 7th January 1971.
- (b) The JSC decision itself "which evinces proof of military input from London".
- (c) Lord Carver's documentary interview.⁶²
- (d) Colonel Dalziell-Payne's memorandum of 27th January 1971 prepared in anticipation of "some of the problems we may face on Monday 31st January 1971 if events on Sunday prove our worst fears."⁶³
- (e) The absence of any disciplinary action after the event.
- (f) The failure of Lord Carver to reprimand Ford for the Appreciation of 7th January 1971.

⁶² X1.28.27-28

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Such failure amounts to implicit authorisation of such a shoot-to-kill policy.

(3) Mr. Heath and all the other members of GEN 47 who attended the meeting on 27th January were aware that the JSC meeting “had authorised implementation of the Ford Memo plans ...and participated in the approval of or acquiescence in these plans by GEN 47.” Furthermore, Mr. Heath and all the members of the United Kingdom cabinet who attended the Heath-Faulkner meeting on 27th January were “aware of the JSC decision ... and expressed [their] approval of these plans to Mr. Faulkner.” In support of these allegations they rely on the following matters:

(a) The meeting of the two Prime Ministers was brought about in whole or in part by the imminence of the Civil Rights march.

(b) “The proper inference to be drawn from the fact that the JSC meeting took place in the morning of the same day is that Mr. Faulkner, as prime Minister, would have been fully briefed on all matters of urgent importance, including the fact that the meeting was considering the risk of a “shooting war”, and that he would have indicated his view to Mr. Taylor as to what the meeting should decide.”

(c) “Mr. Faulkner would certainly have apprised [Mr.] Heath of action which had been authorised as above”

(d) The degree of force to be used in stopping the march was recognised to have serious political implications “which would have been notified at the very least to the UK Prime Minister and in all probability to the other members of GEN 47”

- (e) The fact that the UK government had instructed Mr. Smith to represent its position to the JSC makes it reasonable to infer that the decisions taken would have been promptly reported back to Mr. Heath.
- (f) "The absence on the record of any dissent from the plans authorised by the JSC justifies the inference that GEN 47 approved those plans. If the idea had been proposed and rejected, the minutes would be far more likely to have recorded as such"
- (g) The note for the record does not contain the full account of the Heath Faulkner meeting.
- (h) "We also consider it reasonable to infer that, where a meeting covered a possible future event which might have serious political consequences, the official record of such a meeting was likely to be highly sanitized."
- (i) "In line with the foregoing, we allege that if a shoot-to-kill plan had been notified to Sir Edward Heath by Mr. Faulkner and rejected by Sir Edward, the note for the record would have been more likely to reflect the British government's rejection"
- (j) "Sir Edward Heath's treatment of Irish Taoiseach Mr. Jack Lynch in their telephone conversation on 30th January demonstrates Heath's implacable hostility to the marchers and the organisers of the march and at no point indicates that its outcome was either surprising or regrettable."
- (k) "In the context of the meeting on 31st January between Sir Edward Heath and Lord Chief Justice Widgery, Sir Edward's "propaganda war" reference shows a desire to justify the actions of the army at all costs. Sir Edward appears to have been intimating to the Lord Chief Justice that it was the British Government's position that the findings of his inquiry should not be such as would provide "aid

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and comfort to the enemy” but rather that the Inquiry had its own role to play in winning the propaganda war.”

5J-28 In our submission these are impossible inferences which, in any event, do not begin to support the allegations of conspiracy to murder.

The clients of Brendan Kearney, Kelly & Co.

5J-29 On behalf of Michael Bridge and Michael Bradley, Declan Morgan QC drew attention to the following matters which he said should be investigated by the Tribunal.⁶⁴

- (1) The appointment of General Ford to his position as Commander of Land Forces. He suggests that there is something sinister in the decision to send General Ford to Ireland as opposed to Germany. He claims that it is necessary to establish:

*whether or not General Ford was appointed to achieve a purpose and whether that purpose was connected with any change in Army policy towards civil disturbance and in particular whether it represented any kind of indication of a more aggressive response in relation to that policy.*⁶⁵

In a submission typical of the various conspiracy theories he states:

*Someone in the Ministry of Defence was responsible for making these decisions and they must have had a reason for doing so.*⁶⁶

- (2) The role of General Ford as an observer on 30th January 1972. Mr. Morgan asks: If he was just an observer why did he tell Desmond Hamill that he intervened to give orders to MacLellan? According to Mr. Morgan, a passage in the Hamill interview gives rise to the question:

⁶⁴ Day 050/018/14-19

⁶⁵ Day 050/020/19

⁶⁶ Day 050/020/25

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*of whether or not there was a scheme, as it were, that was devised here which was going to be put into operation by way of contact with some civilian groups and which was being planned from a reasonably early stage.*⁶⁷

We simply do not understand the meaning of this allegation. Referring to General Ford's statement that what was going to occur in Londonderry that day was crucial to the future of Northern Ireland, Mr. Morgan states that:

*it causes one to question whether in fact there was within the main plan another plan, a plan to carry out an operation, the detail of which has not been disclosed. In other words, a plan within a plan...*⁶⁸

- (3) The role of Brigadier Kitson. Mr. Morgan suggests that it is "highly likely" that General Ford discussed with Brigadier Kitson the outcome of his visit to Londonderry on 7th January.⁶⁹ Mr. Morgan states that General Ford would have been aware of Brigadier Kitson's "particular skills in relation to questions of peace-keeping, crowd control, dealing with terrorism."⁷⁰ However, he claims that there is "a conspiracy of silence" as to what happened to the Memorandum of 7th January.
- (4) Mr. Morgan claims that there were undercover SAS soldiers on the ground on Bloody Sunday.⁷¹ He states that if there were sightings of gunmen in the crowd on Bloody Sunday the Tribunal should satisfy itself that they were not in fact undercover soldiers.⁷²
- (5) There may have been shooting in Sector 2 other than by Mortar Platoon.⁷³

⁶⁷ Day 050/025/06

⁶⁸ Day 050/025/22

⁶⁹ Day 050/038/03-07

⁷⁰ Day 050/040/22

⁷¹ Day 050/042/16 – 050/045/19

⁷² Day 050/045/20 – 050/046/02

⁷³ Day 050/046/10 – 050/048/24

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- (6) Mr. Morgan later returns to the lack of any document recording a response to "Ford's proposal on 7th January to shoot a few hooligans".⁷⁴ Like Lord Gifford he attempts to link the Appreciation of 7th January to the minutes of the meeting of the JSC on 13th January and the Memorandum of Colonel Dalzell-Payne.

*That raises the question of whether one is expected to accept that it was a mere coincidence that General Ford, on 7th January, and Colonel Dalzell-Payne, on 27th January, are discussing the same issue, but that there was no indication from one to the other, or process from one to the other whereby one knew what the other was thinking.*⁷⁵

In a document sent to the Inquiry on 2nd February 2001 points (1) and (4) above are repeated.

The clients of Desmond J. Doherty & Co. and MacDermott and McGurk

- 5J-30 A very different case was advanced by Michael Mansfield QC in his opening. He alleged that there was an intention to "teach those in the Catholic Bogside/Creggan areas a lesson"⁷⁶ without indicating what that means beyond saying that it entailed a risk that those who were innocent would be killed:

*Ford and Wilford, believed firmly that the Bogside and the Creggan deserved what it got because they had painted in their minds this simplistic picture that anybody congregating on the street in that area must have an unlawful purpose: if it moves, shoot it.*⁷⁷

⁷⁴ Day 050/055/23 ct scq.

⁷⁵ Day 050/060/11

⁷⁶ Day 050/093/07-18

⁷⁷ Day 050/115/23

FS7 . 953

5J-31 In his opening Mr. Mansfield alleges that the authorities "wanted excuses; excuses for carrying out an objective which was quite different."⁷⁸ Later that objective is described in the following terms:

...free Derry presented an anathema that was entirely unacceptable to the political and military authorities of the day. There had to be reoccupation at the earliest possible opportunity and if this meant innocent civilians might be killed or injured, this was an unfortunate but necessary price to be paid for an attempt to flush out the IRA said to be sheltering in the vicinity. In other words the death of innocent people was purely collateral; that is the term now being used in other theatres of war. Make no mistake -- reoccupation of free Derry or the no-go areas was the end game.

Mr Heath wanted it in the sense that he wanted law and order restored as he saw it, otherwise direct rule would be imposed. Mr Faulkner was resisting direct rule at all costs as a calamity and recognised that essentially for there to be economic and political power, there had to be a secure base which meant he had to, one way or another, overcome the problem and the symbol that free Derry presented, and of course the military itself did not wish to be itself down-faced by an area into which, apparently, they could not go.⁷⁹

5J-32 Mr. Mansfield invited the Tribunal to conclude that the real objective was "to occupy and dominate the Creggan and Bogside, when sufficient forces were available."⁸⁰ Operation Hailstone had been aborted in July 1971 and Operation Motorman was to follow in July 1972:

We say effectively what was on everybody's mind, that at the end of the day the Bogside and the Creggan would be retaken by force, even if it meant saturation, even if it meant there might be innocent people killed. Effectively what happened in January 1972, before Motorman, was an operation which was designed to put a marker down on the population: we, the Paras are here. We did not get in in July 1971. However, the overall objective one day, if not today,

⁷⁸ Day 050/117/02

⁷⁹ Day 050/154/09

⁸⁰ Day 050/155/22

FS 7. 954

*is when we come back, do you not dare put your hands up behind a rubble barricade because you will be shot.*⁸¹

5J-33 In a document sent to the Inquiry on 25th January 2001 Desmond J. Doherty & Co. make the following allegations.

- (1) "Free Derry presented an anathema that was entirely unacceptable to the military and political authorities of the day. There had to be re-occupation at the earliest possible opportunity, and if this meant innocent civilians might be killed, or injured, this was an unfortunate but necessary price to be paid. In short the mark of Stormont and Westminster authority had to be reasserted and stamped upon the recalcitrant citizens of the Creggan and the Bogside."
- (2) A forcible military occupation was increasingly recognised as the only real way of achieving authority and control.
- (3) Whilst the manpower and resources were not available on January 30th to carry out such an operation, our submission is that this was seen as an opportunity to take a step towards the total reassertion of authority through a forcible engagement with the community by front line paratroopers habitually described as "shock troops".
- (4) "On the basis of materials so far disclosed it is possible to infer knowledge and, at least, implicit assent by the officers immediately above Ford, namely Tuzo and Carver, and by one or more politicians at Ministerial level."
- (5) "Once it was clear that the proclaimed plan involved the possible deployment of Paras within the No Go areas resultant deaths of innocent people must have been a foreseeable risk."

⁸¹ Day 050/156/16

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- (6) The concept of an arrest operation is a sham. It could never have been regarded as a serious manoeuvre and was therefore being used to mask the real and well understood purpose of a forceful incursion against the Catholic community, with its attendant risk of serious injury or deaths. Therefore the use of 1 PARA in this role must have been appreciated and approved at a level above General Ford.
- (7) "Although there is no document expressly authorising a forcible incursion by the Paras into the Bogside let alone the use of lethal weaponry in these circumstances, it must have been a clear and inevitable consequence of deploying armed paratroopers on an apparent arrest mission which could have no legitimate chance of success. This must have been appreciated by Tuzo and Carver and whichever ministers were involved in the decision making. Certainly there is no documentation which registers any reservation let alone any prohibition on a fundamentally military operation which might end in a shooting war."

5J-34 By letter to the Inquiry dated 8th November 2002 Desmond J. Doherty & Co. state further:

- (1) Because the UK Rep. was present at the meeting of the JSC on 27th January 1972 the "GEN 47 Group" would have known about the reference to rioting developing into a shooting war.
- (2) The GEN 47 document at G78.485.001, which refers to arrests, confirms that Mr. Heath, Lord Carrington and General Carver must have known about the arrest operation.
- (3) "Mr. Ramsbotham accepted that the Prime Minister must have been aware of the nature of the arrest operation in order to allow him to be able to speak about it in Cabinet. Therefore we respectfully submit and allege that the arrest operation was therefore authorised when there was a risk of a "shooting war" in a large Civil Rights march."

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- (4) "We respectfully submit that the "military" knew that the arrest operation was a "sham" but we do not say and cannot suggest at this time that Mr. Heath knew or the Cabinet would have known the same (i.e. at Cabinet level)."

5J-35 In questioning General Ford, Mr. Mansfield expressed his case as follows:

The first proposition I want to put to you at this stage as a basis is this: that what you had in mind for the operation on 30th January 1972 necessarily entailed a serious risk that far more unarmed civilians than gunmen would be killed. ...

The corollary to that, it is proposition number two, ...: that if what you had in mind did not entail that serious risk to unarmed civilians, it is astonishing throughout the time then and the 30 years since, that you have never managed to discover how such highly trained, disciplined and focused troops managed to hit so many targets that were unarmed.

Of course, we say on behalf of the families that the reason you have not discovered it is, in a sense, the answer to that is contained in the first question: that you have known all along that what you had in mind would entail unarmed civilians being killed; ...⁸²

5J-36 In our submission this version of the plan within a plan differs fundamentally from those proposed by a number of other Interested Parties. In particular, it does not allege that there was an intention to kill innocent civilians, rather that there was a reckless disregard of the possibility that civilian deaths might occur.

The clients of Barr & Co.

5J-37 Eilis McDermott QC, instructed by Barr & Co. on behalf of Patrick Doherty relies on a memorandum of July 1969 by Sir Oliver Wright, then UK Rep in Northern Ireland, released by the Public Record Office in 2000. It includes the following statement:

⁸² Day 260/021/22

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In the last resort it must suit the Catholics to get clobbered by us, if that is the only way we can get justice for them. ⁸³

Miss McDermott submitted:

It is our further contention that Bloody Sunday cannot be considered in isolation. As other counsel have said, and as what I have just read out from the Sunday Telegraph makes clear, the no-go areas and perhaps Free Derry in particular were an anathema to the British Government. There was clearly a military policy formulated for dealing with them which can be seen to stretch from July 1970, the time of the Lower Falls curfew, to Operation Motorman in July 1972. The policy's chief architect was Brigadier General Kitson who, as the Tribunal will know, wrote extensively about low intensity operations and who had considerable experience of the same in many British colonies and former colonies. It was he who released the first Parachute Regiment from Belfast to Derry for Bloody Sunday and in our submission it is vital that this policy be investigated and not just the events of the day. ⁸⁴

and she identified the following issues as central to the Tribunal's search for the truth:

7. Whether there existed a culture of cover-up by deliberate obfuscation and who was responsible for this;

8. The relationships between the United Kingdom Cabinet, the Northern Ireland Cabinet, Lord Grey, the Governor of Northern Ireland, and the senior army commanders and, in particular, the way the army commanders assumed control over all security matters after June 1970;

9. The factors coalescing to influence General Ford, such as the influence of Northern Ireland Government ministers, loyalist groups, Protestant businessmen in Derry, army strategic interests and so on; ... ⁸⁵

This is the sum of her opening submissions on the point.

5J-38 In a letter to the Inquiry dated 31st January 2001 Barr & Co. state:

⁸³ Day 049/010/08

⁸⁴ Day 049/013/11

⁸⁵ Day 049/015/01

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In adopting the specifics of the replies you have received on behalf of the families of James Wray, Barney McGuigan, William and Alex Nash and Danny Gillespie, we make it clear that we do so based upon our understanding and our interpretation of the material disclosed to us.

What that understanding may be is not apparent. Similarly, Barr & Co. appear to be oblivious of the fundamental differences between the cases advanced by Lord Gifford QC and Mr. Mansfield QC on this issue, both of which are indiscriminately adopted.

5J-II THE ALLEGATION IS NOT MADE OUT

- 5J-39 These competing and sometimes inconsistent submissions on behalf of various Interested Parties have been set out in some detail to enable the Tribunal to assess the quality of the case for the existence of a conspiracy to murder. It is submitted that the most cursory examination reveals that these submissions do not begin to support such a grave allegation. It may be seen that they are based on conjecture, speculation and inference. The worst possible motives are freely attributed, without any basis, at virtually every step of the argument. Time and again the Tribunal is invited to draw inferences on the ground that they are reasonable and, on this basis, to conclude that there was a plan within a plan amounting to a conspiracy to murder.
- 5J-40 For reasons set out in Chapter 3 of these submissions, it is submitted that such allegations could be upheld only if the Tribunal were satisfied to the criminal standard on the most cogent evidence that these allegations were proved.
- 5J-41 Furthermore, before the Tribunal could uphold such an allegation on the basis of inferences from the primary evidence it would have to be satisfied that there was no alternative innocent interpretation of the material which might be correct. Such a case cannot be made out on the basis of reasonable inference. For reasons set out in Chapter 3 of these submissions, before a fact finding body could properly arrive at such a conclusion on the basis of the evidence it would have to be able reasonably to dismiss the possibility of any alternative version of events which did not involve such a conclusion. Further, the Tribunal would have to be sure that

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any such alternative explanation was untrue. The circumstances must exclude any reasonable hypothesis consistent with innocence

5J-42 In any event, on any fair reading this edifice of impossible inferences does not begin to support a conspiracy to murder.

5J-43 The Families allege that there was very extensive participation at the highest levels of the Government, the Army and the civil service in this criminal plot. Thus Madden and Finucane identify as participants General Tuzo, General Carver, Colonel Dalzell Payne, Mr. Heath, the members of the JSC who attended the meetings of 13th and 27th January 1972, the members of GEN 47 who attended the meetings of 11th and 27th January 1972 and all members of the United Kingdom Cabinet and the Northern Ireland Cabinet. (Submissions dated 12th February 2001.) It is inherently improbable that all of these senior figures should, without exception, have been prepared to plan and participate in such a scheme.

5J-44 The Tribunal has received full disclosure of contemporaneous records covering the relevant period. These were, for the most part, secret documents which would not have been expected to become open to public inspection. There is nothing in these documents to support the existence of a plan within a plan. While there is some force in the submission that one would not expect participants in a criminal conspiracy to record their plan in writing, even in documents which were believed to be secret, a plot of the scale alleged here could not have failed to leave traces in the contemporaneous documentation.

5J-45 Even if any indication of the true intent could have been kept out of the voluminous documentation produced by so many individuals in Northern Ireland and in Westminster and Whitehall, the implementation of such a scheme would necessarily have involved the willing participation of many others. It is inconceivable that the scheme could have been planned and implemented without information of criminal wrongdoing on such a scale having leaked out. As Mr. Clarke observed in his opening:

It is, of course, possible for plans to be hatched in secret and kept out of documents that are themselves secret. There is no evidence of that in the papers as I suppose, in an ironic sense, by definition

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there would not be. Fulfilment of a plan to keep something out of the documents, even secret documents, would ensure that there was nothing in the documents that related to the plan. But a plan to use the march to provoke a confrontation with the IRA or to draw it out in some fashion would, the Tribunal may think, require both Cabinet approval and military planning or at least one of those.

Such a plan would require a number of very senior personnel from the Prime Minister and the Chief of the General Staff downwards to be involved in, or if not involved, to be deceived or at best to be left in ignorance and could not be carried out at all without giving the necessary instructions to the troops.⁸⁶

Equally significant is the fact that in the high level documentation that followed Bloody Sunday no indication has been found of the existence, fulfilment or non-fulfilment of any such plan.⁸⁷

5J-46 On the contrary, the documents before the Tribunal are wholly inconsistent with any such plan. The documents before the Inquiry reveal that during the period from the Autumn of 1971 up to Bloody Sunday the Westminster Government was anxious to take a political initiative which would break the deadlock in Northern Ireland and win the support of the Catholic population.⁸⁸ As the following examples make clear, Army planning was taking place in the context of such an initiative in a window of opportunity which, it was thought, might present itself in February 1972.

5J-47 In a briefing note prepared by the Chief of the General Staff for the Prime Minister for a meeting of Mr. Heath and Mr. Faulkner on 7th October 1971, General Carver argued that a purely military solution was most unlikely to succeed.

The policy at present governing the operations of the security forces is one of maximum vigour in the elimination and apprehension of identifiable terrorists, tempered by a scrupulous care to avoid actions which are, or may be represented as being,

⁸⁶ Day 003/099/23

⁸⁷ See the observations of Mr. Clarke in opening: Day 003/099/23 – 003/100/20

⁸⁸ See the observations of Mr. Clarke in opening: Day 003/099/16 – 003/099/22

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*indiscriminate as between the terrorists and the general body of the minority community, or deliberately discriminate between Protestants and Roman Catholics as such. It is so tempered in order not to hamper the development of political initiatives, within the existing constitutional structure of Northern Ireland, designed to bring representatives of the minority community into fuller participation in political life, to persuade the minority community that they are not "second class citizens", and thus to erode the support (or at least benevolent neutrality) which substantial sections of the minority community at present afford to the IRA. The success of such initiatives would be a major contribution towards ending the terrorist campaign and permitting the resumption of normal political, social and economic life within the Province.*⁸⁹

5J-48 General Carver also observed in this briefing note:

*Indiscriminate operations, which do not distinguish between the terrorists and the population among whom they live are self defeating.*⁹⁰

5J-49 The record of the meeting between the two Prime Ministers on 7th October 1971 records Mr. Heath as stating that:

*...there was now an acute problem of deteriorating morale in Northern Ireland. But he thought that the confidence both in the Province and in Great Britain might be restored if there were clear signs that both governments were working towards a realistic political settlement which should reasonably satisfy the desire of the minority to have their interests represented. ... It was thus essential that any immediate increase in the military effort should be accompanied by parallel political moves.*⁹¹

5J-50 It appears that by the end of December 1971 and thereafter a political initiative in about February 1972 was contemplated. At a meeting of the Ministry of Defence, Northern Ireland Policy Group on 22nd December 1971, attended by among others, the Secretary of State, Lord Carver is recorded as stating:

CGS said that he thought we should aim at some positive political initiative about February, when he judged the security situation

⁸⁹ G14B.86.9 paragraph 1

⁹⁰ G14B.86.10 paragraph 6

⁹¹ G17.121 paragraph 1

would be just right for it. There would only be a short time available for such a move before any hardening of attitudes or backlash set in. It seemed to him that this initiative should have three parts: first, the transfer of responsibility for law and order to Westminster, whether we liked the idea or not; secondly transferring all those areas of governmental activity which were subject to inter-sectarian strife (e.g. education and housing) to public boards; thirdly to enquire into and reorganise representation at Stormont.⁹²

5J-51 In a draft brief for the use of the Secretary of State for Defence "when GEN 47 next discusses future policy for Northern Ireland", produced on 29th December 1971,⁹³ Arthur Hockaday stated:

*The main theme of this brief is that a lull in violence will not in itself be enough to persuade a significant element of the Catholic community to cooperate in the government of the Province, that we must be ready with a political initiative to take advantage of any fleeting opportunity which a protracted lull in IRA operations may present to us but that a very careful assessment of the Protestant backlash will be an essential ingredient in any judgment on such an initiative.*⁹⁴

5J-52 In the same way, at the GEN 47 meeting on 11th January 1972 Mr. Heath ruled out a military operation to re-impose law and order in Londonderry while the prospect of a political initiative remained alive:

*The Prime Minister, summing up the discussion, said that the relative quietness of the security situation in Belfast underlined the importance of the search for a political initiative which the meeting would discuss as the next item on its agenda. A military operation to re-impose law and order in Londonderry might in time become inevitable, but should not be undertaken while there still remained some prospect of a successful political initiative.*⁹⁵

⁹² G44B.282.4-5

⁹³ G45A.285.1

⁹⁴ G45A.285.15 paragraph 18

⁹⁵ G50.309

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5J-53 It is inconceivable that in these circumstances the civil rights march in Londonderry would be taken as an opportunity to draw out the IRA or to teach the Bogside a lesson.

In late 1971 and early 1972, the reaction of the United Kingdom Government and the security forces to the virtual state of insurrection in the Bogside and the Creggan was relatively restrained.

5J-54 Following his visit to Northern Ireland on 15-17 December 1971, General Carver wrote a report for the Secretary of State for Defence on 20th December.⁹⁶ In the document, which is marked "Top Secret. Perimeter", he states:

The situation [in Londonderry] is totally different to that in Belfast. The Bogside and Creggan are no-go areas. To change this would need a major military operation which would demand large numbers of troops, incur a high level of casualties and inflame the situation not only in Londonderry itself, but in the whole of Northern Ireland and particularly in the Republic. To attempt such an operation either in the near future or soon after making a proposal on the lines of that in para. 5 above [i.e. a political initiative] would wreck any chance of such a proposal succeeding. It is clear that the only policy we can sensibly pursue in Londonderry is to maintain a level of military activity which maintains the morale of the Protestants and of our own soldiers, without provoking the Catholic population to an extent which causes us severe casualties, further antagonises them and brings no dividends. Our recent increased activity has tended in this direction and I recommend, as does the GOC and the Brigade Commander, that we adopt a policy of rather less provocative activity than of recent weeks, although higher than the "low profile" attitude adopted in September and October.⁹⁷

5J-55 This recommendation therefore had the combined support of General Carver, the CGS, General Tuzo, the GOC, General Ford, the CLF and Brigadier MacLellan. This advice was then tendered to the Secretary of State for Defence.⁹⁸

⁹⁶ G44.281

⁹⁷ G44.282.1 paragraph 8

⁹⁸ G45A.285.6-16

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5J-56 This recommendation was accepted by the Secretary of State for Defence. The minutes of the meeting of the Official Committee on Northern Ireland on 5th January 1972 record:

*The Defence Secretary had agreed that the Bogside and Creggan areas should only be entered by troops on specific information and for a minimum of routine patrolling.*⁹⁹

5J-57 It was also accepted by the Home Secretary. The note of the Home Secretary's discussion with the GOC and various senior officers at Lisburn on 14th December states:

*The GOC said that the Army's priorities were first Belfast, second the border and third Londonderry. The position in Londonderry had reached a point where a choice had to be made between accepting that Creggan and Bogside were areas where the Army were not able to go, except on specific information or to mount a major operation which would take ten days and require seven battalions and which would involve at some stage shooting at unarmed civilians. It became clear that the Army preferred the first course, but wanted to make it clear it entailed accepting criticism of allowing "No Go" areas. The Home Secretary said that he had no doubt that the military judgment was right and that it would be wrong to provoke a major confrontation at this stage.*¹⁰⁰

5J-58 Contrary to the submission of Arthur Harvey QC, General Ford was far from being "an officer who was a willing vehicle for the implementation of the firm, resolute and determined security measures which [the Stormont Government] saw as necessary to deal with the situation in Derry".¹⁰¹ While it was his duty to consider and advise on all possible courses of action, the course which he recommended should be followed in Londonderry was one of restraint. It also conformed with the approach adopted by General Carver. Furthermore, the arrest operation on 30th January 1972 as planned was entirely in accordance with General Ford's recommended Course 1 and a half.

⁹⁹ G46.287

¹⁰⁰ G40.260 paragraph 4

¹⁰¹ Day 043/104/11

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5J-59 All of the proponents of the various allegations of conspiracy rely on paragraphs 6 and 7 of the Memorandum produced by General Ford after his visit to Londonderry on 7th January 1971 at page G48.301. On behalf of the senior officers, our submissions in relation to this document are set out above. In so far as it is appropriate to comment further, we would add:

- (1) In his BSI statement Sir Edward Heath states:

*I have also been asked by this Inquiry whether I was aware of a proposal, supposedly emanating from General Ford, that some of the young hooligans in Londonderry should be shot, after due warning, as a possible means of restoring law and order in Londonderry. If such a proposal had been approved by General Ford's superiors in the army, it would have reached the Secretary of State for Defence, who would have reported it to me. This did not happen, and I was not aware of any such suggestion.*¹⁰²

- (2) Lord Carrington, the Secretary of State for Defence, rejects the suggestion that General Ford was actually seeking fatalities and adds:

I am sure that no such plan was in existence and, even if it had been, the MoD, the Government and Michael Carver would have had no part in it.

...

*I can state quite categorically that it was never policy to shoot unless a target had been identified as a threat.*¹⁰³

He also stated:

*All I can say is that we were "Yellow Carding" for all we were worth. I was involved in drafting the amendments to the Yellow Card and we would never have agreed to any course of action which involved the deliberate loss of civilian life.*¹⁰⁴

¹⁰² KH4.9 paragraph 37

¹⁰³ KC6.11 paragraphs 20-21

¹⁰⁴ KC6.11 paragraph 20

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5J-60 Lord Gifford seeks to place a sinister interpretation on the two memoranda by Mr. Stephens both dated 26th January 1972 at G73.456 and G74.457. While Mr. Stephens may have considered that the choice of tactics for actually dealing with the march was essentially a matter for the JSC, this was not the view of Sir Graham Shillington or the GOC. Sir Graham states in his evidence to this Tribunal:

*The GOC and I agreed that the question of policing marches was an operations matter and as such was to be decided by the Security Forces. It was not a political decision and should not be open to political direction. We did not need approval for our decision; we informed the Joint Security Committee of our decision.*¹⁰⁵

Understandably, Mr. Stephens in these memoranda concentrates on the political consequences of permitting the march to take place and matters of presentation

5J-61 In the same way, the following statement in the minutes of the meeting of GEN 47 on 27th January 1972 is concerned with the political implications of the march:

*The meeting agreed that in Londonderry the marchers must be prevented from coming out of the Bogside and Creggan areas; and criticism of the security forces for not entering those areas must be countered by pointing out that it was a matter for military judgement to choose the best place for achieving the aim of preventing the march from reaching its destination.*¹⁰⁶

The meeting's concern at the prospect of adverse publicity because the Security Forces had not entered the Bogside is hardly consistent with the covert plan which is now alleged.

5J-62 The statement in the minutes of the meeting of the JSC on 27th January 1972 that:

The operation might well develop into rioting and even a shooting war

¹⁰⁵ JS8.11 paragraph 25

¹⁰⁶ G79.487

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is not open to any sinister interpretation. In the light of the experience of the Security Forces of IRA tactics this was a sensible prediction which, sadly, proved well founded. The suggestion that this is evidence of the adoption by the JSC of a plan to murder Catholic youths is obviously unsustainable.

5J-63 In his evidence to the Tribunal General Dalzell-Payne candidly accepted that his memo of 27th January 1972 at G82.512 was not clear enough in certain respects and therefore was open to various interpretations.¹⁰⁷ However, any fair reading of paragraphs 12 -15 accords with the account he gave in evidence of his intentions. He had in mind the use of a more aggressive arrest policy and it was to this that "stronger military measures" in paragraph 13 and "additional measures for the physical control of crowds which threaten to march" in paragraph 14(b) referred.¹⁰⁸ This more aggressive arrest policy involved arresting more people and trying them more quickly.¹⁰⁹ It was not in his mind that soldiers were going to use more physical force than they had used in the past to effect arrests.¹¹⁰ Similarly this was the meaning of the reference to the effect of "firmer measures" on 30th January in paragraph 15.¹¹¹ The fact that he was thinking in very general terms is understandable and is not open to the sinister interpretation proposed by Mr. Harvey and denied by the General.¹¹² He envisaged that the policy of arresting more people and trying them more quickly would be used on 30th January, although it was not his idea.¹¹³ He did not know at the time of writing the paper that CLF had decided that 1 PARA would be used in Londonderry as an arrest force,¹¹⁴ although he did know on 30th January.¹¹⁵

¹⁰⁷ Day 245/063/07-09

¹⁰⁸ Day 245/018/05 – 245/019/03

¹⁰⁹ Day 245/039/03-10

¹¹⁰ Day 245/019/07-09

¹¹¹ Day 245/042/08-17

¹¹² Day 245/057/08-15

¹¹³ Day 245/020/07-18

¹¹⁴ Day 245/036/19-23

¹¹⁵ Day 245/075/11-15

5J-64 He did not remember anyone in the month leading up to Bloody Sunday suggesting that the use of firearms to control a crowd needed to be considered. It was never to his knowledge raised as a possibility for 30th January.¹¹⁶ When he wrote that paper on 27th January 1972 he had not seen the CLF's memorandum of 7th January 1972, which he first saw when shown it by Eversheds.¹¹⁷ That came as a complete surprise to him and, so far as he knew, was never seen by the MoD.¹¹⁸ Far from recommending the use of unlawful force on Bloody Sunday, the document states:

*We must await the outcome of the events planned for the weekend 29/30 Jan 72, see what effect our firmer measures have, and then if necessary advise the Home Office to urge Mr. Faulkner to use his power under the Public Order Act to ban all public meetings, and speed up legal proceedings.*¹¹⁹

5J-65 The reference in paragraph 15 to "the only additional measure left for physical control" was a reference to a measure over and above that foreshadowed in paragraph 14(b).¹²⁰ He made clear in his evidence that his paper did not envisage shooting people dead for defying a ban on marching,¹²¹ and that that was "the last thing in the world we were going to do."¹²²

5J-66 The differences between the various conspiracy theories are revealing and mutually defeating. The clients of Madden and Finucane advance a case which covers a wide range of possibilities embodied in the nebulous claim that there was "a plan which envisaged the use of lethal force." (Document dated 12th February 2001.) By contrast Mr. Mansfield appears to advance a much more restrained case involving a reckless disregard of the possibility that civilian deaths might occur but based on both an intention to "teach those in the Catholic Bogside/Creggan a

¹¹⁶ Day 245/020/04-06

¹¹⁷ Day 245/085/21 -245/086/02

¹¹⁸ Day 245/064/14-22

¹¹⁹ G82.519

¹²⁰ Day 245/042/02-07

¹²¹ Day 245/063/13-18

¹²² Day 245/055/21 - 245/056/16

FS 7. 969

lesson"¹²³ and "an attempt to flush out the IRA said to be sheltering in the vicinity."¹²⁴ On the other hand Lord Gifford, in his opening, expressly denied that there was any plan to draw out the IRA; rather he contended that there was "a plan to kill young people in Derry and to teach Derry Catholics a lesson, not a plan to draw out the IRA."¹²⁵ However, this did not prevent him from questioning General Ford on the basis that there was a plan to draw out the IRA which culminated in the following exchange:

Q. Was it part of the plan for Bloody Sunday to try to attract or provoke an engagement from the IRA who would otherwise probably not get involved?

*A. It was not, and there was no covert plan on Bloody Sunday.*¹²⁶

5J-67

In our respectful submission these allegations of conspiracy to murder are so obviously unsustainable as to constitute an abuse of process. The Tribunal should have said so long ago out of fairness to those against whom the allegation is made and in order to avoid the unnecessary expenditure of costs in answering them.

¹²³ Day 050/093/10-11

¹²⁴ Day 050/154/15-16

¹²⁵ Day 049/050/19-23

¹²⁶ Day 258/113/02-06

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CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 4

CHAPTER 6

SECTOR 1

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CHAPTER 6

SECTOR 1

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CHAPTER 6A

SECTOR 1 – OUTLINE SUBMISSIONS

- 6A-1 Two men sustained gunshot wounds in this Sector, Damien Donaghy and John Johnston. Soldiers A and B both acknowledged in 1972, and consistently since, that they fired 2 and 3 shots respectively at someone in the act of throwing a nail bomb in the area, and at the time, when these two men were injured. There is no forensic evidence linking either of the two soldiers to the injuries sustained.
- 6A-2 Sector 1 is also important because the rioting and IRA firing in this sector provides an important background to the deployment of troops to conduct an arrest operation.
- 6A-3 As the march reached the junction of William Street and Rossville Street, the majority of the crowd turned and proceeded south towards Free Derry Corner.
- 6A-4 A substantial number of those on the march continued on towards Barrier 14 intent upon a violent confrontation with the army. On being denied access to Waterloo Place they began a vicious and sustained assault on the troops behind Barrier 14. At the same time, or shortly afterwards, an attack on Barrier 12 was launched by those further back.
- 6A-5 The army eventually responded by deploying a water cannon in an attempt to disperse the rioters. CS gas was thrown from the rioting crowd at the soldiers behind Barrier 14. The water canon and/or that CS gas forced a number of the rioters back from Barrier 14. Some of those who had been repulsed from Barrier 14 continued their assault, but this time against Barrier 12. The army responded with rubber bullets and CS gas. This was only temporarily and partially effective: it caused the rioters briefly to retreat, but also may have pushed a number of them back, west up William Street towards the laundry waste ground. Here they joined the

tail end "marchers" who were by this time themselves attacking the soldiers who were in the derelict building.

6A-6 Word started to spread among the crowd of rioters that there were soldiers vulnerable to attack in the derelict building and a group of rioters, including Damien Donaghy, gathered on the waste ground to the north of William Street and began an attack on those soldiers, and those at the Presbyterian Church.

6A-7 The rioters began hurling objects towards the windows of the building in which Soldiers A and B were positioned. Bricks and chunks of paving were thrown towards and past the windows and nail bombs were heard exploding in the vicinity.

6A-8 Soldier B heard the crump of two nail bombs exploding outside on the waste ground. Soldier A shouted a warning to the platoon that the rioters were using nail bombs.

6A-9 Shortly thereafter, both Soldier A and Soldier B saw a man at the north west corner of the waste ground opposite their position. The man was attempting to light what appeared to be a nail bomb and both soldiers opened fire. Each believes he hit his target.

6A-10 Two people, Damien Donaghy and John Johnston were injured in Sector 1. Neither Soldier A nor Soldier B believes that either of the injured was their target. Each honestly believes that they shot a nail bomber. There is no evidence that either Damien Donaghy or John Johnston were attempting to light a nail bomb when they were hit. There is evidence that Damien Donaghy had been throwing stones and that he was moving in and out from the cover of the building on the east side of the laundry waste ground in a manner similar to that of Soldier A's and B's target.

6A-11 It is, of course, possible that Soldiers A and B are mistaken. If they are, then their mistake was an honest and reasonable one.

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6A-I OVERVIEW OF SECTOR 1 SUBMISSIONS

6A-12 The following topics are addressed in the submissions on Sector 1:

- (1) The progress of the march into and through Sector 1.
- (2) The rioting that took place in Sector 1 at Barriers 12 and 14.
- (3) The rioting that took place on the waste ground in front of the derelict building with nine windows.
- (4) The shooting of Damien Donaghy: when was he shot, where he was shot and what was he doing at the time he was shot?
- (5) The shooting of John Johnston: when was he shot, where he was shot and what was he doing at the time?
- (6) The shots fired by Soldiers A and B and the justification for them.
- (7) Civilian Gunmen in Sector 1

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CHAPTER 6B

THE PROGRESS OF THE MARCH

6B-1 THE COURSE OF THE MARCH

6B-1 The course and progress of the march on Bloody Sunday is dealt with in detail in the Submissions on Behalf of the Clients of Mr. Robert Aitken, which we have seen in draft. Those submissions are adopted by us and not repeated here other than in summary.

6B-2 In summary:

- (1) The march set off at about 14.35.¹
- (2) Soldiers manning barriers along the route were subject to verbal hostility. Eamonn McCann's BSI statement recalls that soldiers manning barricades along the end of the no-go area, particularly in Francis Street, were jeered at by the crowd who "shouted insults and made the usual expressions of hostility."² The 8 Bde log entry timed at 15.29 records "Large number approaching barrier 9" [Francis Street].³
- (3) There is evidence that groups broke away from the march at various points, presumably in order to get ahead of the march and ensure that they could get to army barriers at the end of William Street and were not prevented from doing so by the crush of marchers ahead of them. The 8 Bde log / Porter transcript contain the following entries referring to these breakaway groups:

¹ W113, Serial 111

² AM77.8 paragraph 14

³ W44, Serial 113

FS 7. 978

1522: *Crowd moving by Westland St. Elements splitting up to go into Rossville Street.*⁴

1525? *...What is the number that are still now with this group after some have hived off?*⁵

1525? *...The majority are still with them. I would say that they've got a break-off of about, oh, a hundred and fifty, who are at the moment, the majority of them, in the area of the Little Diamond.*

*...and so the march itself has about 200 strong, 2,000 strong...*⁶

The intentions of this group are clear from Serial 253 timed at 15.31:

*There are indications of the normal aggro on the junction of Rossville Street / William Street. Serials 12 and 13 are now being closed. Over.*⁷

Trouble had therefore erupted at the barriers before the front of the march entered William Street at about 15.33.⁸

⁴ W43, Serial 106

⁵ W121, Serial 239

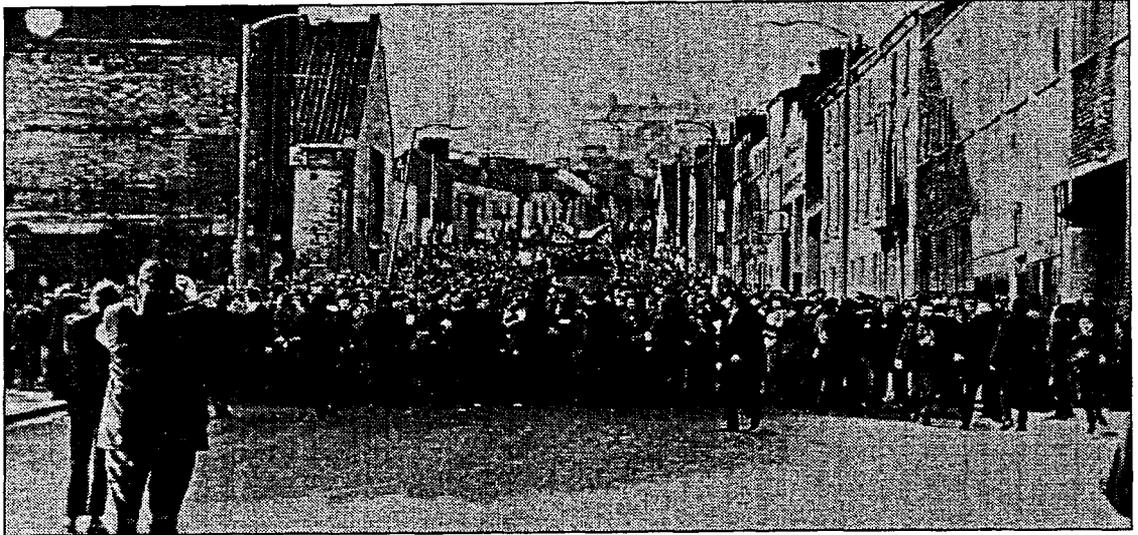
⁶ W121, Serial 240-241

⁷ W121, Serial 253

⁸ W122, Serial 257

FS 7. 979

- (4) Photograph P345 shows as the march proceeded down William Street a substantial group had formed in front of the lorry.



- (5) The stewarding was inadequate and incapable of controlling this breakaway group. According to Eamonn McCann:

12. The organisers of the march had clearly been taken aback by the volume of people. The stewards were trying to organise for people to walk in lines of three...However, they were incapable of organising so many people and as soon as it started, the march was chaotic and confused. Their requests for people to walk in line and to keep behind the lorry were ignored. This was a time when a new generation had grown up in Derry and the young in particular did not like taking orders from anyone and certainly not from people from Belfast. I saw that Kevin McCorry had the microphone and he had a Belfast accent.

13. The march was originally led by the lorry ...However, by the time the march had wound down the hill and reached the bottom of Southway, hundreds of people had decided to take a short-cut down a grassy bank so that by the time the lorry reached the bottom of Southway, hundreds of people had overtaken the lorry and were leading the march. This proved to be significant later...

FS 7. 980

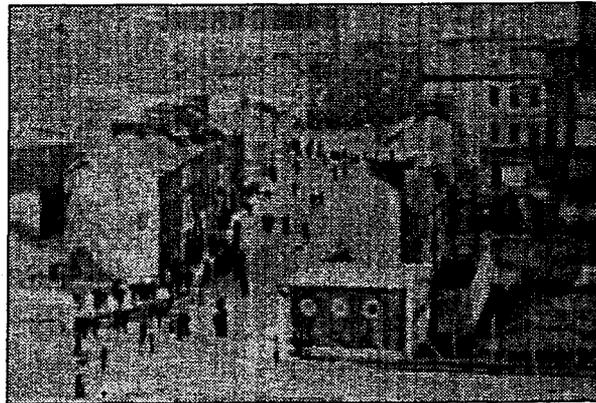
...The people who were walking ahead of the lorry continued across the junction of Rossville Street towards the barricade at the end of William Street.⁹

- (6) The group ahead of the lorry included a hooligan element who were preparing for a confrontation with the army. Nigel Wade's 1972 statement records that:

A lot of people were joining the march as it went on its way, and I noticed in particular youths joining the front of the procession where I was. They looked the same sort of people who regularly riot in the Bogside area. I recognised some of them, and saw them picking up missiles on the way.¹⁰

Gerard McDaid was one of these young men. He joined up with 50 or 60 other rioters in Brandywell and making their way to the front of the march. He describes how they were excited and looking forward to a good confrontation.¹¹

- (7) Photograph **P350** shows a further group of civilians waited at Aggro Corner for the march to arrive.



⁹ AM77.8 paragraph 12-15

¹⁰ M79.1 paragraph 2

¹¹ Dav 108/016

PC 7. 981

CHAPTER 6C

THE BACKGROUND CIRCUMSTANCES TO THE SHOOTING OF JOHN JOHNSTON AND DAMIEN DONAGHY

6C-1 THE RIOTING IN SECTOR 1 - INTRODUCTION

THE RELEVANCE OF THE RIOTING AT BARRIERS 12 AND 14

6C-1 The rioting which took place on Bloody Sunday at Barriers 12 and 14 (and to a lesser extent at Barrier 13) is important for a number of reasons.

6C-2 First, and most importantly, although the riots took place at the barriers they were not attacks *on* the barriers. Rather they were vicious and sustained attacks on the soldiers. They illustrate that large numbers of those on the march were prepared to hurl potentially lethal objects – bricks, paving slabs, scaffolding poles *etc* – at the soldiers behind the barriers.

6C-3 This is important for the following reasons:

- (1) When the arrest operation was launched, it was these rioters whom the soldiers intended to arrest and these rioters who attacked the soldiers conducting the arrest operation.
- (2) The evidence of many of those who were prepared, albeit 30 years ago, to launch such a vicious attack on the soldiers must be viewed with some circumspection.
- (3) The rioting at Barriers 12 and 14 (and that which followed on the waste ground in front of the house with nine windows) forms the background against which the genuineness of soldier A's and soldier B's beliefs should be assessed.

6C-4 Soldiers A and B were in the following situation immediately before the shooting of Damien Donaghy and John Johnston:

FS 7. 982

- (1) They were stationed in the house with nine windows and in a position of considerable vulnerability.
- (2) There was a violent and sustained riot going on at Barriers 12 and 14 and on the waste ground immediately in front of them. Those involved in the assaults were intent on seriously injuring, or in some cases even killing, the soldiers if they were able to.
- (3) Nail bombs were available to and habitually used by rioters in Londonderry at the time.
- (4) Nail bombs had been heard exploding close to where soldiers A and B were positioned.

6C-5 It is against this background that soldiers A and B's conduct falls to be judged.

6C-II EVENTS AT BARRIER 14

6C-6 The events at Barrier 14 are dealt with in detail in the Submissions on Behalf of the Clients of Mr. Robert Aitken, which we have seen in draft. Those submissions are adopted by us and not repeated here other than summarily.

6C-7 As the lorry turned south and headed towards Free Derry Corner a significant number of civilians continued down William Street and made a charge on Barrier 14. The 1972 statement of Nigel Wade records that:

4. When the procession reached the Rossville Street corner the youths at the front broke away, and ran down William Street towards the Army barricade. Someone shouted "Charge" as they ran. When they got to the barricade, they started stoning.¹

¹ M79.1 paragraph 4

P353:



6C-8 Some of the group had already picked up missiles to throw at the army. Eamonn McCann told Eversheds:

People were throwing stones and scaffolding poles which they had purloined from a nearby construction site...

The march had been pretty chaotic since the beginning. Some older people and the organisers were making half-hearted attempts to usher the younger people away from the barricade, but mostly without success.²

P372:



² AM77.8 paragraph 17; AM77.9 paragraph 20

AS 7. 984

6C-9 The group leading the charge were not, certainly at this time, civil rights marchers but were, or included, committed and experienced rioters who had set out with the intention of taking on the army, and seeking revenge for what had occurred at Magilligan. Patrick McCourt had not even been present but recalls that nevertheless “the events of Magilligan had made me and others more hyped up to go on the streets and riot.”³ He made sure that he was at the front of the march “in case anything started.”⁴ McCourt describes himself, and those he was with, as “experienced rioters,”⁵ “as a 16 year old rioter at the time, well educated in rioting, I had no fear.”⁶

6C-10 Paddy McCauley told Eversheds:

I and a number of other like minded youths, (mainly 15, 16, 17 year olds) would gather every Saturday at the junction of William Street, Rossville Street and Little James Street where we would throw stones at the soldiers...⁷

7. On 30 January 1972 the hype was up. I and other hard core rioters were looking for a showdown with the British army. On the previous Sunday, we had been charged by the army on the beach in Magilligan and had the shit beaten out of us. We had no stones with which to defend ourselves and nowhere to run – except the sea. We were therefore going to get our revenge on 30 January by attending the march and forcing our way through to the Guildhall square. My attitude to the march was “fuck civil rights, fuck the British army we are going to the Guildhall”.

... As the march made its way to William Street, I clambered on and off the lorry which was at its head.

10. When the head of the march reached the point marked A [a point to the west of the junction of William Street and Abbey Street]...I and about 50 or 60 other youths ran on ahead to confront the soldiers at the barrier at the eastern end of William Street... Our intention was to prepare the ground for the larger

³ AM146.1 paragraph 2

⁴ AM146.1 paragraph 5

⁵ AM146.2 paragraph 6

⁶ AM146.1 paragraph 5

⁷ AM97.1 paragraph 2

7 . 985

confrontation which we hoped would follow when, as we believed, the march caught up with us at the barrier.⁸

6C-11 Brian Power put the matter more shortly:

I was looking forward to the march because I was a well known rioter and there was going to be a riot...⁹

...I remember that some of the older men were trying to stop the rioting and some of the stewards too... Our attitude was that we were not going to be told what to do. They wanted a peaceful demo, but we were keen on a riot.¹⁰

6C-12 Mr. Power gave evidence that he and his friends who were fellow rioters had often talked about joining the IRA in the time leading up to Bloody Sunday.¹¹

6C-13 The group at this stage was ahead of the stewards. One of the stewards, Charles Morrison, told Eversheds:

As the lorry turned, I could see that not all of the crowd were following it south onto Rossville Street. A small group of youths had decided to continue east along William Street towards the army barrier. As a steward, I decided to make my way down to the barrier to try and persuade them to turn around and go to Free Derry Corner instead...

I believe there were between 100 and 150 people down at the army barrier on William Street... By the time Kevin McCorry and I reached the barrier a small riot had broken out.¹²

6C-14 Missiles were thrown by those in the breakaway group towards soldiers behind Barrier 14.

⁸ AM97.1 paragraphs 7 and 10

⁹ AP18.1 paragraph 1

¹⁰ AP18.2 paragraph 5

¹¹ Day 425/005/23-006/03

¹² AM427.8 paragraph 10

FS 7. 986

EP4/9:



6C-15 At this stage a few stewards were able to make their way in front of the group. Several of the rioters, holding what appear to be long sticks, can be seen on the right hand side of the photographs.

EP4/13



6C-16 The stewards were unable to hold back the crowd which had swelled behind the rioters. As the crowd approached the barrier the occasional stone was thrown.¹³ The soldiers were also the targets of aggressive verbal abuse and spat at.¹⁴

¹³ Video 1, 01:18-40

¹⁴ Video 1, 01:41-2:00

M 7. 987

6C-17 Two warnings to disperse were given over a loud speaker by Inspector Junkin, who is captured in Video 1 at the moment that a stone thrown from the crowd knocks off his cap.¹⁵ It is apparent from the video that neither warning had any effect.

6C-18 The water cannon was used on two occasions on Bloody Sunday. The first time was at approximately 15.44.¹⁶ It was initially successful in clearing the area immediately in front of the barrier.¹⁷ At this stage the vast majority of those who had been simply observing the rioting left the area and either turned down Rossville Street to hear the speeches, or went home. One such individual was Charles Morrison, a steward, who left the area to avoid getting soaked:

A. I think when the water cannon was actually put into use, and that included me personally, I had no desire to get soaked, it sorta just neutralised the situation, people just filtered away after that.

Q. Just before the water cannon came on to the scene, how many people were there at the barrier, how many civilians were there at the barrier?

A. I would say round about 100 to 150 again.

Q. After the water cannon had been used, how many were left?

A. Well, I think most people, including meself, had just decided to go back to Free Derry Corner, you know, it just dispersed the crowd, basically, you know.¹⁸

6C-19 As well as clearing the area in front of the barrier, the adding of dye to the water sprayed by the cannon was intended to assist in the identification of rioters. Liam Doherty, a rioter who was himself covered in dye, confirms that by the time the

¹⁵ Video 1, 02:00-02:12

¹⁶ W171, Serial 120

¹⁷ P390-395

¹⁸ Day 126/091/20-092/07

water cannon was deployed those who had no interest in rioting had headed off down Rossville Street to see the speakers.¹⁹

6C-20 Some of those who had been rioting at Barrier 14 turned and focused their attentions on Barrier 12, others retreated up William Street and began targeting soldiers deployed to the north of William Street in the area opposite the laundry waste ground.

6C-21 A hard core group of rioters remained in the area of Barrier 14. Two CS gas canisters were thrown by civilians. One lodged under the water cannon and caused it to withdraw.²⁰ It was redeployed once the crew had recovered from the effects of the gas.

6C-22 **P1060**: CS gas is visible billowing from beneath the water cannon.



6C-23 The BSI statement of PIRA18, William Joseph Anderson, appeared to contain an admission to having thrown a gas canister at soldiers behind Barrier 14, although in circumstances somewhat different to that suggested by the photographs:

Danny [McLaughlin] and I reached the corner of William Street and Chamberlain Street where there was a riot going on. There

¹⁹ **AD80.2 paragraphs 8-9**

²⁰ **W45, Serial 134** timed at 1548 "... 14 & 15 bombarded with stones, HOOLIGANS USED CS"; **W125, Serial 320** "... there is a hooligan fringe at serials 14 and 15. Some CS has been used, but this was used by them. I repeat used by them. Over."

FS 7. 989

was a lot of stone throwing, and bottles flying over the barrier towards the army... Whilst we were standing at the corner two people approached us. They said that they had a gas canister which they wanted to throw at the army and asked Danny and I to help them. ... It may have been two friends who approached us, or it may have been people who recognised me as being in the Movement...

Danny and I, in any event, agreed to help the two lads. We went south down Chamberlain Street, turned into and up Harvey or High Street, and then turned north into Waterloo Street. When we reached the point marked C [junction of William Street and Waterloo Street] ...we threw the gas canister west down William Street towards the soldiers at Barrier 14.²¹

Mr. Anderson refused to accept that he must be wrong about the location from which the canister had been thrown.²² According to his BSI statement, having thrown the gas canister Mr. Anderson went back to Barrier 14 and joined in the rioting.²³

6C-24 Sustained rioting resumed and intensified after the water cannon had withdrawn. Numerous photographs capture a group of dedicated rioters attacking soldiers from behind corrugated iron shields.

²¹ APIRA18.3 paragraph 10-11

²² Day 408/038/14- 041/05

²³ APIRA18.3 paragraph 12

AS 7 . 990

P385:



6C-25 This period of rioting was also captured by a film crew.²⁴

6C-26 After the first occasion on which the water cannon had been used only those intent on rioting remained in the area.

P384



6C-27 P504: The second deployment of the water cannon was timed at 16.05 by I.T.N. producer, David Phillips.²⁵ The large quantity of water on the ground in the

²⁴ Video 1, 02:12-02:20

²⁵ M66.2

FS 7. 991

photograph below suggests that this photograph was taken after the second deployment of the water cannon.



6C-28 The rioting was vicious and justified launching the arrest operation. Stones, bottles, bricks²⁶ and iron bars²⁷ were thrown. Bernard Smith agreed that the purpose of the rioting was to injure soldiers as badly as possible.²⁸ Gerard 'Mad Dog' Doherty, took part in the assault on soldiers behind Barrier 14. He confirmed that rioting did not constitute 'active service' and that therefore, as a member of the Provisional IRA, he was free to take part. He agreed that he, and the crowd he was with, would have killed soldiers if the opportunity had presented itself:

MR. GLASGOW: ... you have already agreed that you would have killed people during the course of that riot if you could. We do not want to dilute it at all, do we, you have already admitted on oath -- I am sorry, on affirmation, that you would have killed soldiers if you could have got your hands on them.

A. Yes.

Q. On this day?

²⁶ P1043-5, P1048, P1051, P1054, P1059, EP3/2

²⁷ Video 1, 02:59

²⁸ Day 067/025/18-026/04

FS 7 . 992

A. Yes, that is right.

Q. So the answer you have just given at the invitation of the Chairman to the Tribunal to tone it down, to suggest it was just bottle and stone throwing –

LORD SAVILLE: Again, Mr. Glasgow, I do not think there is anything between you. What this witness is telling us is that this is not an active service activity. He would be with a crowd of other people of about his age -- you must tell me if I am wrong about this -- all of whom were perfectly prepared to throw stones and bottles at the soldiers in an attempt to maim or even kill them.

A. Yes, that is right.

LORD SAVILLE: But that was not an active service activity ordered by the Provisional IRA; is that what you are telling us?

A. Yes, that is correct.²⁹

6C-29 The Tribunal heard similar evidence from another rioter, Billie Gillespie. He confirmed that soldiers and the police were regarded as legitimate targets for hatred, injury and, where possible, death. Mr. Gillespie favoured the use of a catapult, loaded with marbles or round cobble stones “these would cause the most damage.”³⁰ He agreed it was a powerful weapon capable of causing really serious injury, but denied having a catapult on Bloody Sunday.³¹

6C-30 Rioting continued until very shortly before 1 PARA deployed. The deployment of the corrugated steel shield and the lifting of Barrier 14 are both referred to in the Porter tape timed at 16.09.³² Billie Gillespie describes running from the barrier at the moment that the snatch squad deployed:

Rubber bullets were being fired at us from behind ... Barrier 14... All of a sudden, a snatch squad of about 30 soldiers came from Doherty's lane (which was the old butchers) at the back of the Embassy Ballroom. They came towards us with batons. We ran away from the barrier and I turned left (south) down Chamberlain

²⁹ Day 400/130/10-131/09

³⁰ AG33.1 paragraph 4

³¹ Day 084/173/04-176/09

³² W128, Serials 367 and 370.

AS 7. 993

*Street, away from William Street ... the crowd were running away from the barrier falling over each other.*³³

6C-31 Mr. Gillespie confirmed that he, and a dozen or so others who remained at the barrier until the last minute, took up stone throwing in the car park of the Rossville Flats as the soldiers arrived in the area. He confirmed that Michael Bridge was amongst this group and that he saw him throw a brick towards a soldier.³⁴

6C-32 Patrick Long's evidence was that a hundred or so people were near the barricade at the time IPARA deployed, half of whom were throwing stones, the other half looking for stones. As the soldiers climbed over the barrier this group ran, most headed up Chamberlain Street.³⁵ Willie Healey put the number of stone throwers at the time of IPARA's deployment at about thirty:

Q. Can you tell us what the scene was immediately before the barrier was parted at barrier 14; what was going on?

A. Well, the army was firing rubber bullets.

Q. Stone throwing still going on?

A. Yes.

Q. Approximately how many people were there at the barrier at that stage, engaged in throwing stones at the army?

A. About, um, about 30.

Q. Were there others watching them or had the spectators departed?

*A. Well, there was some watching, some spectating, you know.*³⁶

6C-33 A number of the known dead and injured were photographed in amongst the rioters at Barrier14:

³³ AG33.1 paragraph 5

³⁴ Day 084/182/06-184/04

³⁵ Day 068/120/21-123/21

³⁶ Day 078/090/18-091/06

(1) Michael Bridge was captured at the forefront of the group which led a charge on Barrier 14 facing those leading the charge.³⁷



Mr. Bridge was later photographed in the midst of the hard core group of rioters who remained after the water cannon had been deployed for the first time.³⁸



Mr. Bridge was captured in another photograph probably on the second occasion that the water cannon was deployed.³⁹

³⁷ P372 / P372.001

³⁸ P382 / P382.001

³⁹ P394 / P394.001

FS 7. 995



He also appears in a photograph sheltering behind corrugated iron sheeting.⁴⁰



(2) John Young was photographed in amongst rioters at the end of Chamberlain Street.⁴¹

⁴⁰ P386 / P386.001

⁴¹ P378 / P378.001

75 7. 996



Mr. Young has also been identified in other photographs showing the latter stages of the riot at Barrier 14.⁴²

- (3) Alana Burke confirmed that she had been shouting at soldiers in the photograph below,⁴³ and that she was later covered in dye from the water cannon.⁴⁴



6C-34 Paddy Walsh who was subsequently photographed near the body of Patrick Doherty appears in the foreground of the photograph below, with a handkerchief tied round his mouth and nose. In the background of the photograph a large

⁴² P380 / P380.001; P383 / P383.002

⁴³ EP5.2

⁴⁴ Day 076/094/01-095/09

FS 7. 997

number of rioters are visible sheltering behind the wall at the end of Chamberlain Street.⁴⁵



6C-35 Known paramilitaries also appear in the photographs taken at the barriers, or have admitted to taking part in the rioting:

- (1) Barney McFadden was photographed with his face to the crowd as they pressed up against the barrier.⁴⁶



- (2) OIRA 7 disobeyed stewards who were shouting for people to follow the march down Rossville Street and went to Barrier 14.

⁴⁵ P386A / P386A.001

FS 7 . 998

I thought there would be a bit of craic by going down to the barricade in William Street to see if we could get through, as the Guildhall was a goal that would have satisfied me... The crowd threw stones. I threw stones myself and the photograph annexed to the statement shows a person I believe to be me near the front of the crowd. I don't know why I got so near the front but it was probably just a short burst of over enthusiasm.⁴⁷

Paragraph 132 of his BSI statement states:

I have already been referred to the evidence of Tony Martin... In paragraph 18 of his statement he refers to a man called [redacted] telling some youths to behave. It was not unusual for me to tell 14 or 15 year olds not to throw stones so this might be me, though I have no recollection of doing so.⁴⁸

OIRA 7 was referred to this section of his statement by Edmund Lawson Q.C.:

Q. Do you think that was you, that he is describing you; this is a classic case of: "do as I say, not do as I do"?

A. Yes, that is possible, yes. I mean, 14, 15-year olds were just getting in the way.

Q. Proper stone throwing had to be left to the big boys?

A. Yeah, well, young people getting hit on the head with plastic bullets was a definite and possible risk.⁴⁹

- (3) Sean Keenan (Jnr) agrees that he went to Barrier 14. He claims to have left before rioting broke out. He has been identified by Brian Power as the man holding a cigarette with an afro style hair cut in **EP5.1** (marked with an arrow and saved as **AP18.7**),⁵⁰ a photograph in which Alana Burke has also been identified as the lady in the dark coat, third from the right with her back to the photographer.⁵¹

⁴⁶ **P373 / P373.001**

⁴⁷ **AOIRA7.5 paragraphs 23-24.** The photograph referred to in this paragraph was not distributed.

⁴⁸ **AOIRA7.23 paragraph 132**

⁴⁹ **Day 398/144/06-13**

⁵⁰ **Day 425/010/21-011/06**

⁵¹ **EP1.001**

FS 7. 999



- (4) Gerard 'Mad Dog' Doherty confirms that he was at the forefront of the rioting at Barrier 14:

I made my way to the army barricade marked as Barrier 14. A crowd of about fifty or so were throwing stones and trying to pull the wire away so we could get through... The stewards were trying to talk the people out of a confrontation but I think everyone thought "Fuck it". We were leaning over the barricade, shouting and pulling at it and throwing stones.⁵²

- (5) PIRA18, William Anderson, admits taking part in the rioting and being party to the throwing a gas canister at Barrier 14.⁵³
- (6) OIRA 8 headed towards Barrier 14 but says he did not participate in the rioting he observed.⁵⁴

6C-III RIOTING AT BARRIER 12

INTRODUCTION AND SUMMARY

6C-36 As the march reached the junction of William Street and Rossville Street one group of rioters broke away from the body of the march and, as discussed above, headed down William Street towards Barrier 14 where a vicious riot ensued.

⁵² AD65.2 paragraphs 7-10

⁵³ APIRA18.3 paragraphs 10-12

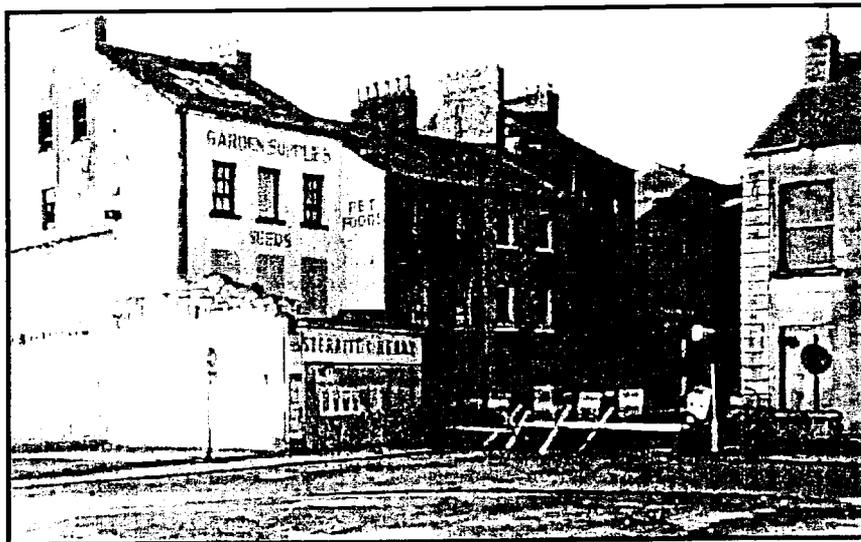
⁵⁴ AW14.1 paragraphs 4-5; Day 410/043/12-22

ES 7.1000

- 6C-37 A secondary group broke away and began attacking the troops behind Barrier 12.
- 6C-38 A water cannon was used to soak the rioters at Barrier 14 and a substantial number of those rioters were forced back from the barrier and joined the attack on the soldiers at Barrier 12.
- 6C-39 The soldiers behind Barrier 12 eventually responded by seeking to disperse the crowd using rubber bullets and CS gas. These measures initially had little effect, but a second wave of rubber bullets and gas temporarily cleared the area immediately in front of the barrier.
- 6C-40 The rioters regrouped, this time using sheets of corrugated iron as shields. The onslaught continued.

LOCATION

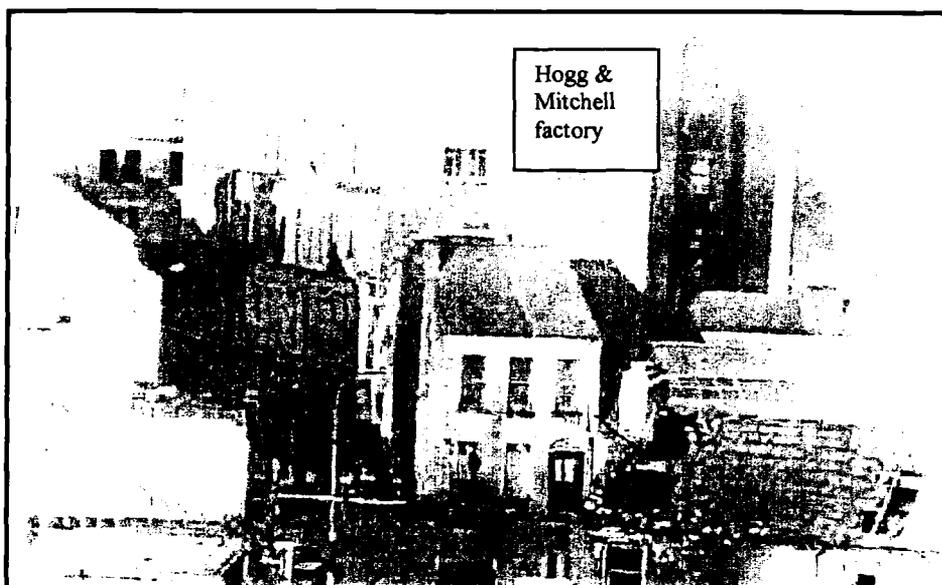
- 6C-41 The location of Barrier 12 is clear from the photographs taken on Bloody Sunday. It ran from the northern end of Sterritt & Henry Garden Supplies to the building on the corner of Sackville Street and Little James Street.⁵⁵



⁵⁵ P244

FS 7.1001

6C-42 Barrier 12 was positioned just to the south of the imposing Hogg and Mitchell factory.⁵⁶



6C-43 Like Barrier 14, Barrier 12 was composed of a series of knife rests and barbed wire.⁵⁷

MILITARY PERSONNEL PRESENT AT BARRIER 12

6C-44 Barrier 12 was manned by the soldiers of 22 Light Air Defence Regiment.

6C-45 INQ1326 was in command of Barriers 12 and 13.⁵⁸ His evidence was that:

Our instructions were to prevent the march leaving the Bogside by manning barriers, which had been pre-positioned in the streets...⁵⁹

6C-46 INQ1326's recollection is confirmed by the "Confirmatory Notes to Orders" of Lt Col Ferguson, CO 22 LAD RA, which record:

⁵⁶ P356

⁵⁷ P242

⁵⁸ C1326.2 paragraph 8

⁵⁹ C1326.1 paragraph 7

PS 7.1002

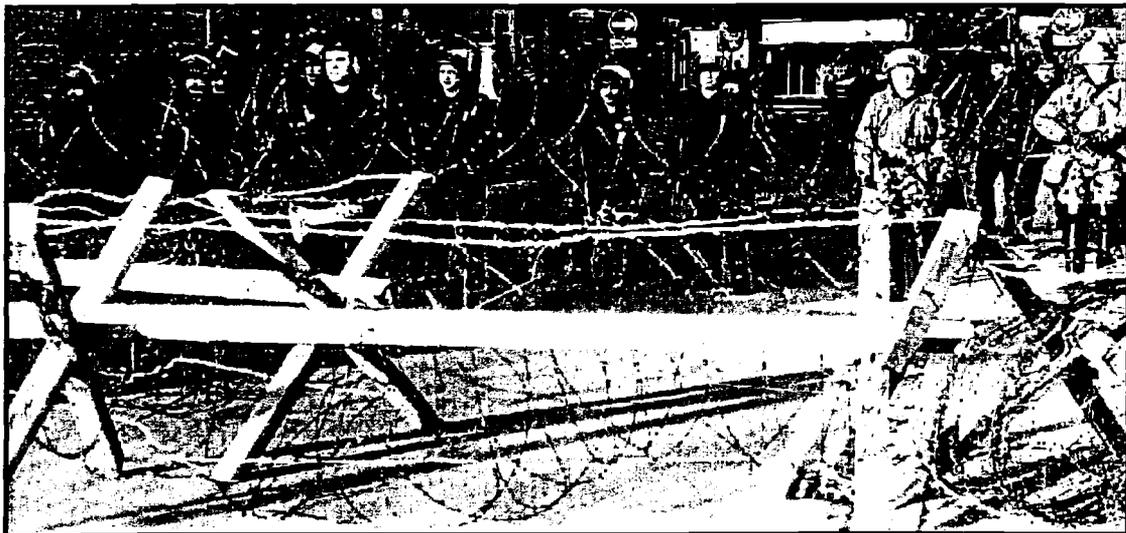
2. MISSION To contain any march on 30 Jan, together with any accompanying rioting, within the Bogside and Creggan areas of the City within the regt bdrys.⁶⁰

6C-47 INQ1326, realising that Barrier 12 was "more likely to attract trouble"⁶¹ than Barrier 13, personally positioned himself behind Barrier 12. Rioting in Little James Street and Sackville Street was common at the time, hence the sobriquet 'Aggro Corner'.

EVENTS AT BARRIER 12 ON BLOODY SUNDAY:

The March Reaches William Street: A Break Away Group Heads for Barrier 14.

6C-48 As the head of the procession came down William Street there was no serious trouble close to Barrier 12. P242 shows Barrier 12 at approximately the time the front of the march was coming down William Street.⁶² The ground is apparently free of debris, and the soldiers have not yet picked up their riot shields. INQ1326 is still wearing his beret.



⁶⁰ B1122.055

⁶¹ C1326.2 paragraph 12

⁶² The timing of this photograph is clear from contact prints P233.041:19A-20A. P242 is an enlargement of contact print 20A. The photograph immediately before it on the roll, 19A, shows the main body of the march making its way down William Street.

FI 7-1003

6C-49 Soldier 109 stated that:

There was initially no confrontation between the marchers and us and the march proceeded quite peacefully down William Street, without any shouting and yelling except, I believe, shouting slogans until the marchers realised that the march was not to be allowed to move through into the city centre.⁶³

6C-50 As the front of the march reached Aggro Corner a large 'break away' group proceeded up William Street towards Barrier 14. The rioting which then ensued at Barrier 14 is dealt with in the Submissions on Behalf of the Clients of Mr Robert Aitken, which we have seen in draft.

Rioting at Barrier 12 before the Deployment of the Water Cannon at Barrier 14.

6C-51 Although the majority of the rioting at Barrier 12 took place after the water cannon had been deployed at Barrier 14, there is no doubt that, as a charge was being made on that barrier, a number of rioters broke away and headed for Barrier 12.

6C-52 P354 illustrates this: as the bulk of the crowd makes for Barrier 14, a number of people on the right hand side of the photograph appear to be heading towards Barrier 12.



FS 7.1004

6C-53 Soldiers at the barrier confirm that they were targeted at this stage:

6C-54 INQ1326:

...as the march approached, the main crowd continued east along William Street and only the aggressive elements, mostly youths, approached the barriers.

I remember seeing the marchers first appear. I did not know exactly where the march was going, but it went east along William Street and a considerable number of people, mainly youths, detached from the march, came over and started throwing stones at us.⁶⁴

6C-55 Soldier 123 observed events at Barrier 12 from his position on the roof of the Embassy Ballroom. His RMP statement records that:

[the procession] then turned into Little Diamond and then proceeded down William St towards Waterloo Place.

It was then that I saw a crowd of youths standing at the junction of Little James St/Waterloo St.

As the crowd arrived at the junction, the youths and other people in the crowd started stoning one of the barriers situated at the junction of Sackville St / Little James St. The remainder of the march moving towards another barrier in William St near Waterloo Place manned by members of the 2 RGJ...⁶⁵

6C-56 INQ0785:

The Battery Commander and I were behind Barrier 12 when we finally saw the crowd. It filled Little James Street and the waste ground to the east of it. People at the front of the crowd appeared to realise that they were going to be pushed one way or another because of the barriers. Things started to get more heated and the barriers became something for the crowd to vent their anger on. They started off by throwing the odd missile but soon mayhem broke out. There were some peaceful marchers who obviously

⁶³ B1723.003 paragraph 12

⁶⁴ C1326.3 paragraphs 14-15

⁶⁵ B1772

FS 7. 1005

*wanted to get away from the trouble and they were heading south down Rossville Street, leaving the hard core behind.*⁶⁶

6C-57 Several civilians observed or have admitted to taking part in rioting at Barrier 12 at this early stage:

- (1) Charles McLaughlin in an undated statement attached to his BSI statement describes going directly to Barrier 12:⁶⁷

*I was at the front of the march. I was with Tony Morrison. At William Street when the march reached the British Army Barricades a riot started. We joined in the rioting. I was rioting at the barrier at Little James Street.*⁶⁸

- (2) Gerard McDaid gave evidence that he was one of a group of 50-60 rioters who had gathered in Brandywell and who had made their way to the front of the march and headed straight for Barriers 12 and 13, by which point they numbered 70-80.⁶⁹

- (3) James Joseph Kelly told Eversheds:

*As the crowd moved down William Street ... the head of the march seemed to go towards the barrier which had been erected across William Street (Barrier 14). There was some stone throwing to my left in Little James Street where the GPO sorting office was and I could hear people yelling and shouting the usual type of expletives at the army.*⁷⁰

6C-58 As the area in front of Barrier 14 became congested, rioters further back in the march turned their attentions on Barrier 12.

⁶⁶ C785.1 paragraph 9

⁶⁷ Day 177/071. His evidence to this Inquiry was that he joined a crowd of about a dozen others already rioting at Barriers 12 and 13 at approximately 3 o'clock, i.e. before the front of the march had entered William Street. Given the apparent absence of stones on the ground in photographs such as P242 it is likely that any rioting prior to the march reaching Aggro Corner was light by comparison with what later occurred.

⁶⁸ AM321.8

⁶⁹ Day 108/016-019

⁷⁰ AK12.2 paragraph 6

FS 7. 1006

6C-59 John Joseph Doherty:

The march was stopped at the City Picture House by an army barricade shown as Barrier 14 ... people were packed into the street and I could not get any further forward ... I noticed that there was an army barrier across Little James Street ... and I decided to riot there. I moved north up Little James Street ... This was waste ground and there were plenty of stones to throw at the soldiers behind the barrier ... There were also soldiers in Sackville Street ... There was a crowd of us in Little James Street who started to throw stones and rubble at the soldiers behind the barricade in Little James Street.⁷¹

6C-60 Patrick McCallion watched the rioting break out at Barrier 14. Fearful that a snatch squad would be deployed he turned back up William Street before the soldiers behind Barrier 14 had taken any action.⁷² As he looked north Mr. McCallion saw a smaller group of people catcalling and stone throwing at the army behind the barrier in Little James Street.⁷³

6C-61 Patrick Eugene McCallion also describes witnessing and taking part in rioting at Barriers 12 and 13 prior to the deployment of the water cannon at Barrier 14.⁷⁴

The Number of Rioters at Barrier 12 was Swelled by Rioters Running from the Water Cannon used at Barrier 14.

6C-62 The main rioting at Barrier 12 broke out immediately after the water cannon had been deployed at Barrier 14. The cannon was used on two occasions on Bloody Sunday. The first instance was at approximately 15.44.⁷⁵ It was initially successful in clearing the area in front of Barrier 14. Rioters and marchers were forced down

⁷¹ AD75.2 paragraphs 6-8

⁷² Day 071/141/02-071/143/01

⁷³ AM74.2 paragraphs 8

⁷⁴ AM75.2 paragraphs 7-9

⁷⁵ W171 serial 120 "The water wagon now in action, firing red dye into crowd. Crowd has moved back safely with it"; serial 121: "time now 15.44"

FS 7.1007

William Street towards Aggro Corner.⁷⁶ At this stage a much larger number of rioters transferred their attention to the soldiers behind Barrier 12 and Barrier 13.

6C-63 Serial 322 timed at 15.49 (i.e. five minutes *after* the use of the water cannon at Barrier 14⁷⁷) records "Serials 12 and 13 also under heavy bombardment from normal hooligans."⁷⁸

6C-64 The initial deployment of the water cannon is captured on Video 3.⁷⁹ The footage shows that a reduced number of rioters renewed their assault on Barrier 14⁸⁰ and a large group of rioters hurled stones and other debris in the direction of Barrier 12 as they poured onto the Aggro Corner waste ground.⁸¹

6C-65 Lieutenant 009 was deployed to the observation post on the Embassy Ballroom. His 1972 statement records the movement of the crowd from Barrier 14 to Barrier 12:

Some sort of action was taken by the Royal Green Jackets but as this was out of my vision I could not see what it was ... the crowd appeared to be forced back from the road block and spread into Rossville Street... At the same time a crowd of about 50 youths, several of whom I recognised as previous troublemakers assembled at the Rossville / William junction and moved onto the waste ground, where they stoned the soldiers manning the road block located in Little James Street and Sackville Street.⁸²

6C-66 Soldier 140's RMP statement suggests rioters may also have been retreating from CS gas in the area of Barrier 14.

After a few minutes I saw smoke coming from the barrier [14] and knew that CS Gas had been fired by the troops down at the barrier.

⁷⁶ P390-395

⁷⁷ W171, Serial 120

⁷⁸ W125, Serial 322

⁷⁹ Video 3: 01.52-02.27

⁸⁰ Video 3: 02.27-02.40; P382-384

⁸¹ Video 3: 02:40-02:54

⁸² B1389

PS 7. 1008

... Then I saw a lot of the crowd return to the junction and the waste ground holding handkerchiefs and scarfs over their faces.

Not being able to get to WATERLOO PLACE they began to advance towards our barrier, shouting as they came, then just before they reached us a hail of stones and bricks plus assorted missiles were thrown at our positions.⁸³

6C-67 There is a body of evidence which suggests CS gas was present in the area of Barrier 14 shortly after the water cannon had been used, and that it was deployed by civilians not the army (see further the Submissions on Behalf of the Clients of Mr Robert Aitken, which we have seen in draft).⁸⁴ However, it is unlikely that Soldier 140 would have been in a position to know who had fired the gas canisters from his position behind Barrier 12.

6C-68 A number of rioters have confirmed that they relocated from Barrier 14 to Barriers 12 and 13 when the water cannon was used:

(1) Charles McGill told Eversheds:

I retreated back along William Street towards Little James Street. The army were positioned at Little James Street and Sackville Street... There were stones lying all around the area and a riot started. People, including me, started throwing stones at the soldiers behind Barrier 12.⁸⁵

(2) John Duddy gave up rioting at Barrier 14 after being soaked by the water cannon. He moved towards Barrier 12 and joined in the riot which was taking place there.⁸⁶

(3) James Joseph Quinn had been throwing stones at Barrier 14.⁸⁷ He moved away from Barrier 14 to escape gas in the area.

⁸³ B1865.005

⁸⁴ W125, serial 320 timed 15.48 refers to the use of CS gas by civilians at Barrier 14.

⁸⁵ AM230.2 paragraph 9

⁸⁶ AD148.6 paragraphs 6-7

⁸⁷ Day 179/037

FS 7.1009

I then saw a crowd of between 50 and 60 people throwing stones and bricks at the barrier on Little James Street... I thought I would join them and throw some more stones as well.⁸⁸

- (4) Billy McGilloway, also moved to Little James Street to riot after the water cannon had been brought forward.⁸⁹
- (5) Liam Doherty confirmed that he and others who had been rioting at Barrier 14 transferred their attentions to the soldiers behind Barrier 12. He spent only five to ten minutes rioting at Barrier 12 because of the amount of gas in the area.⁹⁰
- (6) Don Mullan moved away from Barrier 14 where he felt claustrophobic and threw "one or two" stones at soldiers behind Barrier 12.⁹¹

6C-69 Francis Dunne describes in his NICRA statement arriving at Aggro Corner after the water cannon had been used (apparently for the first time) and witnessing the movement of rioters to Barriers 12 and 13:

By the time the section of the march I was with had reached the junction of William St. and Rossville St. the army already had used gas and purple dye. Confusion was caused by the mass of people retreating up from the water cannon into the oncoming marchers... Many teenagers in the march then broke towards Sackville St. and had a go at the military barrier there with stones and waste from the waste ground there.⁹²

6C-70 Further rioters continued to join as the march proceeded down William Street. James McNulty was at the back of the procession. He approached Barrier 12 and

⁸⁸ AQ10.2 paragraph 10

⁸⁹ AM235.1 (NICRA).

⁹⁰ Day 060/086-087

⁹¹ AM448.3 paragraphs 17-20; this section was adopted in evidence Day 148/102.

⁹² AD173.1

FS 7.1010

joined in the rioting after word had reached him, whilst in William Street, that someone had been shot.⁹³

6C-71 A significant number of civilians stood on the Aggro Corner waste ground and observed the rioting at Barrier 12.

6C-72 Francis Dunne reached the junction of William Street and Rossville Street after the water cannon had been used at Barrier 14.

I saw photographers and others who had been to the front of the march covered in scarlet dye. The retreat of the front rankers into the press of the rear of the march caused much confusion and many people started to drift across Rossville Street. Some younger members of the marchers moved left towards the army barricade across Little James Street and attacked this with stones and bottles. This developed into a brisk engagement with the army replying with rubber bullets and gas.⁹⁴

6C-73 According to Michael Noel Quinn, who was drenched by the water cannon, most of the rioting at this stage was directed at the army in Little James Street.⁹⁵

6C-74 Michael Quinn's account to Jacobson and Pringle was as follows:

... the water cannon came in and the crowd rushed back up William Street, my back got soaked by purple dye, then CS was fired and there were people fainting. The crowd went back up William Street and some broke away to stone the barrier at Little James Street.⁹⁶

6C-75 Michael Geoffrey Taylor:

I saw the parade going past in William Street. I then heard cheers coming from the eastern end of William Street. A short time later some of the crowd moved back down William Street and some of

⁹³ AM377.1 paragraphs 2-4

⁹⁴ AD173.4

⁹⁵ AQ11.19 paragraph 7-9

⁹⁶ AQ11.10

7. 1011

*them, mostly youths, came into Little James Street until quite a crowd had gathered.*⁹⁷

6C-76 There is some evidence that groups of rioters moved to and fro between the barricades.

6C-77 Michael Canavan noted that:

*The rioters were running backwards and forwards from William Street to Sackville Street from barricade to barricade. I didn't actually see them attack anything; I wasn't concentrating on that. But there were about 100-200 of them, running in strange waves to and fro. But as the gas came I couldn't see anyone in William Street apart from the rioters.*⁹⁸

6C-78 Joseph McKinney, who admits having taken part in the rioting at Barrier 14, estimates the group around the barriers numbered approximately 100, some of whom "moved between Sackville Street and William Street."⁹⁹

Soldiers Behind Barrier 13 were also Targeted by the Rioters.

6C-79 Barrier 13 was also the focus for rioters. Soldier 034 was behind Barrier 13¹⁰⁰ he confirmed that a riot broke out at Barrier 13. INQ1326 stated,

*I could not actually see Barrier 13 from my position behind Barrier 12, but I could see that the rioters in front (to the south) of Barrier 12 were also throwing stones at Barrier 13. From the point of view of the rioters, the barriers were virtually one and the same and they were rioting at both of them. I stayed behind Barrier 12 throughout the riot.*¹⁰¹

⁹⁷ M75.1

⁹⁸ KC4.4

⁹⁹ Day 076/112/17-25

¹⁰⁰ B1624.002 paragraph 11

¹⁰¹ C1326.3 paragraphs 15

FS 7.1012

6C-80 Francis Dunne refers to a crowd throwing stones at soldiers and police behind Barriers 12 and 13.¹⁰²

6C-81 Patrick Eugene McCallion says he was one of a group of rioters who threw stones at the soldiers behind Barrier 13.¹⁰³ Gerard McDaid said he was part of a assembly of 50-70 others rioting on the waste ground in between Barriers 12 and 13.¹⁰⁴

EVIDENCE OF CS CANISTERS THROWN AT THE TROOPS BY THE CROWD.

6C-82 There is evidence that during the course of the riot a number of gas canisters were picked up by the rioters and thrown back at the troops behind Barrier 12. Military accounts of this happening include:

6C-83 INQ0785

*Our troops fired CS gas canisters at them and rubber bullets, whenever the yobbs got close enough to threaten the position of the barriers...the yobbos used corrugated iron sheets to protect themselves. They would run forward and pick up the CS gas canisters we had fired and throw them back at us.*¹⁰⁵

6C-84 INQ0863 also refers to CS gas canister being thrown by the rioters.¹⁰⁶

6C-85 A number of civilians have also referred to gas canisters being thrown back at the troops behind Barrier 12.

6C-86 Daniel McGuinness, brother-in-law Dr. McClean, witnessed this:

*At least one smoking canister was picked up by a youth and thrown back along Little James Street.*¹⁰⁷

¹⁰² AD173.24 paragraph 6

¹⁰³ AM75.2 paragraph 7

¹⁰⁴ Day 108/018-019

¹⁰⁵ C785.2 paragraph 10

¹⁰⁶ C0863.2 paragraph 12

PS 7.1013

6C-87 Colm O'Domhnaill (referred to in the note as O'Donnell):

the army fired canisters of CS gas and rubber bullets. Some CS canisters were picked up and thrown back at the troops, and the cloud of gas momentarily drifted back on them, then drifted towards the crowd which broke up into Rossville Street and along William Street, with many suffering severe discomfort.¹⁰⁸

6C-88 Michael Geoffrey Taylor, a reporter for the Londonderry Sentinel, witnessed events from the north side of Barrier 12:

...I saw some clouds of purple smoke coming from canisters which the soldiers threw at the crowd but which in some cases people in the crowd were able to pick up and throw back.¹⁰⁹

6C-89 Video 3 captures the moment when CS gas was fired by the soldiers behind Barrier 12 at rioters who were pelting them with rubble from the waste ground.¹¹⁰ The rioters, many wearing handkerchiefs around their mouths and noses, momentarily retreat south away from the clouds of gas. Others shelter behind a make-shift barrier to the left of the frame. One man can be seen running back into the cloud of gas.¹¹¹ The man appears to stoop and pick something up, quite possibly a gas canister in order to throw it back at the soldiers.¹¹²

A SECOND WAVE OF GAS / RUBBER BULLETS TEMPORARILY CLEARS THE AREA IMMEDIATELY IN FRONT OF BARRIER 12.

6C-90 It would appear from photographic and eyewitness evidence that a second wave of CS gas succeeded in clearing the area immediately in front of Barrier 12 for a short period. At this point many marchers, who had been observing the rioting from the back of the waste ground, were affected by the gas and moved down Rossville Street leaving only hard core rioters.

¹⁰⁷ AM277.8

¹⁰⁸ AO19.9

¹⁰⁹ M75.1

¹¹⁰ Video 3: 02:40-02:54

¹¹¹ Video 3: 02:50-02:53

FS 7-1014

6C-91 **P370:** Stones thrown by the rioters are visible on the ground; at this stage the rioters appear to have retreated from the area immediately in front of the barrier.



6C-92 **P397:** Gas can be seen much further to the south of the waste ground, closer to the junction of Rossville Street and William Street.



¹¹² **Video 3: 02.52**

FS 7. 1015

P22/5:



6C-93 This second wave of gas affected a large number of civilians who had been observing the rioting at Barrier 12.

6C-94 Bernard Doherty stood at Aggro corner watching the rioting in Little James Street. He describes gas saturating the area.¹¹³

6C-95 Francis Dunne:

I stood at Con Bradley's corner watching this skirmish for 5/6 minutes... the army direct[ed] 5 or so CS canisters into the mouth of Rossville street I moved about 20 yards along Rossville Street. At this stage I got a fairly severe whiff of gas... With about 5/600 others I stood and watched the hardier souls who were still in Little James Street throwing away...¹¹⁴

6C-96 EP22/10: Civilians at Aggro Corner moving South to avoid the Gas.

¹¹³ AD54.2 paragraph 9

¹¹⁴ AD173.4

FS 7. 1016



RIOTING RESUMED FROM BEHIND CORRUGATED IRON SHIELDS

6C-97 Serial 326 timed at 15.50 records:

... our sub units at call ... serials 12 and 13 have had to disperse the hooligans with rubber bullets and gas. They have been dispersed now into the general area of waste ground Rossville Street / William Street. Little James Street is completely clear. They report that some of the hooligans were wearing respirators, though not of similar pattern to ours.¹¹⁵

6C-98 However it appears from photographs and from military and civilian evidence that as soon as CS gas had cleared a hardcore group of rioters re-grouped behind several sheets of corrugated iron. This is borne out by subsequent entries in the radio logs and military accounts.

6C-99 Serial 328 records the use of further CS gas in the Aggro Corner area.¹¹⁶

¹¹⁵ W126, Serial 326

¹¹⁶ W126, Serial 338

FS 7. 1017

6C-100 Serial 375, timed at 16.10 (according to the log one minute after Barrier 14 had been lifted),¹¹⁷ suggests those who had been on the Aggro Corner waste ground had only just departed the scene.

... The people on Aggro corner have been driven away by the last fusillade of gas cartridges, are moving down towards the meeting...¹¹⁸

6C-101 This interpretation is supported by Serial 379:

... most of those who have dispersed from Aggro Corner are moving down, ah , are moving down Rossville Street.¹¹⁹

And by military evidence:

6C-102 Lieutenant 009:

The men manning the Little James Street road block fired CS gas onto the junction of William junction and at the stone throwers in Little James Street which caused the stone throwers to move from the gassed area but they collected more stones from some waste ground having torn walls of derelict houses apart. When the gas cleared they resumed their stoning throwing using corrugated sheeting obtained from the waste ground as shields...¹²⁰

6C-103 Soldier 123 observed the same scene from the top of the Embassy Ballroom:

Then I saw CS gas vapours coming from the barrier at Little James St after I had heard the sound of several guns,¹²¹ the youths having now acquired several sheets of corrugated iron sheeting which they were using as shields¹²²

6C-104 Many of the photographs capture the congregation of rioters behind corrugated iron shields.

¹¹⁷ W128 Serial 372 "... serial 14 now being lifted..."

¹¹⁸ W128, Serial 375

¹¹⁹ W129, Serial 379

¹²⁰ B1389.

¹²¹ Day 301/087 In evidence Soldier 123 confirmed he was referring to rubber bullet guns.

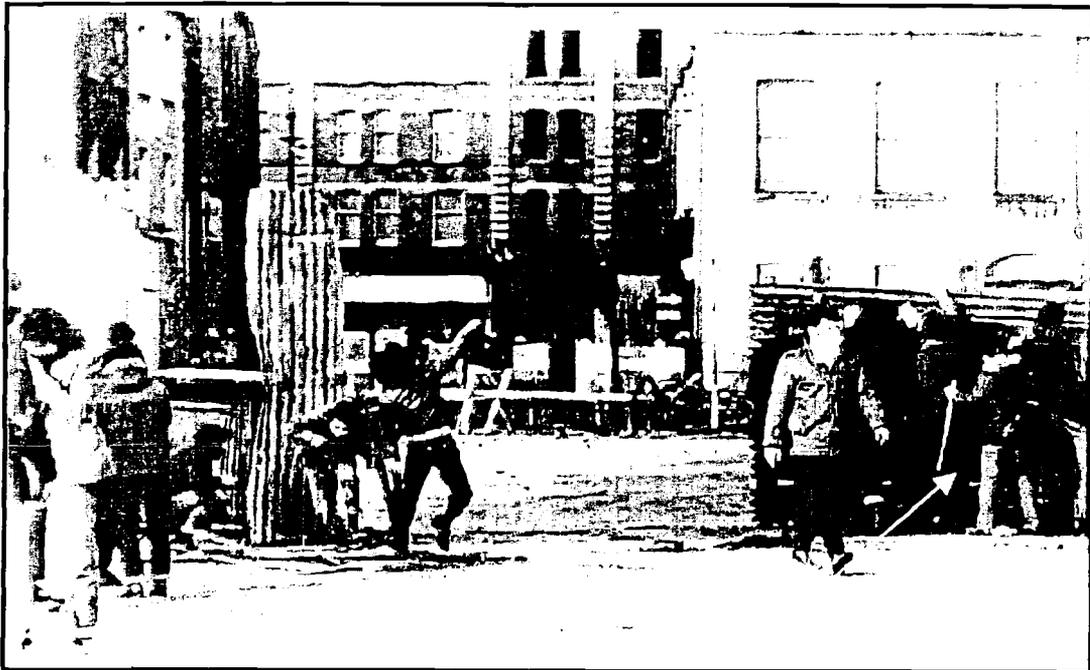
¹²² B1773

PS 7. 1018

P362:



6C-105 P369: A youth on the far right hand side carries a long bar.



FS 7.1019

THE NICRA BANNER IS PARADED IN FRONT OF BARRIER 12

6C-106 As the NICRA banner was carried forward there was a very brief pause in the rioting. Those carrying the banner hurled abuse at the soldiers¹²³ and the rioting resumed. The actuality footage and available contact prints suggest that the parading of the banner occurred after the water cannon had been used for the first time at Barrier 14 and after the majority of observers had moved down Rossville Street to avoid CS gas in the Aggro Corner area.

6C-107 P233.25:19-22. The first three photographs in this series record the scene immediately before the NICRA banner was carried to Barrier 12. In photograph 19 CS gas is visible in the area in front of Barrier 12. In photographs 20 and 21 appear to show civilians suffering the effects of breathing in the gas. The last photograph shows the NICRA banner as it is carried towards Barrier 12.



¹²³ RM 2, AK42.3 paragraph 13

fs 7-1020



6C-108 Michael Noel Quinn held the Banner for a short time:

I was standing chatting to a friend ... when this guy came up carrying a civil rights banner, grabbed me and told me to take one end of the banner with him out onto the waste ground north of William Street. I did not want to go because I did not want to get too close to the soldiers. I did not know the guy but I subsequently discovered that it was Jim Wray. I reluctantly agree to hold one end of the banner...

He was insistent that one of us would have to do it and the others were laughing at me...I probably only held it for about two minutes. I recall standing in the waste ground to the north of William Street and facing the soldiers at Barrier 12 and around the area of Little James Street / Prince Arthur Street.¹²⁴

6C-109 RM 2 also held the banner with Jim Wray. His evidence suggests this occurred not only after the water cannon had been used at Barrier 14 but also following the shooting of Damien Donaghy and John Johnston.

...shortly before I left the area the army used the water cannon on the crowd ...Someone around me had said that two guys had been shot by a sniper further west up William Street and I wanted to check this out.

¹²⁴ AQ11.20 paragraphs 10-11

PC 7-1021

...I stood around on the waste ground in the area between Little James Street and Sackville Street ... There were about 500 people standing around in that area.

Near me, I saw a guy holding the civil rights banner by himself. He was wearing a small black woollen hat. I went over to him and helped carry one of the poles of the banner.

At the time, I did not know who the other guy holding the banner was. I think that the people who had been holding the banner with him had let go of it because of the effects of CS gas.

We walked around the area of the waste ground carrying the banner. We stood very near the soldiers at point B [between Barrier 12 & Barrier 13]. I seem to recall that we were practically on our own as we were doing this, although there were a crowd of people behind us in William Street watching and throwing the odd stone towards the soldiers. As we were carrying the banner around, we shouted abuse at the soldiers but they did not say anything back.

The soldiers fired CS gas over to the crowd to the south of us, in the area of the junction of William Street and Rossville Street. Because I had been on previous marches I thought I was fairly immune to the effects of CS gas, so Jim Wray and I continued to carry the banner around the area of waste ground.

Most of the CS gas seemed to be fired over our heads. I then felt the effects of gas, big time...Whilst I was suffering from the effects of the gas, Jim Wray asked someone to take my side of the banner away from me...¹²⁵

6C-110 RM 2 identifies himself as the man on the left of the photograph below, and James Wray as the other man in the photograph holding the banner.¹²⁶ In fact it is clear from other evidence that RM 2 is mistaken and he is the man on the right hand side of the photograph and James Wray, wearing the hat, on the left.¹²⁷

¹²⁵ AK42.9 paragraphs 9-15

¹²⁶ AK42.9 paragraph 12

¹²⁷ This was confirmed Counsel for the Wray family, Lord Gifford, Day 049/029/06-11.

FS 7-1022



6C-111 Many photographs and actuality footage capture the NICRA banner being carried towards Barrier 12.¹²⁸

6C-112 P357. It appears there was a brief pause in the rioting whilst the banner was carried forward. By this stage the bulk of the crowd can be seen in the Rossville Street waste ground.

¹²⁸ See, for example, Video 3 03:24

FS 7. 1023



6C-113 EP27/2. A photograph taken nearer to the Barrier suggests those closer to the banner were in fact rioters. Those on the right of the photograph prepare to resume rioting.



FS 7.1024

6C-114 **P363:** It is clear from this photograph that rioting re-started even as banner was being held up. Christopher Clarke Q.C., in opening, estimated the group in the photograph consisted of between 30 and 40 people.¹²⁹



6C-115 Enlargements from **P363** reveal two men holding stones, another bends down to pick up something up from the ground.



6C-116 **P368:** A man on the left hand side of the photograph stoops down to pick up a stone (see enlargement)

¹²⁹ Day 009/036/13

FS 7.1025



6C-117 Soldier 109 is now unable to recall the details of what took place in front of Barrier 12¹³⁰ but did refer to the banner being brought forward in his contemporary statement to the RMP.¹³¹

After about 20 mins the crowd started to fall back into Rossville St. At this time four men came up to our barrier with a banner and they started to abuse us. A group of about 30 youths followed these men and they started to stone us. The original four men tried to stop them, but they failed and when the stoning got heavier they went away. In response to the continuing rioting further CS gas was fired leading those who were carrying the banner to withdraw.

¹³⁰ B1723.003 paragraph 13

¹³¹ B1720-1721

MS 7.1026

6C-118 The CS gas fired at rioters close to the NICRA banner is recorded on the video footage.¹³²

RIOTING CONTINUED AFTER THE NICRA BANNER WAS WITHDRAWN

6C-119 A close study of the contact prints reveals that, notwithstanding the volley of CS gas, rioting continued in front of Barrier 12 after the NICRA banner had been carried away.

6C-120 P233.25:22 shows the NICRA banner approaching Barrier 12.

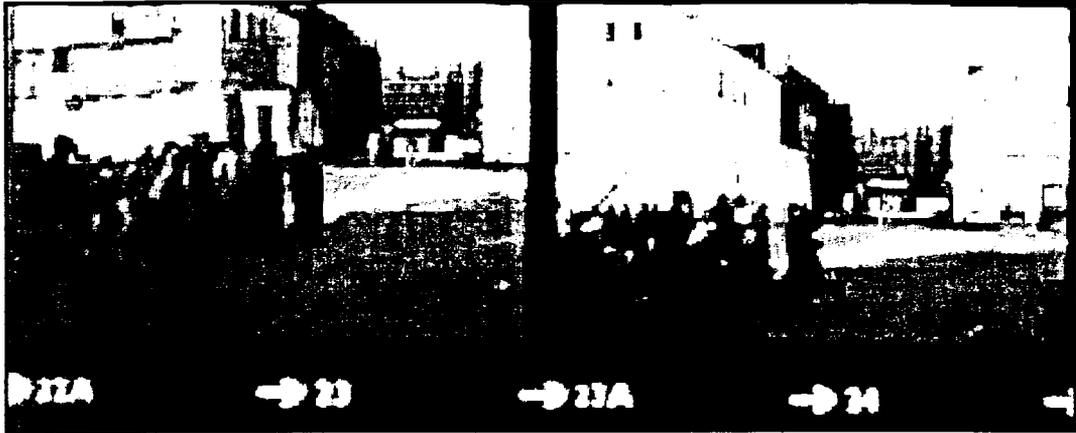


6C-121 The photograph above is followed immediately by a series of photographs showing a group of rioters advancing from behind the same sheets of corrugated metal. CS gas is fired in response to the renewed rioting (photograph 26¹³³).

¹³² Video 3 03:25-30

¹³³ Photographs 26A-28 can be found at P233.53; however they do not add anything to those reproduced above.

FS 7.1027



6C-122 Full scale photographs taken at approximately the same time give a better impression of the scale of the rioting.

P365:



7.1028

P364:

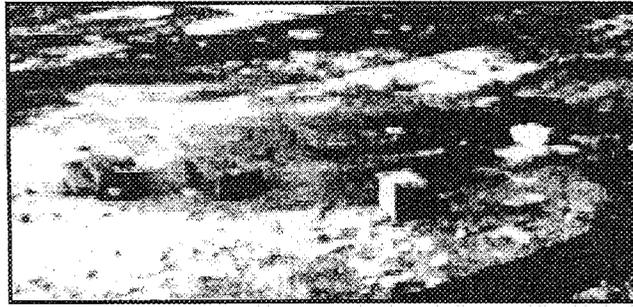


P366



6C-123 A close up of a section of P366 shows bricks and other missiles on the waste ground.

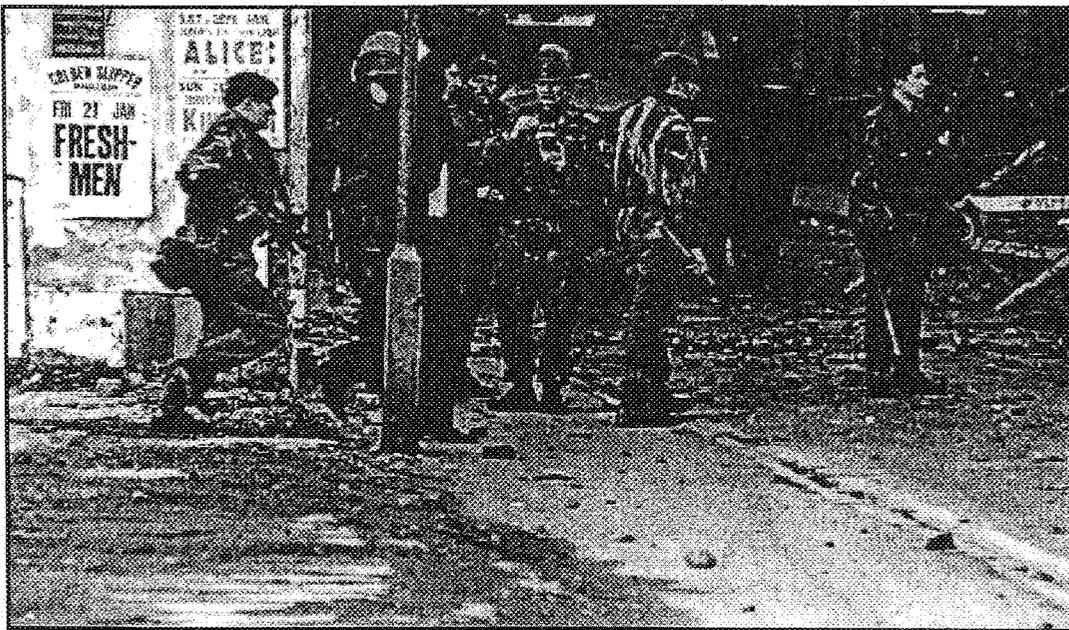
FS 7. 1029



THE NATURE AND SEVERITY OF THE RIOTING AT BARRIER 12.

6C-124 Although the rioting at Barrier 12 was less severe than that at Barrier 14¹³⁴ nevertheless it is plain from the photographs, and from civilian and military accounts, that the soldiers behind Barrier 12 were subjected to serious and sustained rioting. The large number of stones left on the ground by Barrier 12 gives an indication of the ferocity of the riot.

EP4.44

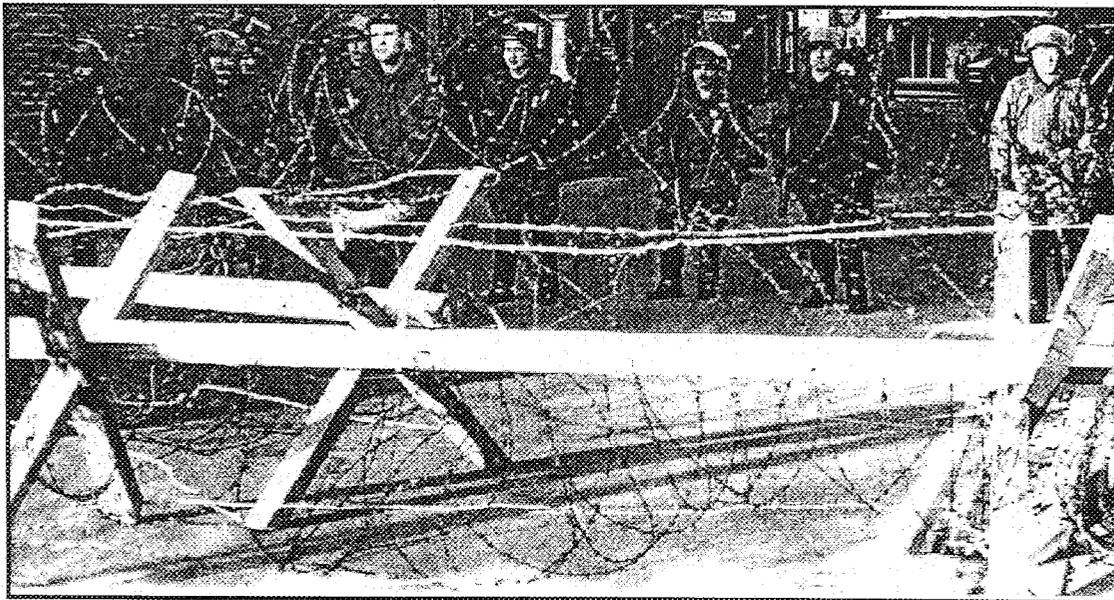


¹³⁴ For example George Leonard Downey AD134.2 paragraph 11 "The rioting was, however, not as serious as that at Barrier 14". Hugh Duffy, AD157.1 paragraph 4 "...a riot was taking place ...this was smaller and less serious than the one at William Street."; see also Patrick McCallion, AM74.2 paragraph 8; and Dr. McClean, AM105.4 paragraph 17.

EP4.45



6C-125 These photographs need to be contrasted with P242 which shows that the ground in front of Barrier 12 was clear prior to any rioting taking place.



Military Accounts

6C-126 Military evidence about the level of rioting is divided. Some soldiers have described it as “a fairly normal riot;”¹³⁵ “nothing too serious;”¹³⁶ “the sort of rioting that we were used to seeing at the junction of Rossville Street and William Street every week.”¹³⁷ Even if it was the norm for the time, the truth is that rioting was undeniably vicious. Other soldiers, including a number of soldiers who made statements in 1972, have described the rioting as serious and frightening.

- (1) Soldier 109’s evidence is that “...The rioting was so severe that day. There was no way we could stop it.”¹³⁸
- (2) Soldier 140 told Eversheds that he was “extremely frightened”¹³⁹ by the level of rioting.

... I'd never seen anything like it before. The were shouting and screaming and throwing anything they could get their hands on; stones, bottles, palings, pieces of metal...¹⁴⁰

- (3) Soldier 023 was observing from the Peter England shirt factory. His RMP statement refers to a large crowd of 2-300 on the waste ground at the William Street /Little James Street junction throwing missiles at troops manning barricades in Little James Street and Sackville Street.¹⁴¹ He told Eversheds:

I could hear all the shouting and hear things being thrown; I remember that people were chucking whatever they could get their

¹³⁵ INQ1951; C1951.3 paragraph 19

¹³⁶ INQ1233; C1233.3 paragraph 14

¹³⁷ Lt009; B1392.002 paragraph 11; confirmed on oath Day 316/083.

¹³⁸ B1723.007 paragraph 25

¹³⁹ B1865.002 paragraph 10

¹⁴⁰ B1865.002 paragraph 9

¹⁴¹ B1517

FS 7.1032

hands on such as bricks and bottles. This activity was below the position of my window in the area of Barrier 12.¹⁴²

- (4) Soldier 109 formed the opinion that the riot was:

...orchestrated and organised. I could see people telling other people where to go and what to do. They were moving around in organised groups ... There was a core element of rioters determined to go for us... The riot gradually moved up the scale and the stoning became heavier despite my Battery Commander warning the crowd that a breach of the peace was being committed... I estimate that there were two or three hundred people backed up front the barrier into the open waste ground who were throwing anything they could find at us...¹⁴³

- (5) INQ0178:

There was an area of open ground by Little James Street, to the south of our barricade. There were about 150-200 people there, throwing bricks and running around. They were mostly youths, between the ages of 10 and 20... I remember a man carrying a corrugated steel sheet, who was trying to get closer to us. He was getting really close and we were concerned that he could have had something behind it (such as a gun), we did not know. We were shooting rubber bullets at him, trying to knock the corrugated iron sheet out of his hand.¹⁴⁴

- (6) INQ1101:

The ground in front of the barrier opened onto a square in which a crowd had gathered, who were throwing bricks, stones, paving slabs, iron bars, in fact anything they could get their hands on at the soldiers.¹⁴⁵

- (7) INQ0785:

¹⁴² B1524 paragraph 9

¹⁴³ B1723.004 paragraph 13

¹⁴⁴ C178.3 paragraph 21

¹⁴⁵ C1101.1 paragraph 7

FS 7.1033

*There were quite a lot of yobbos there, tearing up paving stones and launching missiles with slings. They were quite well prepared for a bit of aggro.*¹⁴⁶

(8) INQ1326:

*...a heavy barrage of stones, half bricks and possibly empty bottles. ...I remember noticing that there was an element of the crowd, the slightly older ones, who were trying to control or direct the rioters, by which I mean directing them to throwing things in a particular direction and assisting them to take cover behind corrugated iron shields. I do not remember any stewards trying to stop the rioting. A high proportion of the rioters were wearing scarfs or handkerchiefs around their faces to hide their identities.*¹⁴⁷

(9) WO1 Wood

*When the parade arrived at the barrier, there was a fair crowd of people gathered and they started throwing stones. I would say that there were about 50 rioters in total, but there was also a further crowd of people watching.*¹⁴⁸

Civilian Accounts

6C-127 Whilst there are some witnesses who do not recall the rioting as particularly severe, the preponderance of the evidence supports the majority military view that the rioting was serious.

6C-128 Significant numbers of rioters were involved:

(1) Hugh McMonagle described the scene as he came down William Street:

*There were young boys, probably about 100 in total, who all seemed to be throwing stones across the waste ground ...towards the soldiers behind those two barriers.*¹⁴⁹

¹⁴⁶ C785.2 paragraph 9

¹⁴⁷ C1326.3 paragraph 17

¹⁴⁸ CW1.4 paragraph 20

¹⁴⁹ AM369.2 paragraph 8

FS 7. 1034

- (2) Nigel Wade stood with Simon Winchester and observed the rioting which took place at Barrier 12 at approximately 16.00 after the use of the water cannon at Barrier 14.¹⁵⁰

About 100 youths stoning the barricade at Little James Street, under heavy rubber bullet and gas fire.¹⁵¹

- (3) Charles James McGill confirmed that he was one of about 200 people who targeted soldiers in front of Barrier 12.¹⁵²

6C-129 Most of those involved in the rioting were experienced and well prepared:

- (1) it is plain from the photographs that many of the rioters wore handkerchiefs to protect them from the CS gas. Charles McLaughlin says he and his friend, Tony Morrison, had an army shield with them which they used to shelter from rubber bullets.¹⁵³
- (2) According to Patrick Eugene McCallion some of those at Barrier 12 were experienced rioters and could throw stones a very long way.¹⁵⁴

6C-130 The rioting itself was vicious and involved far more than just stones being thrown:

- (1) Gerard McDaid described joining up with 50 or 60 other rioters in Brandywell and making their way to the front of the march. All were excited and looking forward to a good confrontation.¹⁵⁵ The group, now slightly larger in size, reached Aggro Corner and headed towards Barrier 12.¹⁵⁶ Stones and bottles were thrown at the soldiers.¹⁵⁷ Mr. McDaid's

¹⁵⁰ Day 109/124: Mr. Wade's present recollection appears to be that these events occurred in the reverse order; however he stated that his recollection of the order in which these events occurred should not be relied on.

¹⁵¹ M79.2 paragraph 7

¹⁵² Day 069/134

¹⁵³ AM321.1 paragraph 1

¹⁵⁴ AM75.2 paragraph 7-8

¹⁵⁵ Day 108/016

¹⁵⁶ Day 108/018

FS 7.1035

evidence about the attitude of the rioters leaves no doubt that the rioters intended to cause serious injury to the soldiers:

A. We threw [sic] stones. We do not care what the army was protected with. We would throw stones at them anyway.

Q. It would not matter how they were dressed?

A. As far as we were concerned, we were defending our area, and they should not be there.

...

Q. ... the sort of weapons that rioters would use would be stones?

A. Yeah, stones.

Q. Any kind of missile they could get their hands on?

A. Yeah.

Q. And the heavier and the more dangerous, the better?

A. Well just whatever you got your hand on at that stage.

Q. Iron bars, for example or railings?

A. Yeah, yeah.

Q. Scaffolding poles?

A. You would have threw them too, yeah.

Q. Catapults?

A. A few boys would have had.¹⁵⁸

According to Mr. McDaid on Bloody Sunday the intensity of the riot was increased by the presence of rioters from Belfast. He agreed that the Londonderry

¹⁵⁷ AM164.2 paragraph 10

¹⁵⁸ Day 108/042, 046-047

FS 7. 1036

rioters were keen to show that they knew how to riot without any help from the Belfast gang.¹⁵⁹

- (2) Charles McLaughlin located himself between Barrier 12 and Barrier 13:

*We were throwing any object we could lay our hands on at the British soldiers who were visible at the two barriers – stones, half bricks, metal bars and any other rubble that was lying around on the waste ground.*¹⁶⁰

- (3) Professor O’Keefe estimated that between 20-25 people were participating in the rioting at Barrier 12.¹⁶¹ He told Eversheds:

*I would hesitate to say that the rioting was not serious, because some soldiers may have been hit by stones or bricks...I remember being apprehensive and frightened, but not desperately so.*¹⁶²

- (4) Francis Dunne arrived at Aggro Corner after the water cannon had been used. He watched the rioting at Barriers 12 and 13 for between five and ten minutes. He describes how the rioters kept having to come south down Little James Street for further bricks and stones to throw at the soldiers.¹⁶³

- (5) Liam Mailey, commenting on the propensity for youths to engage in “planking”, remarked that the area to the left of the junction of Rossville Street and William Street was popular because “that was a building site and there were the materials for making such a noise readily available.”¹⁶⁴ Undoubtedly such materials were also made ideal missiles to throw during the course of rioting.

¹⁵⁹ Day 108/048- 049

¹⁶⁰ AM321.1 paragraph 1

¹⁶¹ H21.12 paragraph B

¹⁶² H21.44 paragraph 5

¹⁶³ AD173.25 paragraph 7

¹⁶⁴ Day 163/096/20-24

FS 7 . 1037

CONCLUSION

6C-131 Before any soldiers deployed into the Bogside, or fired any shots, the march had degenerated into a violent and sustained attack on the army manning the barriers barring the march's progress to the Guildhall. A large and angry crowd was pelting the soldiers with anything which came to hand with the intention of inflicting as much harm as possible on the soldiers and, if possible, killing them.

6C-132 This violent and angry crowd was not, however, contained within the areas immediately in front of Barriers 12 and 14: it had spread onto the waste ground immediately in front of where soldiers A and B were stationed and there a further sustained attack took place.

6C-IV EVENTS ON THE WASTE GROUND PRIOR TO THE SHOOTING OF DAMIEN DONAGHY AND JOHN JOHNSTON

6C-133 In addition to the riots taking place at Barriers 12 and 14, it is clear that sustained rioting was also taking place in and around the laundry waste ground.

6C-134 As the tail end of the march came down William Street soldiers of Machine Gun Platoon in the derelict building with nine windows were seen by the crowd and became targets for a group of rioters. The attack which was then mounted on them was vicious and sustained.

TIMING OF THE RIOTING IN THE VICINITY OF THE DERELICT BUILDING

6C-135 There is conflicting evidence, from those civilians who were prepared to admit that there was rioting, about precisely when it broke out in and around the waste ground where both Damien Donaghy and John Johnston were shot. Some witnesses have suggested that rioting started whilst the main body of the march was coming down William Street; others have said that there were only stragglers in William Street when stones were first thrown.

6C-136 Many witnesses have denied that any rioting took place at all in this location. Damien Donaghy's own admission to having taken part in a riot in the location where he was shot puts the fact of the riot beyond doubt.

FS 7. 1038

6C-137 Notwithstanding the lack of consensus in relation to this issue, the probability is that it was not until the tail end of the march was passing down William Street that *serious* rioting broke out. This conclusion is supported by, amongst others, the evidence of the two wounded themselves and by the two soldiers who fired.

6C-138 There is evidence which suggests episodes of more minor stone throwing and 'cat-calling' took place as the main march proceeded down William Street (see Chapter 6B, above).

Civilian Evidence Relating to the Timing of the Rioting in the Vicinity of the Derelict Building.

6C-139 Damien Donaghy was asked during the course of his evidence:

What was the position so far as the march was concerned at this stage; was the march still proceeding along William Street?

A. No, the vast majority of the march, the marchers went on down to the barrier and other marchers turned right and went up Rossville Street.

Q. At the time the stone throwing was going on, were there still some of the marchers walking down William Street to the junction?

A. Not really a wile lot. They were taking shortcuts along the waste grounds and that to go through Kells Walk and that.

Q. There were some people in William Street, were there?

A. Not a wile lot.

Q. Not many?

A. Not a wile lot.¹⁶⁵

6C-140 John Johnston told the Sunday Times that he was worried about gas and so made sure he was towards the end of the march.¹⁶⁶

¹⁶⁵ Day 070/006/24-007/15

¹⁶⁶ AJ5.1

FS 7. 1039

6C-141 Many civilians have given very similar evidence, including the following:

- (1) Gerry Duddy gave evidence that it was “more or less at the tail end of [the march]” at the time he saw boys stone throwing on the waste ground.¹⁶⁷
- (2) Billy McCartney described those present in the area as “mostly stragglers at the end of the march. The march would have been over at that stage.”¹⁶⁸
- (3) Alfie McAleer confirmed the same to Christopher Clarke Q.C.:

Q. ... You describe how a group of about 10 or 15 youths, including you and your mates, Peter and Terry, gathered to throw stones at the soldiers, that there were a few people standing watching, but other than that there were no other people around, the march had moved on. Do you know where the march had got to by this stage; was it still in some part of William Street?

A. No, no, no, I would say the march had reached its destination.

Q. When you say that apart from the people who were throwing stones, there were a few people standing around, do you mean something like a dozen, or 40 or 50, or what sort of –

*A. There would have been 30, 40 people there.*¹⁶⁹

- (4) Christopher Doherty was asked to confirm by Lord Saville whether the march was still going at the time when he saw stone throwing. Mr. Doherty replied “ No, I do not remember the marchers. It was towards the end of the march, you know.”¹⁷⁰

¹⁶⁷ Day 059/160. Mr. Duddy’s evidence that he believes Damien Donaghy was shot *before* any rioting at Barrier 14 is clearly wrong.

¹⁶⁸ Day 054/166

¹⁶⁹ Day 092/054/15

¹⁷⁰ Day 182/132

FS 7. 1040

(5) Paul Coyle confirmed that marchers were no longer coming down William Street at the time that he witnessed rioting directed towards the soldiers in the derelict building.¹⁷¹

(6) Patrick Harkin gave evidence that

*the tail end of the march passing when those two people were shot ... not a lot [of people] there then.*¹⁷²

Military Evidence re Timing

6C-142 The military evidence was to similar effect:

(1) Giving evidence to this Tribunal¹⁷³ Soldier A adopted the account he had given in his BSI statement:

17. I remember hearing the march approaching. I was hyped up because of the previous incoming fire and because there were lots of people, not just hundreds but thousands who spread across and filled the width of the road carrying their banners. As they marched down the road they did not cause us any aggro; but then again they did not now that we were there. They went down the route we were expecting them to follow, down William Street to the east, and everything was going to plan. I tried to keep out of sight, as there was no need for us to risk being seen unnecessarily...

18. Eventually, I cannot remember after how long, the bulk of the march passed by and we were then left with stragglers; the yob element. They were kicking cans around the road and throwing stones. One of them spotted one or some of the soldiers in my building and pointed us out to the others.

19. Once they all realised there were soldiers in the building they started throwing rocks bricks and stones and yelling "There are Brits in there. There are Brits in there. Get the bastards out!" and that sort of thing. Bricks seemed to be thrown in the general direction of our building rather than directly at any individuals

¹⁷¹ Day 152/058

¹⁷² Day 089/006/17

¹⁷³ Day 297/025-026

FS 7.1041

amongst us. Some of the rioters were over to my right in the waste ground forward and to the side of where I was (south east).¹⁷⁴

- (2) INQ1917 confirmed the accuracy of the following part of his BSI statement during the course of giving evidence to this Inquiry.¹⁷⁵

12. ...My view from the position of cover was restricted, but I can remember seeing some marchers. They were probably stragglers from the main body of the march and they were in an area of open ground quite near to where we were in the building. They were mostly males in their twenties and thirties. They seemed to be running in various directions and throwing things as well, some of which were being thrown in our direction. I cannot remember specifically what it was that they were throwing. There was a lot of shouting going on.¹⁷⁶

- (3) The position was clarified by further questions put to INQ1917 by Mr. Toohey:

MR TOOHEY: ... In paragraph 12 to which Mr Roxburgh has just taken you, you refer to seeing some marchers who were probably stragglers; do you see that, paragraph 12, the first two lines?

A. Yes, sir.

MR TOOHEY: Drawing a distinction for a moment between people who were actually marching down the street and people who might have been marching, but were in the open ground doing various things when you saw them; did you actually see people marching in the street?

A. No, sir.

MR TOOHEY: When you speak of marchers, you are referring to those who were in the open ground adjacent to the building, are you?

A. Yes, sir.¹⁷⁷

¹⁷⁴ B20.003 paragraphs 17-19

¹⁷⁵ Day 288/064-065

¹⁷⁶ C1917.2 paragraph 12

¹⁷⁷ Day 288/066-067

FS 7.1042

(4) Soldier B told Eversheds that he believed that the main crowd of marchers had already passed his position when Machine Gun Platoon became the target for rioters.¹⁷⁸ His contemporary statements suggest that a few stones may have been thrown at an earlier stage; but it was after the march had passed that serious rioting broke out.

6C-143 Soldier B's statement to the RMP on 31.01.72 at 01.10 a.m. refers to the main body of the march passing without any real incident. It suggests that it was not until the crowd had passed that it was necessary to use baton rounds to try and disperse the rioting youths.¹⁷⁹ His SA statement prepared for the Widgery tribunal suggests that members of Machine Gun Platoon had been seen and targeted by stone throwing youths as they took up their positions in the derelict building.¹⁸⁰

RIOTERS ASSEMBLE IN AND AROUND THE LAUNDRY WASTE GROUND AND TARGET SOLDIERS IN THE DERELICT BUILDING

Stragglers and Rioters in the Area of the Derelict Building are Joined by Rioters who had been Rioting at the Army Barriers.

6C-144 As stragglers at the end of the march made their way down William Street, the number of rioters in the area of the derelict building was swelled by rioters who were retreating west up William Street in order to escape the CS gas around the army barriers and Aggro Corner and following the deployment of the water cannon at Barrier 14.

6C-145 Whilst not all of those affected by the gas and by the water cannon were rioters, it is clear from a large number of the photographs that at the time that the water cannon and CS gas were used by the army a large number of those closest to the barriers were rioters. Despite, in some cases, having a degree of tolerance to CS

¹⁷⁸ B43.003 paragraph 11

¹⁷⁹ B43.009

¹⁸⁰ B43.012

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gas and having handkerchiefs with which to cover their mouths and noses, many rioters were affected by CS gas and moved away from the area to riot elsewhere.

6C-146 Ciaran Donnelly worked at the time as a photographer for the Irish Times. He was questioned by Edwin Glasgow Q.C.:

Q. Would it be fair to say that from what you saw, by the time the baton rounds and the water cannon were used, apart from photographers who were trying to record the scene, those who were confronting the soldiers at the barrier were the hard core rioters and anybody who was moved to go on the civil rights march and listen to the stewards had already gone?

A. Most of them had, most of them had.

Q. You remained there for most of that period, Mr Donnelly, before you yourself felt the gas and moved away?

A. Well, looking at the pictures that were shown of the camera crew coming -- covered in water, I had obviously left -- they were at the front of the crowd, I was further back, as I say, standing on a windowsill somewhere. I was not right at the very front.

Q. You yourself did not get soaked?

A. I know I got gassed, I cannot say if I got soaked or not. I did not get heavily drenched.¹⁸¹

6C-147 This was also confirmed by a self confessed rioter, Liam Doherty. In his statement to the present Inquiry he says that:

...anyone who wanted to riot was there; the others headed off down Rossville Street to see the speakers.¹⁸²

6C-148 Further, a reduced number of 'hard core' rioters regrouped¹⁸³ close to the Barriers and remained rioting there until moments before the soldiers were deployed through the barriers. They can be seen in a number of photographs sheltering

¹⁸¹ Day 071/066-067

¹⁸² AD80.2 paragraph 8

¹⁸³ By this stage the rioters at Barrier14 had employed a section of metal sheeting to act as a shield against rubber bullets clearly visible in photographs, for example, P385

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behind corrugated metal sheeting in front of Barrier 12 and Barrier 14. Some apparently moved between the barriers.¹⁸⁴

6C-149 A significant number of rioters, however, left the area and went in search of a riot elsewhere.

6C-150 Liam Doherty was one such rioter. He told Eversheds:

The water cannon came up and gas and rubber bullets were fired. I was there for about 10 or 15 minutes when I got drenched with the dye from the water cannon and got a heavy dose of gas. I started to moving east up William Street...I was badly affected by the gas and I was sick...

There was rioting going on at Little James Street at the that time; it was sporadic...Some of the crowd joined in with the riot at Little James Street. There was a lot of gas though and it couldn't really get in to much of a riot.

I went further east up William Street and stood in the road just north of a piece of waste ground...¹⁸⁵

6C-151 Mr. Doherty confirmed on oath that he had bent down to pick up a stone to throw at the soldiers in the derelict building and shouted to others to do the same.¹⁸⁶ He said that no sooner had he gone to throw a stone than he heard two shots. Damien Donaghy, who had just thrown a stone and who was standing beside him, was hit.¹⁸⁷ Mr. Doherty's claim that no stones had been thrown until he gave the 'call for action' is unsustainable and is an example of an attempt to play down the level of rioting. It is contradicted by the evidence of other civilian evidence, including rioters, who confirm that rioting was taking place for some minutes before Damien Donaghy was shot.

¹⁸⁴ See, for example, the evidence of Michael Canavan, **KC4.4**

¹⁸⁵ **AD80.2 paragraph 9-11**. This section of his BSI statement was adopted during course of oral evidence **Day 060/087**.

¹⁸⁶ **Day 060/091**. It is clear that Mr. Doherty has confused the Abbey and Laundry waste grounds. He accepted the possibility that he had confused the two when he gave evidence **Day 060/097**.

¹⁸⁷ **Day 060/095-096**

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6C-152 Patrick McCallion moved back up William Street and away from Barrier 14 because he feared he would be caught in a stampede should the army come in.¹⁸⁸ Mr. McCallion confirmed that he had moved away from Barrier 14 *before* rubber bullets, CS gas or the water cannon had been deployed.¹⁸⁹ When he reached the laundry waste ground a riot of some proportions was *already* in progress. He observed twenty to thirty people already on the waste ground throwing “anything they could, including stones and empty milk bottles, at the soldiers on the GPO.”

¹⁹⁰

6C-153 Paul Coyle was overcome by gas after reaching the junction of William Street and Rossville Street and retreated up William Street to a point near the site of Stephenson’s Bakery. There were already a number of people throwing stones at soldiers in the derelict building. The march had passed by this stage. Mr. Coyle moved southwards through the laundry waste ground. As he did so he heard two live shots and saw Damien Donaghy fall to the ground.¹⁹¹

Word spread that there were Soldiers in the Derelict Building and in Buildings to the North of William Street.

6C-154 The congregation of a large group of rioters close to the derelict building was no coincidence. A number of those who had been rioting at the army barriers learned from those around them that there were soldiers in and around the derelict building in William Street and went with the intention of targeting these soldiers.

6C-155 Billy McCartney initially went to Barrier 14 with his friend Danny Deehan, AD21. He ignored the request by stewards to go to Free Derry Corner. In oral evidence Mr. McCartney adopted the following section of his Inquiry statement:

¹⁸⁸ Day 071/142

¹⁸⁹ Day 071/141-142

¹⁹⁰ Day 071/143; AM74.2 paragraph 10

¹⁹¹ Day 152/057-059

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*Some people around me near to barrier 14 then said that there were soldiers further back along William Street where we had just marched. Danny and I decided to go back there.*¹⁹²

6C-156 Mr. McCartney agreed he had gone back to see whether people were going to throw stones at the soldiers.¹⁹³

6C-157 Those who had noticed soldiers in the derelict building drew attention to them with the intention of encouraging rioters to target them.

6C-158 Soldier A told Eversheds:

*One of them spotted one or some of the soldier in the building and pointed us out to the others.*¹⁹⁴

6C-159 Soldier A's evidence on this point has been confirmed by a number of civilian witnesses.

- (1) Danny Deehan told Eversheds that he recalls people pointing out soldiers on roofs to the north of William Street.¹⁹⁵
- (2) William Curran told Eversheds that he might have pointed soldiers out to potential rioters who then threw stones at them. This is particularly significant as it demonstrates the level of support, and even active encouragement, rioters received from so called 'peaceful' marchers.

I looked east down William Street and saw a group of about four or five lads coming west up William Street and saw a group of about four or five lads coming west up William Street towards me at point E. The boys were on the northern side of William Street coming towards the waste ground in front of the Presbyterian Church. I may have called out to the boys to say that the soldiers were there, but I do not now remember. When they saw the soldiers, they

¹⁹² AM87.2 paragraph 7, Day 054/164-165

¹⁹³ Day 054/165

¹⁹⁴ B20.003 paragraph 18

¹⁹⁵ AD21.2-3 paragraph 8.

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*picked up some stones from the edge of the waste ground (grid reference K07) and threw them at the soldiers.*¹⁹⁶

- (3) Derek McFeely, told Eversheds:

*... others in the crowd noticed the soldier in the derelict building and had started pointing towards them and jeering and hurling insults at them. I could see the soldiers through two gaping hold in the buildings...*¹⁹⁷

- (4) Noel Kelly told Eversheds that he saw soldiers on the Presbyterian Church flat roof and in the derelict building with nine windows:

*I remember that a call went up that there were soldiers in the building. A small group of young lads, may be four, moved towards a gap in the front (William Street) wall of the shirt factory where the rubble was ... They bent down to pick up stones to throw at the soldiers.*¹⁹⁸

- (5) Kevin McCallion described how, when he was approximately half way down William Street the atmosphere started to change:

*...people in the crowd pointed out that there were soldiers in the vicinity of the old Ritchie's Factory... By now the crowd was getting a bit tense. There was some cat-calling at the soldiers by the crowd, things like "wankers" and "fuckers". The odd stone may have been thrown towards the GPO Sorting Office. I began to think there would be trouble and that a riot was about to start... I still have a vague memory of two shots coming from the GPO .. and then hearing that two people had been shot...*¹⁹⁹

¹⁹⁶ **AC132.2 paragraph 8.** Mr. Curran apparently adopted without amendment this section of his statement (to which he was referred by Christopher Clarke Q.C. on **Day 055/053**).

¹⁹⁷ **AM217.1 paragraph 4.**

¹⁹⁸ **AK17.9 paragraph 6.** Mr. Kelly's evidence to the Inquiry, **Day 062/004**, was that he was *not* at the very end of the march; the "call" he describes occurred whilst there were still thousands of people around. Whilst there is no reason to disbelieve Mr. Kelly's evidence about the "call" his claim not to have seen any stones actually thrown is not credible (and undermined the evidence of Damien Donaghy himself).

¹⁹⁹ **AM69.1-2 paragraph 7-8.** Mr. McCallion's Eversheds statement falls to be contrasted with what he said in his NICRA statement, at **AM69.6**. In the earlier, NICRA, statement Mr. McCallion referred to soldiers on GPO roof and in derelict building firing rubber bullets; but concluded that the live shots "seemed to come from the direction of the aforementioned derelict buildings in William St..."

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(6) Clifford Lancaster:

I could see three or four paratroopers moving about inside [the derelict building] ... I did not look at any guns they might have been carrying. The crowd had spotted the soldiers and began jeering and shouting ... A group of lads broke away from the march and threw stones at the soldiers.²⁰⁰

6C-160 Alfie McAleer, was one of a group of hard core rioters who targeted soldiers in William Street rather than going to the army barriers. Mr. McAleer's evidence, if true, about the careful planning of the rioting makes a nonsense of the suggestion that the rioting was the spontaneous reaction of a few young boys who happened to have noticed some soldiers in the derelict building.

3. I went to the march on 30th January 1972 because I wanted to get the bastards (the army) for the week before at Magilligan where they thumped us into the ground. I had no intention of poncing about on a march – it was too bloody cold. I considered myself and my mates to be experience rioters at the time. We would never turn up for a riot without having scouted the land first to see where the action would happen and where our escape routes lay. We never got caught.... We had agreed that we would not go as far as the army barriers – we knew that the real risk of being arrested was down there.

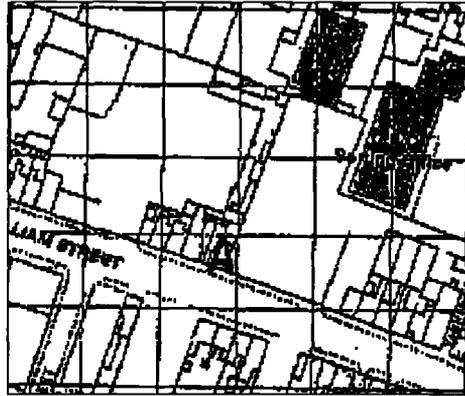
...As the march moved east along William Street, myself and my mates hung back and decided what to do. We heard that there were soldiers in the old Bakery building (marked A on the map attached to this statement – grid reference J17) and went over for a look...

4. A group of about 10 or 15 youths, including me and my mates, Peter and Terry, gathered to throw stones at the soldiers...²⁰¹

²⁰⁰ AL4.1-2 paragraph 5

²⁰¹ AM37.1 paragraph 2-4. These paragraphs of Mr. McAleer's BSI statement were referred and adopted by Mr. McAleer when he gave evidence, Day 092/052-053. Mr. McAleer's recollection of soldiers standing on the corner of the derelict building at 'A' before Damien Donaghy was shot, although maintained in oral evidence to the Inquiry (Day 092/053-054), must be wrong. No other witnesses, civilian or military, support it.

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THE PRECISE LOCATION AND TARGETS OF THE RIOTERS.

6C-161 Rioting in the William Street area was directed towards three targets:

- Soldiers on the GPO roof.
- Soldiers on the Presbyterian Church roof.
- Machine Gun Platoon deployed in the Derelict Building.

6C-162 In order to target these soldiers a sizable group of rioters congregated in William Street and in the parts of the Laundry and Presbyterian Church waste grounds closest to the soldiers.

6C-163 Patrick McCallion gave evidence about the movement of the rioters:

A. ...I retreated back up William Street when the crowd started swelling down at the barricade, ...

...Now there was a portacabin there at the time which was a bookies, bookies shop, squared dab in the middle (marked with a blue arrow). That is the waste ground and there was more or less a wee alleyway through each side and the stone-throwers were sort of running across -- I am in the waste ground here -- in this direction here and they were running as far as there and back again gathering whatever they could, probably milk bottles, I would say, were coming from the houses in this area, thrown and back again.

Q. Could I have control and see if I can turn what you have said into a series of arrows? You were about there, is that right?

A. That is correct.

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Q. That is where the yellow arrow -- that is where there was a portacabin which was used as a bookies? (Marked with a yellow arrow)

A. Aye, but it was smack in the middle of that waste ground, the portacabin was.

Q. The boys in question who were throwing stones, they were coming across from the wasteland that I am pointing at in red and they went as far, did they, as the pavement on the other side of William Street? (Marked with a red arrow)

A. On the waste ground more or less, yes, that is correct.

Q. Where the arrow on the right-hand side in red is, (marked with a red arrow) as far as that?

A. Yes.

Q. And throwing stones at the GPO sorting office?

*A. Yes.*²⁰²



6C-164 Rioting youths also entered the Presbyterian Church waste ground to the north of William Street (and immediately abutting the derelict building).

(1) Charlie Lamberton

²⁰² Day 071/144-145

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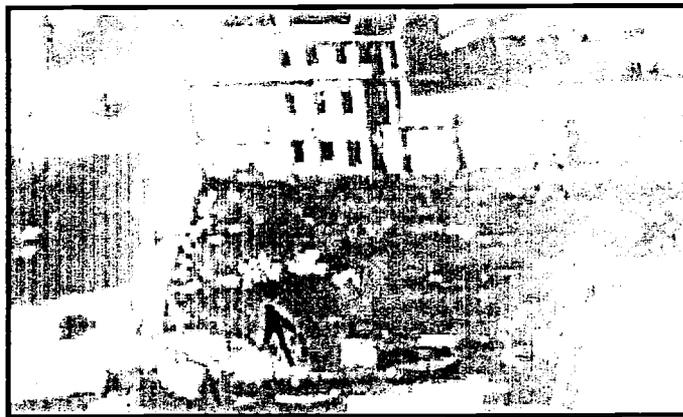
Q. ... You describe drawing level with the wasteground in front of the Presbyterian Church that we can see and seeing a group of about 30 or 40 youths running into the wasteground and throwing stones at the soldiers. The wasteground is presumably this one, is it, to the north of William Street and to the front of the Presbyterian Church?

A. Yes. ...

Q. ... Do you recall how far into the wasteground the people who were throwing stones went?

*A. I think they were halfway in.*²⁰³

- (2) Charles McDaid,²⁰⁴ marked the position of rioters with a blue arrow on the photograph at AM161.25:



- (3) Gerry Duddy,²⁰⁵ said he had seen approximately six boys (in the position marked with blue arrow on the photograph below)²⁰⁶ throwing stones and bottles at soldiers on the Presbyterian Church flat roof (marked with a red arrow):

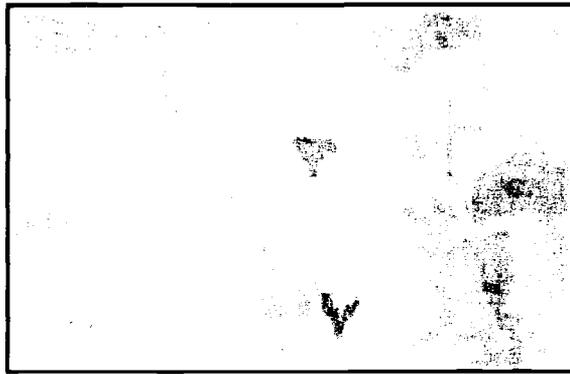
²⁰³ Day 183/092 & 183/094

²⁰⁴ Day 060/139

²⁰⁵ Day 059/131-132 & 156

²⁰⁶ AD146.07

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(4) Billy McCartney,²⁰⁷ described seeing a crowd of fourteen or fifteen young boys on William Street throwing stones.

(5) Gerald Morrisson told Eversheds:

As we passed by the waste ground where Ritchies' Factory used to stand ... up to ten 15 or 16 year old boys were standing in the waste ground throwing stones north up towards the soldiers on the roof of the GPO sorting office and near the Presbyterian Church.²⁰⁸

(6) Brian Callan, told Eversheds:

There were also soldiers on the roof of the GPO Sorting Office ... some young lads ran towards the soldiers and threw stones at them.²⁰⁹

(7) Sean Barr confirmed to Edwin Glasgow Q.C.²¹⁰ that the boys he saw throwing stones were in the waste ground in front of the building with the nine windows.²¹¹

(8) Joe Carlin, told the Sunday Times:

²⁰⁷ Day 054/167 and AM87.2 paragraph 9

²⁰⁸ AM431.8 paragraph 10. Mr. Morrisson has not given evidence to the Bloody Sunday Inquiry. His NICRA statement, AM431.5, refers to stones being thrown at soldiers crouched behind netting wire on the roof of a low building; According to his BSI statement, AM431.10 paragraph 30, he cannot now recall seeing these soldiers.

²⁰⁹ AC4.2 paragraph 15

²¹⁰ Day 063/089

²¹¹ He is one of many witnesses who deny that the rioting was serious.

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There was the usual Aggro corner collection of lads. And they did throw stones at the flat roof of the Post Office sorting office, where there were some soldiers. The soldiers retreated into the top back corner of the roof, and there were a few jeers and so on. A few lads had actually walked right up to the sorting office (or even in there?).²¹²

- (9) William Curran, marked the position of the stone throwers with a green arrow on the photograph below.²¹³



- (10) Seamus Morrison²¹⁴ told NICRA that a few stones had been thrown at the soldiers in the derelict houses [presumably the house with nine windows] prior to Damien Donaghy being shot.

6C-165 The evidence suggests that the rioters formed a separate identifiable group closer to the soldiers than those civilians who were merely observing the rioting.

6C-166 Patrick McCallion was one of the rioters. From his perspective it appeared that:

the only people who were hanging around would be the people that were looking for to have a wee bit of a confrontation with the army.

²¹⁵

6C-167 Father McIvor was an observer of the riot. He told this Inquiry

²¹² AC150.1. Joseph Carlin, AC35, who gave evidence denied that he had given this, or any account to the Sunday Times.

²¹³ Day 055/071; (marked photograph AC132.18)

²¹⁴ AM438.1.

²¹⁵ Day 071/150-151

FS 7.1054

It was easy to identify approximately the 50 young people; they had broken off when the soldier [w]as spotted.²¹⁶

THE SEVERITY OF THE RIOT

6C-168 The rioting in this part of William Street amounted to a sustained and ferocious attack on the soldiers. During the course of the rioting objects were thrown which were, or which appeared to be nail bombs.

Military Evidence

6C-169 Soldier A gave the following account to the RMP on 31.01.72:

... The main body of the marching crowd passed our position and then the youths saw us. They commenced to stone us and to throw bottles. The troops with me fired baton rounds to disperse these youths. They drew back but continued to stone us. Two nail bombs were then thrown and they exploded very close to us. We did not sustain any casualties as the majority of the troops were behind low walls.²¹⁷

6C-170 Soldier A told Eversheds:

19. Once they all realised there were soldiers in the building they started throwing rocks bricks and stones and yelling "There are Brits in there. There are Brits in there. Get the bastards out!" and that sort of thing. Bricks seemed to be thrown in the general direction of our building rather than directly at any individuals amongst us. Some of the rioters were over to my right in the waste ground forward and to the side of where I was (south east).

20. A couple of minutes after the stone throwing began I saw two objects go past, from right to left, slightly lower than the level of the window space through which I was watching. I cannot say now whether they passed one after the other or at the same time ... I cannot be sure about the timing, it was easy to lose track of time in that situation. I am sure that there were definitely two.

21. The objects were black and about the size of a bean can. They looked different to the halves of house bricks and bottles that had

²¹⁶ Day 055/009

²¹⁷ B20.014

AS 7.1055

been thrown earlier. These objects looked uniform and manufactured; man made. They did not have the jagged shape that rocks and stones had. I cannot now remember them smoking or fizzing.

22. I did not see the objects land, but I heard explosions off to my left. There was something about how the objects looked which, coupled with the sounds I heard immediately afterwards, made me think they were bombs. They sounded like nail or blast bombs which I had heard before; they make a different sound. I was convinced and remain convinced that they were bombs that had been thrown.²¹⁸

6C-171 Soldier A was asked by Christopher Clarke Q.C. further details about the 'job element':

Q... Do you have any recollection now as to the size of the job element who were doing this?

A. Not accurately, sir, no.

Q. Roughly; are we talking about five, ten, 15, 20?

A. No. Probably between 20, 30, but that is a rough estimate.

Q. Do you recollect what sort of age these people were?

A. No, not really, sir.

Q. Do you recollect how close to the building they had come?

A. Probably about 20 -- 20 metres, something like that, I think, sir. But, again, I cannot be accurate at this stage.²¹⁹

6C-172 Soldier A confirmed that he had shouted "Bombers" or "Nail bombers" as a warning to the platoon.²²⁰

6C-173 Soldier B gave the following account to the RMP on 31.01.72 at 01:10:

²¹⁸ **B20.003 paragraph 19-22.** Soldier A was referred to, and adopted, this passage from his statement by during the course of his oral evidence **Day 297/025-028.**

²¹⁹ **Day 297/026**

²²⁰ **Day 297/029-030**

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... the main body of the march passed by us without any real incident. There was an element of younger males with the crowd however and these youths stoned us and threw bottles and other objects. When the crowd had passed by the youths continued to attack us. We fired baton rounds to disperse them. There were then two nail-bombs thrown and these landed very close to our position and then exploded. ²²¹

6C-174 Some of the stones thrown by the rioters hit the wall of the derelict building; others came through the windows.²²² Soldier B agreed with the proposition, put to him by Ms McGahey, that it would follow that a nail bomb could have been thrown into the building with potentially horrendous consequences for those inside.²²³

6C-175 In his SA statement and evidence to the Widgery Inquiry Soldier B described the crowd as about 50 strong and consisting of mainly youths and a few adults.²²⁴ To this Inquiry he confirmed on oath his belief that this would have been his best estimate at the time.²²⁵

6C-176 Soldier B's contemporary accounts make it clear that he only *heard* the explosions which he believed to be nail bombs. He did not see what caused the explosions due to the fact that at the time he was putting on his gas mask.²²⁶ What he believed to be two nail bombs landed in the waste ground to Soldier B's left.²²⁷ Soldier B's contemporary accounts record that shortly after the nail bombs had been thrown he noticed a group of rioters in the laundry waste ground. Individuals in the group would run across William Street and throw stones and bottles at the derelict house.²²⁸

²²¹ **B43.009**

²²² SA statement at **B43.012**

²²³ **Day 311/054-055**

²²⁴ SA statement at **B43.012**; Widgery Evidence **B43.017 paragraph A**

²²⁵ **Day 311/030**

²²⁶ SA statement at **B43.012**; Widgery Evidence **B43.017 paragraph C**

²²⁷ SA statement at **B43.012**; Widgery Evidence **B43.017 paragraph C**

²²⁸ SA statement at **B43.013**; Widgery evidence **B43.017 paragraph E-B43.018 paragraph A**

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6C-177 Soldier B now has no specific recollection of nail bombs going off.²²⁹

A: ...all I remember, there was some people out there... I cannot put a figure on it, um, and I remember seeing dust and -- to my left. That is all I can remember, and there was a lot of shouting.

...

Q: You could see dust on the waste ground immediately in front of the window?

A: Yes

Q: What had made that dust, did you know.

A: I cannot remember now.²³⁰

6C-178 INQ0588 was hit by a stone thrown through the window of the derelict building. His evidence corroborates Soldier B's accounts of missiles being thrown into the building:

I remember that we had nothing to take cover behind when facing William Street and stones were raining down upon us from above. I also recall that there was an open space opposite the building on the other side of William Street...

... As we entered the building the march was coming down William Street and I recall a mass of people in front of the building... Just after INQ455 fell we came under stoning from youths on William Street to which we were exposed. Those youths were approximately 40-50 metres opposite the front of our location and were throwing stones and bits of paving stones. The room we were in was very small (approximately 10" x 10") and with nothing to take cover behind the only thing to do was face the crowd, watch for stones and try and protect Private INQ455 from the missiles being thrown by the rioters. During this period I was hit by a rock on my left ear which left ear which left me temporarily stunned. I did not see who threw the rock and resumed my duties after 2-3 seconds when I regained my senses.²³¹

²²⁹ B43.003 paragraph 11

²³⁰ Day 311/029-030

²³¹ C588.2 paragraph 10-13

FS 7.1058

6C-179 INQ1919 told Eversheds that the people who spotted them “immediately started pointing and jeering.”²³² His BSI statement continues:

*As soon as we had been spotted people started to come forward from the same group of people, throwing missiles towards us which did not reach us. It must still only have been a matter of seconds after we had been seen that other people, who were not from this group of people, and who were mainly younger elements in the crowd, began to move forward towards us and across the area of waste ground in front of the derelict building, throwing stones and missiles which were reaching us. I was down on the ground in the derelict building by this stage and my view was more restricted. We obviously took up positions out of the line of sight of the people and away from the objects being thrown which were coming over the top of the walls of the derelict building...*²³³

6C-180 INQ1919 confirmed when called to give oral evidence that his memory was of missiles coming from the top rather than through the windows.²³⁴ He also confirmed that he heard explosions “pretty close” whilst he was in the derelict building; he believed them to be the sound of nail bombs.²³⁵ INQ1919 was referred to, and adopted, what he had said in his BSI statement:

Q. In paragraph 22, the first sentence, you say: "As I was in the derelict building I was only able to see what was happening outside when I moved to the end of a wall and peered out." When you peered out, were you peering out of a window or were you peering out of somewhere else?

A. I thought I was peering out the side of a doorway.

Q. And you say: "As I looked out from behind the wall for, I think, the second time, the group of people throwing missiles and objects at us had thinned out but those people who remained had moved further forward across the waste ground towards us in the derelict building and had more or less reached us." Again, can you give any sort of idea of the number of people who had come forward across the waste ground and were close to the derelict building?

²³² C1919.3 paragraph 19

²³³ C1919.3 paragraph 19 – adopted by INQ1919 when he gave evidence Day 296/011.

²³⁴ Day 296/012

²³⁵ Day 296/009-010

FS 7. 1059

*A. The view I had of the waste ground was not the entire -- I had a limited view from the angle I was looking through and the limited view I had, no more than 15 people.*²³⁶

- 6C-181 INQ1919's recollection of a shouting between INQ0441 and Soldiers A and B making mention of a nail bomb corroborates Soldier A's account of a warning shouted by him to the rest of the platoon.²³⁷
- 6C-182 INQ1917 confirmed that from his position in the derelict building he had observed a group ("stragglers" per his BSI statement)²³⁸ consisting of males in their twenties and thirties running in various directions and throwing things, some of which were thrown in his direction.²³⁹ He then heard two explosions. They seemed reasonably close to the building where he was. At the time he had no idea what had caused the explosions; but from later experience he believes they might have been nail bombs.²⁴⁰
- 6C-183 INQ0275 describes a crowd of 40-100 youths "throwing rocks and anything else they could find and hurling abuse in our general direction." He told Eversheds that although he does not now recall seeing or hearing nail bombs or explosions it is possible he did and that he has simply forgotten. He describes "a lot of activity across the road, and the situation was tense...it was mayhem." It was "extremely unpleasant" to be faced with "a large crowd of aggressive people ...screaming for your blood."²⁴¹ He could not remember whether or not stones or other objects came into the building.²⁴²

²³⁶ Day 296/016-017

²³⁷ Day 296/017

²³⁸ C1917.2 paragraph 12

²³⁹ Day 288/064

²⁴⁰ Day 288/065 & Day 288/097

²⁴¹ C0275.3 paragraphs 16-19

²⁴² Day 340/179

FS 7.1060

The 'Failure' by Other Members of Machine Gun Platoon to Give Evidence of Nail Bombs

- 6C-184 A number of the members of Machine Gun Platoon cannot now specifically recall seeing or hearing nail bombs on Bloody Sunday. These soldiers gave no contemporaneous statements in 1972 and their recollections are incomplete. This incompleteness is demonstrated most vividly by the fact that a similar number of soldiers have no recollection, or simply did not hear, even the shots fired by members of their platoon on Bloody Sunday.²⁴³
- 6C-185 Further, most of the soldiers in the house with nine windows were some way back from the open windows and the sound was masked by the deafening background noise of the riots going on the waste ground and at Barriers 12 and 14.
- 6C-186 INQ0588 sets out in his BSI statement why a combination of noise and his own position may have prevented him from witnessing nail bombs thrown in the area of the derelict building:

... it is possible that nail bombs were thrown past me and exploded but, because of the general confusion, background shooting noise, the noise from the Baton guns and the noise from the crowd, I did not hear them.

18. I have also been asked whether I saw the nail bomber described by Corporal Soldier A and Private Soldier B in their statements. I did not. This may be because I was further west along William Street than where Corporal Soldier A and Private Soldier B say they were and my field of view did not extend as far east along William Street as the location of the nail bomber described by them.²⁴⁴

²⁴³ e.g. INQ0441 (C441.4 paragraph 20); INQ1354 (C1354.2 paragraph 9); INQ1544 (C1544.5 paragraph 34); INQ0455 has no memory of what happened between the time that he fell and being in hospital (C455.1 paragraph 8); INQ0153 (C153.2 paragraph 11); INQ0588 (C588.4 paragraph 19)

²⁴⁴ C588.4 paragraphs 17-18

FS 7. 1061

6C-187 INQ0588 also believes that his hearing may have been impaired as a result of being hit on the left side of his head by a rock thrown by one of the rioting crowd.²⁴⁵ He confirms that he did not hear live rounds fired from his position:

*I did not see or hear anyone fire a gun from my location (other than a Baton gun) that day nor did I see any rioter being shot. However, because of the reasons stated above about the level of noise in our location at that time it is possible that orders were shouted and a soldier from my unit fired in our defence without me hearing it.*²⁴⁶

6C-188 INQ0588 was a baton gunner himself and confirms that during the course of the rioting he fired 20-30 baton rounds at rioters who were stoning him and his colleagues in the derelict building.²⁴⁷

6C-189 INQ0275 gave a similar account of the noise level during the course of his evidence to this Inquiry:

Q. In the circumstances that applied on 30th January 1972, when you were in that derelict building, do you think it possible that a nail bomb or nail bombs could have exploded in close proximity to the building without you hearing it?

A: With the amount of noise that was going on, it could have, not too near.

Lord Saville: What sort of noise do you recall going on at that time?

*A: It is a big mixture that you get at all riots. It is, it is a terrible noise; people screaming, shouting and whatever else goes on, rubber bullet – bullet guns going off. The thing is, you cannot sort of stand there and listen to an individual noise.*²⁴⁸

6C-190 INQ0275 was asked in terms by Mr. Roxburgh whether it would be possible *not* to hear a normal sized nail bomb if it had exploded on the waste ground

²⁴⁵ C588.5 paragraph 21

²⁴⁶ C588.4 paragraph 19

²⁴⁷ C588.4 paragraph 16

²⁴⁸ Day 340/180/22-181/010

A 7.1062

immediately in front of the derelict building. INQ0275 said he *did* think it was a possibility.²⁴⁹

Civilian Evidence of Rioting

6C-191 Such was the noise and activity in the area that dozens of soldiers failed to hear the live rounds fired by Soldiers A and B. There has, however, been a demonstrable reluctance on the part of civilian witnesses to give an accurate or honest account of the fact or the degree of rioting.

6C-192 It seems inconceivable that anyone who saw Damien Donaghy and / or John Johnston shot could have been oblivious to the rioting that was taking place in the area. Despite this, a series of witnesses who claimed to have seen either or both of Damien Donaghy and John Johnston shot were prepared to give evidence to the Tribunal that there was no riot of any kind in this location at about this time.

Witnesses who positively assert that no rioting was taking place

6C-193 Brendan McCrossan said he was behind John Johnston when he was shot. He told Eversheds:

*4. I did not hear any other shots or explosions at this time. The mood of the marchers was still good humoured. I did not see anything being thrown at the soldiers.*²⁵⁰

6C-194 Mr McCrossan gave sworn testimony to the same effect:

Q. Did you see any stone throwing going on?

*A. No.*²⁵¹

6C-195 Tony McCourt told Eversheds that he heard a shot and looked towards the soldiers near the GPO.

²⁴⁹ Day 340/181-182

²⁵⁰ AM483.1 paragraph 3-4

²⁵¹ Day 062/152/18-19

FS 7. 1063

*No one was throwing stones at the soldiers.*²⁵²

6C-196 He reaffirmed when he gave evidence to the BSI, that he had not seen at any stage stones or the like thrown towards the north side of William Street and had not heard any bangs or explosions.²⁵³

6C-197 John McGee told Eversheds that Damien Donaghy was shot a few yards in front of him:

*No one around me was doing anything which in my view justified live shots. I did not see anyone throwing stones or anything else at the soldiers on the roof and I am certain that neither Damien Donaghy nor those around me engaged in anything sinister.*²⁵⁴

6C-198 Mr McGee confirmed on oath²⁵⁵ that he had seen anybody doing anything that was aggressive or could have been interpreted as such.²⁵⁶

6C-199 Brendan Deehan observed soldiers on the GPO roof:

...I think the crowd may have been shouting up at the soldiers. I did not see any of the crowd throwing stones at the soldiers and I am sure that no-one on the waste ground was throwing stones. There was still a very large crowd passing along William Street towards Aggro Corner and throwing stones from the waste ground to the soldiers would have meant aiming them over the heads of the crowd...

*11. I then heard three sharp cracks and someone shouted "Jesus, that's live rounds."*²⁵⁷

6C-200 Monica McDaid gave evidence²⁵⁸ in accordance with her BSI statement. She said she and the others in the laundry waste ground "were all adults except for the one

²⁵² AM148.2 paragraph 8

²⁵³ Day 054/131; McCourt gives his location as 'B' on the map at AM148.11

²⁵⁴ AM223.4 paragraph 3

²⁵⁵ Day 065/055

²⁵⁶ Mr. McGee was reluctantly forced to agree that he could not assist the Inquiry as to what precisely Damien Donaghy might or might not have been doing immediately before he was shot (Day 065/056)

²⁵⁷ AD20.2 paragraph 9-11

²⁵⁸ Day 065/123

FS 7.1064

boy [Damien Donaghy] and there was no rioting.” Ms. McDaid was adamant that she “did not see any stone throwing at all.”²⁵⁹

6C-201 Thomas McDaid, told Eversheds²⁶⁰ that he and his wife spent between 10 and 15 minutes in the Laundry Waste ground before hearing a live shot. In evidence, he said:

...there was no activity in where we were. He was the only young lad²⁶¹ that was there, the rest of us was adults and there was no guns, nail bombs, stone throwing or anything in that area where we were... there was nobody in front of us on William Street with any activity... Nobody at all, I was looking straight into an empty space direct looking over to ... Great James Street Church.²⁶²

6C-202 Ann Harkin, noticed soldiers on the GPO roof and in the derelict building with nine windows immediately before hearing live shots.²⁶³ She told Eversheds:

18. No stones were being thrown at the soldiers I was looking at, even though they were easily visible. There was no rioting at this point.²⁶⁴

6C-203 During her oral evidence to this Inquiry Ms Harkin was referred to her NICRA statement,²⁶⁵ which mentions “a few boys” throwing stones at soldiers in Richie’s factory. She conceded that she cannot now recall whether or not there was rioting taking place.²⁶⁶

²⁵⁹ Day 065/133

²⁶⁰ AM177 paragraph 6

²⁶¹ In his BSI statement Mr. McDaid refers to “four young men” lifting Damien Donaghy, AM177.1 paragraph 6.

²⁶² Day 065/33-34

²⁶³ AH10.3 paragraphs 16-17

²⁶⁴ AH10.3 paragraph 18. Ms. Harkin also suggests that the crowd at Barrier 14 was “orderly and fairly quiet”, AH10.2 paragraph 10. Although she accepted when shown the video footage, Day 059/068, that rioting must have taken place, she insisted, Day 059/104, that she still did not recall seeing missiles thrown.

²⁶⁵ AH10.8

²⁶⁶ Day 059/071; 059/74

FS 7.1065

- 6C-204 Anthony Feeney gave evidence²⁶⁷ that apart from at Barrier 14 “nobody else was throwing stones anywhere else.”²⁶⁸
- 6C-205 Kathleen Turner gave a particularly unconvincing account in her BSI statement. She claimed that soldiers around Richard’s factory, possibly in the building with nine windows, were firing rubber bullets and CS gas canisters that were “bouncing off the walls on the southern side of William Street.”²⁶⁹ She says it was not apparent to her why the troops were doing so because she saw nobody throw anything at all in the area.²⁷⁰
- 6C-206 Columba Donaghy, told Eversheds that he spent 20-25 minutes at the back of the waste ground²⁷¹ before hearing live shots. His evidence to this Inquiry was that he did not see any stone throwing from the waste ground where he was standing.²⁷²
- 6C-207 According to his BSI statement James McDaid was only 10-12 feet from Damien Donaghy when he was shot.²⁷³ When asked by Christopher Clarke Q.C.²⁷⁴ whether he had seen boys throwing stones he replied “I did not pay any particular attention. There is no place there to throw stones at.” He said he had not noticed any soldiers at this stage.

²⁶⁷ Day 067/094

²⁶⁸ There are further difficulties with his account; including assertion that at the time Damien Donaghy & John Johnston were shot there was no one else on the Laundry Waste ground except for him and a girl and that there was no-one in William street or in the waste ground to the North of William Street Day 067/092.

²⁶⁹ AT19.2 paragraph 8

²⁷⁰ Day 054/007. Her evidence, Day 054/009, that thousands of people were in William Street when Damien Donaghy was shot further undermines her account.

²⁷¹ AD116.6 paragraph 7, which he identifies as being the Abbey Waste ground; but which, logically, must have been the Laundry Waste ground, Day 068/071-072.

²⁷² Day 068/077 He explained that he had only a limited view of William Street from his position at the back of the waste ground

²⁷³ AM166.2 paragraph 17

²⁷⁴ Day 061/005

FS 7.1066

6C-208 Patricia McGowan gave evidence that the soldiers in Richie's factory had no reason to fire rubber bullets; she had not seen youths throwing stones at them.²⁷⁵

6C-209 Jim Doherty told Eversheds²⁷⁶ that he was behind Damien Donaghy and John Johnston when they were shot and that there was "no stone throwing going on at that time." Mr. Doherty was a particularly unimpressive witness. He initially agreed that there had been stone throwing going on at time of the shootings;²⁷⁷ having apparently inadvertently let the truth slip out, he made several unconvincing attempts to recover his original position by suggesting that it was only at certain intervals that he had seen stones thrown; and not at the time of the live shots.²⁷⁸

6C-210 William Quigley heard a shot as walked down William Street. He observed a soldier to the west of the Presbyterian Church:

*I did not see anybody throwing any stones, gesturing or catcalling towards the soldier I had seen by the church*²⁷⁹

6C-211 Seamus Bradley told Eversheds,²⁸⁰ that he was:

not aware of any stone throwing in the area at the time the shots were fired, although I was concentrating on getting my wife away from the gas and bullets.

6C-212 His evidence was watered down under cross-examination; he agreed that there may or may not have been stone throwing; he was concerned with his wife's welfare.²⁸¹

²⁷⁵ Day 061/145

²⁷⁶ AD73.3 paragraph 11

²⁷⁷ Day 065/105

²⁷⁸ Day 065/107

²⁷⁹ AQ8.1 paragraphs 4-5.

²⁸⁰ AB69.3 paragraph 7

²⁸¹ Day 064/017

As 7.1067

6C-213 In his NICRA statement, Charles Vincent Meehan stated: "I must make it absolutely clear that no one, where I was standing, was involved in riotous or disorderly behaviour."²⁸²

Witnesses who assert that the rioting was of a trivial nature

6C-214 A number of witnesses have conceded that some rioting was taking place, but give an entirely misleading impression as to its extent. These accounts should be treated with the same degree of caution as those who claim no rioting was taking place.

6C-215 Betty Curran told the Praxis team:

*There was nobody behaving aggressively. Nobody that we see, nobody, was behaving aggressively.*²⁸³

6C-216 She went on to say that the only thing she had seen was a few stones thrown at the back of the march.²⁸⁴ In her BSI statement she admits:

*I saw two or three wee lads opposite where I was standing (i.e. on the north side of William Street). They were throwing a few stones at the soldiers on the flat roof.*²⁸⁵

6C-217 Eugene Lafferty,

*...I saw two or three young lads in the waste ground south of the PC, in the area marked B ... throw stones towards the soldiers at point A. However, the stones probably did not hit the soldiers as the distance was too far. The lads were a year or two younger than me (I was nineteen at the time) and were simply letting off steam.*²⁸⁶

²⁸² AM390.1

²⁸³ O6.10

²⁸⁴ O6.15

²⁸⁵ AC130.2 paragraph 10

²⁸⁶ AL1.8 paragraph 6

H 7.1068



6C-218 Sean Barr gave evidence, that he had seen youths shouting and throwing stones at soldiers “it was not a riot; it was a small number of youths.”²⁸⁷ He confirmed²⁸⁸ that in his opinion there was no reason for the soldiers to shoot; as he had told Eversheds, “the soldiers were under no threat at the time.”²⁸⁹ However he seems to implicitly accept that the soldiers were in some danger; in his BSI statement he remarked that he was surprised that soldiers “so near and in full view of the crowd” were not wearing full riot gear.²⁹⁰

6C-219 Charles McDaid told Eversheds, he saw “two or three youths throwing stones...in the waste ground just south of the GPO...”²⁹¹

NAIL BOMBS

6C-220 Perhaps unsurprisingly, there are few civilian witnesses who are prepared to depart from the ‘official’ version of events. That said, there is clear evidence of the following:

²⁸⁷ Day 063/069

²⁸⁸ Day 063/086

²⁸⁹ AB19.4 paragraph 15

²⁹⁰ AB19.3 paragraph 11

²⁹¹ AM161.3 paragraph 15

FS 7.1069

- (1) There were nail bombs present and to be seen in the Bogside on Bloody Sunday. (See for example the evidence of their being present in Glenfada Park North, Chapter 9).
- (2) There were individuals present on Bloody Sunday who intended to use those nail bombs against the soldiers.
- (3) There some civilian evidence of nail bombs, or explosions, in Sector 1 on Bloody Sunday.

6C-221 Those civilian witnesses who are prepared to depart from the 'official' line are, admittedly, relatively few in number. That said, and despite their relatively small number, the evidence of those who have been independent enough to give such evidence case must be given almost conclusive weight: these individuals have nothing to gain in giving such evidence. Their motive can only be a desire to tell the truth.

Civilians Who Admit to having Heard Nail Bombs Exploding

6C-222 Frank Lawton is among the few prepared to publicly acknowledge hearing a nail bomb on Bloody Sunday: Mr. Lawton admits to having heard what he identified as a nail bomb in the area of the waste ground. In what appears to be his original NICRA statement, witnessed by Bronagh Hinds, he said:

The man on the lorry was calling for the people to meet at "Free Derry Corner". This subsequently happened. But at this time I did hear one nail bomb explode. I stress the one and this appeared to be at the Grandstand Bar in William Street. There were no further explosions.²⁹²

²⁹² **AL6.19** There is in fact a further version of this NICRA statement; almost identical (in this passage); save that it has been retyped with a slightly different layout and only the single word "one" has been underlined. Both purport to have been witnessed by Bronagh Hinds (**AL6.27**).

FS 7. 1070

6C-223 The Grandstand Bar is visible in the photograph below located at the north west corner of the Abbey Street waste ground.²⁹³



6C-224 The timing and location of the explosion described by Mr. Lawton correspond very closely to the accounts given by Soldier A and Soldier B. Mr. Lawton gave the following additional information about the timing of this explosion when he gave evidence on Day 389:

In paragraph 4, you deal with your evidence as to a possible nail bomb and you say that between five and ten minutes before the Army moved in you heard a noise which at the time you thought may have been a nail bomb exploding.

At the time that you heard this noise, had the meeting that we know took place at Free Derry Corner, begun?

A. No, the actual meeting had not begun. The people were moving up the street towards Free Derry Corner at the time, I think.

Q. Was the lorry which we know led the march making its way towards Free Derry Corner?

A. Yes, I think it was, yes.

²⁹³ **P201** The location was identified by Christopher Clarke Q.C., Day 011/070, as being "the first building left standing to the east of Abbey Street on the south side of William Street"

FS 7.1071

Q. Could you still hear rioting at that time from the area of William Street?

A. There was a lot of noise about, but I would not say it was rioting, you know, it was, it is slightly away from where I was at the time, you know.

Q. At the time that you heard the noise which you thought might have been the nail bomb, could you hear rubber bullets being fired?

A. There was the sound of what I considered to be baton rounds being fired and tear gas canisters and to my mind, in a built-up area -- you get a bigger sort of a bang out of a thing like that in a built-up area. It could have been anything, but with the frequency what I heard at the time, they were probably baton rounds.

Q. If we can take it in stages, please. I just want to try and ascertain what background noise or what other noises you could hear at the time that you heard the noise that you took to be a nail bomb. Putting that noise to one side, could you at that time also hear rubber bullets being fired?

A. Yes.

Q. Could you hear CS gas canisters?

A. I did not, I did not -- well, I did not actually see them being fired, but the gas was there.

Q. In January 1972, were you familiar with the sound of nail bombs?

A. I had heard nail bombs go off before.

Q. Your recollection is still that this noise that you thought may have been a nail bomb came from the direction of the Grandstand Bar on William Street?

A. Yes, the sounds were coming from that direction, yes.

Q. Was that the only explosion you heard that day that sounded like a nail bomb?

A. Yes.²⁹⁴

²⁹⁴ Day 389/093/24-095/21

PS 7.1072

6C-225 Mr Lawton's time in the Royal Navy, combined with the time he had spent in the Bogside, means that his ability to recognise particular sounds is likely to have been better than most. Mr. Lawton was questioned further by Nicholas Griffin:

Q. You had been in the Bogside long enough to distinguish the sounds and you go on to say that your hearing was particularly good because of the job you had done in the Navy, yes?

A. Yes.

Q. We know also, as a result of what you have told us today, that you had heard nail bombs go off before 30th January 1972?

A. Yes.

Q. So you had a knowledge of the sound of nail bombs as well?

A. Yes.

Q. May we look, then, at the paragraph above, which is on the screen, the paragraph beginning:

"The man on the lorry was calling for the people to meet at Free Derry Corner. This subsequently happened. But at this time I did hear one nail bomb explode. I stress the one, and this appeared to be at the Grandstand Bar in William Street. There were no further explosions."

We can have, can we not, Mr Lawton, some confidence that what you have said there clearly and without any expression of doubt is likely to be correct?

A. As far as I can remember to this day, yes, that is what I said.²⁹⁵

6C-226 Despite Mr. Lawton's subsequent attempts to downplay the importance of the explosion he heard, it is clear that his immediate reaction on hearing the explosion (and as someone who lived in the Bogside and was familiar with such things) was to conclude that it was a nail bomb exploding. His evidence demonstrates that, at the time that soldiers A and B reported hearing nail bombs, others in the crowd thought that they too had heard a nail bomb explode. Professor William McCormack heard explosions in William Street at a stage which would appear to

²⁹⁵ Day 389/137/02-138/01

be shortly after the first use of the water cannon, when large sections of the crowd were moving from Barrier 14 to Rossville Street.

The Army were firing CS gas but the wind blew it back on top of their own positions. Some water dye blew through the air like silk; there were sounds of explosions in William Street but distant and insignificant. As the wind began to change sides, the crowd felt the effects of the CS. Most people moved back into Rossville Street, the main entrance to the Bog.²⁹⁶

6C-227 Although Professor McCormack had positively denied hearing nail or petrol bombs in his 1972 statement,²⁹⁷ his evidence to this Tribunal was that the sounds could have been bombs exploding. He was asked by Edmund Lawson Q.C.:

Are you able to help us any further about the explosions?

A. No, they were -- these would be booming sounds rather than piercing, high-pitched sounds of gunfire. They were distant. I saw none of them. I have no idea how they were generated or by whom, if they were the result of some kind of petrol bomb, for example, I saw none, but all I can do is report what I heard.

Q. Indeed. You have told us helpfully you had become, in your short time in Derry, reasonably familiar with the sound of baton guns?

A. Yes.

Q. What you were describing here was explosions as opposed to baton guns firing?

A. That is certainly true.

Q. Which would suggest it sounded to you -- I know you would not claim to be an expert in such matters -- like some sort of bomb going off?

A. That would be one explanation, but all I can do is report the sound, as it were, explosive sounds.²⁹⁸

²⁹⁶ AM136.8 (second column)

²⁹⁷ AM136.17

²⁹⁸ Day 113/118/12-119/07

FS 7.1074

6C-228 Although Professor McCormack describes the explosions as occurring after a shot fired by a soldier in William Street for the reasons set out in Chapter 6F, Professor McCormack cannot be describing the shots fired by Soldiers A and B. It is likely, if he heard a shot at all,²⁹⁹ that he heard a shot fired by a member of the IRA.

6C-229 Brian Callan also heard an explosion which may have been a nail bomb exploding. After hearing rubber bullets fired by soldiers in "Brewsters Bakery"³⁰⁰ and noticing youths stoning soldiers on the roof of the GPO Sorting office:

*There was an explosion from that direction. People around me said that the soldiers' CS gas canister must have exploded. There was a larger than usual cloud of CS gas. I was not affected by the CS gas. I cannot say for sure that it was CS gas.*³⁰¹

6C-230 The sequence of events described by Mr. Callan coincides with Soldier B's description of hearing explosions after baton rounds had been fired at the rioting crowd.³⁰²

Objects Thrown Past the Windows of the Derelict Building

6C-231 In addition to there having been explosions heard around the William's Street waste ground at around the time Soldiers A and B claim to have heard nail bombs exploding. There is civilian evidence which further supports their evidence of having seen two objects thrown past the windows at which they were stationed.

Dermot Carlin

Q. It may be an unfair thing to do, but help the Tribunal if you can: if you had put yourself in the position of the soldiers in the building where you now know they were and where it is common ground that they were, they would have seen some missiles being thrown at them?

²⁹⁹ Professor McCormack agreed that it was possible that the soldier had not in fact fired a shot, but merely been pointing his rifle at the boys Day 113/102/05-11.

³⁰⁰ BSI map GR J07 – i.e. the location of the derelict building with nine windows.

³⁰¹ AC4.2 paragraph 15

³⁰² B43.009

FS 7. 1075

A. Probably.

Q. And some going past them from left to right?

A. Obviously, yes.

Q. Mr Carlin, we are talking about quite a lot, I used the word "missile", I did not mean anything emotive by that, but did you see what was being thrown?

A. Bits of stone, concrete, small pieces now, because –

Q. Stone and concrete?

A. Small pieces of building material, yes.

Q. Forgive me for being lawyer-pedantic, but when you say "small" what are we talking about, a fist size?

A. Smaller than that again. The stones I saw being thrown were towards the sorting office and it would be an impossible feat to land a fist-sized stone in that distance. When I looked at it the next day I realised it was a longer distance than I thought it was then even.

Q. I think we have been told -- we can see on the map, in fact, from the waste ground it would be a little over 50 yards?

A. Yes, it would be a good -- some throw.

Q. The distance, of course, from the waste ground to the derelict building we have been talking about is almost half that distance?

A. At certain parts of it, it would be, yes.

Q. Well within range of a young man even with quite a heavy stone?

A. Yes.³⁰³

William Curran

Q. There were a number of youths in that general area, is that right?

A. That is correct.

Q. They were throwing stones, as we look at the photograph, from left to right?

A. Left to right, yes. ³⁰⁴

Sean O'Neill:

6C-232 Despite the denials of countless witnesses and their evidence that no one in the area of the derelict building was doing anything which might have caused the soldiers to believe that they were being targeted by a nail bomber, the admitted actions of Sean O'Neill demonstrate these denials to be false.

6C-233 Sean O'Neill described his own actions at the time that Damien Donaghy was shot.

7. When I was near a lamppost to the east of Stephenson's Bakery approximately at the point marked 3 on the map (grid reference K07), I looked behind me and saw two soldiers through a ground floor window of the eastern wall of Stephenson's Bakery. I attach a photograph on which I have marked the window through which I saw the soldiers. I was holding an empty bottle of lemonade that my friends and I had bought and finished by the time I reached the Bakery. Holding the empty bottle, I left the march, got down on my hands and knees and crawled along the eastern wall of Stephenson's Bakery towards the window through which I had seen the soldiers, the bottom of which was about one to two feet from the ground. I crawled underneath the window and saw a para inside the building aged about twenty-two to twenty five wearing a red beret. He wasn't in a standing or kneeling position, but was kind of crouched down. His flack jacket was open and he was carrying a SLR. I was ready to throw the bottle at him when a gun came out of the window and fired. It was damn loud. I thought he might have seen my head and fired when he saw me. Within a second of hearing the shot I threw the bottle at the soldier and it hit him in the chest. I then raced back to William Street. The soldier did not chase me. ³⁰⁵

³⁰⁴ Day 055/072/06

³⁰⁵ AO65.16 paragraph 7

FS 7.1077



6C-234 Mr. O'Neill has not given evidence and his account has therefore not been tested. There are, however, good reasons for believing that his account is only part of the true position. In particular, his account of what was occurring around him at the time that he attempted to throw the bottle through the window of the derelict building is demonstrably false: he told Eversheds that he had not seen anybody else rioting at the stage when Damien Donaghy was shot.³⁰⁶ The admissions of Damien Donaghy, and of other rioters, demonstrate the falsity of this claim.

6C-235 It is quite possible that Mr. O'Neill may have been involved in something more sinister than he has been prepared to admit. Because he has not given oral evidence to the Inquiry, the Tribunal is unlikely to find out what.

CIVILIAN EVIDENCE OF THE SCALE OF RIOTING IN AND AROUND THE LAUNDRY WASTE GROUND.

6C-236 A number of civilian witnesses have admitted that stones and / or bottles were being thrown at soldiers to the north of William Street. Unsurprisingly, perhaps inevitably, the majority has suggested that it amounted to only trivial rioting. In the light of similar denials regarding Damien Donaghy's participation in the rioting their evidence in this respect is wholly discredited.

6C-237 A small number of civilians give a more credible account of serious rioting in William Street. Even amongst these witnesses there has been a temptation to

³⁰⁶ AO65.16 paragraph 8

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underplay the scale of the rioting.³⁰⁷ Doubtless none has exaggerated the level of rioting; their descriptions can therefore only be regarded as an indication of the minimum level of rioting.

6C-238 Father McIvor gave evidence that he had initially seen one youth throwing stones at soldiers on the GPO roof. This youth was joined by about fifty others. Father McIvor described the youths as being in the waste ground in front of the sorting office.³⁰⁸ He confirmed that these youths joined in the stone throwing and that “they were throwing bottles as well.”³⁰⁹ He agreed that the concentration of the youths were in the middle of the waste ground.³¹⁰

6C-239 Father McIvor is in error in maintaining that there was a gap of 5-6 minutes between the rioting and the live shots being fired.³¹¹ A number of rioters admit to being in process of picking up or throwing objects at the time Damien Donaghy was shot.³¹²

6C-240 Father McIvor’s account to this Inquiry (fifty youths rioting) must be contrasted with the account he gave in 1972 in which he suggested that only one youth took part in the stone throwing.³¹³ It demonstrates the reluctance of civilian witnesses, even those in holding respected positions within the community, to admit to the level of violence which was directed towards the army on Bloody Sunday. Father McIvor’s present candour is exceptional.

6C-241 Another priest, Father Carolan, told Eversheds:

Some young boys in the crowd, perhaps about 12, started throwing stones at the soldiers on the flat roof...It was the natural thing at

³⁰⁷ For example Father Carolan told this Inquiry that 12 youths were rioting; in 1972 he referred to only 2 or 3.

³⁰⁸ Day 055/003-004; H11.12 –13 paragraphs 6-7

³⁰⁹ Day 055/006/11

³¹⁰ Day 055/027

³¹¹ Day 055/011/24-055/012/06

³¹² for example, Sean O’Neill

³¹³ 1972 statement H11.9

H 7.1079

*the time for the young boys to throw stones at any soldiers who came into sight... I remember people in the crowd trying to stop the young boys from throwing the stones but they could not do so and the stone throwing became too severe – the soldiers were being bombarded.*³¹⁴

6C-242 Father Carolan's evidence also needs to be contrasted with his contemporary account, in which he said there were just two or three boys were involved in "throwing stones up at the soldiers on sorting office and in the old burned out factories of Riches and sons."³¹⁵

6C-243 There is further civilian evidence that the rioters near the derelict building formed a noisy and aggressive mob.

6C-244 Hugh Heggarty saw rioters throwing stones at soldiers on the GPO roof. "At this time I could hear a lot of roaring and shouting to the effect of "get the B.....s" and "get the c....s."³¹⁶

6C-245 Mr. Heggarty's description bears a strong resemblance to Soldier A's description of what he heard shouted by the crowd:

*Once they all realised there were soldiers in the building they started throwing rocks, bricks and stones and yelling "Here are Brits in there. There are Brits in there. Get the bastards out!" and that sort of thing...*³¹⁷

6C-246 Mr. Heggarty accepted that it was potentially a murderous crowd:

Q. And it was -- what the crowd was roaring that they wanted to do was to get at these soldiers whom they were referring to by these obscene words?

A. Yes.

³¹⁴ H3.2 paragraph 7

³¹⁵ H3.12

³¹⁶ AH67.2 paragraph 7

³¹⁷ B20.003 paragraph 19

AS 7.1080

Q. And not to mince words, "get at" meant just that, it meant get our hands on them if we can?

A. I suppose so.

Q. Again, to be blunt, Mr Heggarty, if the crowd had got their hands on a soldier, they would have killed him?

A. Most likely.

Q. Most likely.³¹⁸

6C-247 Charles McDaid told Eversheds³¹⁹ that there were "a good supply [of stones] in the waste ground." A photograph of the marchers passing the derelict building earlier in the afternoon shows that there was also a good supply of stones in William Street itself.³²⁰



³¹⁸ Day 068/028/01

³¹⁹ AM161.3 paragraph 15

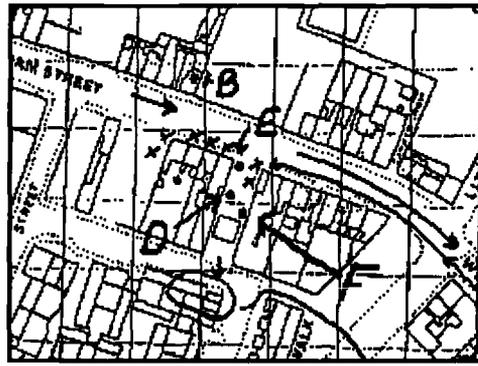
³²⁰ P1111

FS 7.1081

6C-248 Billy McCartney describes coming up William Street from Barrier 14 and seeing soldiers in the derelict building [marked 'B']:

...I saw a crowd of 14 or 15 young boys who were rioting on William Street. They were throwing stones at the soldiers in the derelict building. The boys were opposite the derelict building, on the south side of William Street, and were getting their stones from the waste ground to their right and left. They were going backwards and forwards across the waste ground. I have marked their approximate positions with crosses on the attached map... There was roaring and bad language from both the rioters and the soldiers. I joined in the stone throwing. It was not heavy stone throwing.... The stone throwing lasted for about five minutes.

...³²¹



6C-249 Dermot Carlin's evidence to this Inquiry³²² was that he had not personally seen soldiers in the derelict building; but it was obvious to him that those who had been throwing stones had. He confirmed³²³ that it made sense that some of the missiles were directed at these soldiers; some of the missiles thrown would have passed them from left to right.³²⁴ Although he claims only to have seen the rioters throwing bits of stone, concrete and small pieces of building material, he accepted that the soldiers in the derelict building were "Well within range of a young man even with quite a heavy stone."³²⁵

³²¹ AM87.2 paragraph 9

³²² Day 060/044

³²³ Day 060/072

³²⁴ This is entirely consistent with Soldiers A & B's accounts of objects being thrown in front of the windows of the derelict building where they were positioned.

³²⁵ Day 060/072/17-73/18

M 7.1082

RIOTING WAS IN PROGRESS AT THE MOMENT THAT LIVE SHOTS WERE FIRED.

6C-250 Rioting was taking place, and had been for some time, at the moment that Damien Donaghy was shot. Soldiers of Machine Gun Platoon were amongst those being targeted at the moment that shots were fired by Soldier A and Soldier B. This fact alone does not, of course, justify any firing by soldiers of live rounds. It is, however, relevant to the Tribunal's consideration of the truth and accuracy of the accounts given by civilians about what was going on at the time; its assessment of the situation which confronted the soldiers, including A and B; the accuracy and/or reasonableness and/or honesty of Soldier A's and Soldier B's accounts of what they saw and heard; and the conclusion which it may reach as to why so many civilians, including Mr Donaghy, did not give truthful accounts of what was going.

6C-251 Giving evidence to this Inquiry Patrick McCallion, a self confessed rioter, was referred to and adopted the following section of the account he gave to Eversheds:³²⁶

10. There were about 20 to 30 people on the waste ground where I stood, who were throwing anything they could find, including stones and empty milk bottles, at the soldiers on the GPO. I did not see anything hit the soldiers...

11. I then heard about three live shots...

12. At the time he was shot, I could not say whether he had been throwing stones...I was not particularly interested as to whether he was throwing stones or not. I was throwing stones at the soldiers at the time and I thought that everybody else in the waste ground was throwing stones as well; Everyone seemed to be running around picking up stones.³²⁷

6C-252 Mr. McCallion describes the rioters making strenuous efforts to arm themselves. He refers to rioters running across the waste ground "gathering whatever they

³²⁶ Day 071/143-150

³²⁷ AM74.2 paragraph 10-12

As 7.1083

could, probably milk bottles...were coming from the houses in this area, thrown and back again."³²⁸

6C-253 Alfie McAleer's evidence is that he was part of a group of about ten to fifteen youths directing their rioting at soldiers in "the old Bakery building" (i.e the house with nine windows).³²⁹ He was fetching stones from the laundry waste ground when Damien Donaghy was shot. Damien Donaghy himself was running out into the middle of William Street in order to throw stones.³³⁰

6C-254 Mr McAleer was asked in terms about the moment that Damien Donaghy was shot

Q: ... you were not looking at Mr Donaghy when he was shot?

A: No.

Q: And have I understood the position correctly, you saw him run past you when you were on the wasteground to the south of William Street.

*A: We were coming back from throwing stones, he was going out.*³³¹

6C-255 Liam Doherty told Eversheds that he was in the process of picking up a stone when shots were fired.

... I bent down there to pick up a stone and I was about a foot from the wall on the west side of the waste ground (grid reference I8). As I bent down I heard two shots... A bullet hit the wall above me...

*21. In my previous statement it says that I had already thrown a stone and was picking up a second when the shots rang out... It may have been the second stone.*³³²

³²⁸ Day 071/143-146 Mr. McCallion places the rioters in the laundry waste ground and in William Street. His evidence is that he did not notice soldiers in the derelict building with nine windows.

³²⁹ Day 092/054; incredibly he was not asked for the names of the people he was with when giving his statement to Eversheds (Day 092/093).

³³⁰ AM37.2 paragraph 7; Day 092/057-059

³³¹ Day 092/094/11

³³² AD80.3 paragraph 13; AD80.4 paragraph 21

FS 7.1084

6C-256 Patrick Harkin saw approximately seven young teenagers throwing stones at the soldiers in the derelict building with nine windows. The boys were on the waste ground to the north of William Street in front of the derelict building. Whilst the stone throwing was going on he heard two or three shots that resulted in the youths dispersing.³³³

6C-257 William Doherty told Eversheds that soldiers on the Presbyterian Church flat roof were firing rubber bullets into a peaceful crowd³³⁴ however in evidence to the Inquiry he agreed that he had seen people throwing stones at this stage: “they were attempting to reach the top of the church and there was throwing at Richard’s factory.”³³⁵ Mr. Doherty places these rioters in William Street itself, rather than in the Waste ground to the north.³³⁶ He personally picked up a stone to throw at the soldiers. As he did so a live bullet was fired over his head (which he believes was meant for him; but which hit Damien Donaghy).³³⁷ The manuscript copy of his NICRA statement³³⁸ notes that “stones were being throwing into Richard’s factory” (emphasis added). This supports the evidence of a number of members of Machine Gun Platoon who refer to missiles coming inside the building.

6C-258 Derek McFeely gave evidence that at the time Damien Donaghy was shot:

*There was a number of youths very close to the gable end with the nine windows and there had been considerable jeering, basically abusive language, jeering at the soldiers at the time... they would have been in the middle of the road and the footpath next to the derelict building.*³³⁹

³³³ Day 089/002-005. Mr. Harkin is undoubtedly mistaken in asserting that Damien Donaghy and John Johnson also fell on the waste ground to the north of William Street.

³³⁴ AD180.3 paragraph 8-9

³³⁵ Day 055/132-3

³³⁶ Day 055/133

³³⁷ Day 055/137-139

³³⁸ Which he was referred to by Christopher Clarke Q.C. on Day 055/169-171 and which has the PIN 11959/1 and 11036/1.

³³⁹ Day 061/072

AS 7.1085

6C-259 Mr. McFeely told Eversheds that he was not aware of any stone throwing at the time; but accepted that it is possible that stone throwing was taking place that he did not see.³⁴⁰

6C-260 Paul Coyle, described a group of youths throwing stones at the soldiers in the derelict building. Through the windows of the ground floor he says he could see soldiers crouched down taking cover from the stones. As he moved away from the area he heard live shots fired.³⁴¹

6C-261 Charlie Ward told NICRA:

*I saw a youth about 15 ready to throw a stone at troops who were across William Street in an old derelict house. The troops fired two shots. One youth was shot on the hip and the other shot struck an old man who appeared to be shot in the foot.*³⁴²

EVIDENCE RELATING TO NOISE IN VICINITY OF DERELICT BUILDING

6C-262 The noise in and around the area of the derelict building was considerable. The level of noise gives an indication as to the level of rioting taking place.

6C-263 Derek McFeely gave evidence that at the time that Damien Donaghy was shot, there was:

*an excessive amount of noise...there had been a lot of loud noises which would appear to me to have been rubber bullets.*³⁴³

6C-264 The level of noise is spoken to by the number of witnesses placing themselves extremely close to Damien Donaghy (and / or John Johnston) when he was shot yet failed to hear, or failed to distinguish, the sound of live rounds.

³⁴⁰ Day 061/073

³⁴¹ Day 152/058; AC105.1 paragraph 4

³⁴² AW7.1

³⁴³ Day 061/076

A 7.1086

6C-265 James McDaid, placed himself only 10-12 feet from Damien Donaghy; he was only aware of the sound of rubber bullets “which were still going on.”³⁴⁴ He did not hear live rounds “The only shots I heard was the rubber bullet and gas...there was a lot of crowd noise as well.”³⁴⁵

6C-266 Larry Doherty was in the Rossville Street waste ground opposite Kells Walk when he heard that two people had been shot in William Street.

*I didn't really believe them at the time. There was pandemonium... I am almost certain that I had heard the cracks of two shots above the other noises I could hear, although they had not registered with me until the people started to shout that people had been shot.*³⁴⁶

6C-267 Bridie Gallagher heard a rumour that people had been shot when she was held up in William Street opposite the GPO “I had not actually heard the noise of gunfire above the noise of thousands of people.”³⁴⁷

6C-268 Dermot Carlin gave evidence that he was close to Damien Donaghy but heard no shooting. He agreed that there had been quite a lot of noise and commotion in the area; he described it, in an unguarded moment, as a “small riot”; before adding “maybe just a fracas”.³⁴⁸

6C-269 PIRA 17 was also in the area, but failed to hear live rounds fired. He was asked by Edwin Glasgow Q.C.:

The point that I was inviting you to comment on was simply this, PIRA 17: if you were, as you say, between those two yellow arrows throughout the time when such rioting as there was was taking place on the waste ground in front of the GPO and the house with nine windows, you are also there when at least five live rounds were fired in the general direction --

...

³⁴⁴ AM166.2 paragraph 16-17

³⁴⁵ Day 061/021-022

³⁴⁶ M21.4 paragraph 14

³⁴⁷ AG5.2 paragraph 6

³⁴⁸ Day 060/074-075

FS 7.1087

The point I wanted you to have the opportunity of commenting on was that if your evidence be right, you were there when a substantial number of shots were fired and did not hear them?

A. That is correct.

Q. That does not surprise you?

A. That does not surprise me in the least in that I am sure you have seen the footage and you know the noise that comes from CS gas and rubber bullets guns, a piece of corrugated iron that was used to defend people against these, that there was a lot of noise and din and it does not surprise me in the least that I did not hear those shots.

Q. The noise of a riot like the one that you witnessed –

A. Yes.

Q. -- at barrier 14 is sufficiently loud even to be able to drown out live SLR fire?

A. As far as I am concerned it did, yes.

Q. And nail bomb explosions?

A. I heard none.³⁴⁹

CONCLUSION

6C-270 At the time that Damien Donaghy and John Johnston were shot a significant crowd of rioters had turned their attention towards the soldiers in the derelict building and had begun an assault upon them. Objects were hurled at the soldiers through the windows of the building. Nail bombs were heard exploding nearby. A wholly false picture of that activity was painted by many of the civilians who gave evidence about it.

³⁴⁹ Day 404/152/17-153/24

FS 7. 1088

CHAPTER 6D

THE SHOOTING OF DAMIEN DONAGHY

6D-I INTRODUCTION

6D-1 Damien Donaghy was shot at a time when the rioting in front of the derelict building with nine windows was at its height. Damien Donaghy was one of the rioters.

6D-2 He was shot at approximately 15.55.

6D-3 Damien Donaghy was almost certainly shot by either Soldier A or Soldier B but it is impossible to say which.

6D-4 Damien Donaghy was either not Soldier A's or Soldier B's intended target or, if he was, his actions were such as to lead Soldier A and Soldier B both genuinely to believe that he was about to throw a nail bomb.

6D-II WHEN WAS DAMIEN DONAGHY SHOT?

Introduction

6D-5 It is impossible to put a precise time on the shooting of Damien Donaghy. It is, however, possible to place the shooting within the context of other events.

6D-6 There is no doubt that Damien Donaghy was shot before the 1 PARA were deployed through the army Barriers. Serial 160 of the 8 Bde log records Barrier 14 being lifted at about 16.09.¹

¹ W47, Serial 160

FS 7.1089

- 6D-7 Major Loden's diary of operations suggests that Damien Donaghy was shot at approximately 15.55,² i.e. nearly fifteen minutes before the soldiers deployed.
- 6D-8 At the time that Damien Donaghy was shot the main part of the march had passed and serious rioting was taking place in vicinity of the laundry waste ground and close to the derelict building in which Machine Gun Platoon were deployed.
- 6D-9 Some of those who took part in the rioting in this area (and some who were simply observing) had retreated back up William Street in response to the use of the water canon at Barrier 14 and in order to escape CS gas which engulfed the waste ground at Aggro Corner.
- 6D-10 Several witnesses refer to moving up to Barrier 14 and taking part in rioting *after* Damien Donaghy was shot. A number refer to the water canon being used again at this stage.
- 6D-11 Taken together, the evidence suggests that Damien Donaghy was almost certainly shot *after* the initial deployment of the water canon and after the use of CS gas by the army at Barrier 12, but *before* the water canon was deployed for a second time.
- 6D-12 Combined with timed entries in the army logs, their evidence tends to support the timing recorded by Major Loden for the shooting of Damien Donaghy as broadly speaking accurate.

² **B2212** Entry timed 15:55: *One high velocity round was fired from the direction of Rossville Flats at the wire cutting party. The shot struck a drainpipe on the east wall of the Presbyterian Church approximately four feet above the heads of the wire-cutting party. The drainpipe is holed. A few moments after this a member of the Machine Gun Platoon observed a man preparing to ignite a nail bomb at the corner of the building grid reference 4325/1699 on the south side of William Street. The platoon commander then gave orders to a corporal and a soldier to open fire as the bomber prepared to throw. These two soldiers did so and the man was seen to fall and was dragged away...*

H 7. 1090

Damien Donaghy Was Shot After the use of the Water Canon at Barrier 14 and Initial use of CS gas at Barrier 12:

6D-13 The water canon was used on two occasions on Bloody Sunday. The first time was at shortly before 15.44.³ The 8 Bde log entry timed at 15.44 records

Use of water canon dispersed crowd in area 14. General movement now down Rossville St., after stoning at 14 and 15.

6D-14 Serial 137 of the log timed at 15.50 records the use of gas at Barriers 12 and 13.

At serials 12 & 13 sub units dispersed hooligans with rubber bullets using gas & rubber bullets. Some hooligans wearing gas masks though not current pattern. Little James Street clear.⁴

6D-15 Liam Doherty's evidence suggests that Damien Donaghy was shot shortly after this. He gave the following account in his BSI statement:

The water canon came up and gas and rubber bullets were fired. I was there for about 10 or 15 minutes when I got drenched with the dye from the water canon and got a heavy dose of gas. I started moving back east up William Street. I stopped at the point marked B for about 5 minutes and leant against the wall trying to get my breath back. I was badly effected [sic] by the gas and I was sick. I remember a cameraman taking my photo while I was there.

10. There was rioting going on at Little James Street at that time; it was sporadic. There was a sense of defeat as the crowd came back east down William Street, away from the barrier, as they realised they were not going to get through. Some of the crowd joined in with the riot at Little James

³ W45, Serial 132. See also W171 Serial 120 "The waterwagon now in action, firing red dye into crowd. Crowd has moved back safely with it"; Serial 121 "time now 15.44".

⁴ W46, Serial 137

FS 7. 1091

Street. There was a lot of gas though and it couldn't really get in to much of a riot.⁵

Mr. Doherty's response was to move up William Street and target soldiers in the derelict Abbey taxis building.⁶ He was in the process of picking up a stone when shots rang out and Damien Donaghy called out that he had been shot.⁷

6D-16 This sequence of events is confirmed by Patricia Cunningham:

CS gas and rubber bullets were fired into the crowd but we were so tightly packed that we could not retreat. A lot of people myself included, were overcome by the gas.

The water canon was then brought into action and people panicked and fled back up William Street...I stopped near a derelict building, opposite the site of the former Richard's Factory. At this stage rubber bullets were being fired from that direction. Suddenly, there was the whine of a high velocity rifle shot, coming from the direction of army snipers who were stationed in a burnt out building adjoining the factory site already mentioned. I looked round and saw a youth fall to the ground.⁸

6D-17 Jim Doherty's evidence to the present Inquiry was to the same effect.⁹

A Riot On the Laundry Waste Ground was already in Progress and had been for some Minutes at the Time that Donaghy was Shot:

6D-18 Those retreating from the gas and the water canon came across a riot which was already in progress.

⁵ AD80.2 paragraph 9-10

⁶ Day 060/087-091

⁷ Day 060/095-096

⁸ AC135.1

⁹ Day 065/070-071: Mr. Doherty corrected the part of his statement which suggested that the soldiers actually deployed through the barriers immediately after the water canon was deployed.

PS 7. 1092

6D-19 Patrick McCallion moved away from Barrier 14 because he feared he may be caught up in a stampede. His evidence to the Inquiry was that he had seen 20 to 30 people on the laundry waste ground throwing anything they could including stones and empty milk bottles, at the soldiers on the GPO.¹⁰

6D-20 The rioting had been in progress for some minutes prior to Damien Donaghy being shot. There was no response to the initial rioting:

- (1) John Brown saw no reaction by the soldiers to the boys who were jeering at them.¹¹
- (2) William Curran stated that soldiers on the GPO roof moved back when they saw boys pick up stones and move towards them.¹²
- (3) Pdraig O'Mianain confirms there was initially no reaction by soldiers on the GPO roof to youths who threw stones at them.¹³

Rubber Bullets Had been Fired and Two Objects had been Thrown which were, or Appeared to be, Nail Bombs.

6D-21 As rioting intensified a number of rubber bullets were fired by soldiers in the derelict building and on roof of the GPO.¹⁴

¹⁰ Day 071/142-144

¹¹ AB93.1 paragraph 5

¹² AC132.2 paragraph 9

¹³ AO56.14 paragraph 8

¹⁴ Major Loden's Diary of Operations B2212 entry timed 15.50. Pdraig O'Mianain, Day 059/042, saw rubber bullets fired at a group of young men who were throwing stones. Father Ivor, Day 055/023, gave evidence that a lot of rubber bullets were fired in the area; including one which hit him.

Patrick McCallion Day 071/146/18-147/02 said soldiers on GPO roof initially did not respond to the stone throwing; but then fired "a couple of rubber bullets."

Patrick McCourt, AM146.2 paragraph 7: "I think that the soldiers hiding in Stephenson's Bakery fired one or two rubber bullets as did the soldiers positioned on Great James Street."

- 6D-22 Before Damien Donaghy was shot two objects were thrown which Soldier A and Soldier B believed to be nail bombs.¹⁵ At the time the two objects were thrown the group of stone throwers had moved back to escape rubber bullets being fired at them.¹⁶ Soldier A's present recollection is that these objects were thrown a couple of minutes after the stone throwing began.¹⁷
- 6D-23 Billy McCartney gave evidence that the stone throwing had been going on for about five minutes before a 'salvo' of approximately six rubber bullets were fired. Mr. McCartney suggests that the rubber bullets were followed a few seconds later by live rounds.¹⁸
- 6D-24 According to Father Carolan,¹⁹ the rubber bullets appeared to have no affect on the rioting crowd and the soldiers continued to be "bombarded."
- 6D-25 Soldier A and Soldier B identified a man on the North West corner of the laundry waste ground who appeared to be in the process of preparing to throw a nail bomb. Both soldiers aimed and fired at the man virtually simultaneously. (See further the discussion below: Chapter 6F: The Shots Fired by Soldier A and Soldier B)
- 6D-26 Very shortly after being shot, probably within seconds, members of the crowd reached Damien Donaghy and he was carried to Mrs Shiels' house in Columbcille Court.

¹⁵ Soldier A: B20.014; Soldier B; B43.009

¹⁶ Soldier A's Widgery evidence B20.031F. Neither soldier can now recall rubber bullets being fired (Soldier A: Day 297/028; Soldier B: Day 311/034). Day 297/028: Soldier A confirmed his belief in the accuracy of his statement to the RMP dated 31.01.72, B20.014, which refers to rubber bullets being fired by the troops he was with towards the rioters. Soldier B also referred to baton rounds being fired towards rioters in his statement to the RMP dated 31.01.72: B43.009.

¹⁷ B20.003 paragraph 20

¹⁸ Day 054/168-170

¹⁹ H3.2 paragraph 7

FS 7. 1094

6D-27 Patrick McCourt's BSI statement suggests that the rioting on the waste ground to the north of William Street continued even after Damien Donaghy had been shot.

8. There were still people on William Street as the rioting was taking place on the waste ground north of William Street. I decided to turn around and head back to William Street. As I was moving across the waste ground south towards William Street I saw Damien Donaghy, who I and everyone else knew as "Bubbles", being carried into a house.²⁰

Damien Donaghy was Shot Approximately 15 Minutes before the Soldiers Deployed.

6D-28 Major Loden's diary of operations suggests that the interval between Damien Donaghy being shot and the army coming in was in the region of 15 minutes.²¹

6D-29 This timing is broadly supported by civilian evidence, much of which suggests that there was a gap of approximately 15 minutes between the shooting of Damien Donaghy and the deployment of the soldiers.

- (1) Billy McCartney said that Damien Donaghy had been collected from the Shiels' house and taken to hospital by the time 1 PARA deployed. Shortly afterwards he saw soldiers enter the Bogside.

14. After watching Damien Donaghy being driven away, me and Danny left the area and went back towards the junction of William Street, Rossville Street and Little James Street, past Kells Walk. Perhaps 15 minutes had passed since the first shots which hit Donaghy and Johnston had rang out. At a point around Kells Walk, I remember stopping to talk to Brother Regan, an old school teacher of mine. We crossed Rossville Street and ran across the waste ground at

²⁰ **AM146.2 paragraph 8**

²¹ **B2212** Entry timed 15:55.

FS 7.1095

*Eden Place and Pilot Row towards the Rossville Flats' car park. As we did so, the Saracens and Ferret cars came down Rossville Street from William Street and Little James street and I made a run for it with the vehicles proceeding behind me.*²²

- (2) James (Jim) Joseph McDaid dressed Mr. Donaghy's wounds in the Shiels' house. He estimated about 15 minutes separated the first shooting which he had heard from further shooting outside the house.²³
- (3) Columba Donaghy spent 15-20 minutes chatting between the moment when Damien Donaghy was shot and hearing someone shout that the army were coming in.²⁴
- (4) Alfie McAleer apparently remained in the area close to where Damien Donaghy had been shot. He describes being concerned about his own position after witnessing the shooting of Damien Donaghy. He and his friends stood smoking and discussing how they should get away from the trouble when they heard shouting and the sound of the army coming in. Although unable to say how long separated the two events, it is clear from his evidence that they did not follow on immediately from one another.²⁵

6D-30 Other witnesses have given evidence about the time between the shooting of Damien Donaghy and further shooting shortly after the soldiers deployed.

- (1) In evidence William Curran referred to the gap between the shooting of Damien Donaghy and further heavy firing:

²² AM87.4 paragraph 14

²³ Day 061/007

²⁴ AD116.2 paragraph 11-12

²⁵ Day 092/065-066

FS 7. 1096

...after Bubbles Donaghy was shot, there was a lull in the firing, no more shots for at least 15 minutes. At least 15 minutes after that, then there was heavy, heavy firing coming from the direction of bottom of William Street and Rossville Street.²⁶

- (2) Betty Curran's BSI statement puts the gap between the two episodes of shooting as between 10 and 15 minutes.²⁷
- (3) Monica McDaid heard further shooting approximately 20 minutes after the first shootings in William Street.²⁸

Civilians Evidence of the Events at Barrier 14 after the Shooting of Donaghy: Evidence Relating to the Timing of the Second Use of the Water Cannon.

6D-31 A number of witnesses have described witnessing rioting at Barrier 14 after Damien Donaghy had been shot.

- (1) Sean Barr has given evidence that he assisted John Johnston.²⁹ He moved to Aggro Corner where he observed rioting directed at the soldiers behind Barrier 14. He estimated that it was about 20 minutes after the shooting that he decided to walk down Rossville Street.³⁰ As he reached the south side of the rubble barricade he saw army vehicles moving in.³¹
- (2) Sean O'Neill claims to have helped to carry Damien Donaghy to the Shiels' house. He gave the following account of his movements

²⁶ Day 055/061

²⁷ AC130.2 paragraph 11

²⁸ AM170.3 paragraph 15

²⁹ Day 063/075-076

³⁰ Day 063/078

³¹ Day 063/078-079

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between leaving the Shiels' house and the moment when the soldiers deployed.

11. I then went to the area of Little James Street and Sackville Street....There were a couple of dozen people rioting in the area throwing stones at the soldiers...

12. ... I only stayed in the area of Little James Street and Sackville Street for a few minutes...

13. I went back to William Street and ran east towards Barrier 14...I got up close to Barrier 14...I was within spitting distance of the soldiers to the east of Barrier 14 but the soldiers did not seem worried.³²

Mr. O'Neill confirmed that he would have been one of the boys sheltering behind the metal sheeting.³³

16. A water cannon then advanced towards us from the east of Barrier 14. I believe it was used twice that day, but the first time I had been rioting in Sackville Street. The second time it was used I was within twenty yards of it but the cannon was not very powerful...After the canon retreated I started to return towards Barrier 14. I had been in that area in total for about ten to fifteen minutes when I heard a commotion from Little James Street. I stalled for a few seconds but then Barrier 14 was opened up by the soldiers so I turned and ran south along Chamberlain Street and then turned right in a westerly direction along Eden Place.³⁴

(3) Tony McCourt walked to Barrier 14 with his friend, Peter McGriskin.³⁵ Mr. McCourt sheltered behind tin sheet close to the

³² AO65.2 paragraphs 11-13

³³ AO65.3 paragraph 14

³⁴ AO65.4 paragraph 16

³⁵ Mr. McCourt's evidence is hard to reconcile with that of his friend, Peter McGriskin. Mr. McGriskin [AM267] agrees he was probably with Mr. McCourt as he walked down William Street, but has no recollection of hearing shots or seeing people lying on the ground (Day 106/97). Mr. McGriskin confirms that he was at Barrier 14 with Mr. McCourt and admits to taking part in the rioting there (Day 106/97); he estimates that he and Mr. McCourt spent 10-15 minutes in that location before being forced to retreat from the area having been affected

barrier.³⁶ Giving evidence, he claimed that he was not in the mood to join in with the rioting knowing that two people had just been shot.³⁷ He decided to move when the water cannon was brought up.³⁸

- (4) Eugene Lafferty admitted that he had taken part in the rioting at Barrier 14 after seeing Damien Donaghy and John Johnston shot.³⁹ Mr. Lafferty also referred to water canon being used at this stage.⁴⁰
- (5) Having witnessed the shooting of Damien Donaghy, Gerry Duddy continued up William Street towards Barrier 14. He told Eversheds, "I wasn't scared by Bubbles having been shot..."⁴¹ At Barrier 14 Mr. Duddy observed "a really good riot" in progress.⁴² He remained there until he observed the water cannon come up; at which stage he retraced his steps and then turned down Rossville Street.⁴³

6D-32 These references to the use of the water cannon, which must refer to the second occasion on which it was used, provide a further clue as to the timing of the shooting of Damien Donaghy. David Phillips' statement to the Widgery Tribunal suggests that the second time water cannon was used was at approximately 16.05. Mr. Phillips, at the time the producer of "News at Ten" was positioned approximately fifteen yards behind Barrier 14. Mr. Phillips made a timed note of events as they unfolded; he suggests

by gas. He had reached as far as Eden Place when he heard Mickey Bradley shout "they are coming in" (AM267.2 paragraph 5; Day 106/98).

³⁶ Day 054/134

³⁷ Day 054/135

³⁸ Day 054/136-137

³⁹ Day 064/085-090

⁴⁰ Day 064/088-089

⁴¹ AD146.2 paragraph 7

⁴² Day 059/140

⁴³ Day 059/141

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that the timings noted are accurate to within two minutes.⁴⁴ His statement, compiled from the notes, reads as follows:

At 4.05 the water cannon, which had been withdrawn after its first firing, re-appeared and fired again. The reason for its further use was because the crowd had obtained a corrugated iron shield behind which they were advancing. Rubber bullets were also fired at the shield. Those with the shield retreated round the bend but at 4.09 pm returned with the same or a similar shield. At 4.12pm the barrier was pulled aside in the centre and the paratroops went in amongst the crowd ...⁴⁵

6D-33 Serial 372⁴⁶ on the Porter tape records Barrier 14 being lifted at about 16.09. Mr. Phillips times it 3 minutes later. This may mean that the water cannon was in fact deployed for the second time closer to 16.02 than 16.05. This would not affect the probable timing of for the shooting of Damien Donaghy.

Conclusion

6D-34 There is strong evidence which supports the conclusion that Damien Donaghy was shot at approximately 15.55 as recorded in Major Loden's diary of operations.

⁴⁴ M66.1, paragraph 1

⁴⁵ M66.2, paragraph 2

⁴⁶ W128

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6D-III WHERE WAS DAMIEN DONAGHY SHOT?

6D-35 There is conflicting evidence about where Damien Donaghy was shot. Two principal possibilities emerge:

- (1) The North East part of the laundry waste ground. This is where Damien Donaghy himself says he was shot.
- (2) The North West corner of the laundry waste ground.⁴⁷ The majority of civilians refer to Damien Donaghy being shot in this location. It corresponds with the location of the target identified by Soldier A and Soldier B.

The North East Part of the Laundry Waste Ground: Damien Donaghy's Evidence about where he was Shot

6D-36 At the time he was shot Damien Donaghy claimed to have been in the process of retrieving a rubber bullet which had hit the gable wall of a house on the east side of the laundry waste ground.⁴⁸

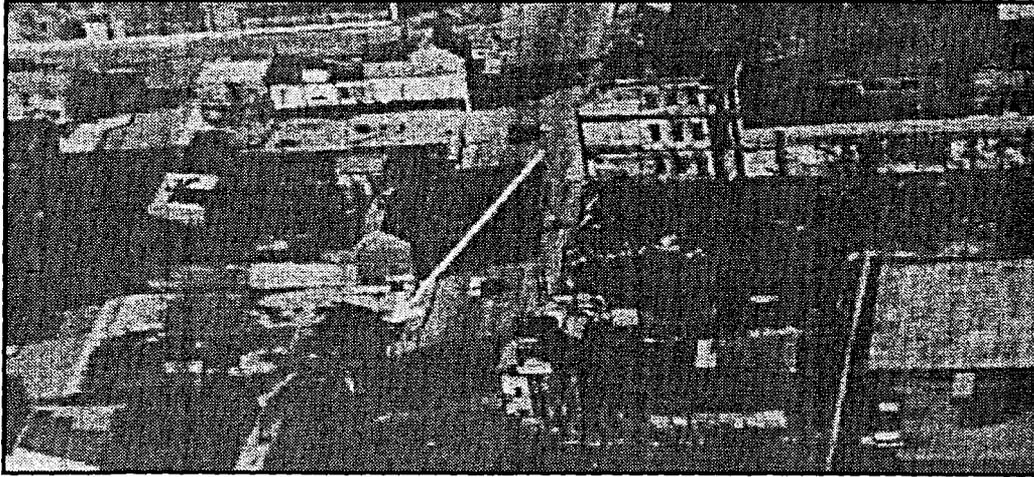
6D-37 The yellow arrow in the photograph indicates where Damien Donaghy says he was at when he saw a bullet ricochet off the gable wall of a house on the east side of the laundry.⁴⁹

⁴⁷ The corner where the Nook bar was located.

⁴⁸ Day 070/011-012

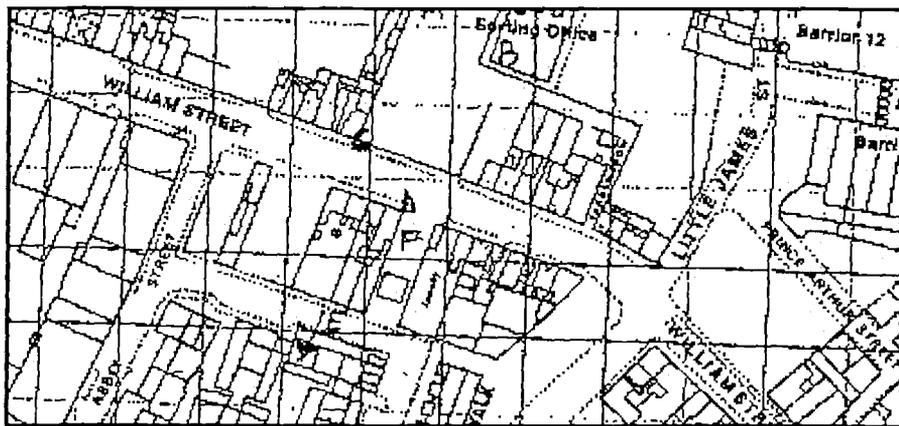
⁴⁹ Day 070/012; (marked up photograph AD120.27)

A 7. 1101



6D-38 Damien Donaghy confirmed that he believed the following section of the account he gave to Eversheds to be correct: ⁵⁰

9. I took about three steps towards the rubber bullet. I hadn't got within 20 feet of the rubber bullet when I felt a jab in my right leg. Initially, there was no strong sensation of pain, but I fell immediately onto my back. My approximate position when this happened is marked F on the Plan...⁵¹



6D-39 When questioned by Mr. Edwin Glasgow Q.C. Mr. Donaghy confirmed that the letter 'F' needs to be moved to the left, towards the word

⁵⁰ Day 070/013 ;Day 070/32

⁵¹ AD120.6 paragraph 9

7.1102

'Laundry', to take account of the fact that the map does not give a true impression of the 1972 position.⁵² He was asked:

Q. If we drew a line between the "C" and the "D" on the corner, the line would finish up about the position where you were going towards the rubber bullet?

A. That is correct, but when I gave my evidence to Eversheds, that is the exact -- they, the laundry as it is there now, as you say it was not there. I put meself there, if the laundry was not there I would have meself right in the middle of the laundry, but that is the one they showed me.⁵³

6D-40 Damien Donaghy stated that those witnesses who placed him at the North West corner of the waste ground were mistaken. "I was shot at the other side -- the other gable across."⁵⁴

6D-41 Questioned further by Mr. Glasgow, Damien Donaghy confirmed he had a clear recollection of where he was shot. He said he was positive that it was *not* the corner where the Nook Bar was located [i.e. the North West corner].⁵⁵

6D-42 There is a relatively slim body of civilian evidence which support's Damien Donaghy's account of where he was shot.

6D-43 Seamus Bradley seems to have assumed that Damien Donaghy had run into the North East corner of the laundry waste ground. Marking the position where he saw Damien Donaghy with a *green* arrow on the photograph below⁵⁶ Mr. Bradley commented "This gable wall here, because it was just to get to the safety in round the corner as quick as we

⁵² Day 070/032/16-034/03. The laundry building was no longer standing by 31.01.72 and the waste ground was therefore approximately twice as wide as it appears on the map.

⁵³ Day 070/034/04-13

⁵⁴ Day 070/024/20-21

⁵⁵ Day 070/031

⁵⁶ AB69.7

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could."⁵⁷ The arrow marks a position apparently slightly further to the north and east than that marked by Damien Donaghy himself.



6D-45 Patrick McCallion, indicated to Eversheds that he had seen Damien Donaghy fall at point F on the map below.⁵⁸



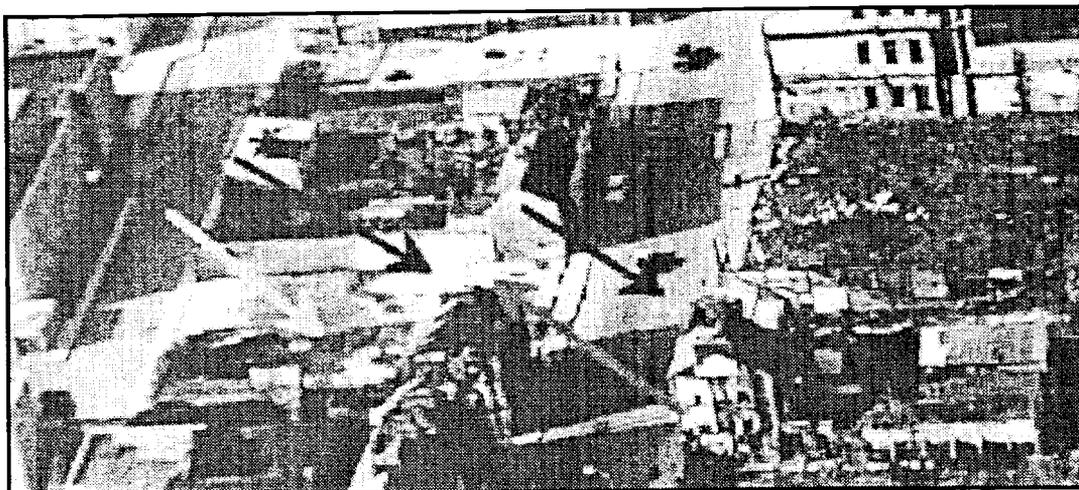
6D-46 Mr. McCallion gave evidence the day *after* Damien Donaghy had given evidence to the Inquiry. Mr. McCallion claimed that the position marked on the map was inaccurate. Damien Donaghy had in fact been shot not at 'F' but at 'D' (i.e. further to the east and in a position more closely corresponding with Damien Donaghy's own evidence). The location

⁵⁷ Day 064/009-010; this location appears to be further to the east than the point marked by Mr. Bradley on the BSI map (marked as point "E") at the time he made his statement. (AB69.3 paragraph 7; AB69.6).

⁵⁸ AM74.3 paragraph 11; map at AM74.5

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indicated by Mr. McCallion was also marked with a green arrow on the map below:⁵⁹



6D-47 A similar shift occurred in the case of Colm O'Domhnaill. In 1999 Mr. O'Domhnaill marked Damien Donaghy's position on the Evershed's map as the North West corner of the laundry waste ground.⁶⁰ By the time he came to give evidence (eighteen days after Damien Donaghy had himself given evidence) Mr. O'Domhnaill claimed that Damien Donaghy's position was in fact further to the east (in almost precisely the location where Damien Donaghy claimed he was shot).⁶¹ Mr. O'Domhnaill marked where Damien Donaghy fell on the photograph below.⁶²



⁵⁹ Day 071/148; and photograph at AM74.06

⁶⁰ AO19.2 paragraph 9; and point 'B' on map at AO19.23.

⁶¹ Day 088/141

⁶² AO19.24

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THE NORTH WEST CORNER OF THE LAUNDRY WASTE GROUND

6D-48 The majority of civilian witnesses refer to Damien Donaghy being shot in this location.

6D-49 Anthony Feeney marked where he had seen Damien Donaghy with a red arrow.⁶³



6D-50 Charles James McGill confirmed to Christopher Clarke Q.C. that he had seen Damien Donaghy at the north west corner of the laundry waste ground. Damien Donaghy was “just off the pavement on the waste ground...at the corner of a building.”⁶⁴

6D-51 Other witnesses who have said Damien Donaghy was shot in the north west corner include:

⁶³ Day 067/089; photograph AF7.6. Feeney had told Eversheds that Damien Donaghy had been shot at the north east corner (marked the map attached to his statement accordingly). It is interesting that, in contrast to witnesses who gave evidence *after* Damien Donaghy who tend to revise their location in order for it to agree with Damien Donaghy’s evidence, Mr. Feeney’s amendment brings his evidence about the location where Damien Donaghy was shot into line with that of the majority of civilian witnesses. Mr. Feeney gave evidence three days *before* Damien Donaghy.

⁶⁴ Day 069/087 in confirmation of the account given to Eversheds re Damien Donaghy’s position at AM230.2-3 paragraph 14; point ‘7’ on map at AM230.7.

AS 7.1106

- (1) Padraig O'Mianain.⁶⁵
- (2) Eugene Lafferty.⁶⁶
- (3) Gerry Duddy.⁶⁷
- (4) Thomas McDaid.⁶⁸
- (5) Michael McGuinness.⁶⁹
- (6) Tony McCourt.⁷⁰
- (7) Monica McDaid.⁷¹
- (8) Billy McCartney.⁷²

⁶⁵ Day 059/045 apparently adopts description given to Eversheds at AO56.15 paragraph 14; and as indicated at point '6' on map at AO56.19.

⁶⁶ Day 064/082 confirmed to Christopher Clarke Q.C. that his recollection was that Damien Donaghy had fallen precisely at the north west corner of the laundry waste ground.

⁶⁷ Day 059/133 "He was at the corner of the waste ground by William St...the gable end". Christopher Clarke Q.C. confirmed that Mr. Duddy was referring to the gable end of the Nook Bar. Day 059/157 Mr. Duddy attempted to mark the position with a green arrow on photo at AD146.7.

⁶⁸ Day 066/037-038. Mr. McDaid agreed that Damien Donaghy had been standing leaning against the wall of the Nook Bar in the position marked with a cross at GR KO8 of his BSI map. Day 066/048 "...about a foot back in from the corner."

⁶⁹ Day 064/146

⁷⁰ Day 054/127. Mr. McCourt indicated with a green arrow on photograph AM148.13 the position in which he had seen people gathered around a body. This position is slightly east of the north west corner of the waste ground.

⁷¹ Day 055/140/02 Ms. McDaid's evidence was that she first saw Damien Donaghy at the north west corner of the waste ground (marked with a green arrow on photograph AM170.7); Damien Donaghy then ran along the gable wall after a rubber bullet. He was shot and fell further back into the waste ground (at the point marked with a red arrow on the same photograph).

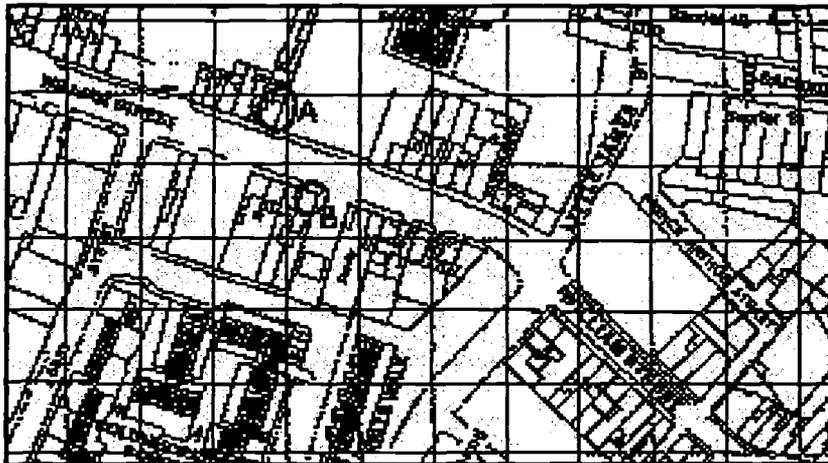
⁷² AM87.3 paragraph 10 Mr. McCartney account to Eversheds puts Damien Donaghy slightly further out from the corner of the building but not materially (point 'E' on map at AM87.9). Day 054/173 When he gave evidence on Day 54 Mr. McCartney marked the exact position where he maintains Donaghy fell with a red arrow on AM87.10. This is slightly further still from the north west corner; but not as far East (or as far South into the waste ground) as Damien Donaghy claims to have been.

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(9) Charles McGill⁷³

6D-52 The north west corner of the waste ground is also the location identified by Soldiers A and B for their target.

6D-53 Soldier A confirmed to Christopher Clarke Q.C.⁷⁴ that his target was at the point marked 'B' on his BSI map:⁷⁵



6D-54 Soldier A was asked by Christopher Clarke Q.C.:

“Q. Do you recall how close to the corner he was?”

A. He was at -- well, when he first appeared, sir, he was right against the corner of the building, and he came out of it into my view and then went back.

Q. And then, when you saw him striking a match against the wall, he presumably must have been within very close proximity to the wall?

A. He came away from the wall, sir, but the wall was within -- within reach.⁷⁶

⁷³ Day 069/087/08-14; point '7' on BSI map at AM230.7 (confirmed Day 069/90)

⁷⁴ Day 297/030-031

⁷⁵ B20.010

⁷⁶ Day 297/031/09

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6D-55 Mr. Clarke referred Soldier A to the map attached to his RMP statement dated 30.01.72.⁷⁷ Soldier A confirmed that the map inaccurately represents his own position and that of the bomber. The latter was "on that gable end."⁷⁸ In reply to questions put by Mr. Harvey about the map, Soldier A explained "I did not have him standing at that wall because I did not make that mark."⁷⁹ Soldier A said could not recall ever having seen the map; he said that if he had "I would have pointed out that my position and the position of the bomber was slightly out."⁸⁰

6D-56 Soldier A was shown the photograph⁸¹ on which Damien Donaghy marked the position where he says he was at the time he was shot. Soldier A told the Inquiry that it was not possible that the person whom he had shot was in the position marked by Damien Donaghy.⁸²

6D-57 Soldier B now has no memory of firing on Bloody Sunday.⁸³ Soldier B's RMP statement refers to his target as "standing in an alleyway off William Street."⁸⁴

6D-IV WHAT WAS DAMIEN DONAGHY DOING WHEN HE WAS SHOT?

SUMMARY

6D-58 Despite his repeated, and very public and doubtless influential, denials, it is now beyond doubt that Damien Donaghy had been rioting on Bloody Sunday.

⁷⁷ RMP Statement at B20.014; Map at B3

⁷⁸ Day 297/048

⁷⁹ Day 297/073

⁸⁰ Day 297/157/19-20

⁸¹ AD120.27

⁸² Day 297/036

⁸³ B43.003 paragraphs 14-15

⁸⁴ B43.009

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6D-59 His lack of candour for 30 years requires his present account be approached with a considerable caution.

DAMIAN DONAGHY'S ACTIONS WHEN HE WAS SHOT – HIS VARIOUS ACCOUNTS

6D-60 As late as his statement to the Inquiry, Damien Donaghy was still maintaining that he was not engaging in any riotous activity. His BSI Statement records:

7. ...I did not get involved with the lads throwing stones and I did not throw any stones myself.⁸⁵

6D-61 Previously, Damien Donaghy has given other, varied accounts. He gave the following explanation of what had occurred on 08.02.72 when questioned by DS Cudmore:

(3) How did you receive your injuries?

(A) I heard a bang and I fell. There was no trouble at the time.

(4) What were you doing in the area at the time?

(A) I was taking a short cut to go to my cousins in Garvan Place, Rossville Flats.⁸⁶

6D-62 He gave the following account in his statement to the Widgery Inquiry on 28.02.72:

I went round the corner of the "Nook Bar" and into the waste ground beside it. I was walking towards Columbcille Court then. I heard the sound of a rubber bullet being fired and I saw it bounce off the wall on my right and I then ran to pick it up. As I was bending down to pick it up I heard a shot ring out and I felt a twinge in my right leg.⁸⁷

⁸⁵ AD120.6 paragraph 7

⁸⁶ AD120.17

⁸⁷ AD120.18

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6D-63 Jacobson and Pringle of the Sunday Times apparently interviewed Damien Donaghy in hospital on 01.03.72 and were given the following account:

He was in William St behind the main body of the march when he saw the gas at the end of the street. He decided to cut across through Columbcille Court to the Rossville Flats. There were a few youths throwing stones at about three soldiers on the low roof next to the Presbyterian Church. He heard a rubber bullet being fired, turned round to see where the bullet was coming and as he turned he was hit in the right thigh...

He says that although he is a regular William Street stone thrower he was NOT throwing stones on that day.⁸⁸

6D-64 In an undated interview Damien Donaghy gave to Jimmy McGovern, which took place after he had given his BSI statement, he described the moment he was shot:

...I got down to where the Nook Bar was, where I was shot...the march was coming down William Street at the bakery corner round from Abbey Taxis there was soldiers in there, in the derelict building at the side you know. And there were a few stones threw at them but that was it and the plastic bullet was fired and it came off the wall and I went to go for it and next thing I was lying shot.

J. McG...Did you handle the plastic bullet?

D.D. I never even got my hand on it to tell you the truth and then that...it happened that quick do you know what I mean and I was lying on me back...⁸⁹

6D-65 In an interview which took place on 23.08.98 Damien Donaghy was asked by Don Mullan:

Don: What do you remember about the incident then – you were on the march?

⁸⁸ AD120.2

⁸⁹ AD120.28-29

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Damien: On the march, coming down William Street. We were coming down past the bakery, I noticed there were soldiers up on top of what would have been the Protestant Church on Great James Street...There was a wee bit of rioting down at the bottom of William Street and that was it, and there were soldiers in the bakery – it was the old Ormeau bakery on William Street. There were left, but he was hiding in between an old broken window, you know, that was it-you never think, then I just turned round and the next thing I was lying on my back and there were a couple of people came to lift me. One of the men that came to lift me was John Johnston.⁹⁰

6D-66 On Day 070/001 Damien Donaghy read out the following prepared statement to the Inquiry at the beginning of his evidence.

After discussions with my legal representatives and because the main reason we are here is for the truth to be told, I may wish to admit that I threw stones. I also would like to add that when I was shot, I did not have a nail bomb or anything else in my hands.

6D-67 Damien Donaghy's persistent lies about his own activities on Bloody Sunday need to be seen in the context of the repeated assertions made on behalf of the families of the fundamental importance of the unadulterated truth being told.

6D-68 In opening Arthur Harvey Q.C. said:

The search for the truth is what the relatives of the deceased and the injured now living have sought; it is all they have sought....⁹¹

... The relatives of the deceased and injured themselves seek not just the form, but the substance of public justice. It is only through this Inquiry and this Inquiry alone that the facts can be established and judgments made, actions by any outside body which would seek to compromise the integrity of that work by unlawful action against any person

⁹⁰ AD120.58-59

⁹¹ Day 043/071/22-24

giving evidence, would be an anathema from those persons whom I appear and an affront to their work over 28 years. Public justice demands that this Inquiry is allowed to conduct its work in the reflective attitude that the discovery of truth requires.⁹²

6D-69 Arthur Harvey Q.C. issued the following plea on behalf of the families on Day 77:

MR HARVEY: Sir, on Day 1 of this Tribunal on 27th March 2000 in opening this case, Mr Clarke, on behalf of the Tribunal, stated: "The Tribunal's task is to try to discover, so far as is humanly possible, in the circumstances with the means now available, the truth. Not the truth as people see it. Not the truth as people would like it to be, but the truth pure and simple, however complex, painful or unacceptable to whomsoever that truth may be. Those who have campaigned for so long to establish this Inquiry seek no more, Parliament which, by the affirmative resolution of both houses establishes this Inquiry, seeks no less, without it many concerns that led to the unique circumstance of a second Inquiry under the 1921 Act into the same facts cannot be led to rest.

"If the truth of what occurred on 30th January 1972 is ever to be established, told and acknowledged, now is the time to do it. By "our clients", I refer to all of the 27 families represented by this Inquiry and urge anyone whoever has anything to contribute, to come forward and do so now and, indeed, are deeply saddened that some individuals have not done so.

This morning the Tribunal offered an opportunity to interested parties to make suggestions which would assist the Tribunal in establishing that truth. All of the representatives of the families have had an opportunity over lunchtime to meet. We believe that there are genuine positive steps that we can take in conjunction with this Inquiry which will assist. In those circumstances, because we do represent 27 families, I would ask that the Tribunal defer dealing with this matter until Monday, and I genuinely believe that there is a deep-seated commitment of these families which has to be brought home and brought to

⁹² Day 043/073/18-074/04

FS 7. 1113

bear on those who are reluctant, for whatever reason, to come forward which they must realise, they must acknowledge, as this Tribunal stated, the only vindication of what occurred in relation to these families must be the whole truth, even its unpalatable aspects.⁹³

6D-70 Similar sentiments were expressed during the opening of Michael Mansfield Q.C.:

May I say before lunch today, may I begin the remarks that I would wish to place before you in relation to all these families: in another context, the context of contemporary politics and conflict in the north of Ireland and, it has been said, in relation to South Africa and it has been said in relation to Chile, but it is an important phrase, an important observation, that you will never have peace unless you have justice, and you will never have justice without truth...⁹⁴

There were two major reasons why this Inquiry exists, why this Inquiry was set up, why we are all here. One Mr Harvey mentioned this week and we have cited it in argument before, was the way in which the families and the dignity of the families and their desire not to seek revenge or recrimination, but for the truth. That was one, a dignified search for the truth.⁹⁵

6D-71 In the light of Damien Donaghy's admission, he agreed that there were several important inaccuracies contained within his statement to the Inquiry.

Q. In your statement as it then read, you said this: "I watched as about five or six lads shouted abuse at the soldiers. The young lads then began to throw stones and bottles towards the derelict building where the soldiers were." Should we read that now as meaning: "The young lads, including me, began to throw stones and bottles towards the derelict building."

⁹³ Day 077/087/12-089/03

⁹⁴ Day 050/084/07-16

⁹⁵ Day 050/085/17-24

FS 7.1114

A. That is correct.⁹⁶

Day 070/007/16

Q. I would like to understand where everybody was. If we could have a look at your map, AD120.24, the building, Abbey Taxis, you have identified with a "C". Can you tell us where the group of you who were throwing stones at the soldiers in that building were?

A. (Marked with yellow arrow). About here. There was a wee wall there.

Q. Yes.

A. I was throwing -- I threw stones from behind the wee wall.

Q. Behind the wee wall?

A. Mmm.

Q. Could we have a look at P199. You would appear to be absolutely right about there being "a wee wall" because we can just see underneath --

A. Just at the "S" and "T" --

Q. There is what looks like the remains of a wall. You were just to the south of that, were you?

A. I would have been about where the "S" is.

Q. Were the others in the same vicinity?

A. Aye around there, roundabout there.

Q. Were some on the other side of the wall, that is to say the north side?

A. I think there were a couple, aye, on the waste ground, aye.

Q. How close did you get to the soldiers?

⁹⁶ **Day 070/05**

A. I would say 20 to 30 feet maybe.⁹⁷

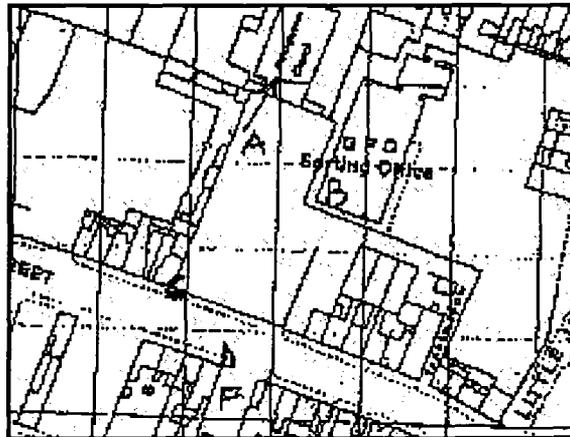
⁹⁷ Day 070/005

7. 1116

P199



AD120.24



6D-72 In evidence, Damien Donaghy maintained the account in his BSI statement concerning his movements at the time he was shot,

Q. ...You say there, if we could look at the last three lines of paragraph 8: "The rubber bullet fell onto the waste ground on my side of William Street. I saw it and decided to go and pick it up, as everybody collected them at the time and it was possible to sell them as a souvenir." Is that what you did?

A. That is correct.

Q. You say this: "I took about three steps towards the rubber bullet. I had not got within 20 feet of the rubber bullet when I felt a jab in my right leg. Initially there was

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no strong sensation of pain, but I fell immediately on to my back in the approximate position marked 'F'." Is that correct?

*A. That is correct.*⁹⁸

6D-73 Damien Donaghy agreed that he had heard rubber bullets fired earlier when he and the others had been stoning the soldiers in the derelict building.⁹⁹

ADDITIONAL CIVILIAN EVIDENCE OF DONAGHY'S ACTIONS

6D-74 A small but significant number of civilian witnesses admit to seeing Damien Donaghy rioting and describe him acting in a way which suggests that he had just thrown or was in the process of throwing an object at the time he was shot; although, unsurprisingly, none have admitted to this in terms.

6D-75 Liam Doherty confirmed the accuracy of the account he gave to NICRA on the evening of Bloody Sunday:

*... I shouted to the lads that they were moving into the back of it. Well, I turned around and I picked up a stone and I went to throw it and this other young lad was standing beside me and he threw a stone to[o] and I turned around again to see if I could get any more stones, I then heard two shots and one hit the wall above my head and the other one hit the young fellow.*¹⁰⁰

Mr. Doherty confirmed when he gave evidence that the "young fellow" referred to in his NICRA statement was Damien Donaghy:

*Q: He was throwing stones, was he, at the soldiers A: Yes
Q. Immediately before he was shot?*

⁹⁸ Day 070/012/20-013/11

⁹⁹ Day 070/06

¹⁰⁰ Day 060/095. NICRA statement at AD80.5

FS 7.1118

*A: Yes, I think so, yes.*¹⁰¹

Mr. Doherty places Damien Donaghy in the middle of William Street.¹⁰²

Mr. Doherty accepted, but could give no explanation for, the fact that he failed to mention to Eversheds Damien Donaghy's part in the rioting.¹⁰³

6D-76 Alfie McAleer, said that he had seen Damien Donaghy run out into the middle of William Street in order to throw stones immediately before he was shot.¹⁰⁴ He had not seen Damien Donaghy at the moment he was shot.¹⁰⁵

6D-77 Noel Kelly said Damien Donaghy was part of a group who were arming themselves with stones to throw at the soldiers in the derelict building when he was shot.¹⁰⁶

6D-78 Charles James McGill, had been rioting at Barrier 12 and retreated up William Street to avoid the gas. Although he denies that there was any stone throwing at the time Damien Donaghy was shot¹⁰⁷ his description of Damien Donaghy's actions immediately before he was shot are consistent with someone who was about to throw a missile. Damien Donaghy was at the north west corner¹⁰⁸ and looked left and right along William Street.¹⁰⁹

Q. Was stone throwing going on?

A. No, not when I was there.

¹⁰¹ Day 060/117

¹⁰² Day 060/095

¹⁰³ Day 060/117-118

¹⁰⁴ Day 092/057-058

¹⁰⁵ Day 092/094-095

¹⁰⁶ Day 062/008

¹⁰⁷ Day 069/088

¹⁰⁸ Day 069/087/08-14

¹⁰⁹ Day 069/090/14-17

FS 7. 1119

Q. Not whilst you were there. You say that all of a sudden you heard three high velocity shots, and the lad shouted "I am hit"?

A. Yes.

Q. Had you seen him immediately before you heard those shots or not?

A. As I said before, I seen him looking up and down the street. I think he was looking to see was the army coming up or down the street, to be honest with you.

Q. You have described how you saw him looking up and down the street?

A. Yes.

Q. But were you still looking at him at the time that the shots rang out or had your attention been diverted elsewhere?

A. Because I was still checking and me eyes were watering, I was still recovering from the gas. I was pretty well recovered.

Q. What you recollect is, effectively, hearing the shots and then the boy shout?

A. Yes, there was two shots and then seconds later there was sort of a third. The two came together sort of thing, but they were split seconds apart.¹¹⁰

6D-79 Eddie Doherty gave evidence¹¹¹ that Damien Donaghy may have been "drifting back and forth" close to the corner of the Nook Bar.

6D-80 Edwin Glasgow Q.C asked him:

Q. Looking back towards you and where Mr Donaghy was, if Mr Donaghy was in your words drifting back and forth, as seen from that building with the nine windows, he would

¹¹⁰ Day 069/088/16-089/16

¹¹¹ Day 065/007

FS 7. 1120

have been coming into view and going out of view round the corner of the building we can see, is that right?

A. That would have been if he was drifting back and forth, do you know. I am only surmising that he drifted back and forth, do you know, going back 29 years. I know he was in that waste ground and I have pinpointed, you know, C, that area, drifting back and forth that, do you know.

Q. I fully accept that, Mr Doherty, that is why I put your own words to you, they were, I stress, "he could have been drifting back and forth". If he was in your words drifting back and forth –

A. That would have been left him out in view of those nine windows.

Q. He could have been coming in and out of view round the corner. You are unable to help as to whether he had anything in his hand?

A. I do not know if he had anything in his hand.¹¹²

6D-81 Michael McGuinness confirmed in his evidence¹¹³ to this Inquiry that it was his belief that Damien Donaghy had been throwing stones in response to the rubber bullets being fired.¹¹⁴

6D-82 John Quigg's account in his BSI statement is that he saw a stone thrown by the man who was subsequently shot:

I saw his arm move as if he were throwing a stone...he turned round, came into the building I was in and said something...He then went back out onto the street again...¹¹⁵

¹¹² Day 065/026/17

¹¹³ Day 064/154

¹¹⁴ A belief first recorded in Pringle's note of a conversation with Mr. McGuinness at AM283.11. Day 064/172-173; Mr. McGuinness places himself as the closest person to Damien Donaghy at the time he was shot.

¹¹⁵ AQ1.1 paragraph 7.

FS 7. 1121

In his NICRA statement he says the man who was shot “had been throwing stones towards the ruins of Richard’s factory...” (emphasis added). There can be no doubt that he is describing Damien Donaghy as he describes the injury suffered by this stone thrower as “just above the knee in the right leg.”¹¹⁶

6D-83 In oral examination Mr. Quigg’s evidence as to what the boy he saw shot was doing was as follows:

Q. You then go on to say in paragraph 7 of your statement that a man in his late twenties or early thirties –

A. Yes.

Q. -- immediately to your left was seen by you and you saw his arm move as if he were throwing a stone. Before we get to what he was doing, was the man alone or was he with others or do you not recall?

A. Well, he was with others.

Q. Can you recall roughly how many he appeared to be with?

A. No.

Q. Do you recall what the others were doing?

A. No, no, only just took him on as, you know.

Q. Just what?

A. I only took him on as that he had been throwing a stone.

Q. You say that you saw his arm move as if he was throwing a stone?

A. Yes.

Q. Although you do not know which direction he threw it in?

A. Yes.

¹¹⁶ AQ1.4

FI 7. 1122

Q. I understand from that, never mind the direction, at any rate he threw it?

A. Yes.

Q. Is that right?

A. Yes.

Q. You then say that, having done that he turned round, came into the building and said something and then went out again. Did anybody else come into the building with him so far as you recall?

A. No.

Q. Just him. Then he went out. Did you see him go out?

A. Out where?

Q. Did you see him go out of the building in which you were?

A. After coming in again?

Q. Yes.

A. Yes.

Q. Did you see what he did after he went out of the building?

A. No, no, no.

Q. But what you did hear was hear shots?

A. Yes, yes.

Q. You describe a lot of shots?

A. Yes.

Q. About twelve and you think there may have been a break between two sets of shots and you saw him with blood coming from his upper leg?

A. Yes.

Q. Did you actually see him fall?

A. No, no, I did not, no.

Q. You saw him after he had fallen?

FS 7. 1123

A. Yes, yes, yes, well, I saw him being carried into the room we were all congregated in.

Q. Wait a moment: after you heard the large number of shots –

A. No, I only heard the single shot. There was a single shot and then a short time after that a group of shots.

Q. So a single shot?

A. Yes.

Q. And then a number of shots?

A. Yes.

Q. But when did you first see the man who had been shot in the leg after he had left the building in which you were?

A. Sorry, I do not understand you, sorry.

Q. You see him throw a stone, he comes into your building, he goes out again, you hear a single shot and then a number of shots?

A. Yes.

Q. My question is: when did you first see the man again?

A. Before the number of -- group of shots. He had been shot in the leg and then he was carried into the building, this derelict building.

Q. Did you see him after the single shot and before the group of shots?

A. After the single shot.

Q. Was he upright at the time; was he falling or had he fallen?

A. No, I only saw him being carried into the building, after the single shot.

Q. Right, there is the single shot. You see him being carried into the building?

A. Yes.

Q. The shots after the single shot, did they take place whilst he was being carried into the building?

FS 7. 1124

A. No, no, no, that was much later.

Q. I am trying to get the sequence: you have the single shot?

A. Yes.

Q. You see him carried into the building?

A. Yes.

Q. How much later did you hear the other shots?

A. About 10 or 15 minutes later.

Q. I see, much later?

A. Yes, yes, yes.¹¹⁷

6D-84 Questioned by Edmund Lawson Q.C. he said:

Q. Can I test what your current recollection is? In your statement at AQ1.1, paragraph 7, there in your statement you refer, do you not, to the man described as being in his late 20s, early 30s, yes?

A. Yes.

Q. You have marked his position on the plan. We have seen that already: "I saw his arm move as if he was throwing a stone, although I do not know which direction he threw it in." Right?

A. Yes.

Q. Pausing there for a moment, he had been throwing stones, had he not?

A. Yes, it is possible -- it was possible, yes.

Q. I think that was your recollection in 1972?

A. Yes, yes.

¹¹⁷ Day 053/081/17-085/019

Q. No doubt that was an accurate recollection at the time. We need not look back to your original statement. Then you refer to him coming into the building where you were, yes?

*A. Yes.*¹¹⁸

6D-85 His NICRA statement was put to Mr. Quigg in the following exchange.

"On Sunday, 30th January 1972, at 4.10 pm ..."?

A. Yes.

Q. "... I was standing in a derelict house just off William Street, halfway between Rossville Street corner and Abbey Street corner taking shelter from tear gas which was being fired from the Rossville Street area. I was along with 20 to 30 other fellows." That is in line with what you have told us: "A shot came from the ruins of Richard's factory in William Street. A chap alongside me fell to the ground as if he had been shot just above the knee in the right leg." Pausing there, in the statement you made at the time you described the man who was shot as being "alongside" you?

A. Yes.

Q. Which rather looks as if you were either next to him or very close to him?

A. Yes, yes, that is correct.

Q. Would that be right?

A. Yes, that is quite true, yes.

Q. "He had been shot just above the knee in the right leg. He was taken into a nearby house in Columbcille Court by other people." So that looks as if it was where he was taken?

A. Yes.

Q. "He had been throwing stones towards the ruins of Richard's factory, but he definitely had –

A. No weapon, yes.

¹¹⁸ Day 053/132/23-133/19

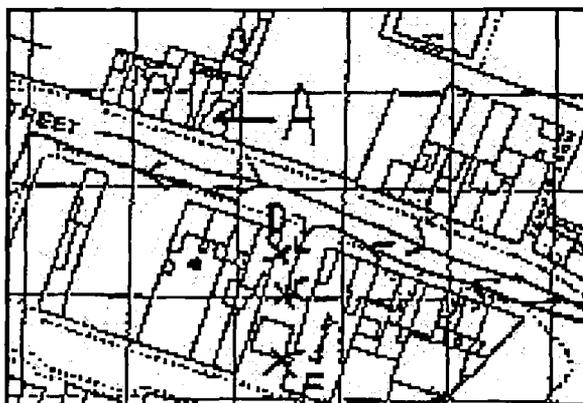
FS 7.1126

Q. -- no weapon." It looks from that, does it not, as if you had been in the street near or close to him when he had been throwing stones, but having no weapon and when he was shot above the knee in the right leg and carried off to Columbcille Court?

*A. Yes.*¹¹⁹

6D-86 Monica McDaid told Eversheds that she saw Damien Donaghy at point 'D' on the map below:

*He was leaning against the gable of the derelict building next to him. He kept looking out on to William Street by putting his head around the corner of the derelict building. I cannot recall seeing anything in his hand or seeing him throw anything.*¹²⁰



6D-87 When questioned before this Tribunal, Ms. McDaid said that she had not in fact seen Damien Donaghy put his head round the corner.¹²¹ However, given her extraordinary assertion that no rioting was taking place at all at this time, the retraction must surely be seen as an example of a witness determined not to give any evidence which might support the accounts of some of the soldiers.

¹¹⁹ Day 053/089/09-090/21

¹²⁰ AM170.2 paragraph 7

¹²¹ Day 065/116-117; Day 065/140-141; Explaining the appearance of this account in her statement as being a mistake by Eversheds.

FS 7. 1127

6D-88 Patrick McCallion was himself throwing stones when Damien Donaghy was shot and “thought that everybody else in the waste ground was throwing stones as well.” Mr. McCallion was quick to ‘correct’ Edwin Glasgow Q.C. who referred to Damien Donaghy as his “friend.” “You say ‘your friend’; to me he was a rioter.”¹²²

6D-89 Dermot Carlin describes seeing Damien Donaghy being assisted by another youth:

12. ...Both youths were very dusty and they looked like young rogues. It was clear that they had been throwing stones from the dust on them. They were not on the march for civil rights.¹²³

6D-90 Mr. Carlin’s evidence suggests that Damien Donaghy had been throwing stones in the period immediately before he was shot:

It is hard to describe now, but at the time I was quite sure they were stone throwers and I said they were not on the march, they may have been before that, but they were not taking part in this at that stage, I saw them and they were not for a short time before I saw them, because they were stone throwing. That is why I say they were not on the march for civil rights.¹²⁴

6D-91 Sean McKeever stated in his NICRA statement¹²⁵ that a group of boys were throwing stones at the soldiers, four shots were fired and “one of the boys fell,” the clear implication being that Damien Donaghy was one of those throwing stones. Mr. McKeever goes on to say that “This boy had no gun, no nail bomb or petrol bomb.” It appears that Damien Donaghy and this group were throwing their stones at the men in Stephenson’s bakery Damien Donaghy’s Injuries

¹²² Day 071/149-150; 163

¹²³ AC32.2 paragraph 12

¹²⁴ Day 060/052/14

¹²⁵ AM293.1

FS 7. 1128

6D-92 The scientific evidence strongly suggests that Damien Donaghy was facing north (i.e. towards the soldiers) when shot. His medical notes record that

*There was a small entrance wound on the front of the thigh and a large exit wound on the posterior aspect.*¹²⁶

There is an inconsistency in the medical notes as to whether the wound was to his right or left leg.¹²⁷ Damien Donaghy's own evidence is that he was shot in the right leg.¹²⁸ Photographs of Damien Donaghy being treated in the Shiel's house confirm this.¹²⁹ The fact that it was his right leg which was hit fits in with that leg having been exposed around the corner and acting in the manner described by Soldiers A and B.

WHAT MIGHT IT HAVE BEEN THOUGHT THAT DONAGHY WAS DOING WHEN HE WAS SHOT?

6D-93 In considering what Damien Donaghy was doing when he was shot and specifically whether he (or someone very close to him) was doing anything at all which might have been mistaken for lighting a nail bomb the Tribunal should also have regard to the fact that it was by no means unheard of for 'Derry Young Hooligans' to pretend to be engaged in 'terrorist activity' even when 'unarmed' – however extraordinary that may appear to be.

6D-94 Sean O'Neill admits to crawling up to the derelict building with nine windows and preparing to throw a bottle at the moment that shots were fired. His account is that the bottle was empty, but there can be no doubt that his actions could easily have been mistaken for those of someone with

¹²⁶ D0742

¹²⁷ D0742-D0767

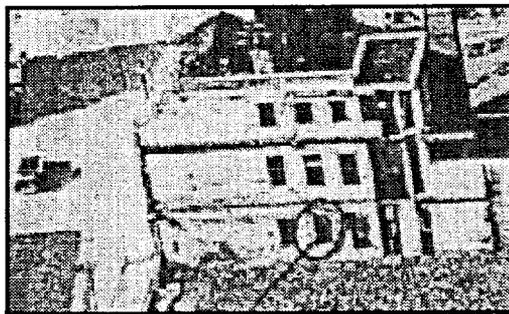
¹²⁸ Day 070/013/17-18

¹²⁹ P750-P751

FS 7.1129

a potentially lethal weapon and, if his own account is truthful, it is very difficult to believe that he cannot have been intending to give that impression.

7. When I was near a lamppost to the east of Stephenson's Bakery approximately at the point marked 3 on the map (grid reference KO7) I looked behind me and saw two soldiers through a ground floor window of the eastern wall of Stephenson's Bakery. I attach a photograph on which I have marked the window through which I saw the soldiers. I was holding an empty bottle of lemonade that my friends and I had bought and finished by the time I reached the Bakery. Holding the empty bottle, I left the march, got down on my hands and knees and crawled along the eastern wall of Stephenson's Bakery towards the window through which I had seen the soldiers, the bottom of which was about one to two feet from the ground. I crawled underneath the window and saw a para inside the building aged about twenty two to twenty five wearing a red beret. He wasn't in a standing or kneeling position, but was kind of crouched down. His flack jacket open and he was carrying a SLR. I was ready to throw the bottle at him when a gun came out of the window and fired. It was damn loud. I thought he might have seen my head and fired when he saw me. Within a second of hearing the shot I threw the bottle at the soldier and it hit him in the chest. I then raced back to William Street. The soldier did not chase me.¹³⁰

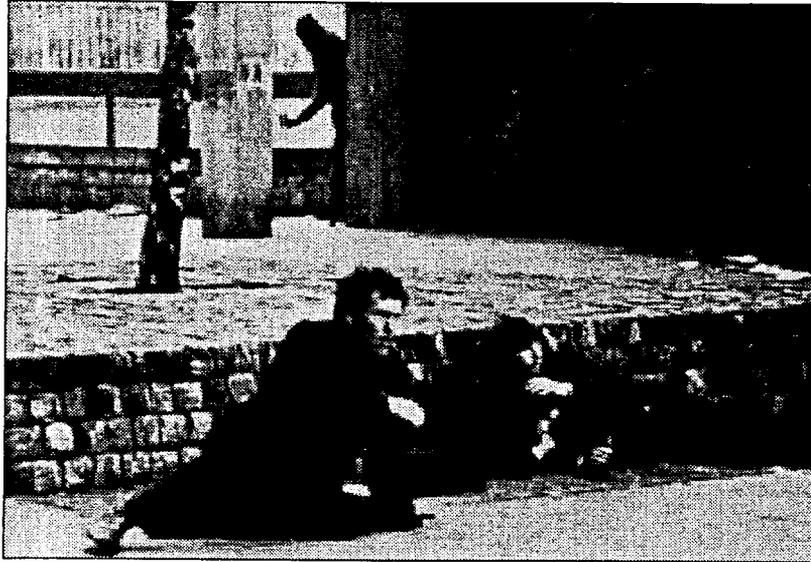


6D-95 P323, captures a person on Bloody Sunday, apparently wearing a baraclava, either throwing, or pretending to throw, an object round the corner of a wall in much the same manner described by Soldiers A and B.

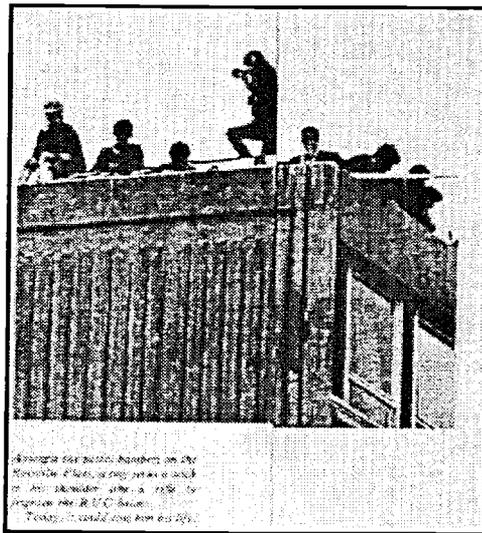
¹³⁰ AO65.2 paragraph 7

FS 7. 1130

Whatever that person may in fact have been doing it seems reasonable to assume that any informed observer would think that he was throwing a nail bomb.



6D-96 The following photograph taken from the "The Battle of the Bogside"¹³¹ is an example of an attempt to mimic the actions of, in this case, a gunman.



PS 7.1131

6D-97 Mr Limpkin's comment by way of caption that "Today, it could cost him his life" may not be unreasonable, and a soldier who fired at someone who looked like might well be justified in doing so.

6D-98 Alfie McAleer confirmed that this kind of pretence was undertaken not only by individuals but by a crowd.

A. Oh, yeah, I have seen it where the crowd made way so a gunman could shoot, but I have also seen the crowd do it deliberately to frighten the soldiers. ...

A. I have also seen the crowd do it, it used to be a regular thing where someone would shout "snipers!" and soldiers would dive for cover and everybody would move out of the road, but it was done as a joke.

A lot of occasions it was done as a yoke, but a lot of occasions it was not.

Q. I was going to follow-up with the photographs of people I suggested to you looked as if they were doing things. You can help the Tribunal at least to this extent: people pretended that there were gunmen when there were not?

A. On occasion, yes.

Q. Did they not also pretend themselves to be armed when they were not, or pretend that they had nail bombs?

A. (Laughing). That is a very silly occupation. I have never seen anybody do it.

Q. I will not press it.¹³²

6D-99 Brian Power confirmed that gunmen would fire during the course of a riot,¹³³ but on other occasions rioters would pretend that a gunman was present merely in order to lead soldiers to believe that they were. :

¹³¹ "The Battle of Bogside", Clive Limpkin. Penguin Books Ltd. 1972 referred to in Lawton Team opening OS7.13.

¹³² Day 092/098/16-99/14

¹³³ Day 425/006/10-17

A. We would usually just clear the streets, even if there were no gunmen about to let them think that there were, just to put them on edge, just a game of cat and mouse, part of the game it was.

Q. Would you then all return and continue throwing missiles?

A. Continue the riot aye.¹³⁴

6D-100 Rioters would also learn when nail bombs were going to be thrown during the course of a riot:

Q. In the situations where you were given word and you got off-side, did that include situations where the IRA were in some way controlling the rioters?

A. Well, they controlled them to the extent that they issued that they were going to do something.

Q. By "they were going to do something," do you mean --

A. Have a shot or snipe or whatever at the Army.

Q. Aside from have a shot or a snipe, what else would they do?

A. Nail bombs.

Q. That word would only come to you as the riot was taking place at the time of the riot?

A. Ongoing, aye.¹³⁵

6D-101 Martin McGuinness is also apparently aware of instances when people pretended to have nail bombs. He was referred by Mr. Jennings to a photograph of nail bombs taken from "Derry thru the lens" by Willie Carson.¹³⁶ Mr. McGuinness refused to agree that the photograph necessarily showed nail bombs; he replied

¹³⁴ Day 425/007/09-15

¹³⁵ Day 425/007/20-008/07

¹³⁶ M111.162-3

FS 7.1133

A. They could be young people in the Bogside; they could be people pretending they had nail bombs.¹³⁷

6D-102 Liam Mailey refers in his BSI statement to the custom of 'planking', an activity specifically designed to scare soldiers:

...kids used to go "planking" on a Saturday night. What they would do is take floorboards from derelict buildings. By standing on one end of the floorboard or plank it was possible to make a sound like a gunshot by pulling back the other end and then releasing it quickly. If a number of kids did this in quick succession it sounded like machine gun fire. I have no doubt that the lads who used to do this had no idea how serious it was – I think it was just something that they did with a view to scaring soldiers.¹³⁸

6D-103 Mr. Mailey's evidence is that this activity commonly took place in and around the area of Aggro Corner.¹³⁹

6D-104 Charles Gallagher also referred to youths engaging in this kind of activity:

Q. At the end of paragraph 5, if we go back to AG6.1, you say in the last sentence that at that time kids would sometimes slam planks together to give the effect of gunfire?

A. Yes, yes.

Q. On what sort of occasion did this happen?

A. It used to happen quite a lot. At night-time they would do it if they thought there was an army patrol around, just to scare them, you know. It was one of the daft things they did. I suppose it might sound like a shot to someone, but it was just being nuisances, really.¹⁴⁰

6D-105 Although neither Mr. Mailey nor Mr. Gallagher refers to this activity taking place on Bloody Sunday itself, their evidence demonstrates the

¹³⁷ Day 391/015/18-19

¹³⁸ M50.2 paragraph 7

¹³⁹ Day 163/096/20-24

¹⁴⁰ Day 105/033/18-034/09

FS 7.1134

predilection of youths habitually to act in a way which was intended to make soldiers believe they were under lethal attack. If such behaviour had been engaged in on Bloody Sunday it seems unlikely, after civilians were known to have been killed, that those who did it would admit to it, or that they would have been encouraged to do so. The Tribunal will be aware of the reasons why Sean O'Neill did not give oral evidence.

6D-106 Further, in order to consider the genuineness / reasonableness of Soldier A and B's belief, it is necessary to consider the more general situation in Londonderry in 1972 and that, in particular, nail bombs were a frequent if not universal weapon used against the security forces.

6D-107 Bishop Daly's evidence to Lord Widgery was that, with the exception of Bloody Sunday, nail bombs were always used in riots:

Q. The Tribunal will pay great attention to the denials that there were nail bombs, but this would be a unique afternoon if none were thrown?

A. This is true, but this is the fact of the situation, and I have no doubt about that, none whatsoever.¹⁴¹

6D-108 Francis Dunne gave similar evidence to the Widgery Tribunal. He was asked by Mr. Gibbens:

Q. Another thing that you would expect if things took their normal course was that nail bombs and petrol bobs would be used by the men, is it not, by the rioters?

A. Occasionally petrol bombs and nail bombs were used.

Q. How many times a week?

A. I suppose once or twice in every riot.

...

¹⁴¹ H5.41 paragraph A-B

Q. If the shenanigans which you expected to take place did take place, among the weapons used you would expect a couple of nail bombs at least, would you not?

A. Yes.

Q. Is it not likely that, with the other sounds on this occasion, you paid no attention as to whether there were nail bombs or not?

A. It is impossible to ignore a nail bomb. If you hear a nail bomb it is a very, very loud crack.¹⁴²

6D-109 Despite the apparent lack of ambiguity in his evidence to the Widgery Tribunal, Mr Dunne now claims that his evidence to the Widgery Tribunal gave an exaggerated impression of the number of nail bombs thrown. He put this down to the nature of the cross examination.¹⁴³

6D-110 John James Canney (a.k.a. Sean Canney) was a freelance photo journalist at the time of Bloody Sunday and frequently attended marches and riots in order to take photographs.¹⁴⁴ Although he had not witnessed any nail bombs thrown on Bloody Sunday he states:

On many occasions I had seen and heard guns, rubber bullets, petrol bombs and nail bombs being used. I was very familiar with those weapons.¹⁴⁵

6D-111 James Joseph Quinn was a regular rioter. He denied ever having thrown nail or petrol bombs himself but agreed that he had seen others doing so. He was asked by Ms McGahey:

Q. Do you remember when?

A. It is a long time ago, I just could not tell you dates, but I seen it all happening.

¹⁴² AD173.20 paragraph B-E

¹⁴³ Day 090/053/24-055/23

¹⁴⁴ AC24.1 paragraph 3

¹⁴⁵ AC24.1 paragraph 3; confirmed on oath Day 093/129/06-13

FS 7. 1136

Q. Can you give us any idea, however roughly, of the number of times you had seen nail bombs or petrol bombs thrown at soldiers?

A. Dozens.

Q. Dozens, before Bloody Sunday?

A. Yes.

Q. Can you remember where within Derry this happened?

A. Well, you would not be standing about if somebody threw a nail bomb. You would be well away from the nail bomb.

Q. Are we talking about the William Street area, the area of the Rossville Flats, the walls?

A. Possibly, possibly.

Q. Anywhere in particular?

A. Not really.¹⁴⁶

6D-112 At least one nail bomb, and very possibly more, had been thrown the day before Bloody Sunday in William Street in circumstances similar to that described by Soldiers A and B. Peter Robson was one of the two men shot during the course of a riot in which a nail bomb had been thrown:

...[I] was on my way home to the Creggan at about 3.00 pm or 4.00 pm. I was walking west along William Street, and had passed the junction with Rossville Street. I could see a bit of rioting going on somewhere in the area.

Just at that point, I decided to take a short cut through a piece of waste ground where a building had been at the point marked A on the attached map...As I turned into this area I saw a man who was about to throw a nail bomb. He shouted at me to get out of the way, and I think he may even have thrown the nail bomb past me. I had no idea who or what he was throwing it at.

¹⁴⁶ Day 179/042/23-043/16

FS 7.1137

3. I walked through the derelict house and onto the street to the north of Kells Walk and Columbcille Court. As I came through the derelict house, I saw the smoke from the nail bomb.¹⁴⁷

6D-113 Mr. Robson's BSI statement records how, as he ran towards Abbey Street, he heard a shot behind him and saw his friend, Peter McLaughlin, fall. As he went to help his friend he was also shot on his right side, just above the hip. His belief is that his friend was shot by a bullet aimed at himself; and that he was mistakenly thought by the soldier to be the nail bomber.¹⁴⁸ According to Patrick McCourt, who had been present and involved in the riot on 29th January, Peter Robson had one of those participating in the rioting.¹⁴⁹

6D-114 The riot had involved at least one member of the Provisional IRA. PIRA18 (William Joseph Anderson) was present when Peter Robson and Peter McLaughlin were shot.¹⁵⁰ Incredibly, he claims to have been unaware of a nail bomb being thrown shortly before his friend, Mr Robson, was injured.¹⁵¹

6D-115 Paul Mahon's evidence is that Gerard 'Mad Dog' Doherty admitted to him that he had thrown nail bombs on 29th January. Commenting on the Grimaldi / North tape in his BSI statement Mr. Mahon states:

I have been referred to the oral evidence of Susan North and I note that she cannot recall when this front section was taped...The shots Mr. Mills said were on this tape are not all shots. There are nail bombs exploding. I also spoke with the person, Gerry "Mad Dog" Doherty, who threw the bombs in the incident and who confirmed this was

¹⁴⁷ AR37.1 paragraphs 1-3

¹⁴⁸ AR37.1 paragraph 3-6

¹⁴⁹ AM146.1 paragraph 3

¹⁵⁰ APIRA18.2 paragraph 5

¹⁵¹ Day 408/030/12-031/08

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Saturday. I conclude that it was taped on the afternoon of 29th January 1972...

...My research discloses that the sounds are of two bombs with the response of two high velocity shots. In support of my findings I interviewed the PIRA member who threw the bombs. This was Gerry "Mad Dog" Doherty. I believe that this was part of a PIRA operation around the William Street area; roughly in the same location as where Johnson and Donaghy were shot on Bloody Sunday.¹⁵²

6D-116 The importance of the admission by Mr. Doherty is unaffected by whether or not Mahon's interpretation of what can be heard on the tape is correct. As the Tribunal is aware Mr. Mahon confirmed that both the video tape and back up sound tape of his interview with Mr. Doherty are missing.¹⁵³ Paul Mahon, questioned by Edmund Lawson Q.C., was able to provide some further details about the interview with Mr. Doherty:

If I go ahead, please, to page 9, the same series, under the heading "Analysis the Grimaldi/North Tape (iii)."This is part of your theory, I do not mean to denigrate by that, I am adopting a neutral stance, about the first part of the tape relating to the day before, yes?

A. I have got absolutely no doubt in my own mind that that recording took place on 29th January 1972 at approximately 4.30 pm.

Q. In the light of that conviction, is that something which you drew to the attention then of "Mad Dog" when you spoke to him --

A. I asked "Mad Dog" right at the end of the interview whether he could help me with this portion of the tape. I then played the tape to him and he said "Certainly, I can help you with this." He then explained what was happening. I said to him "How could you be so specific" and he said because he threw the bombs.

Q. The nail bombs, were they or --

¹⁵² AM19.9 paragraph 25 b) iii, viii

¹⁵³ AM19.24 paragraph 63

A. No, I do not know whether they were nail bombs or whether they were blast bombs.

Q. Did he tell you anything more about the incident in which the bombs had been deployed on the Saturday?

A. Only that there was an Army vehicle involved. He was positioned behind a wall. There were look-outs involved and the whistling that you hear on the tape is whistling coming from these look-outs in order for him to finally throw the bombs.

Q. Then did he tell you about some others getting shot?

A. No, I know what you are referring to there. You are referring to the shooting in the same location on the same day of two individuals and I believe that that location, that shooting happened before this bombing happened.

Q. Before the bombing actually occurred?

A. Indeed.

Q. But close to it and at the same place?

A. At the same location, but my understanding is that the shooting happened earlier on in the day. If you listen very, very carefully to the Grimaldi tape, there is an actual reference, very much in the background, someone asks the time and they give the time as 4.30.

Q. That is referred to on your annotated version, is it not?

A. It will be, yes.

Q. "Mad Dog" in any event was unequivocal in telling you that he was the bomber on Saturday afternoon?

A. Indeed.

Q. Do you think that was on tape?

A. That was definitely not on tape.

Q. That was not on tape, what, a bit sensitive?

A. I would say highly sensitive.

FS 7. 1140

Q. You have no doubt in your mind that is what he said?

A. Oh, no doubt at all, 100 per cent sure.¹⁵⁴

6D-117 Mr Mahon's account is supported by intelligence material relating to Mr. Doherty which records, "Gerry Doherty (Mad Dog) 17-18 yrs ... Mad Dog does most of the nail bombing about William Street. I seen ... Throwing nail bombs once."¹⁵⁵ Mr. Doherty claimed to have no recollection of having told or intimated to Mr Mahon that he had thrown nail bombs the day before Bloody Sunday¹⁵⁶ and denied that the intelligence material was accurate.¹⁵⁷

6D-118 Charlie Downey believes that he may have heard a nail bomb at about lunch time on Bloody Sunday whilst at his mother in law's house, [REDACTED] (to the South of Westland Street).

I believe I may have heard some form of explosion, possibly a nail bomb, whilst I was at my mother-in-law's. However, I did not think it was significant at the time and my memory of it is very vague.¹⁵⁸

6D-119 His oral evidence to the Tribunal is that this probably occurred at around 1.30 to 2.00 p.m.¹⁵⁹ Mr. Downey was asked by Lord Saville:

LORD SAVILLE: ...when you say your memory of this is very vague, is it possible that this explosion was on another occasion together?

A. No.

LORD SAVILLE: You have a recollection it was on Bloody Sunday?

¹⁵⁴ Day 412/185/07-187/09

¹⁵⁵ Int1.331

¹⁵⁶ Day 400/182/05-18

¹⁵⁷ Day 400/035/07-036/08

¹⁵⁸ AD133.1 paragraph 8

¹⁵⁹ Day 091/091/08-10

FS 7.1141

A. Yeah, I think it was.

MR. CLARKE: Had you heard nail bombs before?

A. Quite a lot.¹⁶⁰

6D-120 James Donal Deeney was a regular riot, who, according to his BSI statement, used to boast to his friends that he had never missed a single riot.¹⁶¹ His evidence is that those who wanted to use nail bombs could find them if they wanted:

At the time it was easy to get hold of a nail bomb or petrol bomb. It was a matter of asking the right person. They would be kept on hand, in various stashes. You didn't have to be involved in the IRA, you just had to be game enough to use one.¹⁶²

6D-121 Mr. Deeney confirmed the ready availability of nail bombs in his oral evidence to the Tribunal.¹⁶³

6D-122 Billie Gillespie, who on his own account had lost five years of his life to rioting,¹⁶⁴ gave the following evidence about the circumstances in which nail bombs were used during the course of a riot:

...they were more or less, if the army or the police penetrated too far into the Bogside, that is when they would have been used, they would have been more or less a scare tactic.

Q. Were they used with a view to inflicting injuries on the police or the army?

A. Well, they would have.

Q. Must have been, must they not?

¹⁶⁰ Day 091/091/23-092/08

¹⁶¹ AD26.1 paragraph 2

¹⁶² AD26.1 paragraph 3

¹⁶³ Day 086/004/12-005/09

¹⁶⁴ Day 084/137/25-138/01

FS 7. 1142

*A. Yes, they would have been.*¹⁶⁵

6D-123 It is a reasonable inference that the forward position of the Machine Gun Platoon soldiers in the derelict building may have been regarded by some as 'too far into the Bogside,' thereby making them suitable targets for nail bombs.

6D-124 There were individuals present on Bloody Sunday who were prepared to use nail bombs. Paddy McCauley admits that he would have thrown nail bombs if he had had them. He was asked by Christopher Clarke Q.C.:

Q. You told us a moment ago that on Bloody Sunday you were actively looking for stuff on Waterloo Street and were told you were not going to have any of it?

A. Yeah.

Q. What were you looking for?

A. Nail bombs.

Q. Where were you trying to find it from?

A. Um, I had been looking for people who would have been a bit older than meself and just saying, "Is there any nail bombs here". I would have asked anyone.

Q. You would have known people to ask who would have known whether nail bombs were available; is that the position?

A. Yeah.

*Q. Thank you.*¹⁶⁶

¹⁶⁵ Day 084/140/04-12

¹⁶⁶ Day 162/113/12-114/02

FS 7.1143

CHAPTER 6E

THE SHOOTING OF JOHN JOHNSTON

6E-1 INTRODUCTION

6E-1 John Johnston was 59 years old on 30th January 1972.¹ He was the manager of a drapery store in Londonderry.² He was shot either at the same time as, or very shortly after Damien Donaghy. There is no evidence or suggestion that he was, or had been, engaged in disorderly behaviour.

6E-2 John Johnston was almost certainly shot by Soldier A and / or Soldier B. The evidence suggests that John Johnston was towards the middle of the laundry waste ground, in a direct line behind Soldier A and Soldier B's target. Neither soldier who fired was aware that he had hit John Johnston, or anyone other than his target. He was not Soldier A or Soldier B's intended target and was hit by accident.

6E-3 John Johnston sustained injuries to his left shoulder, to his right leg³ and, according to some notes, to one of his hands. The injury to his hand was described by him as a 'graze',⁴ and was almost certainly caused by a ricochet. This was probably also true of the injury to his shoulder and possibly also the injury to his leg.

6E-4 John Johnston died on 16th June 1972 from a brain tumour. Notwithstanding the frequent references to him as having been one of those who died as a result of injuries sustained on Bloody Sunday there is no medical evidence which justifies those claims.

¹ AJ5.4 paragraph C; his date of birth is given in his medical records as 30.05.12, D0782

² AJ5.6 paragraph A

³ AJ5.8 paragraph B

⁴ AJ5.1

FS 7.1144

6E-II WHEN WAS JOHN JOHNSTON SHOT?

SUMMARY

- 6E-5 The evidence suggests overwhelmingly that John Johnston was shot simultaneously or immediately after Damien Donaghy had been shot. Whilst there is some evidence that minutes, rather than seconds, separated the two shootings, the preponderance of the evidence, including that of John Johnston and Damien Donaghy themselves, indicates that the period was much shorter.
- 6E-6 Most witnesses describe hearing a single burst of gunfire - the shots being fired, at most, within a few seconds of each other.
- 6E-7 Soldier A and Soldier B, both describe firing a second shot (and in Soldier B's case a third) immediately after the first.
- 6E-8 In the circumstances those witnesses who refer to the gap as being some minutes are likely to be mistaken.⁵

John Johnston's Evidence

- 6E-9 John Johnston's own evidence to Lord Widgery put the gap between the two shootings at two seconds:

First I heard a shot, and there was a little boy in the other corner from me, and I saw him lying on the ground. Two seconds after that I got shot in the leg and the shoulder...⁶

He went on later to explain that he did not see Damien Donaghy actually fall, but saw him shortly after he had fallen.⁷

⁵ e.g. Day 065/020 Eddie Doherty and Day 065/127 and AM170.2 paragraph 13 Monica McDaid (who, when she gave evidence agreed that Mr Johnston was shot "very near the time that the young fella was shot, so it was".)

⁶ AJ5.5 paragraph C

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Other Civilian Evidence

6E-10 Damien Donaghy suggested the period between the shots may have been slightly longer, but expressed a lack of confidence in his recollection on this point:

Q... What sort of interval was there, if any, between the time that you were shot, the bullet that hit you in the thigh, and the two gunshots that you remember hearing thereafter?

A: I could not be precise, but I would say it would be a matter of seconds, maybe 10, 20 seconds, maybe less, I am not too sure.⁸

6E-11 The majority of witnesses suggest that there was a single burst of fire.

6E-12 Patrick Joseph Harkin's statement to the present Inquiry suggests that Damien Donaghy and John Johnston were shot with a very short time frame.

I then heard two or three shots. On hearing the shots the young boys throwing stones dispersed. I then saw two people lying on the ground. I did not see them fall. One of them was getting on in years and had been shot in the leg. I believe he many have been called Johnston ...⁹

6E-13 Similarly Father McIvor told the Widgery Inquiry that he heard at least two shots and saw Damien Donaghy and John Johnston fall. The clear suggestion is that they were both felled by a single burst of fire.¹⁰ This appears even more clearly in his written statement to the Widgery Inquiry:

...two shots at least rang out which I was sure came from the are of the sorting office and the Presbyterian Church. I

⁷ AJ5.7 paragraph A

⁸ Day 070/017/07

⁹ AH29.2 paragraph 7. Mr. Harkin was not asked about the timing between the shots when he gave evidence, Day 089/006. However, he insisted, despite being told of evidence to the contrary, that the two men he saw were on the waste ground to the north of William Street.

¹⁰ H11.3 paragraph C-E

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did not actually see who fired the shots. Two people, one either side of me and about 15 yards from me, fell to the ground wounded. I was told that they were John Johnson, aged about 57, and Damien Donaghy, aged 17.¹¹

6E-14 Father Carolan was close to Father McIvor on the waste ground. He told Eversheds

Two distinct shots rang out within a couple of seconds of each other ... Two people in the crowd fell...¹²

6E-15 Thomas McDaid was specifically asked about the gap between the shootings when he gave evidence to this Inquiry. He estimated that it was a matter of seconds (apparently five seconds or less) which separated the shooting of Damien Donaghy and John Johnston.¹³

6E-16 Jim Doherty was asked expressly to comment on the time between the shootings:

Q. I know it is difficult, can you give us any idea of the interval of time that you recall between the moment when Damien Donaghy was shot and the moment when John Johnston was shot?

A. I would say seconds maybe, that would be it, do you know.

Q. As little as that?

A. Yes.¹⁴

6E-17 Brendan Deehan's statement to the present Inquiry reads as follows:

¹¹ **H11.9.** McIvor told the present inquiry that he no longer has an exact recollection of where the men fell. He qualified his 1972 statement in the following way: "I think I saw one of them fall...". This does not, however, detract from the evidence he gave in 1972, and to the present Inquiry, that there was only one burst of fire.

¹² **H3.2 paragraph 8**

¹³ **Day 066/041** confirming his account to Eversheds at **AM177.2 paragraph 6** that John Johnston was shot "within seconds of the boy having been shot."

¹⁴ **Day 065/075/15**

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...I am positive I heard three shots, one after the other in quick succession...

At about the same time as Donaghy spun round and fell to the ground I noticed Johnston staggering round in circles as if he didn't know what was happening.¹⁵

6E-18 Billy McCartney described the period between the shot which hit Damien Donaghy and that which hit John Johnston as a few seconds.¹⁶

6E-19 Charles McGill was asked:

Q. What you recollect is, effectively, hearing the shots and then the boy shout?

A. Yes, there was two shots and then seconds later there was sort of a third. The two came together sort of thing, but they were split seconds apart.¹⁷

6E-20 Michael McGuinness describes hearing a single burst of fire and thereafter seeing both Damien Donaghy and John Johnston injured. Although he saw neither actually hit, the clear implication is that both were hit in a single burst of fire. In his statement to this Inquiry he said:

As I picked up the rubber bullet I heard sharper cracks. There were at least two shots but I cannot remember any more details. The noise was sharper than the bullet noise I had heard earlier, which had been a more muffled sound. I am certain that there had been no shots prior to these. It was startling that the shots were so distinctive.

11. As I heard the shots I looked across the gap and saw a boy I now know to be Damien Donaghy...my instant reaction was that there was no question that he had been shot...

12. When I saw that Damien Donaghy was being looked after I didn't pay much attention to him. I turned and saw

¹⁵ AD20.9 paragraphs 11 and 14. This statement is in contrast to Mr. Deehan's previous statement, at AD20.14, in which he refers apparently to two bursts of fire.

¹⁶ Day 054/174; AM87.3 paragraph 11

¹⁷ Day 069/89

FS 7.1148

John Johnston coming around the north-western corner of the building at the place marked (3 on the map (J8). He was holding his shoulder and laws very unsteady... I was sure that he had been shot...¹⁸

6E-21 It became clear during the course of Mr. McGuinness' evidence that he had not in fact seen John Johnston coming round corner of the waste ground, but merely presumed that he had been. When referred to a photograph it transpired that he had also intended to refer to the north eastern rather than the north western corner of the waste ground.¹⁹

6E-22 Mr. McGuinness was questioned by Edmund Lawson Q.C.; he confirmed that as many as four shots would not be inconsistent with his recollection:

Q. Does that fit in, then, with your recollection? You heard at least two sharp cracks, did you not?

A. Yes, I did.

Q. So two, three or four would be your own recollection?

A. Yes.

Q. Is that right?

A. At least two.

Q. At least two; you would not argue with his saying three or four?

A. No.²⁰

6E-23 In her brief NICRA statement Mary Carmel McKenna refers to a burst of shots before she saw John Johnston and Damien Donaghy fall.²¹

¹⁸ AM283.2-3 paragraphs 9-12

¹⁹ Day 064/147- 148

²⁰ Day 064/171/03-14

²¹ AM296.1

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6E-24 Eugene Lafferty likewise describes hearing two shots and seeing Damien Donaghy and John Johnston fall simultaneously. He made a statement to this Inquiry in the following terms:

When I was in William Street ... I hear two shots over our heads. They were the first shots I heard that day. The shots came from the direction of the Presbyterian Church in a southerly direction. When the shots went off, two people to my right, that is on the southern side of William Street, were hit and fell to the ground. The two people who had been shot were Damien Donaghy, who was known as "Bubbles", and John Johnston.²²

6E-25 Charlie Ward's exceptionally brief NICRA statement reads as follows:

I saw a youth about 15 ready to throw a stone at troops who were across William Street in an old derelict house. The troops fired two shots, one youth was shot in the hip and the other shot struck an old man who appeared to be shot in the foot.²³

6E-26 James McCarron gave the following evidence in his statement to this Inquiry:

...I heard what I believed to be three high velocity shots coming from what I believed to be the direction of the Presbyterian Church and GPO Sorting office. The shots sounded very loud and were fairly close together...²⁴

6E-27 Betty Curran was insistent that John Johnston was hit within a few seconds of Damien Donaghy; notwithstanding the fact that this part of her evidence undermined still further her entirely fictional account of John Johnston being in the process of assisting the injured Damien Donaghy.²⁵

²² AL1.8 paragraph 7; Day 064/081-002. Mr. Lafferty agreed that both Damien Donaghy and John Johnson may have been shot on the laundry waste ground and not, as he marked on the map attached to his BSI statement, in the area to the south of the waste ground.

²³ AW7.1.

²⁴ AM83.2 paragraph 4

²⁵ Day 055/120

Military Evidence

6E-28 The evidence of Soldier A and Soldier B confirms that each fired his shots in quick succession. The fact that both apparently fired at the same target and neither heard the other's shots²⁶ also suggests that they fired simultaneously.

6E-29 Soldier A:

*I took aim at the man and fired 1 round at him. This round missed and I fired a second round straight away.*²⁷

6E-30 Soldier B:

*I took aim at the man's chest and fired a round at them man. I saw no effect from this round and then fired two further rounds.*²⁸

6E-31 Insofar as other members of Machine Gun Platoon are able to recall shots being fired, their evidence supports the conclusion that there was one burst of fire.

6E-32 INQ1917 gave the clear impression that he had heard a single burst of firing from within the derelict building, but said could not be precise about how many shots he heard, although it was "not in excess of five".²⁹

6E-33 INQ1919 described in his statement to the present Inquiry hearing a shot from within the building followed by two further shots. He observed Soldier B in a firing position.³⁰ He commented that it appeared to him that

²⁶ Confirmed by Soldier A, Day 297/033, who went on to explain, Day 297/159, that the firing of one's own weapon leads to ringing in the ears. Soldier B told the Widgery Tribunal that he had not discovered that another soldier had fired until he was back inside the armoured vehicle, B43.023 paragraph G.

²⁷ B20.015

²⁸ B43.009-10

²⁹ Day 288/069

³⁰ C1919.4 paragraph 22

M 7.1151

Soldier B and Soldier A (whose identity he seems to have discovered only later) were aiming towards the same target area. Giving evidence, INQ1919 said he thought that he had probably heard more than three shots.³¹ Notwithstanding his concession when cross examined that he did not see what soldiers A and B were firing at and was not in a position to watch A and B to find out whether or not they were firing at the same target simultaneously, undoubtedly his evidence in relation to the timing was to the effect that the shots were fired in very quick succession.

6E-III WHAT WAS JOHN JOHNSTON DOING WHEN HE WAS SHOT?

SUMMARY

6E-34 There is no evidence that John Johnston was involved in any disorderly behaviour at the time he was shot, or that he had been previously.

6E-35 John Johnston's own evidence was that he was in the process of crossing the laundry waste ground in order to visit an elderly gentleman in Glenfada Park.

6E-36 Although John Johnston had been heading across the waste ground in a southerly direction in order to reach Glenfada Park, the evidence suggests that, at the precise moment when he was shot, or very shortly before that, Mr. Johnston had turned and was facing in the general direction of the soldiers in the derelict building on the North side of William Street.

JOHN JOHNSTON'S EVIDENCE

6E-37 At the time he was shot John Johnston was cutting through the waste ground in order to avoid the CS gas further east down William Street. He told Lord Widgery that, as he crossed the street, he noticed four or five

³¹ Day 296/018

FS 7. 1152

soldiers downstairs in a derelict house close to the burnt out Richardson's factory. It appeared to him that they were trying to hide. Some had their guns pointed out of the windows.³²

6E-38 John Johnston gave the following account of what happened as he crossed the waste ground to the Widgery Tribunal:

A. First I heard a shot, and there was a little boy in the other corner from me, and I saw him lying on the ground. Two seconds after that I got shot in the leg and the shoulder, and then after that I was taken into a house.

Q. What did you think it was that had hit you?

A. I got the impression that it was the soldiers from this waste ground. I was nearly positive it was that.

Q. Did you first of all think it was something other than a proper bullet?

A. No, I thought at the beginning that it was a rubber bullet that I was hit with. I did not even know I was shot.

...

Q. There was still another shot which grazed your hand?

A. Yes I think it is said that that was a ricochet.

Q. You think that was a ricochet?

A. So they say.

Q. Do you think that the other bullet or bullets that caused your injuries may also have been ricochets?

A. No, I do not think so.³³

³² AJ5.4 paragraph D - 5 paragraph C. It seems clear that John Johnston was referring to the laundry waste ground and the derelict building with nine windows.

³³ AJ5.5 paragraph C-E

6E-39 There has never been any suggestion that John Johnston was holding a weapon of any kind. This was confirmed by John Johnston in evidence to the Widgery Inquiry.³⁴

CIVILIAN EVIDENCE REGARDING MR. JOHNSTON'S ACTIVITIES

6E-40 The likelihood is that before he was shot Mr. Johnston was doing nothing which would have drawn people's attention to him. Despite this, and notwithstanding Mr. Johnston's own evidence about what he was doing when he was shot, there are witnesses who have claimed that Mr. Johnston was engaged in various acts of heroism. Their evidence is of no assistance in discovering the truth about the shooting of John Johnston but serves as a further illustration of the manner in which myths have come to cloud the events of Bloody Sunday.

6E-41 One suggestion is that Mr. Johnston was remonstrating with the soldiers who had fired.

6E-42 Eddie Doherty embellishes his account with details which appear nowhere in the account of Mr. Johnston himself:

A...he was looking towards the GPO, you know, and you know, my recollection is that he was remonstrating with them, you know that they shot this young lad you know.

Q. When you say that he was remonstrating, what did he appear to be doing?

A. You know, he was sort of pointing. I recall he possibly was pointing, you know. He seemed a bit angry that this young lad was shot, you know.³⁵

6E-43 An alternative myth is that John Johnston was going to help Damien Donaghy when he was shot. This myth has persisted, despite the fact that

³⁴ AJ5.5 paragraph F

³⁵ Day 065/008/25

FS 7.1154

it was expressly denied by John Johnston when he gave evidence to the Widgery Tribunal.³⁶ This may be partly due to the fact that Damien Donaghy has recounted it in his various accounts:

- (1) In an undated first hand account which Damien Donaghy gave whilst he was still in hospital he stated, "...Shouted to a man I'd been shot. He came over, that man, and he was shot, when he was helping me."³⁷
- (2) Damien Donaghy told Praxis, "Johnson went to lift me, he was shot too"³⁸
- (3) The story was repeated in Damien Donaghy's BSI statement:

I was told some time afterwards by Michael Deakin, who died about two and a half months ago, that John Johnston was bending down to lift me up when he too was shot. I did not know Mr. Johnston at that time.³⁹

6E-44 Others have given similar accounts of John Johnston's activities at the time he was shot:

- (1) Noel Kelly gave the following account in his BSI statement:

An older man (I have since recognised him from pictures I have seen as being John Johnston) went over to help the boy but, as he was standing over him, there was another shot and he fell to the ground, almost on top of the boy.⁴⁰

- (2) William Kearns, in what appears to be a NICRA statement, said the following:

³⁶ AJ5.8 paragraph A.

³⁷ AD120.26

³⁸ AD120.25

³⁹ AD120.6 paragraph 11

⁴⁰ AK17.9 paragraph 6

FS 7.1155

This boy was standing at the corner. A shot rang out. The bullet pierced his leg. I didn't know at this time whether it was a rubber bullet or not. I was running back again to the waste ground. I looked back to see if the boy was allright (sic). He made to get up and fell again. I was going to help him to get up when this old man started to help him. When he got to the boy, he got shot. ⁴¹

(3) William Curran told Praxis:

Johnston, I didn't know Mr Johnston at all, but he had made to lift Donaghy at the same time as I had, but I heard Johnson say oh, my leg, and he got a ricochet, I think. I think it was a ricochet he got in the leg.⁴²

Mr. Curran was asked about his BSI statement, which was to the same effect as remarks in his Praxis interview, when he gave evidence on Day 055/058/10:

Q. Then you describe in paragraph 15 how immediately after seeing Bubbles Donaghy: "I approached him and stood at his feet. I glanced round and saw an older man, who I now know as John Johnston, coming to help Donaghy as well. When Johnston was about five or six feet away from me, I saw him clutch his shoulder. I cannot remember precisely where he was in the waste ground when he was shot." Can you tell us in what direction Mr Johnston was moving, where he had come from and where he was going to?

A. Well, I had my back to him and I came from my right side, indicating that he must have come up William Street or came behind me through the waste ground.

Q. You had your back to him and you were facing in what direction?

A. I was facing Bubbles Donaghy's, yes. I saw Mr Johnston out of the tail of me eye and I assumed he was coming to help Donaghy.

⁴¹ AK44.1

⁴² O6.8

Q. That was an assumption on your part?

A. Yes.

- (4) Betty Curran's BSI statement is in similar terms to that of her husband's:

I subsequently heard that Mr Johnson had been hit too. He had been running over to Bubbles when he fell.⁴³

- (5) Charles McDaid's statement to the Widgery Tribunal gives the same impression:

I then saw a youth fall on the west side of William Street ... I called on him to lie still and then I saw a man run out to this boy from the direction of Columbcille Court and I shouted to him to stay down as the soldiers were firing live rounds and not rubber bullets. By this time people were pushing up William Street to see what was happening and I turned towards them to keep them back. Upon doing so there was more gunfire and someone shouted that the man had been shot.⁴⁴

There are major inconsistencies between Mr. McDaid's oral evidence to the Widgery Tribunal,⁴⁵ which was to the effect that he did not see the man who was shot, and the evidence that he gave to the present Inquiry which was that he had seen John Johnston hit.

Q. If we go back to paragraph 19 at AM161.3, we should correct paragraph 19 so as to read: "As I saw him in the area marked "F", Johnson was moving forward in a westerly direction"?

A. Yes.

Q. You shouted to him, "get down, they are firing live rounds", and you then heard another shot, again from a

⁴³ AC130.2 paragraph 13

⁴⁴ AM161.14

⁴⁵ AM161.16 paragraph E

FS 7. 1157

northerly direction, and he went down; you think that he was hit on the leg?

A. Yes.

Q. Did you hear any more shots other than the two followed by the one that you have described?

A. No.

Q. Mr Johnston, you did not know him at the time; is that right?

A. Not by name. I knew him by seeing him in the town, he was a prominent man.⁴⁶

Surprisingly Mr. McDaid claimed to have no present recollection of seeing a young boy being hit.⁴⁷

6E-45 John Johnston expressly denied that he had been going to assist the injured Damien Donaghy. He was asked in terms when he gave evidence to Lord Widgery:

Q. Had you gone to assist the boy?

A. No.

Q. Did you not turn round to him at all?

A. No.⁴⁸

6E-46 Christopher Clarke Q.C. commented on this part of John Johnston's evidence in opening:

So on that evidence, from that we have just read, he recounts himself as having not turned round at all. That is

⁴⁶ Day 060/142/17

⁴⁷ Day 060/143/11-20

⁴⁸ AJ5.8 paragraph A

FS 7.1158

consistent with what appears in the account given to The Sunday Times.⁴⁹

6E-47 An alternative interpretation is that John Johnston was simply denying that he had ever turned around towards Damien Donaghy, and he was not saying that he had not turned at all. It is certainly correct that John Johnston appears to have told the Sunday Times journalists that he was shot in the back of the leg.

*I went onto the open ground and I think I was about two thirds of the way across, about level with that old wrecked lorry, when there was a big thump on the **back** of my right leg.⁵⁰ [Emphasis added.]*

IN WHICH DIRECTION WAS JOHN JOHNSTON FACING AT THE TIME HE WAS SHOT?

Summary

6E-48 Notwithstanding the *Sunday Times* notes of an interview with John Johnston there is compelling evidence that John Johnston must have turned towards the soldiers to the north of William Street at the time, or shortly before, the moment that he was shot.

John Johnston's Evidence

6E-49 John Johnston's SC statement to the Widgery Inquiry stated:

*I saw soldiers, in firing positions, in a burnt out house almost opposite to this waste ground and north of William Street. As I was crossing this waste ground I **turned and looked at the soldiers** I heard a crack of a shot. I was hit in the right leg near the hit and then another shot hit me in the left shoulder...I was not carrying any object whatsoever in*

⁴⁹ Day 010/81/12

⁵⁰ AJ5.1

FS 7.1159

*my hands and at the time I was hit I was on my own.*⁵¹ [our emphasis]

6E-50 This is the only statement of John Johnston that appears to indicate that he was actually looking in the direction of the soldiers he believed shot him. However the evidence about John Johnston's injuries would seem to support this version of events.

Medical Evidence

6E-51 Mr. Bennett, consultant surgeon, noted that John Johnston "would appear to have been shot on the front."⁵² Christopher Clarke Q.C. commented in opening that it is not 100% clear what Mr. Bennett meant by that expression "it presumably means that the entrance wound was thought by the consultant surgeon to have been at the front."⁵³

Civilian Evidence

6E-52 There is also civilian evidence which indicates John Johnston was facing in the direction of William Street when he was shot.

(1) William Doherty:

Q. Do you recollect now which way he was facing when he fell?

A. Yes, he seemed to be facing towards William Street. I did not see him actually fall, I seen him stagger too, like, you know.

Q. That must be after he had been hit?

⁵¹ AJ5.3

⁵² ED32.4

⁵³ Day 010/074

FS 7. 1160

A. Yes.⁵⁴

(2) Billy McCartney:

Q. Can I ask you this first: do you recall which way John Johnston was facing when he fell or when he was shot?

A. I do not think Mr Johnston did fall.

Q. Which way was he facing when he was shot?

A. When I seen him he was facing -- his face was towards William Street.

Q. Towards William Street?

A. Yes.

Q. At that stage he was facing to the north?

A. Yes.⁵⁵

(3) Monica McDaid:

Were you aware of Mr Johnston before he was shot?

A. Yes.

Q. What had he been doing; can you tell us which direction he had been facing in?

A. He was facing on to William Street.

Q. Was he stationary or was he moving?

A. Stationary.

Q. He moved from the position where you first saw him to any different position at the time that he was shot?

A. No.

Q. Was he with anybody?

⁵⁴ Day 055/142/08

⁵⁵ Day 054/174/15

FS 7. 1161

A. No, he was on his own.

Q. We have had quite a bit of evidence, including the written evidence from Mr Johnston himself, that in fact that day he had tagged on to the end of the march and was going along this wasteland to the left-hand side of the photograph, to the south, to visit somebody in Glenfada Park. That is to say he would have been going, at least at some stage, facing away from William Street. Do you think you might be mistaken --

A. No, when I seen him he probably came in from William Street, but when I seen him he was standing, standing stationary, looking out on to William Street.⁵⁶

- (4) Michael McGuinness described John Johnston as "facing across to where Donaghy had been shot."⁵⁷
- (5) Sean Barr suggests John Johnston was facing in a north easterly direction:

Q. So far as the older man is concerned, can you recall which way he was facing when you saw him hit in the leg?

A. Yes, he was facing down William Street.

Q. Facing down William Street?

A. Yes, and he seemed to have stumbled.

Q. If we go back to the map. Can we have AB19.7? When you say "facing down William Street", do you mean facing in the direction of the junction of Little James Street, Rossville Street and William Street?

A. Yes.⁵⁸

6E-53 John Johnston's own evidence suggests that he was struck moments after Damien Donaghy. It seems likely, therefore, that the attention of the

⁵⁶ Day 065/132/01

⁵⁷ Day 064/148/06

⁵⁸ Day 063/074-075

PS 7. 1162

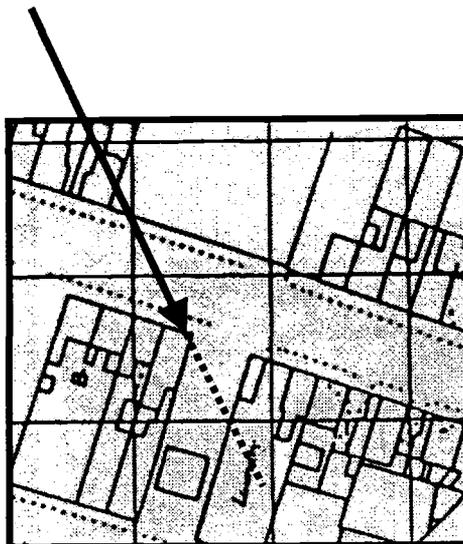
majority of those on the waste ground, including John Johnston himself, was focused on activity in the northern part of the waste ground *i.e.* towards the area where there was rioting and from where both rubber bullets and live rounds were fired.

6E-IV WHERE WAS JOHN JOHNSTON SHOT?

SUMMARY

- 6E-54 John Johnston was almost certainly shot on the laundry waste ground.
- 6E-55 John Johnston was not Soldier A's or Soldier B's intended target. Neither soldier was aware that he had hit anyone other than his target. The likelihood is that John Johnston was about one third to one half of the way down the eastern side of the laundry waste ground and in a direct line behind Soldier A and Soldier B's target.
- 6E-56 The dashed line represents a continuation of the line of soldiers A and B's fire.

FS 7. 1163



6E-57 The Inquiry plan does not make clear that, in 1972, the western wall of the building marked 'Laundry' did not exist. Christopher Clarke Q.C. dealt with this on Day 12:

It is for consideration whether possibly some of the witnesses have been misled by the plan. What I mean by that is this: if you look at the plan it appears to show a building still in existence in the rectangle in which is contained [sic] the words "laundry". It is possible – we will have to examine it in oral evidence – that some people's recollection is that Mr Johnston was on the east wall of the laundry waste ground and thought when they looked at the map that the wall was on the western edge of the building marked "laundry" on the plan; that is to say that they did not appreciate that the wall of the building did not exist at the time. That wall or wall parallel to the line that I have just put on the screen did not exist but it is just possible that it confused people who marked the plan.⁵⁹

6E-58 Where witnesses have not given oral evidence the possibility that they have been misled remains an important consideration.

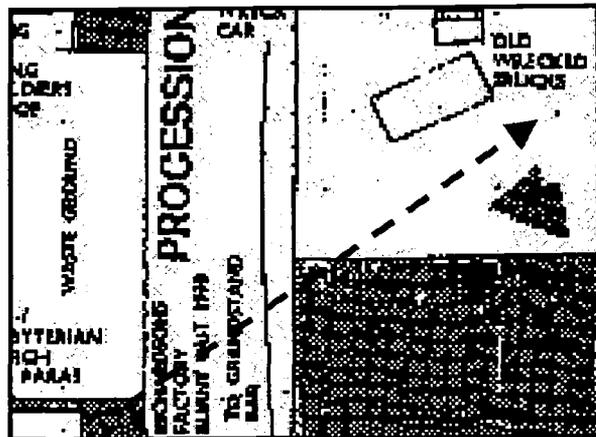
⁵⁹ Day 012/004/09

JOHN JOHNSTON'S EVIDENCE

6E-59 John Johnston gave his most detailed account about where he was shot to the Sunday Times:

I went onto the open ground and I think I was about two thirds of the way across, about level with the old wrecked lorry, when there was a big thump on the back of my right leg...some men came to give me a hand and as I was helped away I could see a young lad lying propped up against the wall to my left...there I am walking away with my back to the troops...⁶⁰

6E-60 The location of what are described as "old wrecked trucks" is marked on a Sunday Times map attached to the statement of Charles Meehan.⁶¹ The dashed arrow suggests that a bullet fired from the derelict building in the direction of the north west corner of the waste ground could have hit John Johnston in the approximate position he describes.



6E-61 John Johnston gave the following evidence about his location, and that of Damien Donaghy.

⁶⁰ AJ5.1

⁶¹ AM390.4

FS 7. 1165

Q. How far was Donaghy from you when he fell?

A. I would say about 10 feet at the most.

...

Q. At the time were you on his side of the road?

A. No, I was crossing over.

Q. Crossing the waste ground?

A. Yes, to get over.

Q. You mean crossing the gap between the two houses?

A. Crossing that gap to get over to Columbcille Court.

Q. On the same side of the road?

A. Yes.

Q. He would be behind you?

A. Yes.

Q. He was standing up near the gable end of the wall, was he not?

A. Yes.⁶²

6E-62 In opening Christopher Clarke Q.C. commented:

It looks from that evidence as if Mr Johnston was further south on the waste ground so as to have Mr Donaghy behind him to the north when he himself was hit.⁶³

6E-63 In his statement to the RUC taken at Altnagelvin hospital on 2nd February 1972 John Johnston said he had just got on to the waste ground and was going to Columbcille Court.

⁶² AJ5.7 paragraphs B-E

⁶³ Day 010/073/10

FJ 7.1166

*I was walking diagonally towards the entrance to Columbcille Court when I felt a blow to my right leg and left shoulder.*⁶⁴

CIVILIAN EVIDENCE

6E-64 A number of witnesses also put Mr. Johnston in a position where he could have been hit by a bullet aimed at someone on the north west corner of the laundry waste ground.

- (1) Eugene O'Neill puts John Johnston at the point he marked '5' on his Inquiry map.⁶⁵



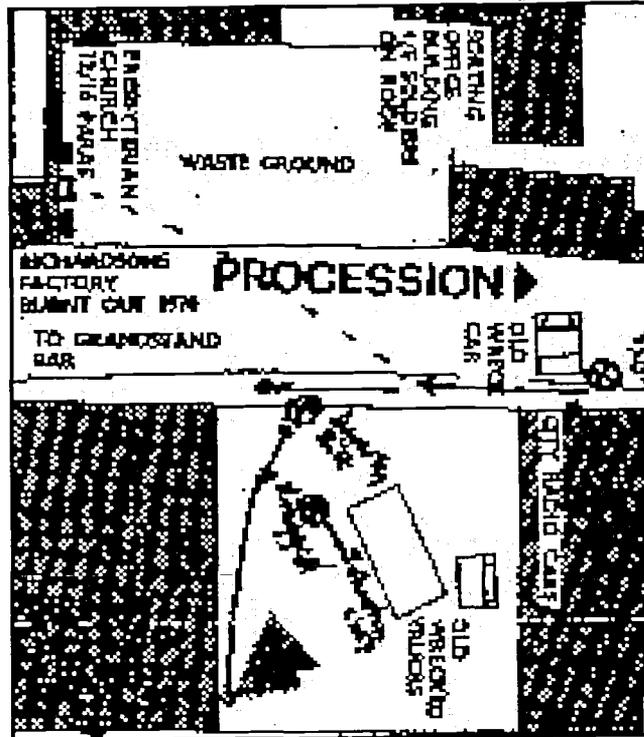
- (2) Charles Meehan similarly placed John Johnston about one third of the way down the laundry waste ground to the south of William Street.⁶⁶

⁶⁴ ED32.5

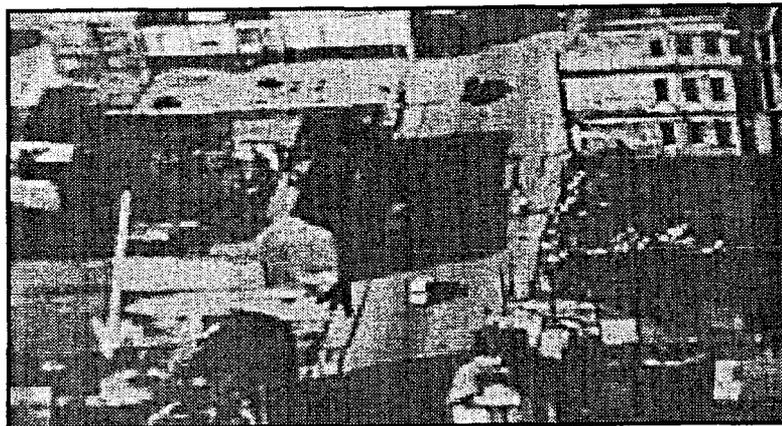
⁶⁵ AO65.2 paragraph 9; AO65.30

⁶⁶ AM390.3

PS 7.1167



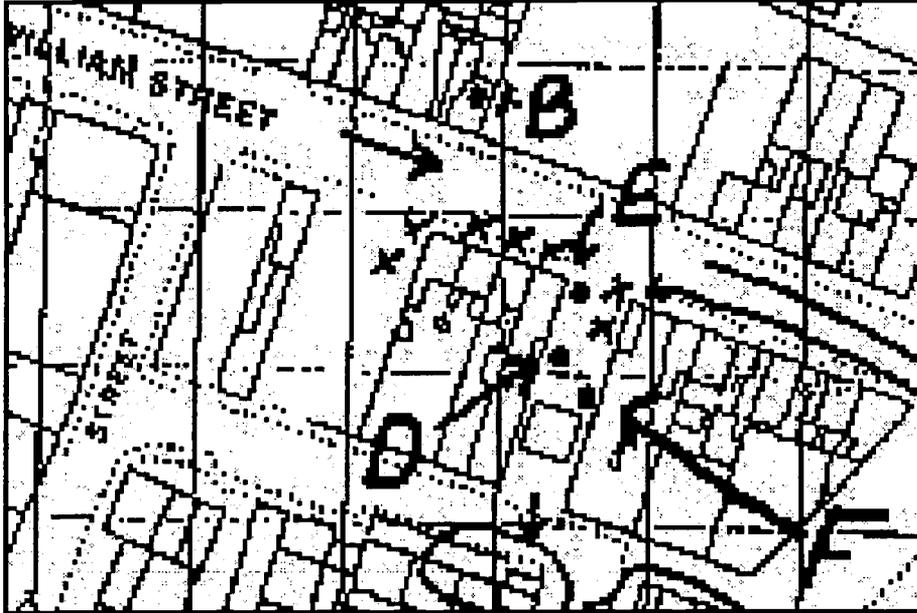
- (3) Anthony Feeney indicated the position where Damien Donaghy was shot (red arrow) and position where John Johnston was shot (yellow arrow) on the photograph below.⁶⁷



- (4) Billy McCartney marked the position of Damien Donaghy 'E' and John Johnston 'F' on the map below.⁶⁸

⁶⁷ AF7.6; Day 067/089/08-091/13

FS 7.1168



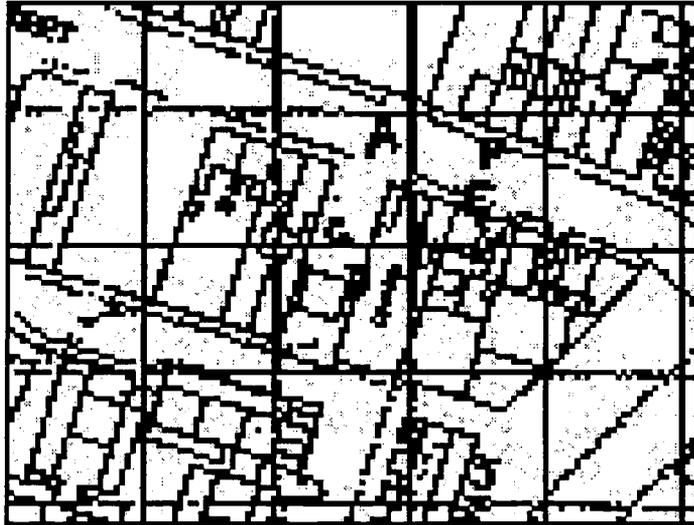
- (5) William Thomas Doherty marked the location of Damien Donaghy 'C' and John Johnston 'D' on the map below.⁶⁹ In evidence Mr. Doherty agreed it was possible that Damien Donaghy was at the corner of the laundry where the Nook Bar was located, and that therefore both Damien Donaghy and John Johnston were further North in the waste ground.⁷⁰

⁶⁸ AM87.9; AM87.3 paragraphs 10-11

⁶⁹ AD180.15

⁷⁰ Day 055/141

FS 7. 1169



- (6) William Curran said he could not recall precisely where on the waste ground John Johnston was when he was shot; but estimated that John Johnston was five or six feet away from where he was standing; marked on the map below at point 'F'; this may also have been a position where he might have been hit by a bullet intended for soldiers A and B's target at the north west corner of the waste ground.⁷¹



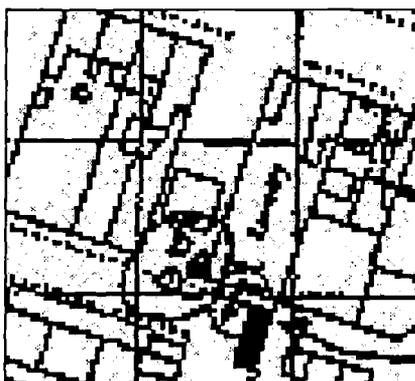
⁷¹ AC132.3 paragraph 15

FS 7. 1170

6E-65 There is some evidence which places John Johnston further south on the laundry waste ground. One possible explanation for this is that Mr. Johnston undoubtedly travelled through the waste ground in order to reach the Shiels' house in Columbcille Court. There is force in the following opening remarks of Christopher Clarke Q.C.:

As one will see, no entirely clear picture emerges from the statements of these witnesses as to the precise point in or near the laundry waste ground at which Mr Johnston fell. Some witnesses put him as having fallen halfway down the waste ground from William Street. Quite a few put him at the north-west corner and some put him in the north east corner. It is possible that different people saw him at different stages as he walked south, having been hit first in the shoulder and then in the leg.⁷²

6E-66 Brendan Deehan is an example of a witness who apparently observed John Johnston making his way to Columbcille Court. He marked the position where he saw John Johnston in the southern most part of the waste ground, 'E' on the Inquiry map.⁷³ Giving evidence he clarified that he had not in fact seen John Johnston fall but saw him staggering about.⁷⁴



⁷² Day 012/013/25

⁷³ AD20.19; AD20.3 paragraph 12

⁷⁴ Day 155/155

FS 7.1171

6E-V JOHN JOHNSTON'S INJURIES

6E-67 A letter dated 7th February 1972 to the R.U.C. from H.M. Bennett, F.R.C.S., Consultant Surgeon, Altnagelvin Hospital, contained the following details about John Johnston's injuries, treatment and prognosis:

This patient was admitted on the 30th January, 1972 with gun shot wounds of the right shoulder and lateral aspect of the right thigh.

Later he was operated upon by Mr Fenton. Both wounds were through and through though a small piece of metal was taken from the wound in the leg.

Here again these are superficial wounds and the patient should make a good recovery with little, if any permanent disability. He would appear to have been shot on the front.⁷⁵

6E-68 The true position appears to be that John Johnston in fact sustained wounds to his right thigh and to his *left* shoulder. This is confirmed by Dr. McClean's evidence,⁷⁶ by John Johnston's own evidence⁷⁷ (which also refers to an injury to his right hand) and by photographs of John Johnston receiving first aid in Mrs. Shiels' house which show wounds to his left shoulder and right thigh.⁷⁸

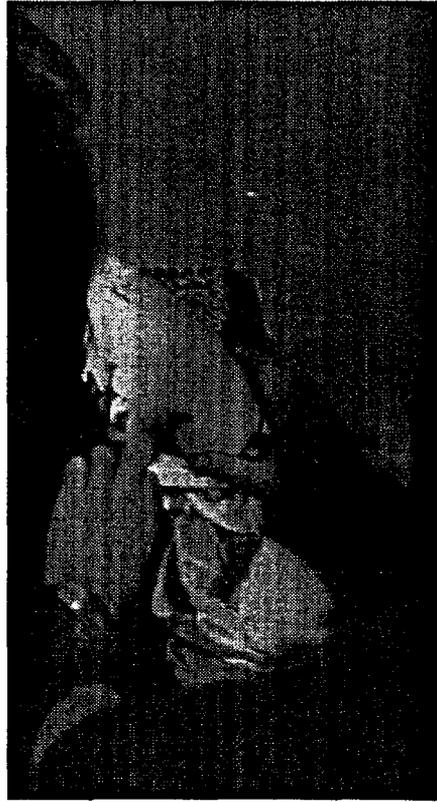
⁷⁵ ED32.4

⁷⁶ AM105.82

⁷⁷ ED32.5

⁷⁸ P755 and P756

FS 7. 1172



CAUSE OF DEATH

6E-69 John Johnston has, by some, been regarded as the fourteenth death of Bloody Sunday. In his opening to this Inquiry Arthur Harvey Q.C. outlined the reason for this as follows:

Johnny remained in hospital for ten days. However, he was never the same man again. His immediate family describe him as being very quiet and very introverted, most unlike himself. Indeed, he was no longer as attentive to his nieces, Helen and Brigitte, and his nephews, John and Jimmy, whom he had previously doted on, as he and his wife Margaret had no children of their own.

Johnny returned to work in Hassons, although he appeared distant and disinterested in his work. His health deteriorated rapidly and he died on 16th June 1972. He died from a brain tumour, which Mr Flannon, a consultant neurosurgeon in the Royal Victoria Hospital in Belfast,

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*stated could have been caused as a result of a blow to the head. It is for this reason that Johnny is referred to as the 14th death of Bloody Sunday.*⁷⁹

- 6E-70 The synopsis of opening on behalf of the family of John Johnston asked the question; "...whether the injuries he sustained on Bloody Sunday contributed to the death of John Johnston".⁸⁰
- 6E-71 There is no evidence that the injuries to John Johnston's leg, shoulder or hand contributed in any way to his death.
- 6E-72 It appears from John Johnston's medical notes that doctors considered whether his symptoms might be caused by a subdural haematoma. It is clear that they considered, properly, whether Mr. Johnston might sustained a minor head injury, in addition to his other injuries, on Bloody Sunday. However, on operating, they discovered that John Johnston had a cerebral tumour. It was the tumour, not a haematoma, which, according to John Johnston's notes was the cause of death.⁸¹ No link is made in the medical notes between a tumour and any possible head injury.
- 6E-73 A letter sent from Dr. MacFarlane to Dr. Kelly on 21st June states:
- This patient died on the 16th June, 1972. As you know he had a cerebral tumour which proved to be inoperable.*⁸²
- 6E-74 Dr. MacFarlane also records a cerebral tumour as the final diagnosis of the principal condition causing admission.⁸³
- 6E-75 Furthermore, and in any event, there is no evidence to support the contention that John Johnston struck his head as a result of his having

⁷⁹ Day 048/155/13-156/09

⁸⁰ OS1.14

⁸¹ D0800

⁸² D0800

⁸³ D0800

PJ 7. 1174

been shot on Bloody Sunday. To the contrary, the preponderance of the evidence, including John Johnston's own evidence, is to the effect that, although John Johnston stumbled, he did not fall to the ground on being shot.

- (1) John Johnston told the Sunday Times:

...I was about two thirds of the way across, about level with that old wrecked lorry, when there was a big thump on the back of my right leg. I thought, my god I've been whacked by a rubber bullet and went to hobble on, though I couldn't move well. Then a man shouted to me "Christ Mr Johnson, you're shot, you'r (sic) trousers are soaking in blood" (sic). I looked down and so they were soaked right through. Some men came to give me a hand and as I was helped away I could see a young lad lying propped up against the wall to my left...⁸⁴

- (2) Billy McCartney's evidence to the present Inquiry supports this conclusion. He was asked:

Q. Can I ask you this first: do you recall which way John Johnston was facing when he fell or when he was shot?

A. I do not think Mr Johnston did fall.

Q. Which way was he facing when he was shot?

A. When I seen him he was facing -- his face was towards William Street.⁸⁵

- (3) Sean Barr's evidence is that he was able to reach John Johnston before he fell:

Q. If we go back to paragraphs 12 and 13 at AB19.3, you describe how he appeared to have been hit in the leg and how you ran towards him and helped him back to where you had been standing. When you did that was he still upright?

⁸⁴ AJ5.1

⁸⁵ Day 054/174/15

FS 7. 1175

A. What amazed me about him was, he was still walking and I thought, if you are shot in the leg, you do not walk, but he seemed to be -- have the strength to walk and I also remember there was not an awful lot of blood, I do not remember an awful lot of blood.

Q. So you helped him walk to where you had been before?

A. Just for a few steps, and then other people took over and helped him.⁸⁶

- (4) William Curran claims to have seen John Johnston at the precise moment that he was shot:

I glanced around and saw an older man, who I now know was John Johnston, coming to help Donaghy as well. When John Johnston was about five or six feet away from me, I saw him clutch his shoulder. I cannot remember precisely where he was in the waste ground when he was shot. I believe that he put his left hand to his right shoulder. I did not hear the shot. I think that he was also hit in the leg afterwards and he hopped away down the waste ground.⁸⁷

- (5) Brendan Deehan made the following statement to the present Inquiry:

At about the same time as Donaghy spun round and fell on the ground I noticed Johnston staggering round in circles as if he didn't know what was happening...⁸⁸

He confirmed the same on oath:

By this stage of your statement you describe hearing three loud-pitched cracks. You were unable to say which direction these cracks came from and then you saw Mr Donaghy and Mr Johnston fall?

A. Yes, I did not actually see Mr Johnston fall; I seen Donaghy fall.

⁸⁶ Day 063/075/19

⁸⁷ AC132.3 paragraph 15

⁸⁸ AD20.9 paragraph 14

FS 7.1176

Q. Your recollection is that you saw Mr Johnston staggering about?

A. Yes.⁸⁹

(6) Jim Doherty's evidence was very similar:

Q. What was the first that you saw of Mr Johnston?

A. The first time I saw Mr Johnston was just after Damien Donaghy was shot.

Q. What did you see when you first saw him; was he stumbling, was he falling?

A. He was stumbling, he seemed to be stumbling and people ran towards him.⁹⁰

(7) William Thomas Doherty's evidence was as follows:

Q. You, as I understand it, saw Mr Johnston fall, but am I also right to understand that before then you had not seen Mr Johnston at all?

A. That is right, yes.

Q. You say in your statement that you think that he was going towards the younger man who had been shot, but you cannot be sure.

A. Right.

Q. Do you recollect now which way he was facing when he fell?

A. Yes, he seemed to be facing towards William Street. I did not see him actually fall, I seen him stagger too, like, you know.

Q. That must be after he had been hit?

A. Yes.⁹¹

⁸⁹ Day 155/154/25

⁹⁰ Day 065/075/07

⁹¹ Day 055/141/25-142/14

FS 7.1177

- (8) Thomas McDaid also confirmed John Johnston did not fall:

Q. What happened to Mr Johnston when the shots rang out?

A. Whenever he was hit, then the people that were round knew that he was hit and they got Mr Johnston then, and I did not know where they took him but I presumed they took him back into the flats in behind --

Q. Did he fall?

A. No, he did not fall, no.⁹²

- (9) Padraig O'Miahain's evidence also suggests that John Johnston faltered but did not fall. Mr. O'Miahain gave an account of leaving the injured Damien Donaghy to go and help John Johnston. He described John Johnston as looking as if he was "on the point of falling forward after stumbling".⁹³ His oral evidence was that John Johnston was on the edge of the waste ground. He assumed John Johnston had been tripped up by the ground which was broken up.⁹⁴
- (10) Leo Deehan gave the following account in his document entitled "*My experience on Bloody Sunday*". However, it is right that the timing and location of the shooting he describes are clearly wrong.

I was about half way down William Street now, suddenly a man in my line bent over and groaned, he started staggering out to the right to an open space, I ran over and now there was about ten people round him and one man said "I think he is shot" he pointed in the direction of the spot I saw the heads move. I heard his name Johnston.⁹⁵

⁹² Day 066/042/06

⁹³ AO56.15 paragraph 16

⁹⁴ Day 059/047

⁹⁵ AD178.16

FI 7.1178

- (11) Michael Joseph Fox described seeing John Johnston, within seconds of seeing the injured Damien Donaghy being carried, in very graphic terms:

... I did not know him at the time but found out later that it was John Johnston. I remember seeing blood oozing from his leg.

John Johnston was still on his feet and I went towards him to help him and touched his arm. He was still standing and there was no-one near him; he looked very pale and shocked. He was not carrying anything at all. I moved with him for about two feet and a number of other people then came forward to assist.⁹⁶

- (12) Anthony Feeney's account in his statement to this Inquiry is that John Johnston was standing motionless after being shot:

He had his arms folded across his chest and appeared to be hugging his upper arms. He had a very shocked expression on his face and I thought that perhaps he was in shock as a result of seeing the young man who had been shot.

13. I now know that this second man was called John Johnston and that he had been shot in the arm.

14. Just then a girl with blonde hair ran past me on my right. She was running towards William Street along the wall to my right and headed straight for Mr Johnston. She stood in front of him and held him up.⁹⁷

- (13) John Long also gives an account of seeing John Johnston after he had been shot. Curiously Mr. Long's evidence is that John Johnston was close to the garages at the back of Kells Walk.⁹⁸ Given that John Johnston was taken to 8A Columbcille Court there would be no reason for him to have been in the area described by Mr. Long.

⁹⁶ AF26.4 paragraphs 24-5. Fox is almost certainly wrong in believing that it was at this stage that he saw Mr Johnston come round the north east corner of the laundry waste ground, Day 059/017/18

⁹⁷ AF7.3 paragraphs 12-14

⁹⁸ Day 068/092

FS 7.1179

Although Mr. Long did not accept that he might in fact have seen John Johnston in the laundry waste ground, it is more than likely that he has in fact confused the two locations.⁹⁹ The fact that John Johnston was apparently standing alone suggests Mr. Long caught sight of him very shortly after he had been shot. He confirms John Johnston was standing.

I saw a man standing on the opposite side of the opening and to my right, at the position marked C on the map (K10). I recognised the man as John Johnston. I knew him to talk to but I didn't know him very well. He was standing up against a parapet with his right leg raised slightly off the ground. I noticed that there were a number of other people around and about but they were all standing very close to the surrounding walls.

4. When I went over to John Johnston I realised that he had been shot. He had a wound on the inside of his right thigh and another wound on his right shoulder. He looked shocked but composed. I saw that there was blood coming from both wounds.¹⁰⁰

6E-76 Although there is a small minority of witnesses who do refer to John Johnston falling, neither their evidence, nor that of Mr. Johnston, suggests that he banged his head or sustained any head injury.

6E-77 John Johnston was discharged from hospital on 10th February 1972. The discharge note from Mr. Bennett describes John Johnston as having made "an excellent recovery" from the "comparatively minor wounds". The only further treatment contemplated is the possibility of further dressing of the wounds by a district nurse.¹⁰¹

⁹⁹ Day 068/092

¹⁰⁰ AL20.1 paragraph 3 and 4

¹⁰¹ D0790

FS 7.1180

HOW MANY BULLETS STRUCK JOHN JOHNSTON?

6E-78 There is compelling evidence that the injury to John Johnston's hand, and in all probability also the injury to his shoulder, were the result of ricochets. The same may be true for the injury he sustained to his leg.

6E-79 The statement of DS Cudmore records the details of John Johnston's injuries as follows:

"...Johnston was injured in his right leg, on the back of his hand and to his left shoulder, the latter two injuries were believed caused by a ricochet."¹⁰²

6E-80 Dr. McClean, who examined John Johnston in the Shields' house was also convinced that his shoulder wound was the result of a ricochet. His statement to the present Inquiry states that:

John Johnston had a wound in the leg and a peculiar wound in the shoulder. I hadn't seen a wound like it before. It was shallow and appeared to be three holes joined together in a line. I thought it had been caused by a ricochet. If it had not been a ricochet the bullet would have gone through the shoulder and caused a lot of damage. He was not losing much blood.¹⁰³

6E-81 Noel Christopher McLoone, one of the Knights of Malta who assisted Mr. Johnston, reached a similar conclusion. His evidence to the present Inquiry is in the following terms:

I also remember another man I treated in this house, again, because of the nature of this wound. He had a big hole the size of a fist in his back. The flesh seemed to have simply been lifted out of the centre of his back near his spine. There was no blood. I remember thinking that it must have been a ricochet wound. I cannot recall any further details about the man, apart from that he seemed elderly to me. I

¹⁰² D0808

¹⁰³ AM105.5 paragraph 25

FS 7. 1181

*think that somebody told me afterwards that he was called Johnson.*¹⁰⁴

6E-82 In addition, when John Johnston described being hit to the Sunday Times team he described being hit only once and not realising he had multiple wounds until Dr. McClean told him so.¹⁰⁵

6E-83 That said, by the time John Johnston gave his statement to the Widgery Tribunal he purported to recall being shot twice:

*As I was crossing the waste ground I turned and looked at the soldiers I heard a crack of a shot. I was hit in the right leg near the hip and then another shot hit me in the left shoulder. At first I thought I was hit by rubber bullets. Another shot, which I believe was a ricochet, grazed my hand but I have no idea when this happened.*¹⁰⁶

6E-84 In his evidence to Lord Widgery John Johnston opined that he did not think that his other injuries could have been caused by a ricochet:

Q. There was still another shot which grazed your hand?

A. Yes. I think it is said that that was a ricochet.

Q. You think that was a ricochet?

A. So they say.

Q. Do you think that the other bullet or bullets that caused your injuries may also have been ricochets?

*A. No I do not think so.*¹⁰⁷

6E-85 During cross-examination by Mr. Gibbens the following exchange occurred:

¹⁰⁴ AM359.5 paragraph 24

¹⁰⁵ AJ5.1

¹⁰⁶ AJ5.3

¹⁰⁷ AJ5.5 paragraph E

FS 7.1182

Q: Do I understand you right to say you understood you had been hit by a ricochet?

A: On the hand. It was not me that said that, it was the hospital people thought it was a ricochet.

Q: What about your leg?

A: The bullet had to be taken from the leg and the shoulder.

Q: Were you aware how many shots had been fired?

A: At this particular period?

Q: Yes.

A: My recollection was just two shots; two or three shots at the most.

Q: But one caught the boy?

A: Yes.

Q: And you say you had a ricochet, one in your leg and one in the shoulder?

A: Yes.¹⁰⁸

6E-86 Betty (B) and William Curran (A) both referred to John Johnston being hit by a ricochet in the course of the interview they gave to Praxis:

A: ...I did not know Mr. Johnson at all, but he had made to lift Donanghy at the same time as I had, but I heard Johnson say oh, my leg, and he got a ricochet, I think. I think it was a ricochet he got in the leg.

B: I - I -

A: And on the shoulder -

B: I - I think that - that that's what Mr Johnson was shot with, the ricochet that I had seen hitting the ground and bouncing up again.

¹⁰⁸ AJ5.7 paragraphs E-G

A: You see, we could see the – see the lumps of concrete getting er –

B: Getting lifted with the bullet.

A: Concrete was flying off – off the footpath where Donaghy was lying. They were still shooting, you see...¹⁰⁹

6E-87 The following exchange took place when Betty Curran was questioned by Edmund Lawson Q.C.:

Q. You went on both of you, look a few lines down, without my reading it all out, it describes seeing the lumps of concrete being lifted off or flying off?

A. I did not see any concrete, I just seen the bullet lifting the tile.

Q. You did not see any concrete?

A. No, I did not see any.

Q. But you saw the tiles?

A. I seen the thing hit the tile and bounce off it, that was all I seen.¹¹⁰

6E-88 When pressed Betty Curran was very defensive:

Q. He was hit by what you thought was probably a ricochet?

A. You see, I do not see what this has to do with my Bloody Sunday statement to the Tribunal.

Q. Mrs Curran --

A. That there was all done for a television programme.

Q. It is indeed.

A. That was not for this Tribunal.

¹⁰⁹ O6.8-9

¹¹⁰ Day 055/122/11

Q. No, but it was another account that you gave. Bear with me, if you will?

A. But that was a long time after Bloody Sunday. The statement I gave was what I remembered on Bloody Sunday. This was taken a -- this was a long time after it.

Q. Do you think what you said in that statement -- I know it was not made for this Inquiry -- in that interview to the television men was to the best of your belief true?

A. Yes.

Q. You certainly would not try to lie to them, would you?

A. I was not lying, no.¹¹¹

6E-89 William Curran was similarly anxious to distance himself from what he had said in the Praxis interview, insisting that it was unsigned and not made as part of his statement to the Inquiry.¹¹² He said he could not say whether or not John Johnston had been hit by a ricochet,¹¹³ but confirmed that he had seen lumps of concrete being lifted in the way he had described to Praxis.¹¹⁴

Forensic Evidence

6E-90 The Tribunal's experts, Dr. Shepard and Mr. O'Callaghan gave the following account of John Johnston's injuries. Their comments confirm that the multiple injuries suffered by John Johnston may indicate that the bullet or bullets which hit him had fragmented before hitting him (*i.e.* that they were ricochets).

Mr. Johnston had wounds to his right leg and one shoulder and, according to some of the notes, his right hand. Some notes indicate that the shoulder injury was to the left

¹¹¹ Day 055/123/21-124/18

¹¹² Day 055/075-076

¹¹³ Day 055/081

¹¹⁴ Day 055/082

FS 7. 1185

shoulder while other letters indicate the right shoulder. Photograph EP22/12 shows an injury to the left shoulder being treated. No detailed descriptions of the wounds are present in the notes. A letter to the Royal Ulster Constabulary from Mr Bennett, Consultant Surgeon, dated 7th February 1972 states that the wounds to the leg and the shoulder "were through and through" and that "He would appear to have been shot on (sic) the front", Mr Bennett adds that "a small piece of metal was taken from the wound in the leg".

These wounds are described in a discharge letter of the 11th February as being "comparatively minor. X-rays apparently showed "foreign bodies" or "metallic fragments" in the shoulder and the right hand. "A small piece of metal" was removed at operation from the leg wound and two fragments of metal were submitted to DIFS (ref 502/72).

A report by Dr Martin dated 4th April 1972 reports that one was a fragment of lead core and the other of copper jacket. Dr. Martin concludes that the "copper jacket" is consistent with the base of a 7.62 calibre rifle bullet although there are no details of why he came to that conclusion.

Mr Johnston was re-admitted to Altnagelvin Hospital in May 1972 with a brain tumour from which he died in June 1972.

Comment

The multiple injuries may indicate that the bullet (or bullets) were fragmented prior to striking Mr Johnston.¹¹⁵

6E-91 Mr. O'Callaghan confirmed this when he gave evidence to the present Inquiry:

It is possible that a bullet or bullets, according to this, fragmented before striking John Johnston; is that right?

A. Yes.

Q. Dr Shepherd was asked yesterday what sort of surface the bullet would have had to contact in order to fragment,

¹¹⁵ E10.4-5

and he referred that question to you. You have told us today that a hard surface at an angle of about 20 degrees plus would cause a bullet to fragment. Does the surface also need to be a rough surface?

A. It certainly assists it if it is a rough surface.

Q. Is there anything you would like to add to the evidence you have already given today about the nature of surfaces and materials that cause bullets to fragment?

A. No, I think perhaps the only thing I would say is there are no absolutes. You would have to treat each surface individually to determine the angle at which any particular bullet would break up in coming into contact with it.¹¹⁶

¹¹⁶ Day 230/045/21-046/14

FS 7.1187

CHAPTER 6F

THE SHOTS FIRED BY SOLDIER A AND SOLDIER B

6F-1 INTRODUCTION AND SUMMARY

6F-1 In assessing Soldier A's and Soldier B's conduct on Bloody Sunday the Tribunal should, in our submission, have regard to the following principles of law:

- (1) An individual who is, or who honestly believes himself to be, under threat of attack is lawfully entitled to use reasonable force to prevent the attack.
- (2) The reasonableness of an individual's response to a perceived threat must be judged according to the facts as that individual genuinely believed them to be, even if it is ultimately shown that his belief was mistaken.¹

6F-2 Soldier A and Soldier B's evidence is clear: they both honestly believed themselves (and those around them) to be under lethal attack. They honestly believed that a man was in the process of lighting a nail bomb which he intended to throw towards them and that, if he was not stopped, the likelihood was that the nail bomb would explode inside the derelict building and they (or their colleagues) would be seriously injured or killed. They had only one way of stopping the man and that was to shoot him as they both intended.

6F-3 The following facts are indisputable:

- (1) If a rioter had succeeded in throwing a lighted nail bomb into the derelict building, there would be have been considerable loss of life or serious injury.

¹ See Chapter 3.

(2) If a rioter on the north western corner of the laundry waste ground was lighting a nail bomb, the only way in which Soldier A or Soldier B could have stopped him was to shoot him.

6F-4 It follows that if Soldier A and Soldier B honestly believed there to be a nail bomber lighting a nail bomb and intending to throw it towards them, their response to that belief was reasonable. The most important issue for the Tribunal may therefore be whether Soldier A and Soldier B did honestly believe that they were in imminent danger of attack.

6F-5 There is no evidence that either Soldier A or Soldier B was in any sense given to acting rashly or recklessly. Both men had spent long periods in Northern Ireland prior to Bloody Sunday. At the time of Bloody Sunday Soldier A had served ten years in the Parachute Regiment.² Despite being involved in many riots neither had fired a live round in Northern Ireland.³

6F-6 The Tribunal should, in our submission, to accept Soldier B's evidence about his target and the manner in which he fired:

I would have fired at a target that I thought was a threat to somebody's life. I would not have fired willy-nilly, so to speak.⁴

6F-7 The fact that both soldiers had previously been in riot situations strongly supports Soldier B's evidence that he did not fire in a state of panic.

Q. You said in 1972 that stones had come in through the windows, although you do not remember that now.

Presumably if a stone could come in a nail bomb could come in?

A. That is correct.

Q. And within that area a nail bomb could have caused horrendous injuries to anyone close to it on explosion?

² Day 297/078/17-18

³ Day 311/009/22-010/06; Day 297/039-040

⁴ Day 311/050

A. Yes, probably injury and death.

Q. Is there any chance that, with that fear in your mind, you saw the rioters, saw them throwing things, and panicked and fired at them to keep them back?

A. No, because it had happened before in Belfast.

Q. Is there any possibility that -- either your eyes were watering, or because of the respirator, or both -- you could not see clearly what was going on, but felt under threat and so fired?

A. No.⁵

6F-II THE CONTRADICTORY AND CHANGING NATURE OF THE ALLEGATIONS LEVELLED AGAINST SOLDIERS A AND B.

ALLEGATIONS MADE IN OPENING

6F-8 In the various opening statements submitted on the behalf of the families it has been alleged that shootings were not only unjustified but part of a wider conspiracy to 'teach the Bogsiders a lesson.'

6F-9 The synopsis of opening statement on behalf of James Wray alleges:

The plan. Not just an arrest operation. Citation of pieces of evidence which suggest something more ambitious and sinister was planned. The absence of documents which speak to a more drastic plan does not mean that there was none...At least some senior officers approved an action which was intended to 'teach a lesson' and which involved a high risk of loss of life.⁶

6F-10 The synopsis of opening on behalf of Barney McGuigan, William and Alexander Nash and Daniel Gillespie makes a similar allegation:

[The families]...are unanimous in the view that the lethal force was unlawful, and where death ensued, amounts to murder. They are also of the view that responsibility for this situation has to be attributed to political and military personnel at the highest level. In

⁵ Day 311/054/22-055/13

⁶ OS4.3 paragraph 5

FS 7.1190

general terms, the events of Bloody Sunday are not an accident of history wherein a few individual soldiers momentarily lost control, but an event which had been orchestrated and condoned and which involved a very simple objective – the forcible reassertion of military authority over the Bogside and the Creggan. Whilst the killing itself may not have been a planned outcome, it was certainly one that was foreseeable, and was considered to be what has more recently termed “collateral damage” during British military operations in a different theatre of war.⁷

...

The mind set of the soldiers engaged in the shootings, and those who were their commanders, is also easily evidenced by documents and witnesses. Essentially, the deaths of D.Y.H. would not be regarded as anything amiss, or unacceptable. Ford and Wilford both in memoranda, books and interviews have said as much. There seems to have been a simplistic equation which ran something along the lines that the Irish who lived in the Bogside and the Creggan were nationalists, nationalists were republicans, republicans could be identified with the PIRA and, therefore, in that area, if it moves- shoot it.⁸

6F-11 The skeleton opening submitted by Barr and Co. Solicitors on behalf of John Johnston and Damien Donaghy alleges:

5. The evidence of Corporal A and Private B is crucial. Their statements exemplify, in our submission a wholesale attempt by soldiers to obfuscate and collude. We will explore the various discrepancies. There is absolutely no reason to conclude that either Corporal A or Soldier B see anyone with a nail bomb or that they had justifications to shoot Damien Donaghy or John Johnston. We believe that the Tribunal should explore why the accounts of A and B are so similar and yet at variance with all other accounts.

6. An issue may arise as to whether or not soldiers were intent on shooting “Derry Young Hooligans” and were given to understand tactically or otherwise that such a course would be countenanced given the affront that these young people were causing to British troops, the rule of law, and the sensibilities of unionist politicians

⁷ OS2.2

⁸ OS2.5 paragraph iv

*and the Unionist community in general and Strand Road Businessmen in particular.*⁹

6F-12 A similar allegation was made by Arthur Harvey Q.C. in opening, on Day 43:

The truth is that on 30th January 1972 soldiers of the 1st Battalion of the Parachute Regiment opened fire on an unarmed people, most of whom were in flight; it killed 13 and it wounded 14. The truth is that they did so, not simply as a result of some 27 acts of individual indiscipline, but rather as a result of failures, misjudgments and wholly unacceptable policies made at the highest level both politically and militarily.

*The truth is that the 1st Battalion of the Parachute Regiment on the ground was doing no more than what had been envisaged...*¹⁰

On Day 44:

*What happened here genuinely was... that General Ford saw that there was a brigade operation; the brigade operation was in relation to a march; he had one opportunity to go down and teach the Derry rioters a lesson and, not only the Derry rioters, but the population of Derry a lesson and that was through the use of the 1st Battalion of the Parachute Regiment.*¹¹

6F-13 In order for such a plan to have been implemented it would necessarily have had to have been communicated to the troops on the ground. Not only is there no evidence to support the allegation that the shots fired by Soldiers A and B were premeditated, either as part of a plan to 'teach the Bogsiders a lesson,' or otherwise, but such allegations were not put to either soldier when he gave evidence.

6F-14 The Tribunal is entitled to, and in our submission should, ask why those apparently far fetched and unsupportable allegations were advanced. It may well be the case that it has long been recognised by those who seek to blame the soldiers for what happened on Bloody Sunday that, in the absence of a planned

⁹ OS6.6 paragraphs 5-6

¹⁰ Day 043/072/18-073/05

¹¹ Day 044/123/20-124/03

conspiracy to shoot, it is almost inconceivable that soldiers such as A and B, in the circumstances which they were in, would have fired unless those circumstances had justified, or reasonably appeared to justify, their doing so.

ALLEGATIONS PUT TO SOLDIERS A & B

6F-15 In the event the allegations that were put to each soldier not only contradicted the case as opened, but were themselves contradictory.

6F-16 Richard Harvey put to Soldier B, but not to Soldier A, that he had fired in order to 'flush out' the IRA from the no-go areas.

Q. Is that not exactly why you opened fire: to see if you could flush the IRA out of there?

A. No. I would only open fire if I thought I was threatened.

Q. I understand you said you would only do something. I am asking you specifically what you did and why you did it.

Did you not open fire with that intention to see if you could draw the IRA's fire towards you?

A. Not at all, no.¹²

6F-17 An entirely contradictory, but no less fanciful, allegation was put to Soldier A (but not to Soldier B) by Arthur Harvey Q.C.:

Q. I suggest to you what happened here is: you were denied the opportunity for either speed or aggression and that you simply shot Damien Donaghy and Mr Johnston, either you or Corporal B in combination, quite literally because you refused to allow yourself to be categorised as an Aunt Sally or a crap-hat?

A. I shot a man who was preparing to throw a nail bomb.¹³

6F-18 By contrast what was put to Soldier B by Arthur Harvey Q.C. appeared to be an allegation of having fired in a state of panic:

¹² Day 311/093/19-094/02

¹³ Day 297/145/22-146/03

Is it that, on the evening of 30th January, both yourself and Soldier A knew and saw that you had shot and injured two people other than a nail bomber because of the precarious position you felt yourselves to be in?

A. On that –that evening we did not know exactly that these two people had been injured.

Q. But at 50 yards you should be able to take a non-lethal shot at a target of a person; is that not right...A non lethal shot. You should be able to hit them in the leg or the shoulder, as opposed to the mid trunk and chest?¹⁴

6F-19 It is unclear what, if anything, Mr. Harvey was alleging here. What is apparently clear is that neither of his suggestions amount to an allegation of conspiracy. We have some difficulty at present in reconciling the case which was put to either soldier with the case as opened in which it appeared to have been categorically stated that the firing on Bloody Sunday could not be viewed “simply as a result of some 27 acts of individual indiscipline.”

ALLEGATIONS RELATING TO THE RMP MAP

6F-20 Both Soldiers A and B have been the subject of unfair criticism arising out of minor discrepancies in their various statements, and, in particular, their RMP maps.

6F-21 Counsel’s Report No.2 contains three ‘conclusions’ against Soldier A. The first of which is that:

There appears to be a discrepancy here between Cpl A’s RMP statements and trajectory map (which suggest that he was out in the open) and his SA statement, marked-up photo and oral testimony (which suggest that he was inside the derelict building).¹⁵

¹⁴ Day 311/078/09-20

¹⁵ Counsel’s Report No.2, Corporal A, Page 1, Issue 1

FS 7.1194

6F-22 This allegation is correct, and Soldier A has always accepted that his first RMP statements and map are inaccurate in this respect.¹⁶ It is perhaps not surprising that at 01.00 a.m., after the previous day's events, and with no prior knowledge of the area, Soldier A was confused as to precisely where he was after having picked his way through varying degrees of demolition before arriving at the shell of a building. The statement taking process itself appears to have taken no more than ten minutes. Soldier A's statement is timed 01.00 a.m.¹⁷ Soldier B's statement, which was also taken by WO Wood is timed 01.10 a.m.¹⁸ Soldier A confirmed that he believed that the statement had taken no more than ten minutes.¹⁹

6F-23 The second alleged discrepancy in Counsel's Report No.2 also relates to the RMP map:

There is a discrepancy here between the trajectory map (which has Cpl A nearer the E wall of the alley way) and the marked up photo (which has him closer to the W wall).²⁰

6F-24 Whilst this conclusion is not expressed as clearly as it might be, what is being alleged is that the target has "moved."²¹

6F-25 An examination of the circumstances in which the RMP maps were marked up (dealt with in more detail in Chapter 2) demonstrates that it would be unjust to criticise or hold any individual soldier accountable for discrepancies which exist between the map and any other descriptions or marked up photographs. Cross-examined by Arthur Harvey Q.C. in relation to the map, Soldier A explained:

I did not mark those positions. If I had have marked those positions, I would have put the tip of the arrow into the derelict building, and

¹⁶ Day 297/106/23-25

¹⁷ B20.014-015

¹⁸ B43.009-010

¹⁹ Day 297/066/17-20

²⁰ Counsel's Report No.2, Corporal A, Page 2, Issue 2

²¹ This was confirmed by Christopher Clarke Q.C. in his opening Day 010/043/13-14

FS 7.1195

*the position of the bomber I would have put on to the gable end of those buildings.*²²

6F-26 Soldier A's evidence is that he cannot recall even having been shown the map at the time, if he had been "I would have pointed out that my position and the position of the bomber were slightly out."²³ There is an undeniable logic in what A says about his location, and that of other members of Machine Gun Platoon:

*I was inside a derelict house on the first floor and the soldiers were down below me. If I have described part of that building which is as a courtyard and it is confusing, then so be it, but the soldiers were not outside where you are suggesting by that low wall because there would not have been no point whatsoever in soldiers who were trying to be concealed being there because they would not have been concealed. There may well be a mix up in grid references and descriptions of the buildings or the derelict walls, floors or whatever.*²⁴

6F-27 The evidence of WO Wood, who took the statements of both Soldier A and Soldier B, supports the conclusion that the maps were not marked up at the time, but marked up by persons unknown at some stage after the statements had been taken. (see Chapter 2 above) According to Mr. Wood it was common practice in Belfast for a soldier to refer to and mark up a map during his interview, and then sign the map at the end of the interview.²⁵ So far as Bloody Sunday is concerned it is plain that this did not happen; not one of the soldiers signed his RMP map. The fact that Soldier A's RMP statement makes no reference to a marked up map is further proof that it was not created in his presence; as is the fact that the map itself appears in a typed up generic format.

6F-28 A further unfairness lies in the fact that the map itself was at the time out of date. Like the map shown to witnesses by Eversheds, which has expressly been

²² Day 297/064/18-22

²³ Day 297/157/09-20

²⁴ Day 297/104/13-22

²⁵ Day 383/159

FS 7. 1196

accepted by Counsel to the Tribunal²⁶ as potentially misleading, the RMP map shows buildings, including an ice house on the laundry waste ground, which were no longer in existence at the time of Bloody Sunday. As Lord Saville rightly remarked, “the trouble is that the [RMP] map does not seem to correlate with what we have in the photographs.”²⁷

6F-29 Arthur Harvey Q.C., despite having himself expressed concern in opening about the inaccuracies in the map shown to witnesses,²⁸ was content to criticise Soldier A on the basis of his RMP map:

Q. ...If you go back to your map, and again if one goes to B3, the wall that you have the man standing at is the completely opposite one to which you now have him standing at on this map.

A. I did not have him standing at that wall because I did not make that mark.²⁹

6F-30 Mr. Harvey’s own description of what the trajectory map shows is inaccurate in that the target is shown in an area very roughly in the middle of the waste ground, and not standing against a wall.

6F-31 Mr. Harvey levelled further criticism which we submit was unfair at Soldier A for having described his position as in a ‘courtyard’ in his second RMP statement:³⁰

Q. ...Can you see any courtyard there visible from William Street?

A. ...If I have made a mistake in describing, I have done. Perhaps it is easy to see how that happens, the way that you and I are tending to get mixed up with walls, courtyards and everything else, that Colonel Overbury and I could have mixed too.

Q. I am not really mixed up, I think I can tell the difference between a courtyard and a derelict building, but what I am confused about

²⁶ *eg.* Day 059/013/20-23

²⁷ Day 297/095/17-18

²⁸ Day 047/025/16-23

²⁹ Day 297/073/08-13

³⁰ B20.019-020

FS 7.1197

and would like your assistance is what you would describe as a courtyard; what would you describe as a courtyard?

A. A sort of –open space enclosed with walls.³¹

6F-32 Lord Saville pointed out that there is an area visible in photograph **P201**, could properly be described as a ‘courtyard.’³² This led to an apparent about turn by Mr. Harvey who stated “Yes, that is a possibility, and I would not eliminate it at all.”³³ Lord Saville was then referred by Mr. Elias to **P202.1** as a result of which he commented:

LORD SAVILLE: In fact the hard copy of 202.1 does actually – to my eye at least, and I am not saying I am right – show an area which could well be described as a courtyard.³⁴

6F-33 The fact that Soldier A’s and B’s maps are identical in every respect, including the mistakes, is further proof that they were drawn up not at the time that the statement was made, but together and at some later time – and not in their presence. Like A’s map, Soldier B has not signed his map, nor is it referred to in the body of his statement. In so far as any criticism has been made of Soldier B in respect of his RMP map the same considerations outlined above in relation to Soldier A apply.

6F-34 Arthur Harvey Q.C. also cross-examined Soldier A at great length in relation to the wording of his RMP statement. By way of example, he sought to criticise Soldier A for having described himself going over rooftops in order to get into position.³⁵ Soldier A’s response was, we would submit, typically straightforward and entirely credible:

Perhaps I was mixed up; perhaps I was tired at the time; perhaps the walls that we went over, perhaps I thought that at some stage they had been roofed and I am giving a generalisation of the

³¹ Day 297/099/04-22

³² Day 297/132/13-21

³³ Day 297/132/22-23

³⁴ Day 297/133/11-15

³⁵ Day 297/061/19-23

FS 7.1198

*derelict buildings, walls, the rubble, et cetera that is between the Presbyterian Church and the derelict house.*³⁶

6F-35 Given that it is apparently common ground that Soldiers A and B were both deployed in the derelict building it is difficult to see how the Tribunal would have been assisted by this line of questioning.

ALLEGATION ARISING OUT OF THE MIS-TRANSCRIPTION OF SOLDIER A'S RMP STATEMENT

6F-36 The third alleged discrepancy alleged against Soldier A in Counsel's Report No.2 is:

*There is a discrepancy here between Cpl A's 1st RMP statement (where he said the target had a match in his right hand) and his SA and oral testimony (in both of which he said that he had the match in his left hand).*³⁷

6F-37 This allegation was patently wrong, and inexcusably so, in view of the fact that this misquoted statement, in which the actual allegation was that: "The object in his hand caught fire as if it were a match," is accurately set out on the very same page of the schedule as that in which it is so misleadingly misquoted.

6F-38 Soldier A had rightly taken up the point in his SA statement that his RMP statement had been mistakenly typed up. The manuscript RMP statement is set out below, the words in bold and underlined indicate the crucial words which were omitted from the typed version:³⁸

*I saw him bring his right arm from behind his back. In his hand was some object which was about the size of his fist. **I saw the man had something in his left hand and, as I watched,** I saw the man brush it against the wall where he was standing. The object in his hand caught fire as if it were a match.*³⁹

³⁶ Day 297/061/24-062/04

³⁷ Counsel's Report No.2, Corporal A, Page 3, Issue 3

³⁸ B20.014

³⁹ B3.003

FJ 7, 1199

6F-39 Christopher Clarke Q.C. fell into the same error when he opened this matter at length on Day 10 and repeated what was in Counsel's Report No.2.

So insofar as in his SA statement he said that he thought there had been a mistake made on the typed copy, the typed copy is in fact in the same terms as the manuscript copy.⁴⁰

6F-40 His mistake was pointed out by Lord Saville. Mr. Clarke conceded that the two statements "are in fact slightly different" but failed to put the whole matter right. The accounts of Soldiers A and B

6F-41 Since making their first statements in the early hours of Monday 31st January 1972 the key features of Soldier A and Soldier B's account have remained consistent in all material respects.

6F-42 Both soldiers give an account of rioting breaking out in and around the laundry waste ground after the main body of the march had passed. Members of Machine Gun Platoon inside the derelict building were amongst those targeted. During the course of the riot two objects were thrown which Soldiers A and B believed to be nail bombs. Shortly after this both soldiers independently identified a man on the North West corner of the laundry waste ground who they believed was in the process of throwing a nail bomb. Soldier A fired twice. Soldier B fired three times. The evidence suggests that they fired virtually simultaneously. At the time neither was aware that the other had fired.

6F-43 Soldier B now has no recollection of having fired his weapon or of the circumstances which led to him firing on Bloody Sunday. Ms McGahey explored the possibility that his memory may have been adversely affected by brain surgery in 1986.⁴¹ Soldier B confirmed that, following the surgery, he had suffered some short term memory loss which had subsequently improved. Whilst expressing the view that he had fully recovered, Soldier B agreed that it was possible that the

⁴⁰ Day 010/050

⁴¹ Day 311/001-002

FJ 7.1200

surgery he underwent, and its after effects, may have affected his recollection of what happened in 1972. He candidly stated, "It could have done; I am not saying it did, but it could have done."⁴² It is, of course, a matter for the Tribunal to judge in all the circumstances whether they feel entitled to conclude that Soldier B was attempting to deceive them on this matter (or on any other) but, if he was, it may be difficult to understand why he should have volunteered that statement in those terms.

6F-III SOLDIER A AND SOLDIER B'S SUBJECTIVE BELIEF

THE HONESTY OF THE SOLDIERS' ACCOUNTS

6F-44 Soldier A's and Soldier B's evidence was clear: they believed that they were under attack and they responded appropriately and lawfully by the only means available to them. It is enough that Soldier A and Soldier B's beliefs were honestly held. It is only if the Tribunal entertains doubts about the honesty of their beliefs that it need go further to consider if their beliefs were also reasonable.

6F-45 In order to reject Soldier A's and Soldier B's evidence the Tribunal would, necessarily, have to make the following findings:

- (1) Neither soldier believed themselves to be under threat when they opened fire on Bloody Sunday.
- (2) Both soldiers opened fire other than in self defence: they both had some other reason to discharge a potentially lethal firearm.
- (3) The soldiers conspired together to concoct a false account of their actions and the reason for them.
- (4) Both soldiers gave false evidence in 1972 and have continued to do so.

⁴² Day 311/002

6F-46 We submit that there is no proper basis on which the Tribunal could reach such conclusions and no basis for suggesting that Soldier A and Soldier B's accounts are other than honest. Having itself now heard the oral evidence of both soldiers, the Tribunal should accept them as witnesses of honesty and integrity.

THE REASONABLENESS OF SOLDIER A'S AND SOLDIER B'S BELIEF

6F-47 In the event that the Tribunal entertains a doubt as to the honesty of these two soldiers' accounts, they may be assisted by a consideration of, not only the honesty of the soldiers' accounts, but also their reasonableness.

6F-48 The soldiers' accounts are both reasonable on their own terms and when viewed against the known facts of their situation. In particular:

- (1) There is overwhelming evidence that a serious attack was being made upon the soldiers in the derelict building. At least some of the rioters on the waste ground were targeting these particular soldiers who were in a vulnerable position.
- (2) Nail bombs were commonly used against troops in riots in Northern Ireland at that time. Both soldiers would have known this.
- (3) The soldiers had heard what they believed to be nail bombs exploding close to them shortly before they opened fire.
- (4) Individuals would often behave like snipers *etc* in order to frighten troops defending against riots.
- (5) The noise and confusion created by a riot in which a number of objects were being thrown would have been considerable, that noise being aggravated by the echo of rubber bullets being fired from within the derelict building.

6F-49 Both soldiers had a split second in which to decide how to act. The reasonableness of their belief and their decision must be viewed from their perspective on the day and not with the benefit of hindsight and time for careful reflection.

FS 7.1202

6F-IV DID EITHER SOLDIER A OR SOLDIER B INTEND TO SHOOT DAMIEN DONAGHY OR JOHN JOHNSTON?

6F-50 Whether Soldiers A or B behaved wrongfully on Bloody Sunday must be determined according to their honest belief on the day. That they honestly believed themselves to be in imminent danger of attack should not in our submission be doubted.

6F-51 The Tribunal is, however, tasked not simply with determining the lawfulness of the soldiers' behaviour. It is required to find out the truth of what happened on Bloody Sunday. It must therefore address not only the question of whether Soldiers A and B were justified in opening fire, but also the question of whether in fact they shot a nail bomber or whether they were mistaken in their belief and were responsible for the shooting of either Damien Donaghy or John Johnston.

DAMIEN DONAGHY

6F-52 Soldier A and Soldier B's evidence is clear: they intended to shoot a man whom they believed to be about to throw a nail bomb. They both also believe that they hit the man they intended to shoot. The Tribunal may even have regard to the possibility or probability that, if dishonest, it might have been very much easier, and more apparently acceptable, for either of these soldiers to have accepted (or pretended) that they did not believe that they had hit the man at whom they aimed.

Soldier A's Evidence about his Target

6F-53 Soldier A gave the following evidence about the appearance of his target to the present Inquiry:

Q. May we then go over the page to B20.004, down to the end of paragraph 26. You say at paragraph 25 that:

"It was at this point when I saw a guy come out from around the corner of the building marked B on the map."

That is the building which we know as the Nook Bar. You describe how you think that you saw him come out and then dart back, and that is what attracted your attention to him. You then describe him as striking a fuse-type match against the wall with his left hand, by

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which you mean the sort of long match that you might have on a boat.

You describe how that spluttered into light with a bigger flame than a normal match; that in his right hand he was holding a dark object, which you assumed was a nail bomb; and he stepped slightly forward from the wall, brought both hands together, and you assumed that he was about to light the nail bomb and throw it in your direction.

Do you still have a picture in your mind's eye of the events that you describe in paragraph 26?

A. Yes, sir.

Q. How soon after you had heard the explosions did you see the man do this?

A. I cannot recall, sir.

Q. Do you recall how close to the corner he was?

A. He was at -- well, when he first appeared, sir, he was right against the corner of the building, and he came out of it into my view and then went back.

Q. And then, when you saw him striking a match against the wall, he presumably must have been within very close proximity to the wall?

A. He came away from the wall, sir, but the wall was within -- within reach.

Q. Did he appear to be with anyone at the time when you saw him?

A. No, sir.

Q. Do you recall how many people were in his vicinity at this stage?

A. No, sir. I only saw -- saw the one man.

Q. And you managed to see a match light from this distance, did you?

A. Yes, sir, because -- I described the match; it was not a normal match, it was -- I have tried to explain it as best I can. I mean, it

FS 7,1204

may not be the sort of match that you do get on a boat or anything, but it was not what I term as a domestic match; sometimes the match that used to get fireworks -- to light fireworks with. It splutters. Rather than just a normal flame, there is like a splutter and a large flame from it, which is clearly visible.⁴³

6F-54 In 1972 Soldier A gave the following description of the man he saw to the RMP at 01.00 on 31st January 1972:

I then saw a man in an alleyway directly opposite my position on the other side of William Street. The man was wearing a blue cardigan or windcheater and was about 5' 7" tall and had fair hair. He was of average build. I saw him bring his right arm from behind his back. In his hand was some object which was about the size of his fist. I saw the man had something in his left hand and, as I watched, I saw the man brush it against the wall where he was standing. The object in his hand caught fire as if it were a match. The man was then bringing his left hand towards his right hand. He was looking down at what he was doing.⁴⁴

6F-55 Soldier A was asked to comment on the following possibilities.

One logical possibility was that there was a nailbomber, as you describe, but in fact you missed him and hit Damien Donaghy instead. As I understand your evidence, you think that is highly unlikely?

A. Yes, sir.

Q. The second possibility is that there was indeed a nailbomber, as you describe, and that you hit him with your second shot. Is that what you believe happened?

A. Yes, sir.

Q. The third possibility is that the person who you hit was someone who you mistakenly thought was a nailbomber, but who in fact was not. Is that possible?

A. No, sir, because he struck a match and I am sure he was going to light a bomb.

⁴³ Day 297/030-032

⁴⁴ B3.003 This extract is from the original manuscript version of Soldier A's statement which does not contain the transcription error found in the typed version.

FS 7.1205

Q. The fourth possibility is that there never was anyone who either was or could be mistaken for a nailbomber, and you gave a false account of seeing a nailbomber in order to excuse the shooting that you had done. Is that possible?

A. No, sir.⁴⁵

...

Q.. I wonder whether there is one last possibility that I ought to ask you about, which is this: is it possible that you were panicked into firing at someone who had what might have been a stone and what might have been a nail bomb, but you could not tell?

A. No, sir, because I can see no reason why someone was striking a match and bringing it towards another object unless it was a nail bomb.⁴⁶

6F-56 Accordingly, Soldier A's evidence is that the man he aimed at was in the process of throwing or preparing to throw a nail bomb and that he hit the man with his second round. That is his evidence as to what he believed and believes.

Soldier B's Evidence about his Target.

6F-57 Soldier B no longer has any recollection of his target or of firing on Bloody Sunday.⁴⁷

6F-58 Soldier B gave the following account of his target to the RMP at 01.10 on 31st January 1972:

I observed a crowd the far side of William St where I saw one person to whom I paid particular attention. This man was of medium height and was wearing a dark coloured windcheater. He was standing in an alleyway off William St. He was looking towards our position as if trying to locate the nearest soldier. I then saw the man bring his hand, from behind his back. He had a dark object in his hand and this was of a size which appeared to fill his hand. He [sic] other hand he brushed downwards against a wall

⁴⁵ Day 297/037

⁴⁶ Day 297/038

⁴⁷ Day 311/038

VI 7.1206

and I saw then that he had a lighted flame in his left hand. He was looking down at his hands and started to bring them together.⁴⁸

6F-59 Soldier B's SA statement refers to the man as being

...at the front of a group of standing by the wall of a house right on the corner of William Street and the open ground opposite the open round on which the derelict house looked.⁴⁹

6F-60 Soldier B's evidence to Lord Widgery was that the man was with a group of about eight others;⁵⁰ he was dressed in a light coloured windcheater.⁵¹

6F-61 Soldier B as asked by Ms McGahey to comment on his 1972 evidence:

Soldier A was asked to deal with various possible interpretations of what happened. I want to ask you to do the same thing. The first possibility is that Damien Donaghy, the man who was shot, was in fact the nail bomber at whom you were aiming.

Do you now have confidence that the man you shot was a man holding a nail bomb?

A. Although I cannot remember it, I have confidence in my own judgment at that time.

Q. Do you have confidence in your judgment in that you think you rightly identified a nail bomber?

A. Yes, I would have.

Q. Are you certain in your mind that you hit the man at whom you were aiming?

A. I wish I could remember it, but I cannot say specifically that I did hit the man I was aiming at.

Q. The first possibility is that you did hit the man at whom you were aiming, and he was a nail bomber. The second possibility is that you aimed at a man who did have a nail bomb, but you missed and hit Damien Donaghy. Yes?

⁴⁸ B43.009

⁴⁹ B43.013

⁵⁰ B43.018 paragraph C

⁵¹ B43.018 paragraph B

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A. That could be a possibility.

Q. The third possibility is that there was no nail bomber at all, but you honestly thought that there was and you fired, hitting Damien Donaghy. Is that possible?

A. All these three situations you have given me are all possibilities, and I am afraid I cannot recall exactly what happened that day, otherwise I could answer correctly what happened. And unfortunately I cannot help you.

Q. I understand that you can only tell the Tribunal in most general terms what you could see when wearing a respirator and if your eyes were watering, because you cannot remember that very situation. But thinking back now, do you remember how certain you were that that man had a nail bomb?

A. Well, I cannot answer that because I cannot remember exactly that day; I wish I could, as I said before.

Q. Do you remember having any doubts afterwards that, because of your eyes watering, wearing the respirator, you might have been wrong and, say, have mistaken a man with a brick for a man with a nail bomb?

A. Remember, we were -- we had been in this situation before, in Belfast for 18 months, with things like this being thrown at us. I had never fired a weapon in anger before, and neither I do not think any of my friends in this particular instant had.

So it does not go to show that we will shoot to kill somebody unless we are certain. Now, I am not saying -- mistakes can happen, as I am quite sure you know. It happens even today with the police. These things do happen.

Because I cannot remember exactly what happened on that particular day, um, it is very difficult for me to answer your questions correctly.

Q. You say you cannot remember what happened on the day itself, but do you remember afterwards having any anxieties that there might not have been a nail bomb at all and that you had got it wrong?

A. No, I do not -- I do not remember that at all.

Q. The fourth possibility is that there was no nail bomber; you knew there was no nail bomber; you fired without justification; and you later gave a false story in order to explain what you had done.

A. Well, I explained that before. We had not done that in the previous situations in Belfast. It was exactly the same. Londonderry

or Derry -- whatever you want to call it -- is the same as Belfast. A street is a street; a derelict building is a derelict building; a rioting crowd is the same, no matter where you are in the United Kingdom. If you are called there to uphold the law, and you think your life is at threat, then obviously you will take appropriate action. At first, the minimum force, you use a baton gun -- round. But if that does not work, and then you are still under threat, you would obviously take out the target who is actually threatening you. And you will take him out. Because at the end of the day we are soldiers, not policemen -- or were, I should say.⁵²

6F-62 Although Soldier B is now unable to remember the events of Bloody Sunday, he is clear that he believes that his 1972 account, in which he describes shooting a nail bomber, was accurate.

Might Soldiers A and B be Mistaken in their Belief?

6F-63 It must, of course, be possible that Soldiers A and B were honestly mistaken in the belief that their target was attempting to light and throw a nail bomb. If, but only if, they were, it is possible that the man at whom they fired was Damien Donaghy.

6F-64 Even if Damien Donaghy was Soldiers A's and B's intended target, and their belief that he was in the process of preparing to throw a nail bomb is an honest one, they are innocent of any wrongdoing. Furthermore, given all the circumstances with which they were faced their belief was, it is submitted, a reasonable one.

6F-65 The preponderance of the evidence suggests that Damien Donaghy was at the North West corner of the laundry waste ground when he was shot. Further, Damien Donaghy was involved in the riot taking place in front of the derelict house. He was actively throwing stones at the soldiers. Importantly, a number of witnesses (including, for example, John Quigg and Monica McDaid) described Damien Donaghy darting in and out around the building at the corner of the waste ground. (See, generally, the section "*What was Damien Donaghy Doing when he*

⁵² Day 311/050/19-053/22

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was Shot?, above). Given the frequent use of nail bombs in riots in Londonderry and given that the soldiers had previously heard nail bombs exploding nearby, and had seen an individual darting backwards and forwards round the corner of a building, he might reasonably be thought to be engaged in something more sinister than the remainder of the rioters close to him, whom the soldiers would also have been attempting to keep under observation. The Soldiers' opportunity was limited and they both concluded that they were under lethal threat.

6F-66

It is almost impossible, 30 years on, to reconstruct precisely what Damien Donaghy was doing on the afternoon of 30 January 1972. A limited picture has emerged before this Inquiry, but the Tribunal can repose no confidence that the account which has even now come out is full and accurate. Furthermore, there is clear evidence before the Tribunal that rioters in Londonderry aped the behaviour of gunmen and nail bombers in order to scare the soldiers controlling the rioters. If Soldiers A and B aimed and shot at Damien Donaghy believing him to be a nail bomber, the probability is that it was his own actions which led them to that belief. His and others' denials to the contrary can be given very little weight indeed. This position was summarised by Edwin Glasgow Q.C. when he began his questioning of Damien Donaghy:

MR GLASGOW: Mr Donaghy, my name is Glasgow and I represent, among others, two of the soldiers who fired from Abbey Taxis.

I do not know how closely you have been following what has been going on, but it is right that I should make plain to you that I have not suggested, and I do not suggest to you that you threw a nail bomb on Bloody Sunday.

What I am putting to you is that you would not have been shot unless you or somebody very close to you did something which led to soldiers almost simultaneously, independently and honestly to believe that you, or whoever it was, was in the process of being about to throw a nail bomb.⁵³

⁵³ Day 070/029/22-030/10

§ 7. 1210

Summary

- 6F-67 Each of Soldiers A and B honestly believes that he shot at a man who was preparing to light and throw a nail bomb. If they are mistaken in that belief, and they in fact aimed at and shot Damien Donaghy, the probability is that his own actions led the two soldiers honestly and reasonably to believe that they were in imminent danger. In either event, Soldiers A and B's conduct cannot be criticised.
- 6F-68 There is no evidence that John Johnston had been or was engaged in any aggressive activity or that he had thrown or was about to throw any object.
- 6F-69 He was shot on the eastern side of the laundry waste ground in a position directly behind Soldiers A and B's target. He was not hit directly and his injuries are consistent with his having been hit by fragments of a bullet which had begun to disintegrate, having struck an intermediate object.
- 6F-70 It is probable that John Johnston was hit by fragments of a bullet or bullets fired by Soldiers A or B. He was not their intended target.
- 6F-71 That John Johnston was accidentally injured in this way is deeply regrettable. Soldiers A and B cannot, however, be criticised for their actions: faced with the position they honestly believed themselves to be in, they had no option but to shoot the nail bomber with the unfortunate consequence that John Johnston appears also to have been hit.

FS 7. 1211

CHAPTER 6G

CIVILIAN GUNMEN IN SECTOR 1

6G-1 OVERVIEW

6G-1 Before the Army had fired any shots on Bloody Sunday at least one shot was fired by OIRA 1 from a balcony in Columbcille Court towards soldiers on the north side of William Street. OIRA 1 fired before the shooting of Damien Donaghy and John Johnston and not, as he claims, in retaliation for the shots fired by Soldiers A and B. The balcony from which OIRA 1 fired had been pre-selected as a good sniping position as it provided an ideal location from which to fire at soldiers in William Street. OIRAs 1 and 2 had gone to Columbcille Court at a time when they knew soldiers were in the area, with the specific intention of firing at the army. They took with them a loaded rifle, or knew that a loaded firearm had been left in the Bogside that would be available for their use. OIRA 1 fired at a soldier whom he identified as being in range and in a vulnerable position. He intended to kill him.¹ The fact that he missed was purely fortuitous.

6G-2 It is possible, but not certain, that the shot fired by OIRA 1 from Columbcille Court was the shot which was observed by a large number of soldiers to hit a drainpipe on the east side of the Presbyterian Church above the heads of the Mortar Platoon wire cutting party. There is military evidence to suggest that this shot was fired shortly before Soldiers A and B fired five shots in total from the derelict building with nine windows. However, as well as OIRA 1, who may himself have fired more than once, other IRA gunmen were also active in the Bogside prior to the deployment of 1PARA. Non-military witnesses speak of gunmen firing rifles and short arms in the William Street area, and of a line of fire being called for in the area of Kells Walk, shortly before 1PARA deployed. The identity of these gunmen is known only to the gunmen themselves and,

¹ Day 393/057/25-058/02

presumably, to a number of their IRA colleagues and civilians who knew that they were intending to be present, or that they had been and/or who saw and recognised or were told who they were. There is evidence it was one, or more, of these gunmen who fired at soldiers near the church. There is also military evidence of shots fired at soldiers manning Barriers 12 and 13 at this early stage.

6G-3 The shot at the Presbyterian Church signalled to the substantial number of soldiers who heard, or became aware of it, the presence of at least one sniper in the very area into which they were about to deploy.

6G-4 The fact that any shot was fired by any IRA gunman prior to the deployment of 1PARA into the Bogside gives the lie to the claim that the IRA had removed their weapons to the Creggan and that there was to be no IRA activity that day. Indeed it is apparent that the standing order of 'defence and retaliation' placed no restrictions at all on the circumstances in which shots could be fired at a soldier, his mere presence being enough to justify him being shot. The presence of a loaded rifle used by OIRA 1 at a pre-arranged sniping position in the Bogside is proof of a preconceived plan to fire at soldiers when the situation presented itself.

CIVILIAN EVIDENCE TO THE BLOODY SUNDAY INQUIRY

6G-5 Many civilians must have been aware of the presence and activities of IRA gunmen in the Bogside prior to the deployment of 1PARA. Predictably very few have been prepared to give evidence to the Tribunal about what they saw and heard. The very widespread failure of civilian witnesses to admit to the presence and activity of IRA gunmen reflects an almost equally widespread determination, evidently shared by many people, deliberately to attempt to conceal from the Tribunal the truth about IRA activity on Bloody Sunday. The assertion, made by many, that there were no gunmen present at all has, however, been diluted over the years by a small number of civilians which has been prepared to admit to seeing gunmen operating in the Bogside. The evidence of civilians who have made admissions in relation to the presence and activities of gunman on Bloody Sunday is powerful and must be given particular weight (see Chapter 2).

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OIRA EVIDENCE TO THE BLOODY SUNDAY INQUIRY

6G-6 To an extent, the significance and persuasiveness of this civilian evidence has been recognised by the paramilitaries who, only after the conclusion of the civilian evidence, have fielded a small group of IRA witnesses to deal with carefully selected parts of the evidence (see Chapter 2).

6G-7 In relation to Sector 1, having been identified by several civilian witnesses as being present in the vicinity of Columbcille Court, OIRA 1 has sought to explain his presence by suggesting that he had gone into the Bogside in order to retrieve a defective weapon, a story which was thoroughly undermined during the course of detailed questioning by Counsel. OIRAs 1 and 2, in common with the large majority of IRA witnesses, demonstrated no desire to assist the Tribunal in its search for the truth about Bloody Sunday. Each was prepared to deal only with matters about which the Tribunal had already heard evidence from other sources. Neither was prepared to reveal anything new or give an honest account of his actions on the day.

6G-II DEFENCE AND RETALIATION ORDER

6G-8 The evidence of members of the Official IRA is that, on Bloody Sunday, the standing order of defence and retaliation was to apply.² The policy of defensive retaliation permitted, and encouraged, the killing of any member of the security forces whenever possible.

6G-9 OIRA 2 was asked by Ms McGahey:

Does "retaliation" mean that the Official IRA could use lethal weapons in revenge for the use of live fire by the British Army, even if the British Army were no longer posing a threat?

A. Um, yes.

² Day 395/174-175; Day 392/029.

Q. Does that mean that retaliation would have to be taken straightaway --

A. Not, not necessarily.

Q. In that case, if you were entitled to fire in retaliation for live fire by the British Army, does that mean you could fire days after live rounds had been fired by the British Army?

A. Well, if we go into this in a wee bit more detail. In terms of retaliation, let us assume that the Army had killed somebody on a particular day, then the IRA might decide, at the earliest opportunity to, if you like, pay them back one. Normally that is the kind of situation in which that kind of retaliation would come about.³

6G-10 OIRA 2, questioned by Edmund Lawson Q.C., confirmed that for a soldier to be targeted he need not have opened fire:

A. Let us put it like this, Mr Lawson: Derry was occupied by members of the British forces at the time, as you are well aware, therefore, in the broadest sense, attacks on members of the British Armed Forces could be clearly seen as part of a defence and retaliation strategy just because of the very fact that they happened to be present.

...

Q. So a soldier who was on a foot patrol could be quite legitimately, according to the policy, be shot by a sniper?

A. Yes.

Q. Even though he had not opened fire?

A. Possibly.

Q. Not possibly, even though he had not opened fire, but was simply walking along?

A. I have just outlined to you and I am not going to trawl the ground again what my interpretation of defence and retaliation is.

³ Day 392/033/01-19

...The very fact that members of the Armed Forces were present on our streets was seen as -- any action against them would have been seen as retaliatory.

Q. Any action against them would have been seen as?

A. Retaliatory.

Q. That is retaliation, not defence?

A. That would be retaliation in the broadest interpretation of the word, as I would understand it.

Q. Retaliation for the fact of his being a British soldier and a member of the occupying forces?

A. You have got it in one.

Q. Nothing to do with him shooting anybody?

A. As I said, you have got it in one.

Q. That was the policy, was it? You are telling us this as a member of the command staff of the Official IRA as at January 1972, that was the policy in existence then?

A. Yes.⁴

6G-11 The evidence of OIRA 1 was also that the order placed virtually no constraints on the circumstances in which a member of the Official IRA could fire at soldiers. He was asked by Ms McGahey:

Q. If a soldier, for example was in William Street, which is not part of Free Derry, did you feel you were entitled to shoot him simply because he was present as a member of the occupying force?

A. Yes...

Q. Your policy of retaliation entitled you, you believed, to open fire on a soldier simply walking down the street in Derry?

A. If there had been activity prior to that by the British Army which we believed required retaliation, yes.

Q. Could that be action taken days or even weeks earlier?

⁴ Day 393/010/24-013/15

*A. Yes.*⁵

6G-12 This section of OIRA 1's evidence was put to Reg Tester, who confirmed it to be accurate and agreed that it would have been the policy taught to young and new volunteers.⁶

6G-13 OIRA1 was also referred by Edmund Lawson Q.C. to the evidence of other members of the Official IRA:

Q. We have heard from OIRA 2 and there, in unequivocal terms from OIRA5, that defence and retaliation as a policy extended to permitting the shooting dead of a British soldier on the streets of Derry, whatever he was doing; was that your understanding of the application of the policy at the time of Bloody Sunday?

*A. Yes.*⁷

6G-14 OIRA7 was asked by Christopher Clarke Q.C.:

Q. When you say that most of what you did at this time, January 1972, by way of action was defensive, what should we understand the position to have been if, suppose, you had an opportunity to shoot a member of the Security Forces who came into the Bogside or the Creggan; was that something that was regarded as legitimate to do?

*A. It would have been legitimate.*⁸

6G-III OIRA1'S SHOT FROM A BALCONY IN COLUMBCILLE COURT

OIRA 1'S VARIOUS ACCOUNTS OF SHOOTING FROM COLUMBCILLE COURT

6G-15 OIRA 1 has identified himself as the gunman who fired from the balcony of Columbcille Court at a soldier near the Presbyterian Church.⁹ At the time of

⁵ Day 395/025/04-026/01

⁶ Day 414/137/10-139/08

⁷ Day 395/176/10-16

⁸ Day 398/07/18-25

⁹ AOIRA 1.6 paragraph 20

Bloody Sunday he was a member of the Command Staff¹⁰ and attached to the Bogside unit.¹¹ In 1972 OIRA 1 spoke to journalists about his involvement in the events of Bloody Sunday. In particular he spoke to John Barry of the Sunday Times¹² and Gerard Kemp of the Sunday Telegraph.¹³

Accounts to Journalists of events in Sector 1

6G-16 According to John Barry's notes, known as PIN437, OIRA 1 gave the following account of events in Sector 1:

PIN437

- (1) Weapons were stored in the boot of a car in Glenfada Park, possibly a green Avenger.
- (2) OIRA 1 took part in at least part of the march; his constant companion was OIRA 2.
- (3) OIRA 1 and OIRA 2 "*scouted round*" and had a good look at army positions. They saw two soldiers whom they regarded as snipers by Stevenson's bakery. John Barry assumed they were talking about the soldiers peering over the wall of the Presbyterian Church.
- (4) As the march came down OIRA 1 and OIRA 2 headed to the corner of William Street and Rossville Street. They heard that "*two boys*" had been shot by the army in William Street.
- (5) OIRA 1 and OIRA 2 had already organised a possible counter-sniping position in Columbcille Court at the back of the flats in the area fronted by white wooden planks, set aside for washing lines etc. They had arranged

¹⁰ Day 395/007/02-03

¹¹ Day 395/010/15-16

¹² OIRA 1.1

FS 7. 1218

with a woman in the flats that she would leave open the gate to this area of her flat.

- (6) OIRA 1 and OIRA 2 collected the .303 from the car in Glenfada Park and made their way to Columbcille Court.
- (7) OIRA 1 took aim at a soldier on the left side of the Presbyterian Church. In parenthesis Barry has made a note that; "*OIRA 1 was actually firing at east side of the church.*" The soldier put his head up twice and OIRA 1 did not fire; the third time OIRA 1 fired. OIRA 2 told him he had hit the soldier.
- (8) OIRA 1 was tackled on the stairwell of Columbcille Court by three members of the Provisional IRA: PIRA1, PIRA2 and PIRA3. PIRA2 took the lead. PIRA1 tried to grab the gun. OIRA 1 stuck it in his stomach and threatened to shoot him. OIRA 1 agreed that he would not fire again and he was allowed to leave in peace.
- (9) OIRA 1 returned the rifle to the boot of the car in Glenfada Park.

L210

6G-17

The account given to John Barry by OIRA 1 is to a large extent consistent with the account OIRA 1 gave to Gerard Kemp of the *Sunday Telegraph* in that it also records that:

- (1) OIRA 1 collected the .303 rifle from the boot of a car in Glenfada Park.
- (2) OIRA 1 took the rifle to an area behind some white planking, on the top floor of Columbcille Court.
- (3) From this position OIRA 1 could see two soldiers by the Presbyterian Church, one kept getting up, he fired a shot at this man.

(4) After firing OIRA 1 returned the rifle to the boot of his car in Glenfada Park.

6G-18 The evidence clearly shows that the information contained in PIN437 and L210 came from OIRA 1 (see Chapter 9). OIRA 1, however, now denies that John Barry¹⁴ or Gerard Kemp¹⁵ ever interviewed him and rejects entirely the evidence that:

- (1) the rifle came from a car in Glenfada Park¹⁶
- (2) he scouted around and took a good look at army positions¹⁷
- (3) the washing area in Columbcille Court was a pre-arranged sniping area¹⁸

6G-19 The Tribunal will no doubt have in mind the manner in which OIRA 1 has departed from what he undoubtedly told Mr Barry and Mr Kemp, when reaching a conclusion about his evidence as a whole, whilst at the same time bearing in mind the way in which information given to journalists was carefully manipulated in order to paint the Official IRA in the best possible light.

OIRA 1 and 2's role in the Official IRA's Propaganda Machine.

6G-20 The account OIRA 1 gave to journalists was, in parts, a more complete picture of what occurred than the absurd, and in our submission incredible, account he gave to this Inquiry of going to retrieve a defective weapon. However, there can be no doubt that his motive for speaking to journalists was purely and simply to justify the shot he fired, a shot, which, although not publicly spoken of, must have been widely known about by civilians in Londonderry. Indeed Paul Mahon gave evidence that someone had once told him "the dogs in the street knew that that

¹⁴ Day 395/106/13-15

¹⁵ Day 395/138/05-07

¹⁶ AOIRA 1.32 paragraph 57; Day 395/110/15-20

¹⁷ AOIRA 1.32 paragraph 53; Day 396/075/01-03

FS 7.1220

shot had been fired".¹⁹ The alleged retaliatory nature of this shot was, and remains, vital to the Official IRA propaganda and should accordingly be received by the Tribunal with particular caution.

6G-21 There is conclusive evidence that lies about IRA firing were considered to be justified and necessary. Both OIRA 1 and OIRA 2 took a full part in the propagation and proliferation of these lies, and continue to do so. In particular both lied in 1972, and have lied to this Inquiry, about the timing of the shot fired from Columbcille Court.

6G-22 OIRA 1 indeed admitted when questioned by Edmund Lawson Q.C. that he was willing to lie in order to conceal the truth about Official IRA activity on Bloody Sunday:

A. Well, in 1972 it was decided that, given the propaganda that was coming out from the British establishment and the claims that there were gunmen all over the place and given that people you represent had said that they were fired upon by hundreds of gunmen and hundreds of shots and given the fact that half the world's press were in here trying to find these gunmen, we just decided it would not be right to give them any excuse by admitting to any shot.

Q. In other words, it would be better to lie?

*A. Yes.*²⁰

6G-23 In relation to OIRA 1's shot Reg Tester remarks in his supplementary BSI statement:

It is also the case that the Official IRA has been economical with the truth in relation to the firing of this shot. The reason that we have been economical with the truth is that the Army Council

¹⁸ AOIRA 1.32 paragraph 56; Day 395/112/21-25

¹⁹ Day 412/163/17-19

²⁰ Day 395/157/06-16

FS 7.1221

decided at the time that there were to be no admissions that any shots had been fired. Indeed, that official line was never changed.²¹

6G-24 A comparison of OIRA 1's contemporary accounts reveals a propensity to invent details with a view to justifying his own actions. The account he gave Gerard Kemp differs from that he gave to John Barry in that:

- (1) OIRA 1 told Mr Kemp, but not Mr Barry, that he personally had seen the crowd dragging away two wounded (Damien Donaghy and John Johnston).
- (2) OIRA 1 told Mr Kemp, but not Mr Barry, that he saw the soldier at whom he fired jerk backwards.

6G-25 Reg Tester gave evidence of the concern amongst the Officials not to give the army any excuse or justification for the civilian loss of life.²² There was also a need to justify any IRA firing to the civilian population, some of whom had reservations about the use of violence. Stephen McGonagle made the following observation in his BSI statement:

There were many guns in Derry at the time and there was always a danger that one would be used in a demonstration. However, people had begun to realise the harm that guns could do, not only in physical terms, but on the impact that they could have on the Cause.²³

6G-26 Evidence of the 'Official line' is to be found in a note of an Official IRA press conference held on the night of Bloody Sunday:

The officer claimed that the IRA Official wing had at no time fired shots in the immediate vicinity of the area where the deaths occurred.

...

²¹ AT6.13 paragraph 45

²² Day 414/073/24-Day 414/074/03

²³ AM253.2 paragraph 5

FS 7.1222

He could not speak for the Provisionals but to the best of his knowledge there was no shooting at all against the Army in the William Street / Rossville Flats area.²⁴

6G-27 OIRA 2, the press officer at the time, agreed that the contents of the note broadly reflected what had been said at the time.²⁵ He personally gave a highly misleading account of events when he spoke at a rally in Kilburn on 05.02.72. A report compiled by the Metropolitan Police Special Branch records that:

[OIRA 2] claimed that he had been in Londonderry the previous Sunday when British troops fired at a peaceful meeting. He said that the IRA had not fired back until the firing had been going on for 20 minutes and then only in a gallant attempt to draw the troops' fire from the innocent.²⁶

6G-28 Giving evidence to the present Inquiry, OIRA 2 confirmed that he had spoken at the meeting and that the report did not accord with what he had witnessed on Bloody Sunday.²⁷ Edmund Lawson Q.C.'s questioning of OIRA 2 demonstrated that even now he has no greater desire to tell the truth about the events of Bloody Sunday:

Did you actually see bodies that day?

A. No, because, um, I was trying to get away because of the total confusion that actually happened on the day. When we left the immediate area that we were in, we were trying to move away in the opposite direction.

Q. Because that is something fairly memorable, is it not, seeing bodies lying on the ground?

A. It would be, yes.

Q. You have no recollection of that?

A. I have no recollection of seeing any actual bodies, no. I would've seen photographs the following day.

²⁴ ED12.4-5

²⁵ Day 393/104

²⁶ Int2.70 paragraph 15

²⁷ Day 392/123-124

FS 7. 1223

Q. Why, in that case, did you say this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground"?

A. As I say, it could have been a wee bit of poetic licence, you are addressing a meeting of Irish people in London, so one might have got carried away a wee bit, you know, with the occasion.

Q. I was not referring in fact to the meeting that you addressed in London, I was referring to the statement that you delivered to this Tribunal, we will see it on the screen. AOIRA 2.7, please, paragraph 22, would you expand that. This is the statement that you produced in, we are told about, January 2002, as you have confirmed this morning, with the assistance of your own solicitors and prior to preparing the so-called Eversheds statement. In it, as you can see, in the fourth line of the paragraph on the screen, you solemnly declared this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground." So far as the last phrase is concerned, that is simply not true?

A. I have gone on to say there, if you notice: "These are not coherent memories as the time was frantic."

Q. It is not true, whether it is coherent or not?

A. No, I am not saying that it is not true, what I am saying is that in the state of confusion that existed at the time and, even when I was submitting that statement through our solicitors, um, it may well be the case that that was -- that obviously was included.

Q. And it was not true?

A. Those are your words.

Q. Do you remember seeing bodies lying on the ground?

A. I cannot honestly remember whether I saw bodies lying on the ground.

Q. About two minutes ago when I asked you the question you gave a simple: no to that. Which is it, do you want to qualify the note [sic]?

A. No, I do not want to qualify it at all.²⁸

6G-29 It appears that even amongst members of the Official IRA there was an attempt to turn a blind eye to firing which had taken place. OIRA7 said he had never spoken to OIRA 1 or OIRA 2 about the struggle which they had all been involved in on the staircase of Columbcille Court:

A. I have not spoken to them at all about it.

Q. Never?

A. No.

Q. Not since 30th January 1972?

A. Not since 30th -- in fact, the first mention of that actual scuffle was on a video programme that was broadcast on I think the 20th anniversary.

Q. The 20th anniversary?

A. I think it was the 20th anniversary where Denis Bradley talks about the rifle was the first discussion that I had actually heard after the event.

Q. Because it was the sort of topic that dared not speak its name, almost, was it not; no-one talked about it?

A. It was an open/closed secret.²⁹

6G-30 Once the stage had been reached where the Official IRA could no longer realistically maintain the stance enunciated in their initial press release, a damage limitation exercise was embarked upon. Members of the Official IRA admitted to having fired shots which could no longer sensibly be denied; but sought to suggest they had been fired in circumstances which it was hoped would reflect well on the organisation. OIRA 1's shot, like that fired by OIRA 4, was sufficiently well known that it needed to be explained rather than simply denied. As a consequence OIRA 1 was forced to accept that he had fired a shot; but he sought to suggest that he had fired only in retaliation for the shooting, moments earlier, of two civilians on the waste ground and in order to defend against further firing.

²⁹ Day 398/156/21-Day 157/009

FS 7.1225

6G-31 OIRA7's evidence to the Inquiry illustrates the importance to members of the Official IRA of justifying the shot on this basis. He was asked by Christopher Clarke Q.C. about the following section of his BSI statement:

Q. Could we have paragraph 40 on the screen, please. You say that when you saw the volunteer with the rifle you realised that it was likely that he was the one who had fired the shot that you heard and you said that that did not concern you because two people had already been shot by the Army and there was, therefore, a good possibility that more people would be shot, and you say that if he had fired at the Army who had fired at Donaghy and Johnston, it was likely that the soldier would not fire any more:

"... so I rationalised it to myself that that shot saved lives rather than caused lives to be lost."

Is this a process that went through your mind at the time?

A. I believe that at the time I, you know, that is what I thought. Um, if that soldier -- if the shot had been fired at the soldier who had fired at Damien Donaghy and John Johnston, then at the very least it would have made him keep his head down, you know, and I mean in the time that, that this fracas or argument or pushing and shoving was taking place, there were not any further shots, so it appeared that this shot had done what it had set out to do.

Q. Should we understand from the fact that this process went through your mind at the time that mentally, at any rate, you thought there was a need to consider whether or not this shot was justified; is that why the thought went through your mind?

A. Um, yes, that is possible.³⁰

OIRA 1's Evidence to the Bloody Sunday Inquiry

6G-32 Whilst OIRA 1 continues to maintain that he fired in response the shooting of Damien Donaghy and John Johnston, other aspects of his evidence have radically altered in the intervening years. His account to this Inquiry is not only inherently incredible but is in stark conflict to the contemporary accounts which he undoubtedly gave to journalists.

³⁰ Day 398/041/10-Day 398/042/13

6G-33 OIRA 1 now claims to have gone to Columbcille Court with OIRA 2 on the afternoon of the march to retrieve a defective .303 rifle that had been left in a dump in breach of the order that no weapons should be left in the Bogside.³¹ He claims that they had made an attempt to collect the weapon the night before, but had decided that it was not possible to get to the dump safely.³² OIRA 1 then claims that, the following day, he and OIRA 2 left the Creggan at about the same time as the march.³³ They went to Columbcille Court and recovered the rifle from the dump at ground level, possibly an outside shed or a coalbunker.³⁴ Having retrieved the rifle they climbed the stairs to the top floor of Columbcille Court, allegedly with no particular object in mind. It was their intention to break the rifle into two parts to make it easier to transport.³⁵ After reaching the top floor balcony, and before he had taken the weapon apart, OIRA 1 claims that, by the most extraordinary coincidence, he heard three shots. People in the area below were shouting that two boys had been shot,³⁶ although he did not see either of the injured men on the ground, or as they were being carried, immediately in front of him, to the Shiels' house.³⁷ OIRA 2 identified to him a soldier, to the north of William Street, as being the soldier who had fired the shots. OIRA 1 saw that the soldier was aiming and was concerned that he might fire again – whereas in truth, of course, this soldier had not fired at all. OIRA 1 fired one shot at the soldier.³⁸

6G-34 Having fired, both men left the balcony, taking the rifle with them.³⁹ They were accosted by a group of men on the stairs. Some of the group were horrified that a shot had been fired; others were encouraging them to fire again.⁴⁰ After this incident OIRAs 1 and 2 made their way to a car which was parked in Glenfada

³¹ AOIRA 1.4 paragraph 10

³² AOIRA 1.4 paragraph 9

³³ Day 396/008/06-11

³⁴ Day 395/058-059

³⁵ AOIRA 1.26 paragraphs 15-16

³⁶ AOIRA 1.27 paragraph 18

³⁷ Day 395/196/21-Day 197/016

³⁸ AOIRA 1.27 paragraph 20

³⁹ Day 395/089/08-090/13

FS 7.1227

Park North. OIRA 1 contends that he placed the gun in the boot, locked it, and took the keys with him. He is adamant that there were no other weapons in the boot of the car.⁴¹ At about this point he and OIRA 1 split up.⁴² His movements thereafter are dealt with in Chapter 9.

6G-35 The detailed questioning of OIRAs 1 and 2 exposed the many inconsistencies and inherent improbability of their account of why they went to Columbcille Court, and the circumstances in which OIRA 1 fired, and demonstrate that no weight or credit can be given to their claim not to have fired the first shot.

Failure to collect the rifle before the march

6G-36 OIRA 1's evidence is that the order that all weapons were to be removed from the Bogside was received a day or two prior to Bloody Sunday and certainly before the Sunday morning itself.⁴³ There had been ample opportunity, had they not intended that it should stay where it was, for the rifle to be collected on the evening of 29th January, or on the morning of the march itself, when fewer soldiers would have been in the area and the risk of being caught would have been much less. OIRA 1's suggestion that it was '*logical*' to collect the rifle during the march itself is patently ridiculous.⁴⁴

1. The evening of 29th January 1972

6G-37 OIRAs 1 and 2 do in fact claim to have gone to the Bogside to recover the weapon the evening before Bloody Sunday. However both claim to have been forced to abandon this attempt because there had been shooting in the area and they could not get to the dump safely.⁴⁵ According to OIRA 1's first statement to the Inquiry

⁴⁰ AOIRA 1.28 paragraphs 23-24

⁴¹ Day 395/118/11-13

⁴² AOIRA 1.28 paragraph 26

⁴³ Day 395/035/15-22

⁴⁴ Day 395/034/23

⁴⁵ AOIRA 1.4 paragraph 9.

FS 7.1228

they “could not get to the weapon because of the presence of police and army in the area.”⁴⁶ OIRA 1 expanded on this in his second BSI statement:

*There were quite a lot of people about and I felt uneasy. I knew that a couple of people had been shot by the Army earlier that day and I thought that this shooting might have been carried out by undercover soldiers who might still be in the area. I did not think it was sensible, therefore, to go and collect the weapon from the static dump and decided to leave it. I just did not feel secure. It was instinct; I did not like the look of it. There was nothing more scientific than that. I did not see any soldiers at the time.*⁴⁷

6G-38 OIRA 2 went even further:

*As we approached the fringes of Columbcille Court we could hear screaming and bottles being broken and I think a shot or two being fired which we assumed came from the security forces. It was probably nine or ten at night, it was mid winter and awfully dark. There was obviously army all over the place and we thought there might be a snatch squad at work.*⁴⁸

6G-39 OIRAs 1's and OIRA 2's accounts of why the plan to retrieve the weapon was aborted were exposed as disingenuous and dishonest when tested by Edmund Lawson Q.C. He asked OIRA 2:

Q. So you feared there might be soldiers about, you did not know there were?

A. We did not know.

Q. So according to you you went down there the following day when the area was crawling with soldiers?

*A. We went down there the following day – let us get it right: where the weapon was was not crawling with soldiers the following day. Most of the soldiery were further on down William Street at the Army barricades...*⁴⁹

⁴⁶ AOIRA 1.14 paragraph 55

⁴⁷ AOIRA 1.26 paragraph 11

⁴⁸ AOIRA 2.14 paragraph 7

⁴⁹ Day 393/050/01-09

FF 7.1229

6G-40 This evidence is, however, completely at odds with OIRA 2's confirmation, only minutes earlier, that when they had returned the next day there had indeed been soldiers "all over the place," and his suggestion that the large number of soldiers in the area had been a reason why it had been necessary for two volunteers to make the trip to retrieve the rifle.⁵⁰

6G-41 Mr Lawson asked OIRA 1 about the contents of his BSI statement:

Q. The shooting to which you refer is a reference to the shooting earlier the same day of two young men called Robson and McLaughlin; is it not?

A. Yes.

...

Q. -- I can refer to if need be. There is a record of the shooting being in fact at two minutes to 4.00, one of those shot talks about it being between 3.00 and 4.00, the other says a bit earlier, about lunchtime when he came down. It appears to have been in the afternoon of that day and so you would have known about that?

A. Yes, I think I would have heard about it, yes.

Q. That did not deter you from going down to collect the rifle, did it, if that is what you did?

A. No.

Q. When you got down there, you could not see any soldiers, could you?

A. No.

Q. It was dark, of course?

A. Yes.

Q. But there were no soldiers obviously about?

A. Not that I saw.

Q. Was there tell of soldiers being in the immediate area?

⁵⁰ Day 393/041/22-042/03

FS 7.1230

A. Was there, sorry, what?

Q. Was anyone talking of soldiers being in the area?

A. Talking about the shooting and the fact that these kids had been shot and wondering where they were shot from, but not specifics about any particular soldiers being about, no.

Q. You go on to Glenfada Park North where you had parked the car; is that right?

A. Yes.

Q. You walked through the back of Glenfada Park into Columbcille Court in the Bogside; no soldiers there, obviously?

A. No.

Q. Yes?

A. Well, not that I saw, no.

Q. If there had been soldiers in the Bogside, you would have heard of that; would you not?

A. You know, 90 per cent of the time you would have, but I mean, it was well-known that soldiers sometimes infiltrated the Bogside and hid in areas and so on and stayed even sometimes for days. It could possibly have been undercover soldiers in the area, I do not know.

Q. You called it off, because you feared there might be soldiers about; did you not?

A. Yes.

Q. So on the Saturday night, you had abandoned the plan, if plan it was, to collect the rifle because there might be soldiers about and chose instead to go and collect it on Sunday, when you knew there would be soldiers about?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did you think that was a safe thing to do?

A. Yes.

Q. You did?

PS 7. 1231

A. Yes.

Q. Because of the disruption caused by the march?

A. Yes.

Q. The order had been to get all weapons out of the Bogside before the march; had it not?

A. Yes.

Q. Which you saw fit to disobey?

A. Yes.

Q. Why did you disobey it?

A. Because I thought it was unsafe.

Q. What was unsafe about picking up the weapon on Sunday morning?

A. Sorry?

Q. What was unsafe about picking up the weapon on Sunday morning?

A. Nothing.

Q. Why did you not obey the order?

A. Because I took it out on Sunday at the time that I thought was most appropriate.⁵¹

6G-42 OIRA 1 eventually conceded that it was not the presence of the security forces which led to him abandoning the mission:

Q. You then refer to there being shooting in the area, you said you could not get to the dump safely. There were no Army personnel about, were there?

A. Not that I saw.

Q. No police in the area that you saw?

⁵¹ Day 395/184/10-187/24

A. No.

Q. No? It is not right to say that you could not get to the weapon that night because of the presence of police and Army in the area, is it?

A. It would be right to say that I did not get to the weapon because I felt the area was unsafe.

Q. Would it be right to say you could not get there because of the presence of police and Army?

A. No, it would not be right to say that, because I have no idea whether there were police or Army there or not.

Q. Why, in that case, AOIRA 1.14 on the screen, please, paragraph 55, why in that case did you say, as we can see on the screen in paragraph 55, with reference to that night:

"We could not get to the weapon because of the presence of police and Army in the area."

...Why did you say, if it was not true, you could not get to the weapon on the Saturday night because of the presence of police and Army in the area when, as you have told us, there was no police or Army in the area to your knowledge?

A. I did not say there was no police or Army in the area, I said I had not seen any, but I said that we did consider the possibility there was undercover police in the area. We did not actually see them, but we considered their presence could be there.⁵²

2. The morning of the march

6G-43 The morning of Bloody Sunday presented a further ideal opportunity for collecting the rifle. In response to questions asked by Mr Lawson, OIRA 1 asks the Tribunal to believe that this possibility was not even considered:

Q. Did you consider removing the weapon on the Sunday morning?

A. Not really, no.

Q. Why not?

⁵² Day 396/002/06-004/08

A. Because I just decided that we would move it at the time we moved it.⁵³

6G-44 When he had been asked to consider the possibility by Mr Lawson on the first day of his evidence OIRA 1 gave a different, but no more convincing explanation for not collecting the weapon on the morning of the march:

If you are telling us the truth, you could readily have complied with the order to collect that weapon on Sunday morning; could you not?

A. I could have, yes.

Q. And you chose not to?

A. Yes.

Q. For no good reason?

A. Yes.

Q. You could not be bothered?

A. Well, no not for no good reason, because I considered the time to move it was the most appropriate time.

Q. With as much safety as there could be in such an operation, you could have done it on the Sunday morning, could you not?

A. No, I think it was better at the time we chose.⁵⁴

6G-45 OIRA 2 accepted the suggestion put to him by Ms McGahey that it would have been more sensible to have collected the rifle that morning:

...we had a meeting in Creggan on that morning to make sure that everybody was fully aware of what their responsibilities should be on the day. So I would imagine that because of the fact that a meeting was taking place that morning, the opportunity did not present itself for us to, um, to go and try and retrieve the weapon,

⁵³ Day 395/054/10-015

⁵⁴ Day 395/189/07-21

FS 7.1234

but as you say it probably would have been a more sensible time, but it just did not happen like that⁵⁵.

6G-46 Despite this concession, OIRA 2 nevertheless sought to defend the decision not to collect the rifle in the early afternoon. His garbled and inconsistent response, on the one hand seeking to suggest that they sought the cover of the marchers, while on the other hand claiming that the timing was a mere coincidence, demonstrates the degree to which OIRA 2 needed to avoid giving straight answers to this line of questioning:

Q. You said the meeting took place either in the morning or at about lunchtime. If this exercise had to be carried out at all in the afternoon, it would surely have been more sensible to carry it out early in the afternoon?

A. Again, because of the events of the previous night, I think we still had a feeling that there may well have been, you know, undercover Army activity in the area and because of the fact that the march would have been coming down William Street, um, we thought probably that, um, maybe that in some of the vacant buildings there could have been Army photographers and so on or possibly RUC Special Branch photographers photographing people on what they regarded as an illegal march. So we probably felt that at the time it might be safer to wait until there was a larger number -- larger numbers of people about to actually try and retrieve the weapon in question.

Q. You actually managed to choose a time, which is about 4 o'clock, at which the march was pouring down William Street; did you not?

A. I would say the time of retrieving the weapon and the fact that the march was coming down William Street was more coincidental than deliberate.

Q. If you were right in thinking there might be Army undercover people or photographers, surely they were likely to stay there if they were there in the early afternoon until late afternoon?

A. Aye, but the chances are they would have been distracted with the business they were doing, they would have been concentrating on the march, not on anything that was happening, say, along the

⁵⁵ Day 392/087/18-088/001

FS 7.1235

sidelines of the march or even a good distance away from the sidelines of the march. Because of the fact there would have been so many people about, they would have been distracted themselves by what was happening and we felt that would have given us the opportunity to do what we felt we had to do, which was to go and get the weapon and get it away and get it out of the road.

Q. As the march approached more closely down William Street, closer to Rossville Street, to the Bogside area, closer to where all the Army barriers were, the likelihood of the Army coming into the Bogside was getting greater and greater, was it not?

A. No, not really because -- I can see what you are getting at there, but they had erected barriers down at the junction -- just beyond the junction of Chamberlain Street and William Street, just a wee bit further down, around the corner there as you go towards Waterloo Place and because they had erected barriers down there, I think most people would have assumed that that was where they were going to be and that was as far as the march was going to get because the intention of the march was to go to the Guildhall Square, which is just out there, as you know. I think a lot of people felt -- certainly we felt that the Army would not have come in, say, through the, the first arrivals from the march because that would certainly have provoked a major riot. So the Army were quite simply behind barriers, down where they had set up the barriers further on down William Street. So it was more or less felt: the chances are they will not come in so we will have enough of time and enough opportunity to get this weapon away and out of the road.

Q. You have explained why you thought that about 4 o'clock was a time at which you could use the presence of lots of people as cover to get away. It may well be suggested to you that turning up at 4 o'clock was exactly the right time to snipe at soldiers?

A. But we, we had no knowledge or we had no foreknowledge that you know soldier would be occupying -- that a soldier or a number of soldiers would be occupying positions on buildings overlooking William Street.

Q. Could you not anticipate that, bearing in mind that the march was going to come down William Street?

A. No, not really because -- well, I do not honestly know.

Q. Were you not taking a huge risk in seeking to move this weapon, that you would be caught by soldiers who, at the time that you left Columbcille Court, were really only yards away from you?

A. Yes, but we would have been moving in the opposite direction from where they were and there would have been a large number of

people between us and them.

Q. You did not remove the rifle on the night before Bloody Sunday

A. That is right.

Q. -- because you thought that there might be soldiers in the area?

A. Yes, because --

Q. Even though you were operating under the cover of darkness?

A. Yes, but at the same time the undercover soldiers would have been operating under the cover of darkness as well.

Q. Why, then, did you try to remove this rifle when you knew there were soldiers in the area?

A. No, but we did not know that there would be soldiers in the immediate area. I mean, we assumed that the soldiers would be down at the Army, um, the Army barricade, shall we say, further on down William Street. We were not to know that there was going to be soldiers positioned around, say, buildings overlooking William Street; we had no idea.⁵⁶

6G-47 And yet despite saying that he and OIRA 1 did not know about where soldiers would be located, OIRA 2 claims that the local people would have known about Army positions:

Q. Do you remember anything about knowing about the British Army's sniping positions?

A. No, I am sure that, you know, local people would have seen some activity in the run-up to Bloody Sunday itself. The people in Derry are very observant, you know and people would probably have seen maybe the Army doing things on the fringe of the Bogside in the lead-up to Bloody Sunday that they maybe would not normally do, so they just assumed that they probably would probably engage in some kind of special counter measures to cope with the Bloody Sunday march, maybe camera positions or whatever, you know, photograph people.⁵⁷

⁵⁶ Day 392/088/02-092/03

⁵⁷ Day 392/045/19-046/05

The evidence of both OIRAs 1 and 2 is undermined by the evidence of Reg Tester that the weapons would only exceptionally be carried in day time and would not be moved unless strictly necessary.

Q. Weapons were not carried in the daytime, were they?

A. Not normally, no.

Q. Unless there was some special operation -- I do not think we need to go into the details, so no-one needs to jump up -- but they would not normally be carried?

A. No.

Q. In the normal course of events, there would be no need to tell people not to carry weapons around with them in the daytime?

A. No, there would not.

Q. Because they would not anyway; is that right?

A. (Witness nodding)

Q. So far as moving weapons around was concerned, that was inevitably a dangerous business; was it not?

A. If it was moving between, shall we say the Bogside and the Creggan, yes, because the Army had a line of communications right across the middle of the area.

Q. Quite right, and if you got caught with a weapon --

A. Yes.

Q. -- by the Army, I suppose you would say if you were lucky you might get arrested, if you were unlucky you might be shot dead?

A. That is correct.

Q. So you would not likely encourage, you would not personally move a weapon, unless you had to presumably; is that right?

A. That is correct.

Q. You certainly would not encourage your volunteers to do so?

A. No, weapons were too valuable to lose.

Q. Yes, quite. The weapon would be too valuable to lose, I am not saying it cynically, but so too would the volunteer?

FJ 7. 1238

A. Naturally.

Q. You would not want him shot?

A. No.

Q. Or arrested, would you?

A. No.

Q. You cannot envisage circumstances in which would encourage that unless it was absolutely necessary?

A. Unless it was absolutely necessary.⁵⁸

6G-49 Mr Tester confirmed that it would have been unusual for weapons to have been carried in the streets during the day time:

...you have said that weapons were not usually carried in the daytime?

A. That is correct.

Q. Were patrols in cars carried out in the daytime?

A. There would always be somebody driving around in a car.

Q. Would there be a weapon in the boot of the car?

A. There would possibly have been a weapon in the boot of the car, but we did not walk around or around the streets carrying guns or anything like that.⁵⁹

3. **Failure to collect the weapon before the march was in breach of Orders.**

6G-50 The failure to collect the weapon before the march not only exposed OIRAs 1 and 2 to greater, obvious and wholly avoidable danger but, according to their own evidence, was in flagrant breach of the express orders 'alleged to have been issued at the Command meeting on 29th January and repeated at a further meeting on the morning of 30th January. OIRA 1 agreed with the suggestion put to him by Ms

⁵⁸ **Day 414/111/23-113/13**

⁵⁹ **Day 414/164/04-13**

FJ 7.1239

VI 270

McGahey that the whole point of the order was to ensure that all weapons were in the Creggan before the time of the march.⁶⁰ He confirmed the same in answers to questions asked by Edmund Lawson Q.C.:

Q. The order was to get it out of there before the march; was it not?

A. Yes.

Q. And orders, once given, were expected to be complied with, were they not?

A. Yes.

Q. Is it right that you had an OC who imposed rigid discipline?

A. Yes.

Q. And would have taken any breach of his orders very seriously?

A. Yes.

Q. Is it right that there is no chance that anyone would disobey his orders?

A. Yes.

Q. Apart from you?

A. Apart from me.⁶¹

6G-51 Had the arrangement been as OIRA 1 describes, and had the plans been discussed at or immediately after the Command meeting, it is inconceivable that Reg Tester, the Command quartermaster, would have been unaware of the location of the rifle, or of the plan in place for its transportation to the Creggan. Mr Tester's own evidence is that the rifle was missing at the time:

A long time afterwards I found out that a volunteer member of the Official IRA (I am not prepared to name him) had the Sporting Rifle 303 that was missing at the time.⁶²

⁶⁰ Day 395/053/21-23

⁶¹ Day 395/187/09 - Day 395/188/16

⁶² AT6.3 paragraph 16

FS 7.1240

The presence of weapons in safe dumps in the Bogside

6G-52 Reg Tester's evidence to this Inquiry is that the rifle used by OIRA 1 had been issued to the Bogside unit, who were issued with their own collection of weapons separate from those of the Creggan unit:

"On Bloody Sunday, I knew that there were three weapons out. I did not, however, know where the rifle was, though I know to whom I had issued it."

To whom had you issued it?

A. It had gone to the Bogside unit.

Q. Right. When had it gone to the Bogside unit?

A. That I could not say.

Q. Can you say approximately how long before Bloody Sunday it had gone to that unit?

A. No, I cannot, I am afraid.

Q. For what purpose had it gone to them?

A. As part of their own collection of weapons down there.

Q. Do you know where it was kept?

A. No, I do not.

Q. Do you know when it was due to be returned?

A. It would have stayed with the unit until such times as they either no longer needed it or the situation changed altogether.

Q. According to the evidence that has been given to this Tribunal by OIRA 1 and OIRA 2, this weapon had been left in a dump in the Columbcille Court area, though there is a difference in their evidence as to what floor it had been left on, and OIRA 1 has told the Tribunal that he went down with OIRA 2 on the Saturday evening to retrieve the rifle. Were you aware of that happening?

A. Not at the time, no.

Q. When did you become aware of that?

A. I never did become aware of it.

Q. The evidence from him was that he went down on the Saturday evening but in the event did not collect it on that evening, so he

went down again on the Sunday with a view to collecting that weapon. Presumably you were not aware of that either?

*A. No, I was not.*⁶³

6G-53 This evidence is consistent with what Mr Tester told the Sunday Times when he was interviewed in March 1972:

*There were to be no weapons in the Bogside except for those held by the Bogside Official Unit, and these were to be kept in several safe dumps. All other Official weapons were to be kept in two cars which would be on hand in the Creggan*⁶⁴

6G-54 Mr Tester stated that he did not have direct control over the weaponry issued to the Bogside unit.⁶⁵

*Not being in the Bogside I really had no accurate picture of what went on there. I knew nothing of any of our volunteers with weapons, other than I assumed that the OC had his pistol with him.*⁶⁶

Inconsistencies as to why, and whether, it was necessary to remove weapons from the Bogside.

6G-55 OIRA 1's and OIRA 2's evidence about the reasons why it was necessary to remove the defective weapon from the Bogside is inconsistent and disingenuous. OIRA 2 said in evidence that there was a concern that the rifle was not in a secure position:

*I would not have regarded it as being in a secure position and that was one of the reasons why OIRA 1 and myself went to retrieve it.*⁶⁷

6G-56 This contradicts OIRA 2's comment in his BSI statement regarding the failure to collect the rifle on the evening of 29th January that, "We weren't too bothered we hadn't got the weapon as it was secure."⁶⁸

⁶³ Day 414/039/24-Day 414/041/07

⁶⁴ S34

⁶⁵ Day 414/044/16-18

⁶⁶ Day 414/046/20-23

FS 7.1242

6G-57 Mr Lawson asked OIRA 2 whether a further reason for removing the weapon would have been to prevent it being used. OIRA 2 agreed that that was "probably true."⁶⁹ The inconsistencies in his evidence led Lord Saville to ask OIRA 2 to clarify the reason for removing weapons to the Creggan:

LORD SAVILLE: Mr Lawson, excuse me a moment; OIRA 2 it is the Chairman. Can you help because I do not quite understand, it may be my fault: what was the reason for getting all the weapons back up to the Creggan?

A. Just to make sure that they were secure.

LORD SAVILLE: It seems to follow from that that you must have thought there was at least a possibility that the Army would come into the Bogside; is that right?

A. Well, I suppose the possibility was that they may well -- that they may have come in and decided to search -- engage in a very, very thorough search. So, as a precaution, the idea was just to remove -- to remove the weaponry to a safer location, presumably in Creggan.

MR LAWSON: Was there a fear that they might do a very, very thorough search?

A. I would imagine there probably was, aye.

Q. In that case why leave the rifle in the car in Glenfada Park North if, as you claim you did, that is what happened?

A. Oh, you mean in relation to after the incident?

Q. Yes.

A. The whole idea of leaving the rifle in the car was to get away from the scene as quickly as possible.

Q. I appreciate that, running the risk, what, that the rifle would be found and seized by the Army?

A. Aye, but the other possibility was, because of -- because of the direction that we moved in or were moving in, we could have been

⁶⁷ Day 392/135/05-07

⁶⁸ OIRA 2.14 paragraph 7

⁶⁹ Day 393/37/25-38/04

spotted from Derry Walls by a soldier and if anybody had have been spotted carrying a weapon, I think you know the outcome.

Q. You would not have been carrying it openly because it would have been taken in half?

A. Well, it may or may not have been taken in half. It might not have been possible to actually dismantle the weapon

Q. Was there any concern that guns had to be removed from the Bogside in case people would use them if they were there?

A. No, that was not, that was not the reason that the guns were removed from the Bogside and brought to the Creggan.

Q. If this be true, why not simply leave them there, they were secure, were they not?

A. Mr Lawson, I do not know, it probably seemed like a good idea at the time.⁷⁰

6G-58 OIRA 2's account is not supported by that of his immediate colleague, OIRA 1, who states that there was no concern that the Army might come into the Bogside and find it:

...it would have been one of the less likely times that the Brits would have come into the Bogside.⁷¹

6G-59 OIRA 1's BSI statement gives the following explanation for the removal of weapons to the Creggan:

At the time we looked at the situation and knew that everyone would be on the march and that the Creggan would therefore be empty. It seemed to make sense to leave our volunteers and their weapons up there, and we would do our best if the army tried to infiltrate the area.⁷²

6G-60 During the course of giving evidence, OIRA 1 agreed that there was in fact no real concern about the possibility of the Army invading the Creggan:

⁷⁰ Day 393/038/14-040/09

⁷¹ Day 395/032/03-04

⁷² AOIRA1.34 paragraph 67

LORD SAVILLE: Was there a view, then, that there might have been an incursion by the Army into the Creggan because it was empty?

A. Well, it was a possibility. I do not think there was any intelligence or any serious discussion about where they would come in, how they would come in, when they would come it [sic]. It was just somebody suggested: "Look, there is crowds down the Bog, the Creggan is going to be empty, move a couple of cars, there are weapons in them, they should all be up in the Creggan, because that is where we may be vulnerable."⁷³

6G-61 Having agreed that the Officials in the Creggan could not have repelled an incursion by the British army⁷⁴ OIRA 1 struggled, and failed, to give a convincing explanation of why it was therefore necessary for weapons to be taken from the Bogside:

LORD SAVILLE: I follow that in one sense, but you have a small number of men, if there was an incursion by any sizeable number of troops -- not the size of Motorman, of course, but a sizeable number -- then the Officials, with pretty obvious common sense reasoning, could not and indeed would not go head-to-head with them because they would surely lose and, in that event, would lose all the arms that had been taken up to the Creggan, this is what is slightly puzzling me?

A. I think maybe you have to get it into the context, I mean, firstly, no-one was absolutely sure -- we had no information there was going to be any large-scale assault on the Creggan. What was simply an issue was that the vast majority of people would be in the Bogside and, with that numbers of people in the Bogside, it was relatively secure.

In the Creggan, which -- there were obviously less numbers of people, it was relatively empty at the time because of the numbers that had come into the Bogside, it was felt that at least by placing a number of armed men there, should an army invasion or an attempt to come in occur, they would be in a position to (at the very least) to fire shots and try to keep their heads down and maybe delay their entrance, and maybe even put them off at the end of the day coming in, maybe even give time for people to organise and come

⁷³ Day 395/033/02-12

⁷⁴ Day 395/178/17-179/04

out of their homes and so on. That is all it was; it was a delaying tactic; it was simply a tactic.

Had we had hundreds of armed men with hundreds of weapons, then we would have deployed them with a different -- with different expectations.

LORD SAVILLE: I think I understand that. Of course, it could be said -- this is looking at things after the event -- in view of what you told us a few moments ago, about the people themselves being the best defence, the safest place for your weapons would be the Bogside?

A. Yes, but the whole point of having weapons was not simply to keep them safe; the point of having weapons was to deploy them as and where we thought they might be of the best use.

MR LAWSON: That was not the concern in relation to the defective rifle, was it?

A. What?

Q. To use it?

A. To use it, no.

Q. The defective rifle, as you claim it to have been, was as you described it, in a secure dump?

A. Yes.⁷⁵

6G-62 The illogical position adopted by OIRA 1 was also exposed by questions put by Ms McGahey:

Ms McGAHEY: Your evidence is that the rifle in Columbcille Court was broken --

A. Yes.

Q. -- and needed repair?

A. Yes.

Q. So if that be right, it was not going to be much use in the defence of the Creggan, was it?

⁷⁵ Day 395/179/05-181/02

A. No.

Q. What was the point in going to get it?

A. Because it was the orders, that all weapons were to be removed to the Creggan, and at some point the red[sic] weapon would have had to have been taken to the Creggan anyway if it was ever going to be attempted to be repaired that was just the logical time to do it.⁷⁶

6G-63 There was nothing logical at all about the time chosen to remove the weapon; being in day light, and coinciding with the period when many more soldiers were in the area. Moreover, Reg Tester's evidence is that weapons in secure dumps in the Bogside would not have been moved:

Q. So in order to comply with this order, somebody would have to go to whatever dumps either on the Creggan or in the Bogside weapons were in; is that right?

A. Anything that was in a safe dump in the Creggan would have been left where it was.

Q. What about anything that was in a safe dump in the Bogside?

A. They probably would have been left there too. It was basically to make sure that nobody, no volunteer, or officer for that matter, was -- had a weapon in his own possession at the time of Bloody Sunday, so that I would know where they all were.

...

as you have just said, those weapons that were in safe dumps in the Creggan and the Bogside were left there?

A. That is correct.⁷⁷

6G-64 This is consistent with what he told the Sunday Times in 1972:

*There were to be no weapons in the Bogside except for those held by the Bogside Official Unit and those were to be kept in several safe dumps.*⁷⁸

⁷⁶ Day 395/034/10-23

⁷⁷ Day 414/029/24-Day 414/031/12

A weapon would not have been stored in an insecure dump

6G-65 The evidence is that weapons and ammunition were in short supply and thus extremely valuable to the Officials whether broken or not.⁷⁹ Against this background OIRA 2 asks the Tribunal to believe that the position of the dump was such that the rifle could have been found by accident⁸⁰ and that there was a considerable risk of an accident to a child or an innocent person who may have come across it.⁸¹

6G-66 OIRA 2 was asked by Edmund Lawson Q.C.:

Q. Did you regard it as being in a secure position?

A. I would not have regarded it as being in a secure position and that was one of the reasons why OIRA 1 and meself went to retrieve it.

Q. Let us just think about that: you did not regard it as it being in a secure position and you and OIRA 1 were agreed about that, were you?

A. We would have been, aye.

Q. Yes?

A. Yes

...

Q. ... as far as you were concerned and OIRA 1 apparently agreed with you, plainly it was not in a secure position; was it?

A. That is right.⁸²

6G-67 Despite OIRA 2's confidence, his colleague does not support his view. OIRA 1's first statement to the Inquiry describes the weapon as in a secure dump. He confirmed this on oath, although suggested that it was only "relatively secure"

⁷⁸ **S34**

⁷⁹ **OIRA 7, 399/027/17-20**

⁸⁰ **Day 392/061/06-10**

⁸¹ **Day 392/072/14-18**

FS 7.1248

when the differences between his own account and OIRA 2's were drawn to his attention by Ms McGahey.⁸³

6G-68 OIRA 2 was himself aware of the shortage of weapons and suggested it was a reason for going to collect the rifle. It is hard to reconcile this evidence with the suggestion that the rifle was left in a location where anyone might have stumbled across it:

...at the time OIRA were so poorly armed we couldn't afford to lose any weapons broken or not. If it fired we needed to keep it. If we ever did lose one we had no guarantee we'd ever get it replaced because we had no proper supply lines at the times, so we couldn't afford to leave it where the Brits or the Provos might find it. As far as I remember this is why it was decided we should try to retrieve the weapon.⁸⁴

6G-69 In fact, as Reg Tester's evidence confirms, the shortage of weapons meant that no rifle would have been left for days in an unlocked shed:

Q. As you have indicated, moving away slightly from the point I started with, as you have indicated, the weapons were themselves extremely valuable; you were fighting a war as you perceived it and to fight a war you needed guns?

A. Yes.

Q. Obviously you had to take great lengths to ensure, as you sought to, not only they were properly accounted for, but that they were looked after; they were not lost, correct?

A. Correct.

Q. They were not mislaid?

A. No.

Q. If they were left inadvertently somewhere, they were to be recovered --

⁸² Day 392/135/04-20

⁸³ AOIRA1.4 paragraph 9; Day 395/048/16

⁸⁴ AOIRA 2.14 paragraph 6

A. Yes.

Q. -- as soon as possible and placed into a secure position?

A. That is correct.⁸⁵

6G-70 Mr Tester's evidence is also that members of the Provisional IRA were liable to steal weapons from the Officials if they had the opportunity:

...If they found out that the Official IRA had any weapons or ammunition stored away, they would have been the first to steal it.⁸⁶

6G-71 Sheds would not have been regarded as safe locations for the storage of weapons, "because sheds were too open to theft."⁸⁷ It is inconceivable that, in the circumstances, the weapon would have been left in the manner OIRA 2 describes for four or five days⁸⁸ prior to Bloody Sunday.

The weapon was removed from the boot of a car in Glenfada Park North

6G-72 OIRA 1's own account in 1972 was that the weapon was not left in Columbcille Court but collected by himself and OIRA 2 from the boot of a car in Glenfada Park. John Barry's note of an interview with OIRA 1 records that:

He had the available arms stored in the boot of a car in Glenfada. (I think he said it was a green Avenger, but my notes don't record that)...He and OIRA 2 went into the area, having got a .303 from the boot of the car...⁸⁹

6G-73 Gerard Kemp's article quotes OIRA 1 as having told him:

I went back to my car and got my rifle out of the boot. It is a .303. I walked back to the court and went up the stairs on the way to the upper storey of the maisonettes. I was behind some vertical white planking.⁹⁰

⁸⁵ Day 414/113/14-114/07

⁸⁶ AT6.1 paragraph 6

⁸⁷ Day 414/029/17-18

⁸⁸ Day 392/057/13-15

⁸⁹ AOIRA 1.1

⁹⁰ L210

FS 7.1250

6G-74 There is independent evidence which supports the conclusion that the rifle came from a car in Glenfada Park. Anthony Martin told Peter Pringle of the Sunday Times that, after assisting with the wounded:

I met an ira man and he told there (sic) were two rifles in a car – a green avenger – parked in Glenfada Park and he wanted me to help him get to it. I learnt later that the rifles had been removed before the shooting started.⁹¹

6G-75 Vincent Browne's article in the Sunday Press dated 6th February 1972 refers to the fact that careful preparations had been made to ensure that weapons would be available to Officials in the Bogside:

The Officials had an Active Service Unit of four men on duty. They were all either to be armed during the parade or to have immediate access to arms should they become necessary. In addition, a number of other volunteers in the parade were armed for their personal protection.⁹²

A broken weapon would not have been left with ammunition.

6G-76 Ammunition was also a precious resource to the Officials and would not have been left with a weapon unless it was intended for use. OIRA 1's access to a functioning and loaded⁹³ firearm was thus no accident but can only be regarded as evidence of a pre-planned operation. Whether or not it was taken by OIRA 1 to Columbcille Court that day, or left deliberately in a position close to a pre-arranged sniping position, it was intended that the weapon should be employed against the security forces on Bloody Sunday.

⁹¹ AM24.5

⁹² L171

⁹³ Day 395/062/19-23

ES 7.1251

6G-77 The evidence of Reg Tester, Command quartermaster, was that ammunition was very tightly controlled. It was in very short supply and every round mattered.⁹⁴

*Each volunteer had to account for each round of ammunition issued to him and God help him if he could not account for it.*⁹⁵

6G-78 OIRA 2 agreed:

*I think ammunition would have been fairly tightly controlled, because ammunition at the time was in pretty short supply.*⁹⁶

6G-79 According to OIRA7 the Officials were so short of ammunition at the time that apparently armed patrols were patrolling with broken weapons and without ammunition.⁹⁷

6G-80 OIRA 2 agreed with the suggestion put to him by Ms McGahey that the likelihood was that a weapon left with ammunition in order that it could be fired quickly:

Q. Was it the practice of the Official IRA to keep its weapons in dumps loaded?

A. It could well have happened on occasions, aye, it could well have happened.

Q. Did it happen when the intention of the person who left the weapon was that the weapon should be used quickly from the place in which it was stored?

*A. That may well have been the case, yes.*⁹⁸

No evidence that the weapon was defective.

6G-81 There is no independent corroboration for OIRA 1's claim that the rifle was defective. Indeed, on OIRA 1's own account, he was able to fire the rifle without

⁹⁴ Day 414/115/19-23

⁹⁵ AT6.1 paragraph 4

⁹⁶ Day 392/048/05-07

⁹⁷ Day 398/128/13-130/04

⁹⁸ Day 392/071/02-09

any difficulty. The shot fired was even accurate enough to make OIRA 2 believe it had found its target.⁹⁹

6G-82 If the assertion that the rifle was in need of repair were true, there would be no logical reason for it being left in a dump in Columbcille Court, or for it to be loaded. It is similarly incredible, given the value of weapons to the IRA, that despite being a member of the Command Staff, OIRA 1 claims not to know whether the weapon was in fact repaired, or whether there was anyone in Londonderry who was capable of carrying out such a repair.¹⁰⁰ According to OIRA 1 a defective weapon would have been returned to the quartermaster, Reg Tester.¹⁰¹ This was also the evidence of OIRA7.¹⁰² Mr Tester did indeed confirm that the rifle was returned to within a few days of Bloody Sunday.¹⁰³ He was not aware that the rifle was defective, and it showed no signs of being defective:

Q. Was it a working weapon as far as you knew?

A. Yes, it was.

Q. Did you know as opposed to anything you heard by way of rumour at any time, did you know whether or not it was damaged?

A. I had, I never saw the weapon in actual fact.

Q. If the sight to that weapon had been damaged or missing --

A. Yes.

Q. -- then you would have made another one?

A. We would have tried to get another one made, yes.

Q. You simply would have done it; would you not?

A. Well, I could not do it, I did not have the tools or the skill, but it would have been dealt with.

⁹⁹ AOIRA 1.27 paragraph 20

¹⁰⁰ Day 395/158/21-160/22

¹⁰¹ Day 395/046/16-23

¹⁰² Day 398/131/07-22

¹⁰³ Day 414/158 /19-21

FS 7.1253

VI 284

Q. Let us have on the screen AT6.14, paragraph 57. This is your recent statement in which you said:

"I am asked by Eversheds whether I know anything of the condition of the weapon that was involved in the shot being fired from the area of Columbcille Court. I am aware that the official line is that the weapon was damaged."

That is the official line in the double sense of that word that Mr Clarke was using earlier on: "Official line that the weapon was damaged. It is the case, however, that the weapon would work."

Did you know that?

A. I knew there was a working weapon, but all I was told was that there had been some damage to it.

Q. But you, as you said in your statement made the end of last year, you do not remember if the sight was missing; was that correct?

A. That is correct.

Q. "If the sight had been missing, we would have made one", is what you said in this statement?

A. That is correct.

Q. Do you wish to amend that?

A. That is correct.

Q. You say:

"I do not remember whether the sight was actually missing on Bloody Sunday, I do not recall the detail to this extent."

A. No.

Q. As you have already told us, this is not contentious, the weapons were in short supply, were highly valuable –

A. Yes.

Q. -- to you at the time. If there was a fault with a weapon that was capable of being fixed, then fixed it would be as soon as possible?

A. Yes.

Q. Is that right?

A. That is correct.

FS 7. 1254

VI 285

Q. And you have absolutely no recollection -- this is fair, is it not -- absolutely no recollection of the sporting rifle coming back to you for fixing by reason of a defective sight?

A. No, I have not.

Q. The sporting rifle was one which you saw again after Bloody Sunday; was it not?

A. I did see it again later, yes.

Q. When it was returned to you, again you have no recollection of it being defective?

A. No.

Q. Or requiring repair?

A. No.¹⁰⁴

6G-83 Nor do other members of the organisation support the evidence of OIRAs 1 and 2. OIRA7, who claims to have assisted OIRAs 1 and 2 with transporting the weapon to the car, was surprised to find that it had been left in the Bogside. No one said at the time, or in the immediate aftermath, anything to him about the weapon being defective.¹⁰⁵

The Choice of OIRA 1 to collect the weapon / OIRA1's reputation as a good shot

6G-84 OIRA 1's evidence is that he and OIRA 2 volunteered to collect the weapon at, or immediately after, a command meeting held the day before Bloody Sunday at which the presence of an outstanding weapon in the Bogside had been discussed.¹⁰⁶ In truth it would have made no sense at all for either OIRA 1 or OIRA 2 to volunteer to collect the weapon if, as they claim, they had not left it in the dump themselves and did not know the precise location of the dump.¹⁰⁷ The real explanation for the choice is undoubtedly OIRA 1's reputation for being a

¹⁰⁴ Day 414/127/19-130/08

¹⁰⁵ Day 399/029/19-031/19

¹⁰⁶ Day 395/043/08-044/11

good shot, a reputation which OIRA 1 was not prepared to confirm or deny when he gave evidence to the present Inquiry,¹⁰⁸ but which is evidenced from what he himself told Gerard Kemp in April 1972:

Last week, in the Bogside part of the barricaded "no go" area which Roman Catholics call "Free Derry", I found and interviewed the sniper referred to in the Widgery report. He is in the official I.R.A. and he talked on condition his name and rank were not given.

He admitted firing the "single high-velocity round" but said he did so after he had heard two shots and seen the crowd dragging away two wounded...

The sniper, in his early 20s said he had shot and killed three British soldiers since last August, the Army confirming the deaths.¹⁰⁹

6G-85 OIRA 2 was prepared, reluctantly, to agree that OIRA 1 was probably a sniper, but refused to be drawn on whether OIRA 1 had been involved in the shooting of Gunner Ham, shot by an IRA sniper whilst on foot patrol a month before Bloody Sunday.¹¹⁰

Q. Was OIRA 1 a sniper?

A. Um, I am not prepared to answer that question...

Q. What I am asking you is: was he a sniper, it is a very simple question. If you are here to help the Inquiry?

A. I am here to help the Inquiry.

Q. A simple yes or no would be helpful.

A. The answer is probably: yes.

Q. Was he in fact the sniper who killed gunner Ham?

¹⁰⁷ Day 395/043/19-044/24

¹⁰⁸ Day 395/087/16-24

¹⁰⁹ L210

¹¹⁰ G47A.298.3

A. I do not know who killed the soldier that you are referring to.¹¹¹

The fact that two volunteers went into Columbcille Court

6G-86 The acknowledged dangers of moving a weapon were such that it would have been ludicrous for two members of the OIRA Command Staff to have risked arrest, and even their lives, collecting a defective weapon, particularly given that the OC Official IRA had been arrested only a couple of days before.¹¹² OIRA 2 claimed that they gave this no thought:

Q. You took great care on the Saturday night not to take any risks either with the loss of the weapon or risk of capture of yourselves; did you not?

A. That is correct, aye.

Q. This was a damaged weapon, obviously one that you did want to keep if you could; you were risking, if you left it there, the loss of that weapon, were you not?

A. That is right.

Q. If the soldiers came into the Bogside?

A. Yes.

Q. If you had got your guess wrong about what the soldiers' plans were, were you not risking vastly more than the loss of that weapon; you were risking the loss of your lives?

A. It did not occur at the time, you know, I just -- we just did not think about it at the time. As I keep saying, the whole idea was to get the weapon out of the area and away from the area as fast as possible and get it back to where we had agreed and had been instructed that it should be taken to, which was back to Creggan.

Q. That was more important than taking the risk that two members of the Official command staff falling into the hands of the British Army?

A. Well, we just did not think about it that way at the time.

¹¹¹ Day 393/014/25-015/16

¹¹² Day 395/008/20-24

Q. But you did think about that the night before?

A. What we thought about the night before was the fact that, um, because there were not that many people about at the time that we went to try and retrieve the weapon, and because it was very dark and because of the shootings earlier on that night in which two civilians had been wounded by the Army, we thought that it was far too dangerous at that time, on the Saturday night, to try and remove the weapon. ¹¹³

6G-87 OIRA 2 gave an entirely different explanation for why he accompanied OIRA 1 when asked questioned by Mr Lawson:

Q. I think you said in answer to Ms McGahey, if you had been found in possession of that gun you probably would not have been here today?

A. The chances are.

Q. What, they would have shot you?

A. In all probability, yes.

Q. It would not have done you much good to say -- excuse me, the gun is not working properly?

A. You are probably right, yes.

Q. It was a dangerous operation, was it, to remove the gun?

A. The whole idea behind the operation was to get the gun out of the area that it was in and get it back to Creggan.

Q. I appreciate what you are saying, but that is not my question: it was a dangerous operation?

A. It was a dangerous operation, yes, yes.

Q. And if you had been caught you were quite likely to have been killed?

A. Yes.

Q. If you had been lucky enough to avoid being killed, you would have been arrested and spent a long time locked up?

¹¹³ Day 392/092/16-093/24

A. That is correct.

Q. Both of you?

A. Yes.

Q. Why two of you?

A. It is just the way it worked out.

Q. Come on, you are well-disciplined, you tell us, well-organised, quasi-military organisation, why two of you?

A. Well, it would make sense to have two men because, for obvious reasons, two pairs of eyes are better than one in the sense of being able to look around and see was anybody there, any soldiers or anybody else.

Q. You knew there were soldiers there, they were all over the place?

A. Yes, they were all over the place, that is right, therefore, two men would have had a better chance of getting the weapon away out of the road, back into the car and then hopefully back up to the Creggan; that is the answer to the question.

Q. So what was, and obviously recognised at the time, to be a dangerous operation?

A. That is correct.¹¹⁴

OIRA 1's SHOT

Decision to take the rifle from the dump to the Columbcille Court balcony.

6G-88 OIRA 1's evidence was that the rifle was in a shed or coalbunker outside Columbcille Court at ground level.¹¹⁵ Had it been his intention merely to collect the weapon, the obvious thing to have done would have been to leave the area as quickly as possible. Instead, he took the rifle to a balcony overlooking William

¹¹⁴ Day 393/040/13-042/06

¹¹⁵ Day 395/058/14-395/059/07

Street on the top floor of Columbcille Court. It is plain that this was a well known and established sniping position.

6G-89 OIRA 1 was asked by Edmund Lawson Q.C.:

Q. Do you agree that there was absolutely no need to go to the second floor?

A. No, I do not agree anything. I have no idea exactly why I went to the top floor, I do not know if there were items in the stairwell, I do not know how dark it was, I do not know if there was people milling about outside; all I know is that when I went in, I went up to the top floor. I do not recall exactly why.

Q. Do you remember people milling about outside?

*A. No, I do not.*¹¹⁶

6G-90 OIRA 2 told the Tribunal that the reason for going to Columbcille Court was "presumably in response to the two individuals having been shot some time prior to that."¹¹⁷ This is in stark conflict with OIRA 1's evidence which is that he had been in the washing area behind the slats for a minute to a minute and a half before he heard shots fired.¹¹⁸

6G-91 The obvious reason for going to the second floor, as OIRA 2's evidence implicitly and unintentionally acknowledges, was that it afforded OIRA 1 an ideal vantage point from which to fire at soldiers to the north of William Street. Both OIRA 1 and 2 tried, in vain, to suggest that this was not the case. OIRA 2 was asked by Ms McGahey:

Q. Was this weapon stored in this particular dump for quick use in the sniping position on that landing?

A. I would say probably not because, um, the only protection for any intended sniper, the only protection would have been the wooden slats which would have been about maybe a half an inch to

¹¹⁶ Day 396/016/20

¹¹⁷ Day 393/048/19-20

¹¹⁸ Day 395/074/17-21

FS 7.1260

*an inch thick and if anybody had opened fire, say, from that particular position, at a target, the muzzle flash would have been clearly seen and the return fire, particularly if it had been an SLR, would have sent straight through the wood and straight into the person who was doing the firing. So I would imagine that where the weapon was retrieved from was not likely to be a spot from where somebody would fire at a target.*¹¹⁹

6G-92 However, when seeking to defend the decision to go to the top of the flats during the march OIRA 2 stated "...it would probably have been fairly difficult for them to see us through the slats"¹²⁰

6G-93 Having been shown various photographs of the area by Mr Lawson, OIRA 1 reluctantly agreed that he would have had an unimpeded view from the second floor of Columbcille Court of parts of William Street and the laundry waste ground.¹²¹

6G-94 Contrary to the denials of OIRAs 1 and 2, Gerry O'hEara's evidence establishes the fact that the washing area in Columbcille Court was a well known position from which to fire at Army snipers near the Presbyterian Church:

We all knew Bubbles – he was our age. We were told he had been shot from a well known place from where British soldiers sniped, the flat roof of a building at point marked A (grid reference KO5) on the map ... From that point soldiers could stand on the flat roof and peep their heads over the wall to look across the waste ground to the south.

*5. There was an area of waste ground between Columbcille Court and the buildings to the north of William Street. The IRA and the army would take potshots at one another across that waste ground, the IRA shooting from the washing rooms near a well known republican house in Columbcille Court, marked B (grid reference J10) on the attached map, the army shooting from the derelict building.*¹²²

¹¹⁹ Day 392/071/10-23

¹²⁰ Day 393/051/03-04

¹²¹ Day 396/020/08-021/01

¹²² AO79.2 paragraphs 4-5

FS 7.1261

6G-95 In 1972 OIRA 1 gave John Barry detailed information about the arrangements which had been made to ensure access to the washing area:

*He and OIRA 2 had already organised a possible counter-sniping position against the two by the Church. It was in C Court, in one of the areas outside the back door of each flat set aside for washing lines etc. The area is fronted by white wooden planks giving a slatted effect. The two men had arranged with a woman, the occupants of one of the flats, that she would leave open the gate to her washing area.*¹²³

6G-96 It is unsurprising that OIRA 1 now seeks to repudiate this account of how he came to be in Columbcille Court, given that it patently contradicts the oft-repeated assertion that there were no plans to fire during the march. However, for the reasons set out in Chapter 9, it must be beyond doubt that OIRA 1 provided these details to John Barry, a fact which is illustrated by OIRA 2's confirmation to Mr Lawson that only himself and OIRA 1 knew that they had fired from the washing area:

Q. Have you broadcast -- have you personally being telling a lot of people where you had conducted this firing exercise from?

A. I did not tell anybody.

Q. You would expect, we will have to ask him, OIRA 1 to be equally discreet, would you not?

A. I would have thought so, yes.

Q. The author of this note, then, has managed to get from somewhere or other an accurate description of where you were and of the slatted effect of the wooden planks?

A. Yes. I have no idea where the author of the note got his information, he did not get it from me.

Q. Wherever he has got it from he has got that bit right?

*A. Aye, he has that bit right, surely.*¹²⁴

¹²³ AOIRA 1.1

¹²⁴ Day 393/084/25-085/13

6G-97 Reg Tester's account to the Sunday Times also makes plain that OIRA 1 had a pre-planned position from which to fire:

The officials realised from the sniping positions taken up on Sunday that the army was eager for a confrontation...

We know of the following Official shooting:

1. a man with a .303 sporting rifle fired a single shot at a para on the roof of the Presbyterian Church off William Street. He was firing between the wooden slits on the first floor balcony of Columbcille Court. This man had been in the immediate area when Donaghy and Johnston were shot. Being a member of the Bogside unit, he had access to a weapon and rushed to his position.¹²⁵ [our emphasis]

6G-98 OIRA3, The acting OC of the Official IRA in Derry, referred to the use of pre-arranged positions. He told a journalist from the Observer that the Officials had two marksmen on duty, one at the corner of William Street and Rossville Street, the other in the Little Diamond.¹²⁶

*Our policy is to have marksmen stationed so they can, if it looks promising, use the situation when a riot is over.*¹²⁷

OIRA 2 agreed that this was a fairly accurate representation of practice at the time.¹²⁸

Failure to dismantle the weapon immediately, or at all.

6G-99 OIRAs 1 and 2 claim that it was their intention to break the rifle down in order to make it easier to transport. If this were true it is self evident that, given the grave risks associated with being seen with the rifle, they would have wanted to do this as quickly as possible. Their failure to do so is yet further evidence of their intention to fire the weapon from the balcony.

¹²⁵ S34

¹²⁶ ED24.9

¹²⁷ ED24.9

¹²⁸ Day 393/028-030

FS 7.1263

6G-100 OIRA 1's own account is that two or three minutes passed between removing the rifle from the coal bunker and reaching the landing.¹²⁹ He could provide no explanation for why he failed to dismantle the weapon during this time.¹³⁰ OIRA 1 was asked by Ms McGahey:

Q. Having obtained the weapon in the ground floor, why did you climb three flights of stairs with it?

A. Simply to just get away from the street.

...

Q. Did you want to go off the street in order to take the rifle to pieces?

A. Well, my intention would have been, yes, to take the stock off the rifle and put it into two parts and made it easier to transport.

Q. Why do you not do that as soon as you reach the first floor landing?

A. Well, I am not – I do not know, there was no particular reason, I may have just simply walked up the stairs and stopped when I got to the top of them.

Q. You were aware, were you not, that in order to obtain this rifle you were going to take a risk of being caught by the British Army, when ever you did it?

A. Yes.

Q. You had been very careful not to run unnecessary risks the night before?

A. Yes.

Q. Surely the sensible thing to do was to grab that rifle and get out of that area as soon as you could?

A. No.

Q. Why not?

¹²⁹ Day 395/061/24-25

¹³⁰ Day 395/63/23

A. Because I did not feel any particular risk in the location at the time that I was there.¹³¹

6G-101 It was wholly self-contradictory for OIRA 1 to suggest that he did not consider retrieving the weapon to be a dangerous exercise, while at the same time agreeing that his perception was that, had he been found in possession of the rifle he would, or might have been shot dead.¹³²

6G-102 OIRA 2 confirmed that they had intended to break down the rifle:

Q. You say in the statement that you were going to break down the weapon to make it easier to transport discreetly. How were you going to break it down?

A. Well, you can take the butt off it. You can break it into two pieces. You can remove the wooden butt and that leaves you then with the rest.

Q. Did you remove the magazine?

A. I cannot remember.

Q. Were you going to remove the bolt?

A. I would not say we were going to remove the bolt, no, I would not think so, just remove the butt and then you would have the two bits intact. I cannot remember the exact detail, but I think our intention was to take the butt off the weapon and that would leave it then in two parts, easier to, to move away out of the road.¹³³

And yet

Q. You say later in your statement that the time between collecting the gun and it being fired by OIRA 1 was a minute or two. Is that what you remember now?

A. Um, yes, that is right.

¹³¹ Day 395/059/08-Day 395/060/18

¹³² Day 396/004/19-005/22

¹³³ Day 392/069/13-070/02

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Q. And you also say that it was only seconds between your hearing the shout "Two boys have been shot" and OIRA 1 firing; is that correct?

A. Aye, I think it would have been -- it would have been a matter of seconds.

Q. So it seems there must have been at least a minute or two minutes between the time that you collected the gun and the time that you heard the shouts, yes?

A. Um, I would say probably, yes.

Q. And your evidence is that it was only when you heard those shouts that you thought there might be justification for firing; is that right?

A. Yes.

Q. So you had been there for a couple of minutes. That is enough time, is there not, for you or OIRA 1 to unload the rifle?

A. Aye, you are probably right.

Q. It is enough time for you or OIRA 1 to dismantle it?

A. Possibly, but because of the whole commotion that was going on down below us, it probably never occurred to either of us to do that.

Q. You were in a very vulnerable position indeed, were you not? A. I would say we were, yes.

Q. You needed to be on, on your account, off that landing as fast as you possibly could?

A. That is right.

Q. And back to the car?

A. Yes.

Q. So the only sensible thing to do, surely, was to unload and dismantle that rifle from the second you took it out of that cupboard?

A. Well, that obviously did not happen, otherwise you would not be asking me about it.

Q. My question is: why did that not happen?

A. I would say probably because of what was happening around us; the noise, the roaring and the shouting and so on, you become easily

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distracted and maybe what was in your head ten seconds before that just left your head because of what was going on around you; that is the only way I can explain that.

Q. If you had been caught by the British Army in possession of this weapon, the consequences to you would have been very serious indeed; would they not?

A. I probably would not be sitting here talking to you now.

Q. It would take an awful lot of distracting you from your task, picking up that weapon, dismantling it and getting out of the way?

A. Probably on the other hand, you see, we would have thought because of the whole commotion around us and there was a fairly good crowd -- what seemed like a fairly good crowd below us, the likelihood of the Army arriving on the scene at that point in time was probably fairly remote so we probably felt that there was probably just enough of time to get away, but not in the fashion that you are suggesting.

Q. It may be suggested that the reason you did not dismantle the weapon in the couple of minutes you had available was that you or OIRA 1 intended all along to fire it?

A. No, I dispute that. Not only do I dispute it, I refute it.

Q. It may be suggested that that was your intention, and by "you" I am referring to both of you collectively --

A. Yes.

Q. -- from the moment that you went on to the landing in Columbcille Court?

A. No.

Q. Or that you had actually gone to Columbcille Court with the intention of using a weapon that you knew had been left there for that purpose?

A. No, that was not our intention at all.¹³⁴

6G-103 This evidence is completely at odds with OIRA 2's later account to in answer to Ms McGahey of what had occurred immediately before OIRA 1 had fired:

¹³⁴ Day 392/073/17-076/17

Q. ...Immediately before this happened do you remember what he (OIRA 1) was doing with that rifle?

A. Um, I think he was basically looking to conceal it somewhere in his clothing so that we could get away out of the road before, um, all this distraction about two boys being shot happened.

Q. So he was not beginning to dismantle it?

A. No, I think he was just trying to get away along with meself as fast as possible out of the area.

Q. He was just planning to conceal it under his coat and go?

A. Yes, I would imagine so, yes.

Q. Without seeking first to unload it?

A. No, I think the idea would have been, um, you know, "Let's get away from here as quick as possible."¹³⁵

6G-104 It is also inconsistent with OIRA 2's suggestion that the purpose of going up to the top floor of Columbcille Court was in response to the shooting of Damien Donaghy and John Johnston.¹³⁶

6G-105 The evidence of Sean Keenan makes it plain that OIRA 1 and OIRA 2 were in fact in Columbcille Court for some time. The relevant section of his evidence was put to OIRA 2 by Mr Lawson:

Q. Mr Keenan gives a description, and we are going to hear from him I gather, that he is walking down Rossville Street and the lady has obviously run over, or come over from Columbcille Court, or that area, reports to him that there are people with a rifle up there in Columbcille Court. He then goes over there with her and then meets you in the stairwell, which suggests it was more than just a fleeting moment that you were up there on the third floor, does it not?

A. But the length of time on the third floor, as you suggest, would not necessarily -- I mean, I am just, I am wondering exactly, you know, what, what was the point you are trying to get at in terms of

¹³⁵ Day 392/080/18-081/07

¹³⁶ Day 393/048/19-20

time. I mean, it would only have taken a matter of seconds to come from where we were down to the stairwell.

Q. A point, OIRA 2, is this, since you ask, I deal with the suggestion now, it is as plain as a pikestaff, I suggest to you, that you and your colleague OIRA 1 were not just passing, you were there in order to shot [sic] at the Army; were you not?

A. We were not there to shoot at the Army.¹³⁷

6G-106 Nor was any attempt made, either immediately or at all, to dismantle the gun after the shot had been fired. OIRA7 agrees that there was some time between the firing of the shot that he claims to have heard and the commotion on the stairs involving OIRAs 1 and 2.¹³⁸ He confirmed to Lord Saville that dismantling the weapon would simply involve undoing a locking nut which fastened the stock to the barrel and the trigger mechanism. No attempt was made to dismantle the gun whilst he was present and it was put into the car complete.¹³⁹

OIRA 1's Target

6G-107 The evidence of OIRAs 1 and 2 is at odds as to the location of the soldier at whom OIRA 1 fired. OIRA 1 marked the location of the soldier as falling within the oval on the map at AOIRA 1.48¹⁴⁰

OIRA 1 doubts whether his shot hit the Presbyterian Church:

I have heard talk of a shot hitting the drainpipe to the Presbyterian Church, which I understand may be to the east of the church. This is not the direction in which I fired. I am not aware of my round hitting a drainpipe. If it did hit a drainpipe to the east of the church I cannot explain why I missed the soldier I was aiming at so badly, unless this was down to a ricochet, or the defective sight. I have no

¹³⁷ Day 393/076/03-23

¹³⁸ Day 398/152/14-20

¹³⁹ Day 399/039/20-040/15

¹⁴⁰ AOIRA 1.48

recollection of there being a drain on the east side of that building and believe that the story is a fabrication.¹⁴¹

6G-108 By contrast OIRA 2 has given evidence that he believes OIRA 1's shot was probably the shot which hit that drainpipe of the Presbyterian Church.¹⁴² He pointed out to OIRA 1 the presence of a soldier on near the Presbyterian Church. OIRA 2 agreed that he did not know whether the soldier was the soldier whom, on his own account, had fired three shots.¹⁴³

Q. Let alone, as you have confirmed on Thursday, you had no idea at all whether the soldier who was aimed at at the Presbyterian Church, or by it, was the person who had fired those shots?

A. That is correct.

Q. Is that right?

A. Yes.

Q. You thought it was?

A. Yes.

Q. "That is the bastard", you said?

A. Or words to that effect, aye.

Q. You said to your friend?

A. Yes, that is right, yes.

Q. To be fair to you, you have never disassociated yourself from this shot, he pulled the trigger but the two of you were in it together?

A. Both of us were present when the incident happened, aye.

Q. So you identified -- putting it rather unduly formally -- the target, saying something like "That is the bastard who has just been shooting"?

¹⁴¹ AOIRA 1.27 paragraph 20

¹⁴² Day 392/082-083

¹⁴³ Day 395/080/02-05

HJ 7.1270

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A. That is right.

Q. You had no idea whether that was true or not?

A. It looked very likely because of the position that he was in.

Q. You had no idea whether the soldier that you could see had fired those shots?

A. That is right.

Q. Did you?

A. That is right.

Q. Is that right?

A. Well, since I could not see any other soldiers in sniping positions, I just automatically assumed that it must have been him.

Q. You had seen soldiers previously in sniping positions, you told us that --

A. No, I had seen soldiers.

Q. In sniping positions?

A. Well, possibly, they were in the backs of buildings.

Q. You told us that five minutes ago.

A. This particular soldier, you know, appeared to be taking aim; he appeared to be in that position.

Q. Or using his sight?

A. Possibly.

Q. Which they did, did they not?

A. Which they did, yes.

Q. In case he was the one who had shot, you encouraged your mate to try to kill him?

A. Um, if you put it like that, the answer is: yes.¹⁴⁴

¹⁴⁴ Day 393/056-058

FS 7. 1271

6G-109 OIRA 1's evidence was also that he did not know whether the soldier he fired at was the soldier whom, on his own account, had fired three shots.¹⁴⁵

Timing Of OIRA 1's Shot

6G-110 The evidence demonstrates that the shooting of Damien Donaghy and John Johnston occurred after the main body of the march had passed at a time when rioting had broken out in and around the laundry waste ground. Whilst this riot was in progress Soldiers A and B fired five shots in total at a man they believed to be in the process of lighting a nailbomb at the north west corner of the laundry waste ground. Neither of the soldiers who fired was aware of any incoming fire whilst he was in the derelict building, nor has either ever suggested that he fired other than in the circumstances and for the reason outlined above. For that reason, in relation to the issue of Soldiers A and B's shots, the timing of the OIRA 1's shot, and whether or not it is the Presbyterian Church shot, is to a very large extent irrelevant.

6G-111 From the civilian perspective it is plain however, that the question of 'who fired the first shot' is fundamental and of symbolic significance. It would be, as Paul Mahon discovered, an unforgivable heresy to suggest that the first shot on the day had been fired by a member of the IRA. However in support of this conclusion the Tribunal has heard not only from military witnesses but also from civilians who refer to hearing a single shot prior to the shooting of Damien Donaghy and John Johnston. Moreover a close examination of the evidence of OIRAs 1 and 2 about the state of affairs at the time they fired the shot shows them also to have lied about the timing of the shot in relation to the shooting of these two civilians.

OIRA 1's Evidence

6G-112 OIRA 1 claims to have set off for the Bogside to collect the rifle at about the time that the march was setting off from the Creggan.¹⁴⁶ He agrees that he would have

¹⁴⁵ Day 395/080/02-05

reached the Bogside much quicker than the march.¹⁴⁷ According to OIRA 2, whether walking or driving, it would have taken only a matter of minutes to travel from the Creggan to the Bogside.¹⁴⁸

6G-113 OIRA 1 could not account for how he spent what, on his own account, must have been a considerable period of time between arriving in the Bogside and retrieving the rifle:

Q. ...do you have any recollection of what you did once you got down to the Bogside, apart from getting the weapon and going to the second floor of Columbcille Court?

A. No.

Q. Nothing at all?

A. No.

Q. Complete blank?

A. Yes.¹⁴⁹

6G-114 His first statement to the Inquiry gives the impression of his having seen early sections of the march at the point that he reached Columbcille Court.

The majority of the march were behind the lorry, but a number of people had got in front of it. The people both in front and behind the lorry were in a happy mood and there was no sense of anything unusual happening on the day. I do recall that those people I saw on the day were in a generally happy mood...I believe that we approached Colmcille Court from the Bogside Inn direction. Therefore we were not part of the march itself at any time. In fact we really only got glimpses of the march.¹⁵⁰

6G-115 Questioned by Mr Lawson, OIRA 1 agreed that if his account of arriving at Columbcille Court from the south, via Glenfada Park North, was correct, that he

¹⁴⁶ Day 396/008/06

¹⁴⁷ Day 396/034/08

¹⁴⁸ Day 392/066

¹⁴⁹ Day 396/035/03

¹⁵⁰ AOIRA 1.5 paragraphs 12-13

FS 7. 1273

could not in fact have seen the march until he reached the second floor landing from where he fired.¹⁵¹ He said that he did not have a view of the march from the landing, but did gain the general impression of the march turning from William Street into Rossville Street.¹⁵² This evidence places him in the balcony area behind the slats at a stage when the front of the march was in William Street and not, as he claims, at the time when Damien Donaghy and John Johnston were shot.

6G-116 It is in fact quite apparent from the photographs¹⁵³ that OIRA 1 would have had a commanding view of the laundry waste ground and a section of William Street from the landing. OIRA 1 was forced to concede this:

Q. So you had, it would appear, an unimpeded view from the second floor of Columbcille Court of William Street; do you agree?

A. No, I would -- if that is the situation as it was at the time, I would say, I had an unimpeded view of about 20 feet of William Street.

Q. And of the laundry wasteground right in front of you?

A. Well, yes, it would appear so, yes.

Q. Not it would appear so, it is plainly so; is it not?

A. If that is the situation as it was on the day, yes, it would be...I am assuming that is the way it was on Bloody Sunday, then yes, I accept what you are saying.¹⁵⁴



¹⁵¹ Day 396/014/02-396/015/07

¹⁵² Day 395/069

¹⁵³ for example, P201

¹⁵⁴ Day 396/020/08

FS 7.1274

6G-117 OIRA 1 contends that whilst on the landing he heard three shots fired by the army from the north side of William Street; almost immediately after this someone shouted that some boys had been shot.¹⁵⁵ If he had in fact been on the landing at the time that Damien Donaghy and John Johnston had been shot OIRA 1 could not have failed to have seen the rioting in the laundry waste ground, the two wounded being tended by two different groups of people about 30 yard directly in front of and below his position, or the procession as they were carried a very few yards directly below him to Mrs Shiels' house. His own evidence to this Inquiry is that he saw neither John Johnston or Damien Donaghy at any stage¹⁵⁶ - although this did not prevent him from giving an account to Gerard Kemp that he had,¹⁵⁷ a section of the account that OIRA 2 agreed was "*unlikely*."¹⁵⁸

6G-118 An obvious explanation for OIRA 1's failure to see Damien Donaghy or John Johnston as they lay on the ground or as they were carried to Columbcille Court is that he had, by that stage, already fired and had left his position on the landing.

OIRA 2's evidence regarding the timing of the shot

6G-119 OIRA 1's account of hearing shots at the stage that he reached the Columbcille Court balcony is not corroborated by his colleague, OIRA 2, who did not hear any shots fired before OIRA 1 fired. OIRA 2 was asked by Ms McGahey:

Your evidence is that you heard noise and a confrontation. You had no idea, did you, whether the soldier who you could see had fired any shots?

A. That is correct.

Q. And you actually had no idea whether anyone had fired any shots at all?

¹⁵⁵ Day 396/023/08-22

¹⁵⁶ Day 396/025/05-17

¹⁵⁷ L210

¹⁵⁸ Day 392/108/06-08

FS 7. 1275

*A. That is correct too.*¹⁵⁹

6G-120 OIRA 2 lied in his first statement to the Inquiry. He was asked by Edmund Lawson Q.C.:

Q. Did you in fact hear any shots fired prior to being party to your colleague, OIRA 1, firing the rifle?

A. Well, I have already told the previous counsel that I have no recollection of actually hearing any shots. I am not sure. I may have done, I am just not sure.

Q. Are you in a position to assert that you can confirm that the shots were high velocity shots?

A. Which shots are we talking about here?

Q. The shots that allegedly preceded the rifle being fired?

A. I would imagine they would have been, yes.

Q. Can you definitely confirm that to be the position?

A. I cannot definitely confirm it.

Q. Why did you do so when you made this same statement for the benefit of the Inquiry?

A. Because --

Q. Just a minute, you ought to look at it, page 3, please, paragraph 9, where you said, did you not, in this statement of about January 2002, that you heard a number of high velocity shots with a gap between them. You cannot remember exactly at this time, but you believe there could have been two or three shots, right. You go on to say that you could not specify the time between them. Lest there be any doubt about the matter, concluded the paragraph by saying:

"From my experience living in Derry at that time I can definitely confirm that these were high velocity shots."

That is what you said, is it not?

A. That is what I said, yes.

¹⁵⁹ Day 392/077/13-19

PS 7.1276

Q. And you were in no position whatsoever to do that, were you, OIRA 2?

A. Well, according to the way that you are putting it, the answer to the question would be that I probably was not, but again I think, in the general state of confusion possibly what I said there, you know, was, um, just a reflection of how things happened on the day.

Q. It was at best, was it not, a serious exaggeration?

A. No, I would not accept that.

Q. You would accept it was an exaggeration, presumably?

A. No, I would not even accept it was an exaggeration.

Q. What, when you said "I could definitely confirm these were high velocity shots", when you at least were unsure whether you had heard any shots; is that not an exaggeration?

A. It could well be, yes.¹⁶⁰

OIRA 2's evidence is that his colleague fired before the main march arrived. This is further evidence of the fact that the shooting occurred prior to the shooting of Damien Donaghy and John Johnston. A. We went down, um, I cannot remember the exact timing of when we went down, but I know it was in the afternoon.

Q. You know it was in the afternoon?

A. Aye, it was in the afternoon.

Q. Are you sure?

A. I am 100 per cent certain, yes.

Q. 100 per cent?

A. It was before the march would have arrived.

Q. Before the march had arrived?

A. Before the march. It would have been before the main body of the march would have arrived.

Q. Thank you. So whatever time it was, it was quite clear -- it is quite clear in your recollection that you went to Columbcille Court before the march, the main body of the march had got to William Street?

A. Um, in my recollection, yes, that is the way it was, yes.

Q. And you were only there for a few minutes, were you not, on your account?

A. As far as I remember, yes.

Q. Is that right?

A. Yes.

Q. So at the time that you were party to the firing of the shot -- you did not actually pull the trigger -- at the time you were party to the pulling of the shot, the march had not yet reached --

A. The main body of the march had not arrived, as far as I recall.

Q. The coal lorry that was leading the march; you remember that?

A. I do not remember seeing the coal lorry, no.

Q. And the street, William Street, was not thronged with people?

A. No, but there were people milling about, do you see, there would have been a lot of people who were just standing by and not taking part in the march.

Q. You would have been, presumably, the more reluctant to shoot if there had been a vast number of people, civilians in William Street?

A. I would imagine that no shots would have been fired at all had there been a large number of people about.

Q. This is at a relatively early stage of the march?

A. That is correct, yes.

Q. Is that right?

A. Yes.

Q. ... in your statement to Eversheds that you have confirmed to this Tribunal to be accurate, you did not seek to amend when you began your evidence on Thursday, you said it was in the morning that the two of you had gone down there; was that right?

A. I think that should be amended to read "the afternoon". FS 7. 1278

Q. That is just a mistake, is it?

A. I think it probably is, yes.

Q. What is not a mistake, I gather from what you have just told us, is the next sentence:

"We came down into the Bogside some time before the march."

A. That is correct.

Q. That is absolutely right?

A. On my recollection, yes.

Q. Is that as you have put it, 100 per cent right?

A. As far as I can remember, yes, that is correct.

Q. You personally had heard no shooting, did you, before the .303 was fired?

A. Well, again, as we said on Thursday, because of background noise and so on, I have no direct memory of actually hearing shots being fired.

...

Q. You do not remember now hearing any shots, right?

A. That is what I told you on Thursday when you asked me, yes.

Q. You have some recollection of someone saying something about two people being shot?

A. Yes.

Q. This occurred before the main body of the march had passed by?

A. As far as I am aware, yes.

Q. Is that right?

A. Yes.

Q. You personally had no idea whether there had been any shots?

A. From the sound of the way that it was said, um, there seemed to be a lot of commotion and I do distinctly recall hearing "two boys had been shot" or words to that effect.

Q. You had no personal knowledge whether that was right or

wrong?

A. I could not see whether it was right or wrong.

...

Q. Was that consistent with the policy of defence and retaliation?

A. It was insofar as two other individuals had been shot before this retaliatory shot.

Q. Had they, OIRA 2; had they? It did occur, if this occurred, as you have told us, when it did, as the march had yet still to pass by, the main body of the march, there had not been any shooting by the Army?

A. Our understanding or our belief at the time was -- and this is all that I can tell you -- our belief was that two individuals had been shot and that the shot that was fired was a shot that was fired in response to the shooting of these two individuals.¹⁶¹

6G-121 Edmund Lawson Q.C. asked about the quality of OIRA 2's recollection:

Q. ...the only matter which you appear to have a clear recollection is the shot from Columbcille Court?

A. Oh, I have a very clear recollection on that, yes.

Q. Yes, which happened, as you said, before the march passed by?

A. Before the main body of the march arrived, yes.¹⁶²

6G-122 It emerged that, even on his own evidence, OIRA 2 made no more than an "assumption" that OIRA 1's shot followed the shooting of the two civilians. This contrasts with his very clear recollection of the stage the march had reached at the time OIRA 1 fired:

Q. But the shot that you say was fired was fired before, as you claim, the main body of the march had come by?

A. That is correct.

¹⁶¹ Day 393/051/10-058/15

¹⁶² Day 393/120/17-23

Q. If that is correct, OIRA 2, you have not got your story straight because, by then, Mr Donaghy and Mr Johnston had not been shot.

A. Well, it was my assumption that Mr Donaghy and Mr Johnston had been shot before, before the man who was with me fired the shot.

Q. What was clear to you from your vantage position was that the main body of the march had not come by when you fired the rifle?

A. That is as I recollect it: that the main body of the march had not arrived. But your suggestion to me that, um, Mr Johnston and Mr Donaghy were shot, when?

Q. Later on?

A. It has always been my assumption that they were actually shot -- I do not know the exact timing -- it has always been my assumption that they were shot before the main body of the march arrived.

Q. And on the basis of that assumption, you fitted the rest of the story around that?

A. On the basis of what I believe. What I have told this Tribunal is what I believe.¹⁶³

Civilian Evidence relating to the timing of OIRA 1's shot

Civilian Evidence of an Early Single Isolated Shot

6G-123 There is civilian evidence of a single shot being fired before Damien Donaghy and John Johnston had been wounded. Several of these witnesses believe that a soldier on the north side of William Street fired the shot they heard. Such an assumption, although undoubtedly wrong, is understandable given the visible presence of soldiers, some of whom were looking down their sights, and the fact that the sound of a bullet striking a position to the north may have been mistaken as the sound of a bullet being fired.

6G-124 Joe Carlin gave the following account to the Sunday Times:

¹⁶³ Day 393/077/02-25

FS 7.1281

But I had heard a single shot – a high velocity shot – just as I went in off William Street ...it came from the direction of Gt James St. It didn't come from the Bog, in front of me. So we proceeded through to the back and hid behind the wall ... but nothing seemed to be happening...on the corner the Aggro was still going on. While we were standing there, a small boy by our side was hit.¹⁶⁴

6G-125 It would seem that Mr Carlin heard a high velocity shot which was wholly unconnected with, and some significant time before, Damien Donaghy was shot close to him.

6G-126 Charles Gallagher says he was only 100-200 metres behind the lorry leading the march:

When I reached the corner of Abbey Street...I heard a shot which I believe came from Stevenson's bakery...I thought the shot was a high velocity shot...At the time I thought that I was the only person who had heard the shot and felt a bit of an idiot when giving my statement to NICRA but with hindsight think that others must have heard it.¹⁶⁵

His evidence confirmed that the shot was fired during the early stages of the march:

Q. Did you see anybody in the William Street area throwing stones, shouting at soldiers?

A. No, no, none at all, no.

Q. You go on to say in paragraph 7 that as far as you were aware there was no reaction amongst the crowd to this shot?

A. Yeah, that surprised me a bit because I -- maybe it was because I lived in the area and knew it so well, you sort of get to know an area amazingly well, but I was convinced it was a shot and I know I said it the next day and I do not think many other people said it, but I said what I thought happened, you know.¹⁶⁶

¹⁶⁴ AC150.2

¹⁶⁵ AG6.1 paragraphs 3-5

¹⁶⁶ Day 105/034/10-21

He confirmed to the Tribunal, in answer to questions asked by Edwin Glasgow, QC that there had been no reaction to the shot at all:

Q. It was a fairly crowded street?

A. Yes, it was a fairly crowded street, yes.

Q. The one thing you have told the Tribunal about and it is in your statement, and of course I am not challenging, is the thing that struck you was, when you heard that shot, there appeared to be no reaction at all?

A. Yes.

Q. You are quite clear about that?

A. I was surprised, yes.

Q. A single shot, you are sure about that are you, what you heard was one shot on its own?

A. One, yes.

Q. You said yourself you felt a bit of an idiot, but you did not understand why, whatever that shot was and wherever it had come from, there appeared to be no reaction at all?

A. No, I do not remember any particular reaction, yes.

Q. Looking down the crowd in William Street in front of you there was nobody running around, or reaction from the crowd at all that you can recollect?

A. No, there was not.¹⁶⁷

6G-127 Martin Hegarty similarly suggests that there was no reaction from the crowd to this first shot which was fired:

I was marching east along William Street, having reached ...[Abbey Street]... I heard a shot...The shot I heard, which was the first shot I heard that day, was definitely a single high velocity shots which I recognised, as much as one can, as coming from an army weapon. I think it was some time after 3.30 pm when I heard it...

Whilst people may have been a little anxious when the shot rang out, there was no real panic. People certainly did not run on hearing the shot, albeit that they probably could not have done so because there were so many people packing the street...I did not hear any reports that anyone had been hit by the shot that I heard. Later, when I heard the news and was able to piece things together, I concluded that perhaps the shot that I heard had been the shot that hit the first man.¹⁶⁸

Sheila Ingram:

When I reached...midway down William Street...a single shot rang out...I recognised this shot instantly as a high velocity shot...I formed the impression that the shot was fired from a height, from somewhere on the north side of William Street...I would say that there was a feeling of anxiety amongst the crowd for, perhaps, a few seconds, although I would not say that anyone panicked. There was chitter chatter through the crowd. However, as the shot was not followed by any other shots people soon carried on walking and the march proceeded along William Street...I do not think that I addressed my mind at the time to whether the shot was an army shot or a civilian shot. I had not seen anyone throwing stones, or anything else for that matter, on William Street.¹⁶⁹

- 6G-128 The “impression” of the shot coming from the north of William Street is perhaps understandable, this being the area where the shot hit. Ms Ingram’s evidence indicates that this shot was not related to the wounding of Damien Donaghy or John Johnston – following which people did not simply revert to carrying on walking.
- 6G-129 Professor William McCormack also heard a single shot in William Street. Professor McCormack attributed the shot to a soldier on the GPO who he had observed aiming his rifle at a group of youths who had been stoning him.¹⁷⁰ However he agreed that it was possible that the soldier had not in fact fired a shot, but merely been pointing his rifle at the boys.¹⁷¹ Professor McCormack believes

¹⁶⁸ AH62.2 paragraphs 8-10

¹⁶⁹ AI1.2 paragraph 7

¹⁷⁰ AM136.3 paragraph 18

¹⁷¹ Day 113/102/05-11

FS 7. 1284

that he was in approximately the middle of the march¹⁷² and that the shot was fired considerably before the main firing took place.¹⁷³ His evidence about the lack of reaction to the shot by the crowd in reply to questions by Mr Rawat demonstrates that this was a shot was unconnected with the shots fired later by Soldiers A and B which unquestionably induced a degree of understandable amongst a large number of those present in the vicinity.

Q. If we try and pick up the point you have made about what the march was like at that time, effectively it was static, was it not?

A. Yes.

Q. And your recollection is that after this soldier aimed at the young boy, no-one from the crowd called out?

A. That is correct and I was struck by that at the time. There was of course a lot of noise and I was looking in that direction. I did not, as it were, gaze round and find this incident. I simply was looking in that direction when it happened.

Q. Nor can you say that as a result people scattered?

A. No, apart from the boys who were already retreating and certainly the last one retreated very rapidly, nobody else seemed to move in response to this incident.

Q. You do say in your statement to this Inquiry that it did not seem to change the mood of the crowd, which you described as still buoyant at that point?

A. That is correct.¹⁷⁴

6G-130 John Brown heard a single rifle shot from approximately the area of Kells Walk. It was not until some minutes later that a girl near Kells Walk shouted that a civilian had been shot.¹⁷⁵ Mr Brown confirmed, when he gave evidence, that he had heard only one shot and that it was the only shot he heard that day.¹⁷⁶ His

¹⁷² Day 113/122/18-20

¹⁷³ Day 113/124/12-14

¹⁷⁴ Day 113/101/04-25

¹⁷⁵ AB93.2 paragraph 9-10

¹⁷⁶ Day 054/59/03-06

FS 7. 1285

response to a question by Edwin Glasgow Q.C. about the direction from which the shot had been fired went on to volunteer evidence about the stage the march had reached which demonstrates that the shot Mr Brown heard was fired before the shots fired by Soldiers A and B:

It was in the William Street direction, but I did not see where there would be anything like that there because the marchers were still coming down. I was sort of halfway down there in the procession, me and this girl. She shouted somebody was shot in William Street and I did not believe that either and I was not going to -- it looked to be a long time before there were going to be any political speeches so I decided to move on or go home, because I presumed it had descended into the usual riot.

Q. To the usual riot?

A. Yes.¹⁷⁷

6G-131 Kathleen Turner heard a single rifle shot as she came down William Street.¹⁷⁸ At the time she associated the sound of the shot with a boy falling to the ground. Mrs Turner's evidence is inconsistent with this being Damien Donaghy. The shot was fired at a time when the street was so full of people that it was not possible to turn round and retreat in the opposite direction.¹⁷⁹ It is known that Damien Donaghy was shot at a time when only stragglers from the march and rioters were in William Street. The boy Mrs Turner saw fall in William Street was also a considerable distance north of the laundry waste ground where it is known that Mr Donaghy fell.¹⁸⁰ Indeed Mrs Turner accepted that the connection between the shot and the boy falling was no more than an assumption on her part:

LORD SAVILLE: If you will forgive me, Mr Harvey. This young lad you saw, you say in paragraph 13:

"I did not stay around after the boy was shot ..."

¹⁷⁷ Day 054/67/11-23

¹⁷⁸ Day 054/43/20-24

¹⁷⁹ Day 054/41/02-10

¹⁸⁰ Day 054/010/09-19

FS -7.1286

How are you able to say that he was shot? Could he possibly have been injured by a rubber bullet or do you have anything in your mind that helps us to show that he was actually shot?

A. No, I think I just made a connection in my mind between the rifle shot and the lad throwing up his arms, but in all honesty he could have been hit by a rubber bullet or a gas canister.¹⁸¹

6G-132 William Martin Hegarty also associated the sound of a single high velocity shot with a civilian casualty, who he names as John Johnston. The evidence he gave about the stage the march had reached shows him to be confused and may well indicate that what he in fact heard was an early incoming round, possibly that fired by OIRA 1 from Columbcille Court. In his BSI statement Mr Hegarty said he was only 40-50 yards from the front of the march. At the time of the shot he states the crowd in William Street was fourteen people abreast, and the mood still joyous and happy.¹⁸² His belief is that the shot occurred at around 15.25 to 15.30¹⁸³ which can be said with certainty to have been before the shooting of Damien Donaghy and John Johnston. Although it is right that Mr Hegarty refused to accept the suggestion put to him by Edmund Lawson Q.C., that the shot had been fired from the south of William Street,¹⁸⁴ the other evidence he gave is consistent only with it having been an early shot fired by a member of the IRA. In particular, Mr Hegarty confirmed that he was quite sure that he heard the shot at the point when the beginning of the march had only just turned round into William Street.¹⁸⁵ He agreed that he did not know John Johnston and only reached the conclusion that it was Mr Johnston who he had seen when it was suggested to him by others after the event.¹⁸⁶ The man whom he assumed had been injured was carried from William Street itself to the end of the waste ground, he did not see him taken into a house.¹⁸⁷ Mr Hegarty agreed that he had neither seen nor heard anything at the

¹⁸¹ Day 054/022/19-23/6

¹⁸² AH65.2 paragraphs 7-9

¹⁸³ AH65.3 paragraph 13

¹⁸⁴ Day 407/037/19-038/22

¹⁸⁵ Day 407/038/23-039/01

¹⁸⁶ Day 407/039/03-18

¹⁸⁷ Day 406/039/24-041/06

time which suggested that another man, Damien Donaghy, had been shot or injured in the area. He heard only one shot.¹⁸⁸

The absence of evidence supporting OIRA 1's claim that he fired immediately after Donaghy and Johnson were shot.

6G-133 OIRA 2's evidence is that "it would have been a matter of seconds" between learning that two civilians had been shot and OIRA 1 firing back.¹⁸⁹ At the time there were a substantial number of people in and around the laundry waste ground, many of whom had retreated up William Street in order to escape the worst of the C.S. gas in and around Aggro Corner. According to Anthony Martin people had also been drawn to the Columbcille Court area as news of two injured civilians spread. "There had just been wounded people. Everybody sorta goes to see what is going on."¹⁹⁰ Martin estimated that he had seen six or seven people involved in the melee immediately around the gunman as he left Columbcille Court and a further 24-25 people in the general area, although "there could have been a lot more people and there could have been fewer."¹⁹¹ Mr Martin had failed to mention the shot in the NICRA statement he made on 02.02.72.¹⁹²

6G-134 If, as OIRA 2 and OIRA1 claim, OIRA 1 had fired a very short time indeed after the shots that injured Damien Donaghy and John Johnston had been fired it is unlikely that the many civilians in Columbcille Court and in the laundry waste ground would not have heard this shot, which must, quite literally, have passed directly over their heads. The vast majority make no mention at all of any IRA activity. Others who admit to seeing a gunman in the area do not mention that there was no fire was returned, or positively assert that there was none.

¹⁸⁸ Day 407/041/15-042/07

¹⁸⁹ Day 392/073/21-25

¹⁹⁰ Day 176/117/22-24

¹⁹¹ Day 176/118/01-21

¹⁹² AM24.1-2

FS 7.1288

6G-135 Colm O'Dombnaill heard shots fired by the army and saw a group gathered round an injured civilian on the ground. Mr O'Dombnaill was plainly very close to events in Columbcille Court and yet positively asserts that there was no return fire directed at the army:

There was a scuffle with a photographer but those who attempted to prevent him photographing the injured were fought back by other civilians and eventually he was permitted to go unmolested. There was a momentary panic when someone said that an IRA gunman was going to return fire. However this did not materialise and the crowd soon wandered freely again.¹⁹³

Mr O'Dombnaill was asked about this incident by Christopher Clarke Q.C.:

Q. If we go to paragraph 11, you describe being near to the injured boy and hearing talk of somebody getting a rifle to fire back. Can you be any more specific about what you heard?

A. Well, this was a kind of conversation that went on among people. I am not even sure whether someone suggested getting a rifle, but, um, it struck me as an extremely insane thing to think about because we were in plain view of troops on the back of a building on Great James Street.

Q. Did anything come of it?

A. Nothing.¹⁹⁴

6G-136 Stephen McGonagle helped carry Damien Donaghy into the Sheils' house in Columbcille Court, where he remained for a short time until he was satisfied that they were both being looked after.¹⁹⁵ He comments that:

There was certainly no retaliation by the crowd. I am certain that if someone on that march had had a gun then there would have been a swift retaliation against those two soldiers...

...People were very annoyed about what had happened and I was quite worried that if anyone did have a gun on the march that this

¹⁹³ AO19.10

¹⁹⁴ Day 088/144/13-24

¹⁹⁵ AM253.4 paragraphs 16 and 19

*was the time that it would be produced. My fears were fortunately unfounded.*¹⁹⁶

In fact Mr McGonagle did see a young man with a pistol near the William Street / Rossville Street junction a short time later, and it must be plain that if he had heard the alleged retaliatory shot about which he was apprehensive, he would have said so.¹⁹⁷

6G-137 Despite OIRA 7's attempts to corroborate the accounts which had been given, in the presence of a loyal OIRA team in the public gallery a few days earlier, by OIRAs 1 and 2,¹⁹⁸ his evidence contradicts their evidence that the shot was fired immediately after the shooting of Damien Donaghy and John Johnston. Edmund Lawson Q.C. explored this aspect of his evidence with him:

...paragraph 33, you said you thought it was after about three to five minutes standing around that you heard a single high velocity shot, although you then add:

"It could have been ten to 15 seconds as the whole time just gets blurred in my mind."

A. That is right, you know, time in a situation, that is what I am saying, you know, it could have been ten to 15 seconds, it could have been more, it could have been less, I do not know.

Q. One thing that is clear is that you were not in the immediate vicinity when two or three shots were fired by, or apparently by soldiers?

A. I was not, no.

Q. No. The shots that are alleged to have been fired at Messrs Donaghy and Johnston; you did not hear those so you were not in the area then?

A. I did not hear them.

Q. You obviously arrived some time after that?

¹⁹⁶ AM253.5 paragraphs 22-23

¹⁹⁷ AM253.5 paragraph 25

¹⁹⁸ Day 399/041/08

FS 7.1290

A. There was a lot of noise going on, but what I am saying is: the shots that are supposed to have hit Johnston and Donaghy, I did not hear the shots.

Q. Bear with me. You arrived some time after those shots have been fired, it would appear?

A. I arrived after they were fired, yes.

Q. Then you spent some time talking to people in the area?

A. I spoke with people in the area, yes.

Q. The people milling around, and then you heard another shot?

A. And then I heard another shot, yes.

Q. Whatever else may be the position, it would be quite wrong, in your recollection of matters, would it not, to suggest shooting: bang, bang, bang: Johnston, Donaghy, shots take place, the shooting, bang, bang, bang, a brouhaha amongst those who are present, "the bastards are shooting", and a retaliatory or defensive shot coming straight from Columbcille Court just like that; that did not happen, did it?

A. Because I did not hear the bang, bang, bang I do not know how quickly it happened.¹⁹⁹

6G-138 Peter Mullan witnessed the shooting of Damien Donaghy²⁰⁰ and helped to carry John Johnston some of the distance to Columbcille Court.²⁰¹ He told the Sunday Times that, a short time after helping the injured Mr Johnston, he had witnessed an altercation involving BBC pressmen near the door into which the injured had been taken.²⁰² In his BSI statement Mr Mullan describes standing outside the house for a few minutes.²⁰³ He intervened briefly in the altercation involving the pressmen in an attempt to keep the peace.²⁰⁴ At this point he saw OIRA 1, who he

¹⁹⁹ Day 398/148/20-150/08

²⁰⁰ AM450.6 paragraph 8,

²⁰¹ Day 152/194/01-04

²⁰² AM450.2

²⁰³ AM450.7 paragraph 12

²⁰⁴ AM450.2; Day 152/236/19-237/01

knew and is able to name,²⁰⁵ walking northwards towards the area where the two men had been shot.²⁰⁶

I have been asked if I am aware of the rifle being fired by the man holding it. As far as I was aware, no shots had been fired from the at gun at that point. If the rifle had been fired in my area, I would have heard it. I would think that any shot by the man would have been fired after the young man and Johnston had been shot. I say this because I had carried Johnston part of the way to the house in Columbcille Court, after which I had spoken with someone I knew for a couple of minutes. It was therefore several minutes after the shootings of the young man and Johnston that the gunman was heading angrily towards William Street. My clear impression was that the man knew that people had been shot and he was going after the action.²⁰⁷

6G-139 Mr Mullan's evidence is that he moved south along Abbey Street shortly after this altercation had taken place. The next gunfire he heard came from the south end of Rossville Street.²⁰⁸ On any view Mr Mullan's evidence demonstrates that OIRA 1 did not fire immediately after Mr Donaghy and Mr Johnston were shot. If he in fact saw OIRA 1 leaving Columbcille Court, and not, as he believes, entering the building in order to fire, his evidence supports the conclusion that OIRA1 must have fired before the shooting of the two civilians as he heard no shooting between the time Damien Donaghy was shot and seeing the man on the stairs. It is perhaps this possibility that leads OIRA 1 to deny that he is the man Mr Mullan describes.²⁰⁹

²⁰⁵ AM450.8 paragraph 22; 152/204

²⁰⁶ AM450.7 paragraph 14

²⁰⁷ AM450.8 paragraph 20; Mr Mullan confirmed on oath that his impression was that OIRA1 had not fired at this stage and that those who surrounded him were trying to prevent him from firing (Day 152/203/06-17; Day 152/216/11-23). When a section of OIRA 1's account to the Sunday Times (PIN 437) was read to him Mr Mullan stated that it was possible that he had not heard the shot as he had been involved in the attack on the pressmen (Day 152/215/08-216/06), however it would have been odd if Mr Mullan had failed to hear a shot fired so close to him (as Mr. Mullan himself said when asked by Edwin Glasgow QC about other evidence of shots in the area; Day 152/240/02-08).

²⁰⁸ AM450.8 paragraph 25

²⁰⁹ Day 396/048/06

6G-140 In his NICRA statement Frank Hone referred to hearing shots whilst near Columbcille Court; it is plain from his account that some minutes separated the shots which he attributed to the army and the heavier sound of a shot fired by a civilian gunman close to his position:

We withdrew via the side entries of Columbcille Court leading to Rossville St. It was then I heard shots; by their tone I knew they were Army rifles that were being used and being shot as far as I could guess from either the Abbey taxi-stand or the church roof. Then I heard two civilians being hit. About three minutes later I heard a heavier shot from very close to me in Kells Walk.²¹⁰

Mr Hone now has no recollection of these events.²¹¹

6G-141 Anthony Martin's evidence supports the conclusion that OIRA 1 had removed the rifle he used to fire from a car in Glenfada Park prior to the march reaching William Street and any shooting by the army.

Q. ...In the account you gave to the Sunday Times you said that you met an IRA man and he told you that there were two rifles in a green Avenger parked in Glenfada Park and he wanted you to help him get to it.

You are recorded there saying:

"I learnt later that the rifles had been removed before the shooting started."

Is that something that you learnt?

A. Yes, I -- we were talking about the car and I was talking to somebody about it, but I got near that car, got the gun out, I most certainly would have used it against the army, (inaudible) and the guy said "well, you would not have got any guns in it because they were moved out".

Q. Did you learn when they had been moved out?

A. I, I was told shortly before -- shortly before the actual march.²¹²

²¹⁰ AH80.1

²¹¹ AH80.5 paragraphs 23-24

6G-142 Mr Martin acknowledged that he did not in fact know when the weapons had been removed from the car. He was told only that they had been removed before the point at which he re-entered Glenfada Park having dealt with the deceased and wounded in the area, but whilst soldiers were still present. However he confirmed his opinion that the weapons had been removed at an early stage:

I would assume it would have been before the shooting, not at the shooting or after.²¹³

THE ALTERCATION ON THE STAIRS

6G-143 As OIRAs 1 and 2 left Columbcille Court a group that included members of the Provisional IRA accosted them. The incident is relevant not just in terms of chronology, but because it yet further undermines the credibility of OIRAs 1 and 2 and illustrates the extent to which they, and others from the Official IRA, have sought to orchestrate their evidence to this Inquiry. The presence of a third member of the Official IRA, OIRA 7, in Columbcille Court at this time may well be further confirmation of the fact that this was a well known and pre-arranged sniping position used by the Official IRA.

Credibility of OIRA 1 and 2's accounts

6G-144 OIRA 1 gave the following account of the incident when he spoke to John Barry in 1972:

OIRA 1 says he was then tackled, on the stairwell or at the entrance of the washing place to it, by three Provos: PIRA1, PIRA2, and PIRA3. PIRA 2 – the oldest of the group – took the lead, said “You cunt” etc. PIRA1 tried to grab the gun. OIRA 1 stuck it in his stomach and said he “I’ll fucking shoot you etc.” PIRA2 backtracked, said there is no need for all of this etc. Agreed that OIRA 1 wouldn’t fire again, and he was allowed to depart in peace.

²¹² Day 176/102/25-103/17

²¹³ Day 176/104/25-105/02

FS 7.1294

OIRA 1 then has a very hazy chronology. He went back to Glenfada, put the rifle back in the boot of the car, and waited rather at a loose end.²¹⁴

6G-145 OIRA 1 now repudiates this account:

I have never had an interview with Barry and therefore it is not me who says that I was tackled on the stairwell. I don't remember any Provisionals being there and certainly not the three who were mentioned. I do not remember who the people on the stairwell were. I did not suggest I would shoot anybody in the way in which it is set out in these notes. It says that I agreed that I would not fire again. I had no intention of firing again.²¹⁵

6G-146 There is, however, corroboration of the facts set out in PIN437 relating to this incident.

6G-147 PIRA 1 said that he had no recollection of PIRA 2 being present during the argument, but otherwise agreed with the contents of John Barry's note that were put to him. He was asked in detail about the contents of the note and specifically agreed that, when he had tried to grab the rifle, OIRA 1 had stuck it in his stomach and threatened to shoot him. He also specifically agreed that OIRA 1 had agreed not to fire again and had been allowed to depart in peace.²¹⁶

The evidence of OIRA 7

6G-148 OIRA7 claims to have joined OIRA's 1 and 2 as they left Columbcille Court. He purports to corroborate their account of what occurred, in particular, in relation to Sector 1, that OIRA 1 fired after he had learnt that Damien Donaghy had been shot.²¹⁷ His colleagues undermine his account. OIRA 1 told the Tribunal that he had no recollection of OIRA 7 joining or being present at the confrontation which

²¹⁴ AOIRA 1.1

²¹⁵ AOIRA 1.33 paragraph 60

²¹⁶ Day 409/073/01-074/17

²¹⁷ Day 398/031/12-16

FS 7.1295

took place on the stairs.²¹⁸ In his BSI statement, OIRA 2 was clear that he and OIRA 1 were the only members of the organisation who were present:

*We were the only two members involved in the incident. If there were any other volunteers around they would have been on the march as ordinary citizens of Derry and no-one was waiting around for orders. As it was most, if not all, other volunteers were in the Creggan.*²¹⁹

6G-149 If, as OIRA 2 claims, the majority of the members of the Official IRA were in the Creggan on Bloody Sunday, the presence of OIRA7 in Columbcille Court immediately after OIRA 1 had fired is surely very unlikely to have been a mere coincidence.

6G-150 There is also evidence of a struggle involving a gunman close to Columbcille Court who was disarmed. OIRA 1 is resolute that the gun was not taken from him and that he personally returned it to the boot of a car in Glenfada Park.²²⁰ On OIRA 1's own account, if his evidence is correct, the incident to which these witnesses refer must have involved another gunman.

6G-151 Eamon Gallagher was unshakeable in his belief that he saw a gunman armed with a rifle in the area of Kells Walk prior to any shots being fired. Mr Finnegan's suggestion that the gunman appeared only after army shots had been fired was emphatically denied.²²¹ According to Mr. Gallagher as the man produced the rifle a group of men gathered around him and either broke or dismantled it.

...they gave me the impression that they did know him because they had no bother – he handed over the rifle to them and they dismantled it and one of the men said "there will be no shooting here today"²²²

²¹⁸ Day 395/194/10-105/09

²¹⁹ AOIRA2.22 paragraph 46

²²⁰ AOIRA 1.40 paragraph 119

²²¹ Day 066/120/13-19

²²² Day 066/072/09-13

OIRA 1 and 2 were expressed themselves as being absolutely certain that this was not incident that they were involved in.²²³ OIRA 2 expressly acknowledged the possibility of there being other riflemen in the area:

Q. If it happened, it is another gunman in the area?

A. It could well be.

Q. Do you have any recollection of what in fact you were wearing that day?

A. I cannot really remember. Probably jeans and a jacket of some sort.

Q. So it is not you, anyway?

A. Definitely not.²²⁴

6G-152 Vinny Coyle gave the following account to the Sunday Times of disarming a gunman who he describes as a freelancer:

He heard a shot. It came from the second storey of Kells Court. Coyle is less than fully frank about what happened. But I take it he met up with Provo "Sean" coming over the waste ground. Anyway, Coyle was the bloke who had a furious row with the bloke who fired. And says he seized the gun and broke the butt against the man's chest. Says the chap was not an Official but a freelance.²²⁵

6G-153 OIRA 1 says he knew Vinny Coyle and is adamant that he was not present. OIRA 1 was asked by Edmund Lawson Q.C.:

Q. You are aware, because you have been taken to it; of various other descriptions given, for example, by Father Bradley as he was, Vinny Coyle, et cetera, about another gunman in Columbcille Court. If their accounts are right, whoever that gunman was, it was not you?

A. Well, as I understand it, Father Bradley's account was that he had seen all of this and then subsequently admitted that he had only heard it second-hand, so I would not take any notice of Father

²²³ Day 396/047/12-048/08

²²⁴ Day 393/113/02-09

²²⁵ AC109.2

FS 7.1297

Bradley's account. As for Vinny Coyle's account, he says he broke the gun over someone's chest and I think I have pointed out that in my view it would have been more likely that the person's chest would have broke, so I do not think I take account of that view, either.

Q. It was not you?

*A. No, it was not.*²²⁶

6G-IV CIVILIAN EVIDENCE OF OTHER GUNMEN IN SECTOR 1.

6G-154 There is civilian evidence that OIRA 1 was not the only gunman operating in the Bogside. Other gunmen were present with rifles and gunmen with handguns.

EVIDENCE OF OTHER GUNMEN ARMED WITH RIFLES

A rifle fired from behind the taxi office in William Street

6G-155 Anna O'Donnell gave the following account to NICRA of seeing a man emerge from the taxi office and fire a rifle from street level in response to a shot that, so she thought, had been fired by a soldier from the Presbyterian Church injuring a youth in the legs.

*A man appeared with an old rifle behind the taxi office in William Street and fired one shot-hitting nothing. Other bystanders advised him to put the gun away as it would only draw fire, which he did immediately. I saw no sign of this man after this incident.*²²⁷

Mrs O'Donnell may have been referring to the City Cabs office the location of which is marked with an arrow on the photograph below.

²²⁶ Day 396/048/09-24

²²⁷ AO20.1



6G-156 The location from which the gunman appeared, and the fact that she says the man put the gun away immediately, would suggest that she is not describing OIRA 1.

6G-157 The Observer Gallery proofs record information from the acting CO of the Official IRA in Londonderry on Bloody Sunday. According to the CO the Officials had two marksmen on duty. One covering Rossville Street from the corner of William Street and Rossville Street; the other in the Little Diamond covering William Street. Both were armed with rifles. ²²⁸

Evidence of high velocity fire heard at the City Cabs office timed at approximately 1605 apparently emanating from the west.

6G-158 The evidence of David Tereshchuk is that a single isolated rifle shot was fired at about 1600.²²⁹ He confirmed that he is quite sure that he did not hear multiple gunfire either before or immediately after this single shot.²³⁰ Mr Tereshchuk's evidence to the Widgery Inquiry was that his impression of where the shot had emanated from coincided with that of witnesses who had described the shot as

²²⁸ ED24.9; OIRA3 claims not to remember having spoken to anyone from the Observer, AOIRA3.30 paragraph 56.5; he adds "...we had no-one positioned in Little Diamond as suggested here.", AOIRA3.33 paragraph 56.40

²²⁹ M77.12 paragraph 7

coming from the direction of the Little Diamond,²³¹ where, according to OIRA 3 a marksman was stationed in order to cover William Street. It is plain that a shot fired from this direction could not have hit the east side of the Presbyterian church. From an elevated position it is quite possible for the shot to have reached Barrier 13 and there is military evidence (see further below) of a shot fired at Barrier 13 shortly before 1 PARA deployed.

6G-159 The same shot appears to have been heard by Simon Winchester and Nigel Wade who were also near the City Cabs office at the time. Although "IRA people" persuaded Mr Winchester after the event that it was the shot at the Presbyterian Church, Mr Winchester's initial impression was that this was a shot at an army barrier:

When I was in William Street standing by the City Radio Cabs office, I heard a single shot which I thought came from the direction of the Little Diamond. I thought it was a high velocity rifle shot and I said to my colleagues 'Provos', thinking that it was from an IRA sniper. I remember a woman standing to the door of the cabs office, saying to me 'You be sure you get it right who fired that shot'. I took her to mean the army fired it, but that was not my impression. I thought it was fired from the Little Diamond towards the army barricades. I did not hear the whine of the shot. This shot was fired between 4 pm and 4.05. I noted it in my notebook, which I produce to the Tribunal.²³²

6G-160 So far as the location of the gunman is concerned, Mr Winchester told this Tribunal that he still believes the shot came from behind him as he faced east looking towards Little James Street or William Street. Whilst he could not say specifically where the shot was from the arc of possibility included the Little Diamond, Rossville [Street] and Glenfada [Park].²³³ Mr Winchester confirmed that the shot did not sound to him like a shot fired by the army.²³⁴

²³⁰ Day 071/130/13-131/3

²³¹ M77.7 paragraphs E-F

²³² M83.16 paragraph 12

²³³ Day 116/031/07-15

²³⁴ Day 116/103/05-14

FS 7. 1300

6G-161 Mr Winchester was referred to a passage from his book "Holy Terror" in which he made the following comment on the shot he heard:

It turned out to have been from an IRA gun, fired at an army wire-cutting party. It injured no-one, but it gave an indication that there were IRA guns in the Bogside that day, despite the assurances given to me earlier.²³⁵

Mr Winchester explained why he had reached this conclusion about the shot:

I did because IRA people that I spoke to much, much later once the dust had truly settled suggested that there was an early shot fired at a wire-cutting party. Now who told me that, I cannot tell you at this remove and it was a conversation I had in Belfast, not in Derry.²³⁶

Mr Winchester's own evidence tends to suggest that this was not the shot fired at the Presbyterian Church.

6G-162 Nigel Wade was with Simon Winchester and also heard a single rifle shot²³⁷ although he is now unable to say whether this occurred as he was walking down William Street or after he had observed rioting at Barrier 14²³⁸ or say where the shot was fired from.²³⁹

EVIDENCE OF HANDGUNS

The carrying of weapons by members of the Command Staff for Personal Protection

6G-163 The evidence of OIRA 4, who has said that members of the Command Staff had access to short arms for personal protection, further undermines the suggestion that all weapons had been removed to the Creggan. OIRA 4 was himself was

²³⁵ Day 116/147

²³⁶ Day 116/147/24-148/4

²³⁷ Day 109/199

²³⁸ Day 109/124

²³⁹ Day 109/198/18-199

FS 7. 1301

carrying a .32 pistol on Bloody Sunday for that purpose.²⁴⁰ It would be surprising if other members of the Command Staff, including OIRAs 1 and 2, were not doing the same, particularly given that, on their own accounts, they were to undertake the task of recovering a defective weapon from an area close to where large numbers of soldiers were deployed. OIRA 2 agreed that they were both authorised to carry a handgun for personal protection but said, despite the dangerous mission on which he was engaged neither he nor OIRA 1 carried a weapon for their personal protection.²⁴¹ No weight can be given to the fact that both deny carrying arms other than the .303 recovered from the dump in Columbcille Court, having regard to the wholly incredible evidence they have both given to the Tribunal.

A Handgun fired from Kells Walk Balcony

6G-164 Teresa Bradley describes seeing a gunman on a Kells Walk balcony in the location marked with an arrow on the photograph below.²⁴²



6G-165 Mrs Bradley confirmed on oath the accuracy of the following passage from her BSI statement.²⁴³

12. ...my attention was grabbed by a gunman at the front end of Kells Walk ... The man was standing completely alone and was

²⁴⁰ AOIRA4.15 paragraphs 3-4

²⁴¹ Day 393/096/11-22

²⁴² AB70.14

²⁴³ Day 064/035-038

FS 7.1302

pointing a handgun straight in front of him with arm outstretched, and was firing it in the direction he was facing (the north). He was quite close to me. It as not a heavy gun and the firing sounded like "pops". I heard him shoot several times. His arm and the gun were moving up and down as he fire.

13. The crowd around me who had seen him fire got very irate and were shouting at the man form him to stop shooting.

14.... average height and slim ... maybe my age at the time ... He had a light coloured jacket on, not any overcoat. ²⁴⁴

6G-166 There can be no doubt, given Mrs Bradley's description of the weapon and the location of the gunman, that the man she saw was not OIRA 1. Further confirmation of this is Mrs Bradley's evidence that the gunman she saw, unlike OIRA 1, had not been physically approached.²⁴⁵

A pistol fired from street level from near Kells Walk / Columbcille Court

6G-167 David Capper saw a separate gunman. Mr Capper witnessed a man three or four feet²⁴⁶ from him firing a pistol from a position slightly to the east of the Shields' house in Columbcille Court.²⁴⁷ The shot was fired five to eight minutes after the shooting of Damien Donaghy.²⁴⁸

I did not see him fire. I heard the bang, looked round and I could see him put a handgun into the coat and then blend into the crowd.²⁴⁹

6G-168 The man was facing north towards the Presbyterian Church and Mr Capper says he assumed the man had fired at soldiers in the derelict buildings close to the church.²⁵⁰ Mr Capper confirmed on oath that he had seen the gunman. He described him as being in his thirties or forties, wearing a brown overcoat and

²⁴⁴ **AB70.2 paragraph 12-14**

²⁴⁵ **Day 064/063-064**

²⁴⁶ **Day 073/014**

²⁴⁷ **Day 073/069**

²⁴⁸ **Day 073/070**

²⁴⁹ **Day 073/011/03-05**

PI 7.1303

carrying a pistol. He explained that, for "diplomatic" reasons he had given the impression to the Widgery Inquiry that he had not seen the gunman as he had not wanted to get involved in identity parades.²⁵¹ Mr Capper was questioned at length, and he declared himself to be positive that the gunman had fired from ground level.²⁵² There can therefore be little doubt that this was *not* the same shooting incident that was witnessed by Mrs Bradley who saw a pistol being fired several times from a balcony at the back of Kells Walk, or OIRA 1. It is evident from the answers that Mr Capper gave in response to questions asked by Edwin Glasgow Q.C. that the Tribunal ought to have heard from many more witnesses about this incident. Mr Glasgow inquired the number of civilians present when the gunman had fired:

Q. What is the sort of size of the crowd?

A. 20, 30. This was after all the milling around and we had been chased and told to get lost and I was standing on the pavement or in the road, um, thinking what am I going to do now, where should I go, should I try and get back in, should I wait and then the bang and he fires this one shot.

Q. Again your recollection is that after the incident they scattered?

A. Oh, yes.

Q. Again, I want to be clear: no question of a confrontation between the crowd and the gunman or anything like that?

A. No, they, they, like me, felt that if a shot had been fired that close to them, it was a possibility that the army might have fired back or done something and they were anxious to get out of the road, and so indeed was I.²⁵³

6G-169 Mr Capper's evidence is therefore that this gunman, unlike OIRA 1, was not challenged by a crowd after he had fired. OIRA 1 is resolute that Mr Capper is not describing him:

²⁵⁰ Day 073/011

²⁵¹ Day 073/065/07-14

²⁵² Day 073/123/09-23

²⁵³ Day 073/123/24-124/16

FS 7.1304

*I know nothing about the evidence he has given about a short man of 30 to 40 years firing one round from a pistol towards soldiers in a derelict building near the Presbyterian Church. It is not me. I did not have a pistol that day.*²⁵⁴

A pistol fired from the crowd in William Street prior to the shooting of Damien Donaghy and John Johnston.

6G-170 Ciaran Donnelly, gave evidence to Lord Widgery of a single shot from a revolver fired from the crowd in William Street approximately 20 minutes before 1 PARA deployed.²⁵⁵ His evidence to this Inquiry suggests that this shot occurred prior to any other gunfire, military or civilian.²⁵⁶

6G-171 Mr Donnelly gave a detailed description the gunman in his BSI statement:

*4. ...a man aged forty to fifty years old, about 5'6" tall with dark hair, wearing a blue suit jacket, dark trousers and a white open-necked shirt, fire a short aimed at derelict house. The firearm he was holding was a small handgun or possibly a starting pistol. I remember thinking that this man appeared to be drunk. After he had fired the shot the crowd around him of fifteen to twenty people said something like "don't be so bloody stupid, clear off" to him. I cannot remember where he was standing when he fired this shot but I do remember that he was aiming toward a bricked up derelict house.*²⁵⁷

6G-172 According to Mr Donnelly's evidence to Lord Widgery the house was in William Street.²⁵⁸ He now believes it more likely that the building was an industrial building rather than a house.²⁵⁹ Giving evidence to this Inquiry Mr Donnelly initially maintained, as he had done to Lord Widgery, that he had not actually seen the man fire.²⁶⁰ When pressed he made the following concession:

²⁵⁴ AOIRA1.40 paragraph 118

²⁵⁵ M22.5 paragraph D

²⁵⁶ Day 071/83-84

²⁵⁷ M22.20 paragraph 4

²⁵⁸ M22.5 paragraph A-D

²⁵⁹ Day 071/068/17

²⁶⁰ Day 071/017

FS 7. 1305

*Yeah, maybe, maybe I did see it. It is hard to say. It was a long time ago.*²⁶¹

6G-173 The fact that Mr Donnelly has consistently described the gun shot as being from a pistol or revolver makes it most unlikely that this was the shot at the Presbyterian Church, which military witnesses overwhelmingly believed to have been high velocity. Mr Donnelly describes an isolated shot, entirely unconnected with the shooting of Damien Donaghy and John Johnston.²⁶²

Gunman with a pistol firing from a building on the South of William Street

6G-174 Derek Humphry spoke to a member of the Official IRA who admitted firing a pistol shot from a building on the south side of William Street towards soldiers near the GPO building in response to the shooting of Damien Donaghy and John Johnston.²⁶³ He was asked by Mr Clarke:

You spoke to this man yourself, did you?

A. Yes.

Q. Not through an intermediary, you actually saw him?

A. No.

Q. Did he describe where he was at the time when he fired this shot?

A. I cannot recall, sir.

Q. What was described as a pistol shot, was it?

A. Definitely, yes.

Q. One only or more than one?

*A. One, one shot from one pistol.*²⁶⁴

²⁶¹ Day 071/071/23-24

²⁶² Day 071/083/18-25

²⁶³ Day 217/159-161

²⁶⁴ Day 217/159/25-160/10

Other corroboration for the presence of handguns in and around William Street prior to the deployment of IPARA.

6G-175 Chris Myant was a journalist who assisted with the taking of NICRA statements. He was told by a young woman that she was sure that somebody had fired a handgun in William Street, although she was unsure about the timing.²⁶⁵ Mr Myant's view was that she was hysterical and had probably got it wrong; an opinion which is devalued given the other evidence which confirms that at least one gunman armed with a pistol, and probably more, were active in and around William Street at this time.

6G-176 In his 1972 statement Thomas Mullarkey refers to hearing "a single shot, loud, a revolver I thought, but I could not place where it came from." The shot was timed shortly after four or five high velocity shots.²⁶⁶ Mr Mullarkey now has no recollection of this incident but confirmed the reliability of his 1972 evidence.²⁶⁷

6G-177 John Long did not hear any shots but as he passed through an alleyway from Kells Walk towards Columbcille Court with a doctor for Damien Donaghy and John Johnston, he saw people pushing to get out in the opposite direction. Mr Long recalls that someone mentioned a handgun had been seen and they all wanted to get away. Mr Long said he had not been told where this man had been seen.²⁶⁸

Accounts of multiple shots fired from near Kells Walk.

6G-178 William Burke describes in his NICRA statement witnessing the shooting of Damien Donaghy and John Johnston. He was close to the group who gathered round them:

I stayed around the fringe of this group of people for say five minutes and continued in the direction of Kells Walk. About this

²⁶⁵ Day 122/176-178

²⁶⁶ AM452.2 The words which are underlined have been added to the typed statement in manuscript.

²⁶⁷ Day 069/034

²⁶⁸ Day 068/096

FS 7.1307

*time I heard three or four shots and ran round beside some garages for cover. Some people were persuading three men to move on and break off firing at the soldiers because of the risk to innocent people around.*²⁶⁹

6G-179 Although the statement does not make it explicit, it appears from the context that Mr Burke saw these gunmen before 1 PARA had deployed. The possibility that this is simply yet another version of the struggle involving OIRA 1 is contradicted by the details in Mr Burke's account of the number of shots. Nor is this likely to have been Teresa Bradley's gunman who was on his own, and who disappeared after firing without being involved in any kind of struggle.

6G-180 Noreen Donnelly is another witness who refers to the presence of more than one gunman. Her undated 1972 statement describes what must be the injured John Johnston. Five minutes later she was told by a man to "Look at the man on the flats with a gun." She could not see him as she did not have her glasses on. Noreen Donnelly then moved to Rossville Street. Her statement records that:

*As I was about to enter the arch at Kells Walk a boy told me to go back. "Don't come in here as the boys have guns up in the flats. There are about thirty."*²⁷⁰

6G-181 This incident occurred ten minutes before the main episode of shooting broke out in Rossville Street.²⁷¹ It is not clear from the statement where the gunmen referred to were. It may be that it was either Columbcille Court or Kells Walk. It is unlikely that she means the Rossville Flats as it would have made no sense for her to be told not to go behind Kells Walk if this were the case.

Eye Witness accounts of civilians calling for a line of fire prior to the deployment of 1 PARA

6G-182 Evidence that civilians were warned that a gunman was about to fire corroborates not only the presence of gunmen in the area but also that a substantial number of

²⁶⁹ AB105.1

²⁷⁰ AD127.1

²⁷¹ AD127.1

FS 7.1308

civilians in the area must have been aware of their presence and their intentions. Much of this activity appears to have occurred shortly before, and in anticipation of, the deployment of troops down Rossville Street.

- 6G-183 The *Sunday Times* note of an interview with Joe Carlin suggests that a line of fire was called for prior to the shooting of Damien Donaghy and John Johnston. Mr Carlin refers to retreating as CS gas drifted up William Street:

So we went up ahead of it [the gas], to the entrance where you go through, through rouble and you go in to Glenfada. As we were going through, a line of fire was shouted for. People lay flat or stepped aside. I was just off the road, moving inside (2) when word came back to get flat, get flat. There must have been 35-40 people at that stage moving through it... While I was clambering over this the word came back "Get down, they're shooting". I didn't know who "they" were, but people were looking back in the direction of the old Bog and hiding to protect themselves from that direction. But there was no shooting. So everyone got up from behind their stones and walked on. But I had heard a single shot – a high velocity shot – just as I went in off William Street.²⁷²

- 6G-184 The precise location where this occurred is unclear. It appears that Mr Carlin was either referring to the laundry waste ground or to a passageway between the north gable end of the Kells Walk block of flats and William Street. The incident is clearly separate from the single rifle shot he heard.

- 6G-185 *Sunday Times* notes of an interview with [James] Brendan O'Connor and Kieran O'Connor record that one, or both of the brothers, was with Mr Carlin, and appears to have witnessed the same incident. The notes record that:

One young man, in a white coat, clearing a line of fire around the front of Kells Walk in Rossville Street.²⁷³

- 6G-186 Mr James Bredan O'Connor now denies ever giving an interview to the *Sunday Times* or that he saw the incident recorded in the notes.²⁷⁴

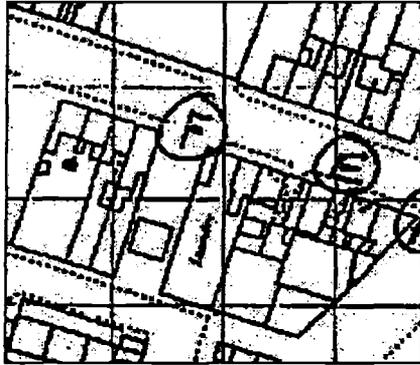
²⁷² AC150.2

²⁷³ AO10.11

FS 7. 1309

6G-187 Simon Winchester may also have witnessed the same incident; but also saw an earlier instance of civilians being warned that a gunman was about to fire:

I saw boys clearing paths for snipers on two occasions on Bloody Sunday. The first was before I heard the first shot. At this time I saw boys clearing a path in William Street at the place marked "F" grid reference KO8.²⁷⁵



6G-188 Mr Winchester concedes that his recollection of the first line of fire is extremely hazy.²⁷⁶ His evidence in relation to the second line of fire is that it was called for after the first shot in the area south of Kells Walk. Mr Winchester remained in the area for about five minutes during which time no shots were fired.²⁷⁷ His oral evidence to the present Inquiry was somewhat at odds with the contents of his statement in suggesting that both incidents occurred in the area of Kells Walk Street.²⁷⁸

6G-189 Nigel Wade said he could not recall the first line of fire referred to by Mr Winchester.²⁷⁹ He is, however, able to recall two men, who he assumed were members of the IRA, clearing a line of fire from Kells Walk Street through to

²⁷⁴ Day 108/146-151; Day 108/153; Day 108/161-164

²⁷⁵ M83.9 paragraphs 52-54

²⁷⁶ Day 116/34

²⁷⁷ M83.9 paragraphs 54-55

²⁷⁸ Day 116/033-036

²⁷⁹ Day 109/205

FS-7.1310

Rossville Street.²⁸⁰ This incident occurred two or three minutes before 1 PARA came down Rossville Street.²⁸¹

6G-190 The evidence of this activity suggests that there were several gunmen in the area preparing to fire at 1 PARA as they deployed into the Bogside. This conclusion is supported by the evidence of Stephen McGonagle who gives a detailed description in his BSI statement of a man with a pistol or revolver standing slightly south of the junction of Rossville Street and William Street apparently lying in wait for soldiers, but disarmed before they arrived:

I could see a young man of about seventeen or eighteen walking around this area. This young man was wearing a gabardine raincoat which I remember thinking was strange as it was a fair day and not raining. I saw the young man put his hand into the left pocket of his coat and pull out either a pistol or a revolver. He held this in his left hand pointing towards the ground. The young man was walking around as if he was looking for a vantage point from which to open fire.

26. This young man was followed by two people who I knew to be IRA activists. These two men quickly disarmed the young man and I would estimate that this young man was only walking in the open with his gun for about three minutes.²⁸²

6G-191 The precise timing of this sighting is unclear. Mr McGonagle says that Rossville Street was very quiet at the time as most people had gone to Free Derry Corner for the meeting; he is therefore presumably talking about a period very shortly before the deployment of 1 PARA.²⁸³

6G-192 Marion McMenamín's account of seeing a gunman near Kells Walk as 1 PARA deployed down Rossville Street²⁸⁴ is further evidence of a plan to fire at soldiers as

²⁸⁰ Day 109/126-128

²⁸¹ Day 109/156

²⁸² AM253.5 paragraphs 25-26

²⁸³ AM253.5 paragraph 24

²⁸⁴ Day 194/212-220

FS 7.1311

they entered the Bogside, and specific corroboration for INQ1383's account of a gunman with a pistol in this location.²⁸⁵

6G-193 There is Sunday Times material recording discussions with Ivan Cooper which refers to the presence of CIV2, Martin McGuinness and PIRA 17 "in a house in William Street, almost down by C street" armed with Thompsons and a pistol prior to the deployment of troops through the barriers. The notes record a plan to fire through the doorway at soldiers who were occupying houses on the other side of William Street, but state that the trio became trapped and none of the weapons was fired.²⁸⁶ Mr Cooper has described the notes as "poisonous," and rejects them in their entirety.²⁸⁷ It is not know what truth lies behind this account but it is submitted that there is likely to be some.

6G-V MILITARY ACCOUNTS OF SECTOR 1 FIRING

THE PRESBYTERIAN CHURCH SHOT

6G-194 There is a considerable body of military evidence of an incoming high velocity shot striking a drainpipe on the east side of the Presbyterian Church above the heads of the Mortar Platoon wire cutting party.²⁸⁸ A large number of soldiers

²⁸⁵ Day 304/129-130

²⁸⁶ KC12.68

²⁸⁷ KC12.12 paragraph 97

²⁸⁸ for example, Soldier N B397, B438.004 paragraph 21-22; Soldier M B359; Soldier K B297, B311.005 paragraph 8; Soldier O B466 paragraphs 1-2, B575.110 paragraphs 19-23; Soldier P B595 paragraph D – B596 paragraph A; Soldier T B734; Soldier U B766, B787.003 paragraph 13, Day 369/012/15-015/17; Soldier V B801, B821.003 paragraph 2.1; Soldier Q B635; B657.2 paragraph 13; Soldier 002 B1363.002 paragraph 9; Soldier 006 B1375, B1377.003 paragraph 9; Soldier 013 B1406, B1408.002 paragraph 10; Soldier 014 B1409, B1412.003 paragraphs 14-15; Soldier 017 B1484.002, paragraph 9; Soldier 018 B1485, B1491 paragraph 12; Soldier 019 B1494.001 paragraph 5, Day 343/097/07-14; Soldier 024 B1526; Soldier 032 B1613, B1616.004 paragraph 14, Day 362/006/12-22; Soldier 035 B1625, B1628.003 paragraphs 11-14; Soldier 039 B1651.2 paragraphs 9-11, Day 362/056/11-17; Soldier 106 B1711, Day 299/054/12-056/25; Soldier 112 B1730, B1732.002 paragraph 9, Day 320/093/16-094/25; Soldier 119 B1752.013 paragraph 20; Soldier 200 B1979, B2011 paragraph A-B; INQ007 B1287 paragraph 44; INQ0024 C24.1 paragraphs 4-6; INQ0025 C25.2 paragraphs 13-14; INQ0127 C127.3 paragraphs 10-12; INQ0147 C147.1 paragraphs 5-7; INQ0366 C366.2 paragraphs 12-16; INQ0468 C468.2 paragraph 13; INQ0739 C739.3 paragraph 16, Day 306/017/04-19/02; INQ0748 C748.1 paragraph 5; INQ0768

...continued

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witnessed the shot including members of Guinness Force, who were gathered together in the grounds of the church, and members of Mortar Platoon. As a consequence, shortly before they entered the Bogside they became aware of the presence of at least one sniper intent on killing them. This intention was attested to by OIRA 2 who confirmed to Edmund Lawson Q.C.:

Q. ... if you are going to shoot a soldier, you decide to shoot to kill him?

A. I would imagine so, aye.

Q. Not to give him an ear ache, to kill him?

*A. That is right.*²⁸⁹

6G-195 That a soldier was not killed was pure good fortune. Unsurprisingly the knowledge that a shot had been fired had an effect on some of those who were awaiting their deployment into the Bogside.

6G-196 INQ0768, a member of Mortar Platoon, was very close to the drainpipe. His BSI statement records that:

*The downpipe split and shattered. Debris from the downpipe fell onto us... We were very open on the flat roof and I remember this was a frightening experience as I expected the gunman to adjust his sights and fire again at us. We got off the roof quickly...*²⁹⁰

6G-197 Soldier 019, another member of Mortar Platoon also recalls pieces of the drainpipe landing near him. He recalls that: "I was not shocked by being shot at but it certainly woke me up."²⁹¹

C768.2 paragraphs 11-13; INQ0812 C812.2 paragraph 9; INQ0816 C816.2 paragraphs 16-17; INQ0834 C834.3 paragraphs 12-14; INQ1094, C1094.3 paragraphs 14-16; INQ1152 C1152.4 paragraph 17; INQ1318 C1318.2 paragraphs 12-14; INQ1854 C1854.2 paragraphs 11-12

²⁸⁹ **Day 393/060**

²⁹⁰ **C768.2 paragraphs 11-13**

²⁹¹ **B1494.002 paragraph 5**

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6G-198 Soldier O was aware of a general change in the mood of the troops in the churchyard:

After we had heard this shot, the mood in the churchyard became more serious: we realised that the prospect of the Rossville Flats being used by snipers had become a fact...²⁹²

However whilst the shot may have raised the level of adrenalin, Soldier O's evidence makes it clear that it had no effect on the purpose, or implementation of the arrest operation:

...the mood had not changed to "we're going in to shoot this lot" and indeed this attitude was never there at any time. The idea was still the same for us to get into the crowd and make arrests.²⁹³

6G-199 Guinness Force soldiers describe the incident, and its effect on them, in similar terms. Soldier K's evidence is that:

...I was standing east of the Presbyterian Church ...All of a sudden, there was a shot which hit the drainpipe, six feet in front of me. The shot hit the drainpipe quite high up it and ricocheted off. My instant reaction was to hit the deck...Hearing the shot made the adrenalin start running. There was also a certain amount of fear as someone was firing at us and I could not see who or from where.²⁹⁴

Timing

6G-200 It is not possible to ascertain the precise timing of this shot. It is known that Guinness Force arrived in the area of the church at about 1500.²⁹⁵ The shot is recorded in Colonel Loden's diary of operations under the entry timed 15:55.²⁹⁶ The evidence of the majority of soldiers who witnessed the shot suggest that this timing is broadly correct. Soldier 106 told the RMP that he had moved from the

²⁹² **B575.110 paragraph 21**

²⁹³ **B575.110 paragraph 22**

²⁹⁴ **B311.005 paragraph 8**

²⁹⁵ **B2202.024**

²⁹⁶ **B2212**

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church yard approximately 15 minutes after the shot.²⁹⁷ Soldier Q also times the shot as having occurred approximately 15 minutes before receiving the order to move off in vehicles to Barrier 12.²⁹⁸ Others, for example INQ0127,²⁹⁹ and Soldier 035,³⁰⁰ simply describe the shot as having been fired shortly before mounting up in vehicles.

6G-201 The vast majority of those soldiers who were aware of the shot which hit the church did not hear the shots fired by members of the Machine Gun Platoon from the derelict building with nine windows. This is not surprising given the noise of rioting both in the area of Aggro Corner and in the area further to the west of William Street from where the shots were fired. Those who did hear both episodes of firing confirm that the shot that hit the church was fired first.

6G-202 Colonel Loden's diary of operations suggests that the shot at the Presbyterian Church was fired shortly before the shots fired by Soldiers A and B. The entry timed 1555 records:

One high velocity round was fired from the direction of Rossville flats at the wire cutting party. The shot struck a drainpipe on the east wall of the Presbyterian church approximately four feet above the heads of the wire cutting party. The drainpipe is holed. A few moments after this a member of the Machine Gun Platoon observed a man preparing to ignite a nailbomb at the corner of the building [then he gives a grid reference] on the south side of William Street.

The Platoon Commander then gave orders to a Corporal and a soldier to open fire as the bomber prepared to throw. These two soldiers did so and the man was seen to fall and was dragged away by his comrades.³⁰¹

²⁹⁷ B1711

²⁹⁸ B635

²⁹⁹ C127.3 paragraph 12

³⁰⁰ B1628.003 paragraph 14

³⁰¹ B2212

FS 7.1315

6G-203 Colonel Loden's statement of 17.02.72 records that:

At approximately 1555 hours, I heard one HV round fired from the direction of the Rossville Flats. I heard the crack and believed this round had been fired at the Mortar Platoon wire cutting party...A few minutes later I heard several shots form the MG Platoon in the disused building...³⁰²

6G-204 Colonel Loden remained confident that the order of events was as set out in his diary, although his evidence is that the seemingly precise timings in the document were not noted down at the time. He was asked by Christopher Clarke Q.C.:

When things were happening, at for instance 1550 and 1555, was anybody making a note or anything of the kind?

A. No, sir.

Q. So these are timings recollected when, for instance, the Diary of Operations was compiled?

A. Correct, sir.

Q. How confident or otherwise are you in the sequence of events, that is to say as to whether or not the shots from the Machine-Gun Platoon in the disused building followed or preceded the shot at the drainpipe?

A. I am absolutely positive, the shot at the drainpipe was first.

Q. You still have that in your mind now, have you?

A. Absolutely, yes.³⁰³

³⁰² B2219

³⁰³ Day 342/35/8-21

FS 7. 1316

6G-205 Soldier 200 also heard two episodes of firing before deploying. His evidence to Lord Widgery was that the first of these had been incoming fire at the Presbyterian Church; the second episode was SLR fire from a derelict building. He was asked by Mr McSparran:

Q. When you were at the Presbyterian church did you hear any firing?

A. Yes, sir.

Q. Did you hear SLR firing?

A. Yes, sir.

Q. Did that come from a building which was close by?

A. I should think it was in the area of the building that has been burnt down.

Q. That is what is referred to at the moment as the derelict building?

A. Yes.

Q. How many shots did you hear?

A. I only remember hearing one.

Q. But you now know that they fired five shots from there?

A. I believe it is correct.

Q. Would it be right that that was the first firing you heard that afternoon?

A. No sir.

Q. What firing had you heard before that?

A. I was the wire-cutting party.

Q. And there was one high velocity shot fired?

FS-7.1317

A. Yes.³⁰⁴

6G-206 The order appears in the document Soldier 200 produced in preparation for the Widgery Inquiry entitled "Sequence of events." In it the following list appears under the sub-heading "Church":

- a. Access
- b. HV shot (Warned by K)
- c. MG Pl
- d. Return to veh.³⁰⁵

6G-207 Soldier 200 has no present recollection of the order in which shots were fired but is able to confirm that his 1972 evidence would have been of his own personal recollection; not simply the sequence of events which he had learned from others.³⁰⁶ It may not have been helpful for Mr O'Donovan to suggest that, because Soldier 200 could not at the time identify the source of the SLR firing he heard, that he could not say whether it was before or after the incoming shot.³⁰⁷ Soldier 200 was resolute about the correctness of his 1972 evidence:

A. I am going back to what I told you: that -- as far as sequence of events is concerned. I have no doubt in my mind about the sequence of events and, therefore, I am not sure how you could expect me to answer further than that.

As far as I am concerned the sequence of events are clearly in my mind as far as the two incidents you are referring to, and the only actual information I received after my initial statement was that the, the bangs, the high velocity shot in the area to the right of the Presbyterian Church or the west, I then found out later it was

³⁰⁴ B2011 paragraph A-C

³⁰⁵ B2022.060

³⁰⁶ Day 367/069/09-071/04

³⁰⁷ Day 368/096/05

FS 7.1318

*Machine-Gun Platoon. I am sorry, I cannot go any further than that.*³⁰⁸

6G-208 Soldier A was aware of incoming fire before he and other members of Machine Gun Platoon moved forward to the derelict building.

*Before we moved forward, to take position in a derelict building, I was aware of a shot or possibly two shots being fired. I cannot remember if I actually heard the shot or shots or whether someone told me that we had been fired at and to keep my head down.*³⁰⁹

INCOMING ROUNDS EXPERIENCED BY SOLDIERS AT BARRIER 12

6G-209 Several soldiers at Barrier 12 were aware of incoming fire directed at, or very close to, their position prior to the barrier being lifted. The location of Barrier 12, approximately 100 yards from the Presbyterian Church, makes it unlikely that this was the shot which hit the Presbyterian Church. The fact that more than one shot was fired before the deployment of 1 PARA is corroborated by the significant body of civilian evidence which demonstrates the presence of several active IRA gunmen in Sector 1.

6G-210 W.O. INQ0836 recalls a shot fired at an early stage of the march, before serious rioting had broken out:

10. As the crowd passed us a shot was fired from the south and hit a wall near to where I was standing. I immediately looked up and saw a mark where the bullet had hit about three or four feet above my head, so nine to ten feet from the ground. It was a low velocity bullet so I did not worry about it. I just heard an impact and looked up to the wall it had hit. Because of where it had hit the wall I would calculate that it had come from the direction of the Rossville Flats.

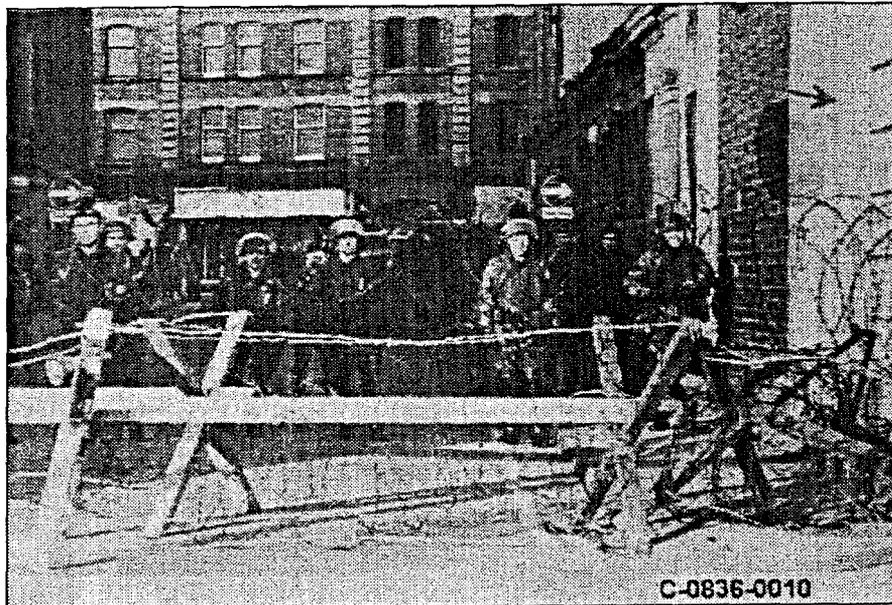
³⁰⁸ Day 368/108/05-17

³⁰⁹ B20.002 paragraph 10; Day 297/041/08-20

FS 7. 1319

11. *The bullet did not cause any particular panic. It was an isolated incident amongst the commotion and the noise going on at any time.*³¹⁰

6G-211 INQ0836 marked with an arrow on the photograph below the location where he believes the bullet struck:³¹¹



6G-212 INQ0785 recalls a number of shots fired at Barrier 12 shortly before 1 PARA deployed:

12. *At one point, while the riot was going on, the Battery commander went around to confer with the paras Regimental Sergeant Major in Great James Street...*

13. *The Battery commander and I returned to Barrier 12. Suddenly, there was a low velocity shot. I was standing in the street and I heard as well as sensed the shot ... Further similar shots, (fewer than five in total) were fired at us. It was definitely not automatic fire...Although I could not say exactly where the shots were fired from nor where they were fired to, I think I instinctively kept my*

³¹⁰ C836.2 paragraphs 10-11

³¹¹ Day 301/031

FS 7.1320

*back to the Rossville Flats, because we were aware that there was a possibility of being shot from there.*³¹²

- 6G-213 INQ0345's exact location is unclear; he was possibly at Barrier 12. He refers in his BSI statement to a high velocity shot hitting a wall somewhere above head height which appeared to have been fired from somewhere behind the march. No more than a minute later a second high velocity shot was fired, aimed lower; he believes it was probably fired from the same gun and same location as the first.³¹³
- 6G-214 INQ0145 was at barrier 12 when he heard two shots "coming towards my general area".³¹⁴ The shots were very close together, probably from two different weapons and probably from .303 rifles.³¹⁵ INQ0145 did not hear bullet strikes. The shots were fired 10-15 minutes before 1 PARA deployed.³¹⁶ INQ0145 gave evidence that at the time the shots were fired there were still a large number of people in the street, enabling him to conclude that the shots must have been fired before 1PARA's deployment.³¹⁷
- 6G-215 INQ0178 recalls a short burst of automatic gunfire from in front of Barrier 12. He took cover ;³¹⁸ when he returned to his position the barrier had been opened and 1 PARA was deploying.³¹⁹ INQ0113, who was in a location on the City Walls, also heard automatic gunfire at about this time.

*After I had watched the riot, I heard one burst of Thompson machine gun fire which lasted approximately five to ten seconds...It would have been at around 4.00 pm. I said to Major INQ1484, "There's a fucking Thompson going off down there!"*³²⁰

³¹² C785.2 paragraphs 12-13

³¹³ C345.3 paragraph 16

³¹⁴ C145.2 paragraphs 10-11

³¹⁵ Day 278/019/19-020/13

³¹⁶ C145.2 paragraphs 10-11

³¹⁷ Day 278/019/18

³¹⁸ Day 339/107/18-21

³¹⁹ C178.3 paragraph 23

³²⁰ C113.5 paragraph 39

FS 7.1321

6G-216 INQ0007's statement to the RMP described how he heard a crack and thump above his head two minutes before Support Company moved out of Queen Street. The shot came from the direction of the Rossville Flats.³²¹ His present recollection is that the shot was fired after 1 PARA had deployed.³²² However he was firm that the shot was distinct from at the Presbyterian Church:

...I am quite clear in my own mind now that (a) there was a shot at the Presbyterian Church when I was standing in the courtyard there and that later, when I went down to the barrier [12] to go through, there was another shot then.³²³

INCOMING ROUNDS EXPERIENCED BY SOLDIERS BEHIND BARRIER 13

6G-217 Soldiers behind Barrier 13 were also aware of incoming fire prior to the deployment of 1 PARA.³²⁴ Soldier Z recalls an incoming high velocity shot before 1 PARA deployed³²⁵ which cracked on the building above his head.³²⁶ The shot came from in front of him. He did not think it a threat but Sergeant 041 sent him and two or three others to collect their rifles after it had occurred.³²⁷ This shot was separate from the shot which occurred much later, at approximately 16:50, which Z returned.³²⁸ It is unlikely given that the bullet struck the position above Z's head, that this was the same round as that experienced by soldiers behind Barrier 12.

6G-218 INQ1997 heard a low velocity round which he believed to have been fired from the back of the crowd in front of the barrier.³²⁹ INQ1997 confirmed on oath that he

³²¹ B1280

³²² B1288 paragraph 46-49

³²³ Day 292/119/15-19

³²⁴ Day 0372/088

³²⁵ Day 372/093/19-20

³²⁶ The building struck by the bullet was marked with a red arrow on the image saved as B879.021, Day 372/091

³²⁷ B879.004 paragraphs 23-24

³²⁸ B879.006 paragraph 38

³²⁹ C1997.2 paragraph 12

FS 7.1322

was sure this shot had been fired before 1 PARA had deployed through the barrier.³³⁰

³³⁰ Day 295/094/02-09

FS 7.1323

CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 5

CHAPTER 7

SECTOR 2

FS7-1324

CHAPTER 7

SECTOR 2

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CHAPTER 7A

SECTOR 2 DEPLOYMENT

7A-1 INITIAL DEPLOYMENT

7A-1 As the two Mortar Platoon Pigs drove south down Rossville Street and turned east across the Rossville Street waste ground they were attacked by gunmen and rioters. The Pigs were not fast moving vehicles. They were cumbersome and awkward to manoeuvre:¹ Their nick name came from their being 'pigs to drive'.

FIRING AS THE PIGS MOVED DOWN ROSSVILLE STREET

7A-2 A number of witnesses have described hearing firing towards the soldiers before the Pigs came to a stop and before the soldiers debussed.

7A-3 George Nellis was at his mother's house at 33 Chamberlain Street.² He went out into the street when he heard the sound of a running crowd. He stepped out of the house to see a "panic situation".³ He described what he saw and heard as he went outside to investigate:

It was as I stepped outside the house that I also became aware of gunfire. I did not hear the sound of guns being fired but I distinctly remember hearing the sound of bullets striking. It seemed to me that I could hear bullets hitting the house somewhere high up, perhaps in the eaves. Bullets seemed to be hitting the house in short bursts, as if there had been regular bursts of fire from an automatic weapon. I remember thinking that the sounds had an echo to them,

¹ INQ1579, driver of Pig 2, confirmed this. He said that their top speed was 30 mph but they took time to reach this speed because they were very heavy. There was not enough time to reach the top speed in Rossville Street: Day 336/153/10-154/03. William Harley agreed that the army Pigs were cumbersome and "not the most manoeuvrable.": Day 077/046/15-21

² AN 9.2, paragraph 8

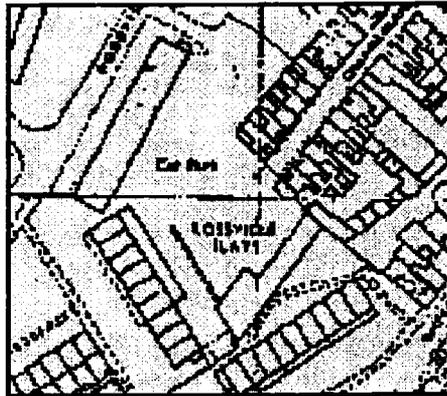
³ AN 9.2 paragraph 12

FS 7. 1329

*but my overall impression was of the sound of bullets hitting the house somewhere high up.*⁴

7A-4 In his oral evidence to the Tribunal he stated that there were maybe two bursts of possibly three or four bullets each.⁵ Again he placed the bullet strikes (he repeated that he did not hear the weapon discharging) he heard at the level of the eaves of his mother's house and of the two houses next door. The bullets seemed to move along in a line above his head and were not focussed on one spot.⁶

7A-5 The rounds that Mr Nellis heard can only have been fired by someone firing northwards from the direction of the Rossville Flats and they must, therefore, have been non-military fire. It would not have been possible for a soldier firing from either the waste ground or from the Rossville Flats car park to have struck the eaves of the houses on the east side of Chamberlain Street. The geography of the area of the Rossville Flats and Chamberlain Street is such that the southern end of Chamberlain Street reaches further south than the gable end of Block 1 of the Rossville Flats.⁷



7A-6 The furthest positions south that soldiers reached were the gable end of Block 1 and the south west corner of the back wall (*ie* the west) of the Chamberlain Street

⁴ AN 9.2, paragraph 13

⁵ Day103/146/02-16

⁶ Day103/149/24 – 150/02

⁷ B790

FS7. 1330

houses. There was, therefore, no soldier in a position that would have enabled him to have fired in effect north, back to towards Chamberlain Street.

7A-7 The firing that Mr Nellis witnessed was very early. Although Mr Nellis was subsequently in the Rossville Flats courtyard for about three minutes,⁸ he did not hear any gunfire or see any soldiers or Army vehicles (although not consciously looking).⁹ Mr Nellis witnessed firing coming from the direction of the Rossville Flats *before* Pig 2 arrived in the forecourt of the Flats.

7A-8 Gerard Grieve ran away from Barrier 14 where he had been involved in the rioting.¹⁰ He heard shooting, he thought from the William Street area, before he reached the Rossville Flats' car park. In oral evidence he confirmed what he had said in a Praxis interview, that there was firing *before* the Pigs stopped.¹¹

Q: Could we have AG55.2 on the screen, please. This, Mr Grieve, is the notes of an interview conducted by a company called Praxis which was a television company who made a programme called "Secret History: Bloody Sunday". That was to coincide with the 20th anniversary of Bloody Sunday. Do you remember being interviewed by someone from Praxis?

A. Yes, I think I do, yes.

Q. The only part I want to ask you about – what you had said in the preceding paragraph was that everyone ran from the barrier up Chamberlain Street. You go on to say: "The army was coming across waste ground along Rossville Street on foot and Saracens behind. As I got to the courtyard the army were firing. "Firing before the Saracen stopped. Definitely." Looking at that, when you are talking about firing, are you talking about live fire or rubber bullets?

A. There was live shooting at that time, but there might have been rubber bullets fired, but I cannot say for definite, but I know there was live rounds being fired.

⁸ Day 103/089

⁹ AN 9.3 paragraph 19

¹⁰ Day 147/001/18

¹¹ Day 147/009/01- 010/03

FS 7 1331

Q. Is it still your recollection that you heard live rounds before the Saracen stopped?

A. Yes.

7A-9 Eunan O'Donnell, a School Teacher at the time,¹² had been on the civil rights March. He heard firing at or about the moment when the Pigs arrived in Rossville Street and on the waste ground. He attributed it, we submit erroneously, to military firing from the City Walls. In his BSI Statement he explained that he was standing in Rossville Street at about the junction with Pilot Row [GR L12]. He heard a (further¹³) volley of six or seven live shots "which appeared to be coming from the City Walls to the south east of the Rossville Flats (of which he is "almost certain"¹⁴) and definitely from a high trajectory." He thought the firing consisted of single shots, fired in quick succession. He also recalled seeing at least two APCs and at least ten soldiers at the north end of Rossville Street and on the waste ground around Eden Place and Pilot Row.¹⁵ The APCs were "definitely moving and heading in the direction of the Rossville Flats car park."

7A-10 He confirmed this in oral evidence:

Q. You describe in paragraph 11 having heard a volley of shots. I do not keep you to the strict number, but you thought it was about 6 or 7, is that right?

A. Yes.

Q. It was after that that you became aware of the army vehicles moving in down Rossville Street?

A. Well, we had heard the army vehicles revving up.

Q. But you had heard that volley of shots before you became aware of the army vehicles moving, so there had been a substantial number of shots in the area before the army vehicles moved down Rossville Street; is that correct?

¹² AO 28.1 paragraph 1

¹³ Having heard two shots earlier on from the approximate location, he said, of the Embassy Ballroom.

¹⁴ AO 28.2 paragraph 12

¹⁵ AO 28.2 paragraph 11

FS 7. 1332

A. I think they may have happened -- I am no longer entirely clear of the order in which they happened. I think they may have happened almost entirely simultaneously; that is what my statement says.¹⁶

7A-11 The firing that Mr O'Donnell heard was at a time when the Pigs were moving on to the waste ground and Rossville Flats' car park. It can only therefore have been para-military firing, and Mr O'Donnell's evidence is thus consistent with the military evidence from soldiers around Pig 1 that they were fired upon shortly or almost immediately on debussing.

7A-12 Edward Dillon also heard firing as he saw the soldiers appearing. It is clear that Mr Dillon saw the first of the Army vehicles arriving in Rossville Street. He had been walking south down Rossville Street prior to the Army's deployment through Barrier 12; he explained in his BSI Statement that he¹⁷

...heard the sound of vehicles coming into Rossville Street from William Street. I was probably 500-600 yards away from them. I saw approximately five or six vehicles – Saracens and army jeeps (Land Rovers) but I do not know how many of each. More or less at the same time as I saw the vehicles I heard shooting. I thought this was from the direction of Blocks 1 and 2 of the Rossville Flats and possibly from the roof.

7A-13 He thought (illustrating the mindset of many of the civilian witnesses) that the shooting was Army fire, coming from the direction of Blocks 1 and 2 or possibly from the roof. Edwin Glasgow Q.C. asked him about both the timing and the location of this shooting:

Could I just ask you one more matter about what you heard when you first saw the army vehicles coming in. Your recollection is of being able to see quite a number of vehicles, is it, do you remember, as you looked back up Rossville Street?

A. I cannot recall how many.

Q. You cannot recall?

¹⁶ Day 054/114/18-115/10

¹⁷ AD45.1 paragraphs 4 and 5

FS7 1333

A. Yes.

Q. Are you sure that you heard the noise of shooting at about the same time that you first saw any army vehicles, is that your recollection?

A. Yes, round about the same time, yes.

Q. And at that time, you told my learned friend Mr Harvey on the far side, you think you had just crossed the rubble barricade and you were approaching the corner of Blocks 1 and 2

A. Yes.

Q. Just one word, if I may. I am sorry if it sounds pedantic, if we look at the second page of your statement of AD45.2, I want to see how particular you were being, the top paragraph, paragraph 5. You have just described seeing the vehicles coming in and it has accurately been put to you on a number of occasions that you thought the shooting had come from the direction of Blocks 1 and 2 or possibly from the roof.

In the middle of that paragraph we have on the page, five lines down, you said:

"I have no doubt that the shots I heard were fired by soldiers."

You were twice asked whether you thought they were fired by "the soldiers"; did you in fact mean simply that from the noise of the shooting you knew it was soldiers shooting or did you mean the soldiers who you had seen in the road?

A. Soldiers.

Q. Just soldiers, wherever they were, the noise was of soldiers shooting?

A. (Witness nodding).

Q. And your belief -- again, I do not criticise this at all or its honesty -- your belief at that time was that there must have been soldiers in the region of Blocks 1 and 2 or possibly even on the roof?

A. No, I did not think of that at the time, you know. Just to go back to your question, I believe at the time when the shots, when I heard the shots being fired that the only soldiers that I remember seeing clearly at the time was the soldiers that were coming-- well, actually not the soldiers, the army vehicles that were coming behind. So I cannot recall seeing army soldiers or vehicles at Kells Walk.

FS7-1334

Q. It might help to look at your plan, sir. If we go to AD45.7 and enlarge the centre of it, the position is that, you have accurately said more than once, you got approximately to where your 1 is?

A. (Witness nodding).

Q. You looked behind you or over your shoulder and you see a number of army vehicles coming down here?

A. Right.

Q. I have drawn an arrow for the north of Rossville Street and you cannot remember quite how many? (Indicating).

A. That is right.

Q. And those are the only soldiers that you can see, but the words that have been put to you in your statement, and you accept, is that you thought that the shooting that you heard was coming from Blocks 1 and 2, the ones we have labelled, I put two yellow arrows, one and two, or possibly from the roofs. (Indicating). The only reason why you say you have no doubt that the shots you heard were fired by soldiers is because the noise of the firing sounded like rifles; is that the position?

A. The noise of the gunfire that I heard, I have no doubt that it was the noise that I have heard on numerous occasions previous in time, was the noise from, from army fire.

Q. And allowing, as I am sure we all do, for the echoes and the other noise that was going on, you cannot help the Tribunal any more about the direction from which that shooting was coming, only that it sounded like rifle fire?

A. It sounded like rifle fire, yes.

Q. Did you hear any other noise at all, particularly, for example, rubber bullet guns or explosive noises of shooting of any other kind?

A. I cannot recall, no.

Q. You cannot recall. Was there quite a lot of noise?

A. Quite a bit of noise I thought at the time, yes.¹⁸

¹⁸ Day 174/084-089

7A-14 Although Mr Dillon was reluctant to accept that the shooting was anything other than military, it is plain from the timing and the location, that he was describing early shooting as the Army vehicles appeared. Given that it is established that there was some time between the soldiers debussing and their opening fire, Mr Dillon must in fact have heard para-military gunfire.

7A-15 Thomas Daly ran from the junction of William Street and Rossville Street when he heard the noise of the Pigs coming into the Bogside. He ran "as fast as [he] could" from there towards the Rossville Flats car park. By the time he reached Pilot Row he heard what he said he took to be Army fire coming from behind him. He looked over his shoulder and saw Army vehicles coming down Rossville Street. However, what he heard could not have been Army fire as the soldiers did not open fire until some time after they had debussed. Given that Mr Daly had only run a distance of approximately 125 yards as fast as he could, the firing happened far too soon for it to be military fire.¹⁹

7A-16 Noel Moore was unequivocal in his oral evidence to the Tribunal that he heard firing before the Pigs came to a halt on the waste ground:

Q. Had you heard the noise of the Saracens approaching before you were lying down on the ground or did you hear them while you were lying on the ground?

A. I heard them while I was lying on the ground.

Q. You were already lying?

A. Yes.

Q. [Refers to AM 416.5, paragraph 26] ...you remember hearing the noise, the noisy engines of the Saracens. That was after you had already heard quite a lot of shooting?

A. That is right, yes.

Q. You are quite sure about that?

¹⁹ AD 4.2 paragraphs 15-18

A. Oh, yes.

Q. You heard quite a lot of sustained shooting before those Saracens made their noises, they approached you lying in the car park?

A. Yes, yes.

Q. And the Tribunal can be quite certain about that from you: as you were lying in that car park at that time, hearing what was going on, hearing quite a lot of sustained shooting, followed by the approach of the Saracens and the noise they made?

A. Yes.

Q. No doubt about that whatsoever?

A. No.²⁰

7A-17 Ann McGuinness' (nee Harkin's) evidence was to the same effect:

Q. ...you do have a recollection of hearing shooting at the same time as you are hearing the roaring of Saracens' engines. I want to be clear about it. I have got that right have I?

A. I have that recollection.²¹

7A-18 Harry McBride was at Free Derry Corner. He had often heard shooting in the past in the Bogside. What he heard that day was not like what he had heard in the past. It was single shots but quicker than he normally heard. His oral evidence to the Tribunal was that the first shooting he heard was like automatic fire but he thought it was single shots. It was coming from Rossville Street and was directed at Free Derry Corner. In reply to questions from Edwin Glasgow QC he told the Tribunal that he was quite sure that was at the stage when he thought the Saracens would be coming but they had not yet arrived.²²

Q: In paragraph 6 you describe the first shooting that you heard; I am right about that, am I not?

²⁰ Day 063/127/04-128/05

²¹ Day 059/115/23-116/03

²² Day 105/105/20-106/21

FS 7. 1337

A. Yes.

Q. That is the first shooting?

A. Yes, on Bloody Sunday.

Q. You say in the fourth line: "It was like automatic fire, but it was single shots and not proper automatic firing."

A. Yes.

Q. That is still your recollection, that it sounded like automatic fire, but you think it was single shots?

A. Yes.

Q. And a number of them?

A. That is right.

Q. If we look down at paragraph 8 on the same page we have there, on the fifth line if you follow it, it is the line which starts with the word "coming" under "Wells": "I did not see any Saracens coming but I was apprehensive that they would come."

A. Yes.

Q. Are you quite sure that was at the stage when you thought that the Saracens would be coming, but they had not yet arrived?

A. Yes.

7A-19 Bernard Gilmore²³ was moving away down Rossville Street towards the Rossville Flats with his wife and mother-in-law when he heard the first live round. He described it as SLR fire, of three or four rifles in single shots in quick succession - 30 or 40 shots in 2 seconds. Five seconds later he heard the revving of Pigs. Consequently, the firing that he heard *preceded* the troops deploying from their Pigs and cannot have been military fire. It was only after he reached his mother's flat in Block 2 of the Rossville Flats that Mr Gilmore saw soldiers running through the waste ground and saw the Pigs parked on the waste ground at grid references M13 and L13 (around Pilot Row).

²³ AG38/Day 087/088

FS 7-1338

7A-20 Other witnesses heard hostile fire directed towards the soldiers' vehicles.²⁴ Accordingly, there is a significant and consistent body of evidence of there having been hostile fire directed towards the deploying soldiers as their vehicles moved south down Rossville Street.

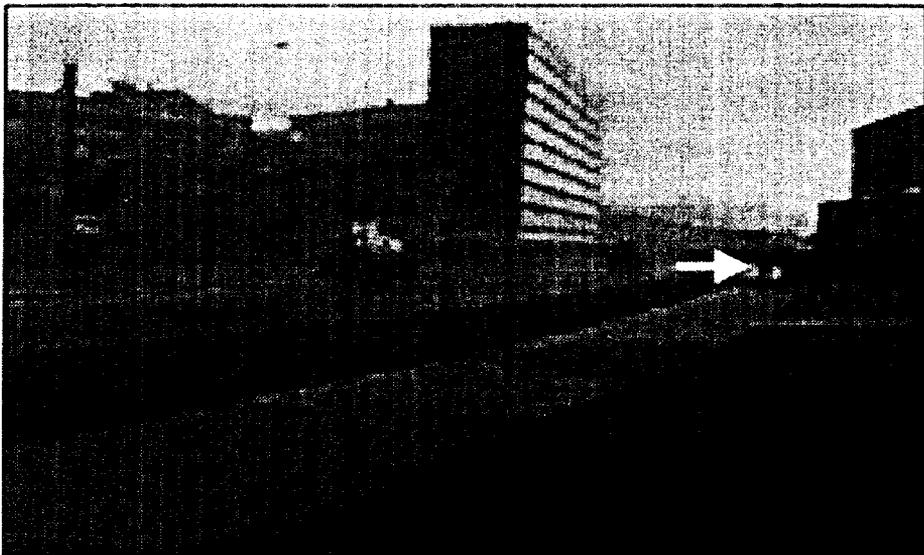
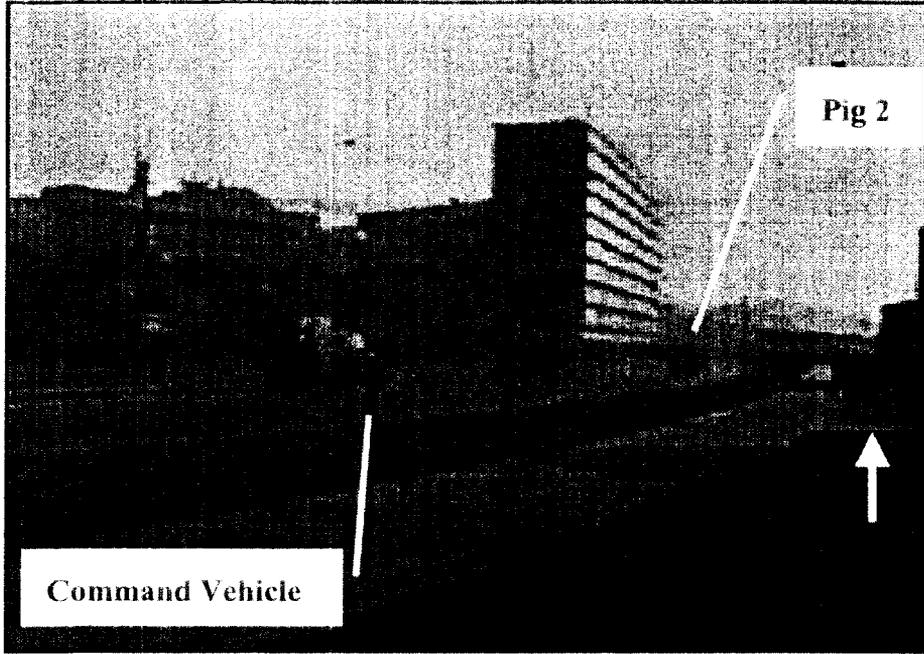
THE RIOTERS ATTACKED THE PIGS AS THEY DROVE DOWN ROSSVILLE STREET

7A-21 The ABC film sequence of the Pigs entering Rossville Street shows youths throwing objects at one of the vehicles as it passes. It is important to bear in mind that this vehicle is not the first of the vehicles to have passed the Kells Walk wall: we do not see what happened to the first Mortar Platoon Pig before it turned off Rossville Street onto the waste ground.

7A-22 The ABC film footage shows Pig 2 and the Command Vehicle being attacked by civilians throwing stones from the Kells Walk pavement. The two stills extracted below demonstrate that, moments before they debussed, the soldiers in Pig 2 were being targeted by rioters. Men on the right hand side of the stills can be seen moving towards the vehicle, throwing objects at it and then retreating. Two such men have been indicated with arrows.

²⁴ For example Donncha McFeely at Day 409/096/01; Ciaran MacLoughlin at Day 415/126/20; Robert McLaughlin at Day 107/14/15; Day 107/035/17

FS 7.1339



7A-23 One of those throwing stones has had the candour to tell the Tribunal about his part in what can be seen in the video. Neil McLaughlin²⁵ described how Pig 2 was stoned as it came down Rossville Street²⁶:

²⁵ AM347

²⁶ Day 091/053/03-11

7-1340

Q: If we look at paragraph 12 together, your recollection today is that when you ran at, it says "the Pigs", but it was the one Pig, was it not?

A. Yeah.

Q. Throwing stones at them, you think you hit one and suddenly the soldiers jumped out of the back of the Pigs; that would have just been the one Pig?

A. Uh-huh.

7A-24 Of the drivers, Soldier S said in 1972 that missiles were thrown at Pig 1 all the way from William Street;²⁷ and INQ 1579 recalls people picking up bricks and throwing them at Pig 2. In the back of Pig 2 Soldier P said in 1972 that he could hear stones bouncing off the vehicle;²⁸ Soldier R still recalls stones and bottles being thrown at the Pig;²⁹ and Soldier U told the RMP that, as the vehicles advanced, rioters threw stones and bottles at them (in amongst the noise U also heard the automatic fire).³⁰ Soldier 006's description of what was happening is consistent with what can be seen on the video and is probably accurate: "...the rioters threw bottles and bricks at the Pigs and they were bounding (sic) off the sides ...the crowd was scattering but some people were still throwing things at the Pigs."³¹

7A-25 Pig 2 stopped momentarily just south of Pilot Row.³² It can be seen doing so on Video 48. It seems that five, members of the Mortar Platoon debussed from Pig 2 at this point.³³ The five were probably Soldier P, Soldier 017, Soldier R, Soldier

²⁷ B707 paragraph 3

²⁸ B591

²⁹ Day 337/014/24

³⁰ B748 and B771 at F

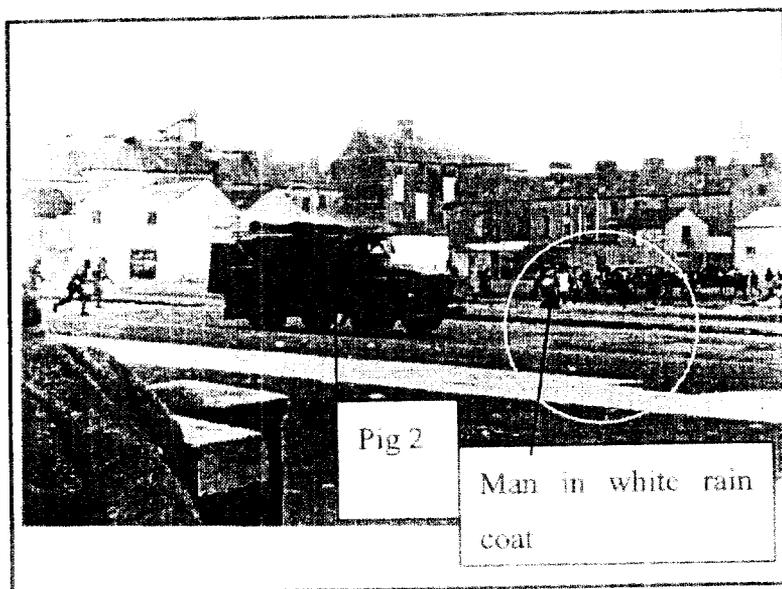
³¹ B1377.007 paragraph 17

³² B670

³³ B592

FS 7 1341

U³⁴ and Soldier 006.³⁵ Mr White's photograph³⁶ (below) shows three soldiers following Pig 2.



7A-26 The three soldiers are close behind Pig 2. Pig 1 is not in the photograph and is yet to cross the waste ground.

7A-27 The man in the white raincoat (circled) who appears in this and a number of other photographs is a useful aid for determining the correct sequence of the various pictures.

7A-28 On debussing, Soldier P went over to the Kellis Walk side of Rossville Street. Soldier 017 independently went in the same direction. Soldier U³⁷ and Soldier

³⁴ B787.004 paragraph 20

³⁵ B1375-6

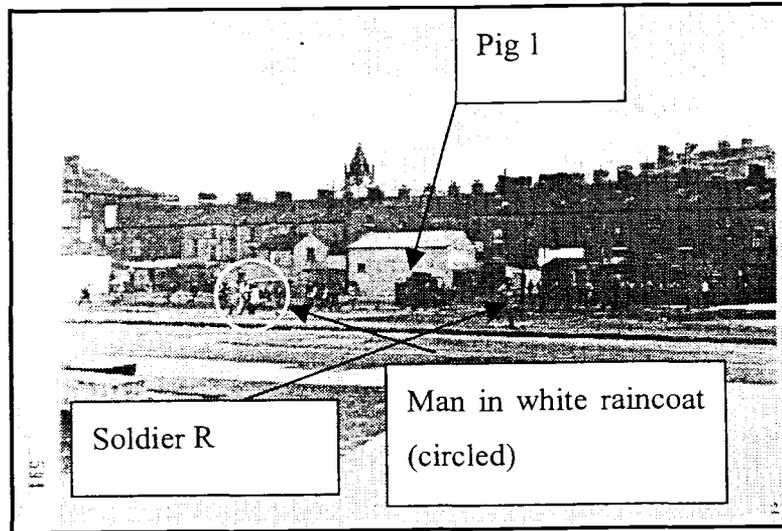
³⁶ P5/593

³⁷ B787.004 paragraphs 21-22

FS 7-1342

006³⁸ began to disperse the crowd and to attempt to make arrests. They “simply debussed and started making arrests as we had been trained to do”.³⁹

7A-29 Soldier R, who was Pig 2’s vehicle guard, chased after the pig as it moved forward again.⁴⁰ Mr White’s photograph, P594, possibly shows R chasing the pig.⁴¹



7A-30 The man in the white raincoat (circled) has by now moved a few yards further south towards the Rossville Flats.

7A-31 Soldiers P and 017 both described things being thrown at them.⁴² Soldier R, the vehicle guard, was hit three times by stones or bottles as he ran after the Pig when it moved off.⁴³ Soldier U went left on debussing; some of the crowd running past him threw objects as they went and U was himself struck more than once.⁴⁴

³⁸ B1377.005 paragraphs 19 - 20

³⁹ B1377.5 paragraph 19

⁴⁰ B691.015

⁴¹ P5/594; Day 337/019/09-24

⁴² B577 and B1482, paragraph 2

⁴³ B677 and 337/24/11

⁴⁴ B787.004 paragraph 22

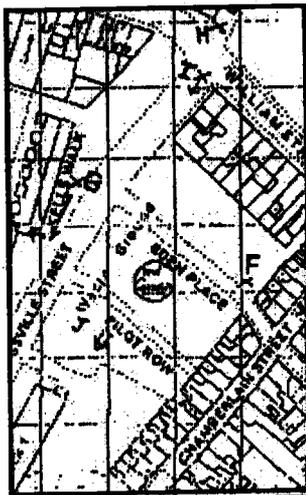
FS7-1343

Soldier 006 went out across the waste ground. He recalled rioters running past him, some of whom were throwing objects at him and the other soldiers.⁴⁵

7A-II FIRING AS FIG 1 ARRIVED ON THE WASTE GROUND

7A-32 In addition to the evidence of those who heard general firing at the soldiers as the Pigs drove down Rossville Street, there is clear evidence that shots were directed towards the soldiers as Pig 1 arrived on the waste ground and its occupants debussed. This firing occurred whilst Pig 2 was still in transit.

7A-33 Julian Daly was at position G on the map below, being the north end of Rossville Street by Kells Walk at the junction with Eden Place.⁴⁶



7A-34 He described what must have been the arrival of Pigs 1 and 2⁴⁷ and he may in fact have witnessed the first soldiers leaving Pig 2, before it turned into the car park: he explained that the "lead APC" stopped at his point J and five soldiers got out. The second APC stopped "south of Eden Place".⁴⁸ These two positions correspond

⁴⁵ B1377.005 paragraph 20

⁴⁶ AD2.3 Paragraph 13

⁴⁷ AD2.3 paragraph 14

⁴⁸ AD2.3 paragraphs 14-16

FS7.1344

approximately with the initial stopping points of Pigs 1 and 2, although Mr Daly has described Pig 1 as the second APC and Pig 2 as the first.

7A-35 Mr Daly said that "almost immediately" after seeing soldiers jump out, and - crucially - whilst Mr Daly was still at point G, he saw bullets hit the pavement about perhaps two feet away from him. He recalled them "pinging up" from the ground.⁴⁹ Another man grabbed Mr Daly and said,

.... 'in a very definite way' that these bullets were not rubber bullets but live. I thought this because of the way the bullets struck the ground around me.⁵⁰

7A-36 Miss McGahey asked Mr Daly about the rounds that he saw:

Q. Had you had the impression that it was live rounds being fired -- in your direction?

A. It is very difficult to explain, I, I knew they were live rounds, but I did not believe they were live rounds, if you can understand what I mean.

Q. Could it have been rubber bullets that were fired?

A. Oh, no, no.

Q. Why not?

A. Well, when I say "pinging from the ground", I mean, you know, spurts of dust, mortar dust or something like that coming from the ground. Rubber bullets did not do that; rubber bullets simply bounced off the ground.

Q. Your recollection is rubber bullets would not create a cloud of dust -

A. Not in that way.

Q. Had you seen live rounds hit the ground before that day?

A. Oh, yes.

⁴⁹ AD2.4 paragraph 19

⁵⁰ AD2.4 Paragraph 20

FS 7. 1345

Q. When had you seen that?

A. Oh, on various occasions, um, I had been in situations where Army had shot and hit walls or hit the ground, so I knew what a bullet looked like when it struck, you know, concrete or a roadway.⁵¹

7A-37 As with other civilians, Mr Daly's first instinct on seeing soldiers had been that they should be 'taken on' and he implored others to stay with him; now they ran off south down Rossville Street.⁵²

7A-38 Danny Deehan ran away from the rioting at Barrier 14 down Chamberlain Street as the soldiers deployed through the Barrier. In his BSI statement he had said that he saw the Pigs coming in as he looked through Eden Place towards Rossville Street and that he believed that he "heard live rounds being fired when I was running down Chamberlain Street" and that he "definitely did hear them (live firing) when I burst into the Rossville Flats' car park."⁵³ Mr Deehan has a memory of people shouting, "They're firing live rounds".⁵⁴ He heard these shots being fired before the Pig that came into the car park stopped.⁵⁵ As he made for the low wall front of Block 2 he saw someone "going down" approximately five yards away to his right (west) and he thinks he saw someone else going down too.⁵⁶ There were 40-50 people within a ten yard radius of him.

7A-39 Edwin Glasgow QC asked Mr Deehan about the moment when he heard live firing:

Q. It is as you are running down Chamberlain Street or as you are running into the car park that you first recall hearing live rounds being fired?

A. Yes.

⁵¹ Day 183/007/09-008/06

⁵² AD 2.4 paragraph 20-21

⁵³ AD 21.3 paragraph 12

⁵⁴ AD 21.3 paragraph 12

⁵⁵ AD 21.3 paragraphs 12-13

⁵⁶ AD 21.4 paragraph 15

FS7. 1346

Q. And were those the first noises of firing of any kind that you had heard since you had left the riot behind you at barrier 14?

A. I believe so, yes.

Q. Whether it was while you were still in Chamberlain Street or while you were running across the car park with the Saracen approaching on your right, the one thing you are clear about is that you heard live rounds at that stage

A. Yeah.⁵⁷

7A-40 In his BSI statement Mr Deehan had given the impression that the stoning of the soldiers continued after the troops around the Pig 2 had begun firing. He said that there were people behind and in front of him and some were turning around and throwing stones.⁵⁸

7A-41 In oral evidence Mr Deehan said that there was live firing *before* there was stoning of the soldiers but that as soon as the soldiers around the Pig started to fire and two civilians had been shot, the stoning finished. This means that the firing that Mr Deehan heard prior to the soldiers around the Pig opening fire was civilian rather than military.

Q. So as not to lead you, what is your own answer to this: is your own recollection that the first live firing that you heard was while you were still running?

A. Yes.

Q. How long after that firing that you heard while you were running, either at the bottom of Chamberlain Street or in the car park, how long after that was it before anybody was hit?

A. Um, it would have been within, within 30 seconds, I would say, from entering the car park until I got over the wall. It would have been a short—

Q. Could we look together at page AD21.4, which if you would prefer, as some do, it is the third page of your manuscript statement; at the top we have it as paragraph 15. You there help the

⁵⁷ Day 102/027/25-028/14

⁵⁸ AD 21.4 paragraph 15

FS 7.1347

Tribunal with your recollection of some people throwing some stones in the car park; do you remember? If you want to check it, it is about 6 or 7 lines down in paragraph 15:

"Some people were turning around and throwing stones but the two I saw go down were not."

A. I do not remember clearly now.

Q. You do not remember it clearly?

A. No.

Q. Do you remember it at all, clearly enough to recall whether that stone-throwing was before the sustained shooting of the large number of shots started, or were people still throwing stones even after live fire started in that car park?

A. I do not remember clearly, I think most people were running at that stage, running away.

Q. I do not mean to push unfairly, can I put perhaps the commonsense point to you again: is it your recollection that young men were actually stoning soldiers while they were firing live rounds?

A. No.

Q. Do you think that that incident of the stoning took place before you saw anybody hit, or is that where you get into difficulty on timing?

A. Yeah, that is where I get into difficulty on the timing.

Q. Very well, but your recollection is that there had been some live firing before that, such stoning as there was, before that started?

A. Yes.

7A-42 Soldier 033 from the Command Vehicle also saw rounds hitting the ground. He heard a Thompson firing and saw a strike of bullets on the ground to the front and left of him.⁵⁹

⁵⁹ B1621.5 paragraph 35

FS 7-1348

7A-43 The journalist, Simon Winchester was on the waste ground walking towards Free Derry Corner⁶⁰ when, at about Pilot Row,⁶¹ "several Humber APCs swept in from the direction of Rossville Street and we all started running."⁶² He told the Widgery Inquiry that he saw some soldiers running with the vehicles.⁶³ He ran towards the Rossville Flats' car park in a crowd of "several hundred".⁶⁴ He was asked whether he heard anything:⁶⁵

Q: As you were running did you hear anything?

A: Yes. I heard a number of shots. I thought they were from behind me.

Q: Did you see where it appeared they struck?

A: No, I didn't.

7A-44 Mr Winchester said it was difficult to say accurately how many shots he heard but he thought it was "less than ten", of the same type as the single round he had heard in William Street.⁶⁶ The firing was, he was "convinced", not the sound of baton guns.⁶⁷

7A-45 The soldiers in Pig 1 also heard hostile fire as they debussed: Soldiers S, V, 162, 019, and INQ 0768 all heard this fire.

7A-46 Soldier S, the driver of Pig 1, told Lord Widgery that he heard rapid single repetition fire as soon as he got out of the vehicle.⁶⁸ He said in 1972 "As soon as the vehicle stopped and we debussed we came under fire."⁶⁹ He did not see any

⁶⁰ M83.24 letter F – M83.25 letter A

⁶¹ M83.25 letter B

⁶² M83.25 letter A-B

⁶³ M83.25 letter C-D

⁶⁴ M83.25 letter G

⁶⁵ M83.26 letter B

⁶⁶ M83.26 letter C-D

⁶⁷ M83.26 letter D

⁶⁸ B712 letter D

⁶⁹ B707 paragraph 3

FS7-1349

shots land but took cover immediately.⁷⁰ S's evidence to Lord Widgery was that all the men came under fire, "in fact the Pig came under fire".⁷¹

7A-47 Lance Corporal V said that he ran to the Chamberlain Street wall and as he did so he heard "single rifle fire" and saw "spurts in the earth" where several shots landed to his right.⁷²

7A-48 Corporal 162 heard hostile firing from an automatic weapon firing just as he got out of Pig 1: "just after we had disembussed from the vehicle; as I was getting out, if you like."⁷³ The sound came from his right as he rounded the front of Pig 1, *i.e.*, the sound came from the Rossville Flats.⁷⁴ Although this evidence does not appear in his RMP statement, Corporal 162 is clear that he would have mentioned it at the time.⁷⁵ The vagaries of the RMP statement taking process⁷⁶ no doubt account for its omission.

7A-49 Soldier 019 had taken up position at the corner of the Chamberlain Street alleyway (which he describes in his RMP Statement as the corner of Eden Place / Harvey Street⁷⁷) when

...suddenly I heard three to five shots being fired. These were high velocity and were fired from the direction of Block 2 of the Rossville Flats. I could not see the gunman. I was trying to hold back the rioters which were 150 in number and were of mixed sex.⁷⁸

7A-50 Soldier 019 said in his BSI Statement that his current recollection was of rifle fire but he cannot now say whether it was hostile or not;⁷⁹ however he remains firm

⁷⁰ B712 letter E

⁷¹ B719 letter E

⁷² B807 letter D-E

⁷³ Day 323/177/03-18

⁷⁴ Day 323/216/13 – Day 323/217/18

⁷⁵ Day 323/212/14-25

⁷⁶ As to which see Chapter 2.

⁷⁷ B1492

⁷⁸ B1492

⁷⁹ B1494.003 paragraphs 11 and 12

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that he heard this firing before Lieutenant N fired.⁸⁰ He accepted that he did not know in 1972 whether the firing was hostile or not.⁸¹

7A-51 INQ 0768⁸² heard a small burst of automatic fire soon after he debussed. He then heard what he took to be answering Army fire between 3 and 10 rounds (which may have been Lieutenant N's warning shots⁸³). INQ 0768 was at the rear of Pig 1 and he almost certainly heard the burst of fire that fell nearby.

7A-52 INQ 1918 was probably one of the last soldiers to debuss from Pig 1.⁸⁴ He was the signaller and would therefore have been sitting in the rear of the Pig, furthest from the door, behind the driver. He has only scant, snap shot memories now, but does recall hearing the first incoming fire (which he is sure was not Lieutenant N's shots⁸⁵) while he was close to the Pig. He said in his BSI statement that he was aware of the sound (but not the direction) of incoming non-SLR high velocity fire as he was positioned at the north corner of the Chamberlain Street / Harvey Street alleyway. He thought that he only heard "a couple of shots". The sound was coming from his left rear quarter (*i.e.* behind him to the west),⁸⁶ although he might be mistaken as to the direction.⁸⁷ INQ 1918 also heard Thompson Machine gunfire probably after the initial incoming high velocity fire.⁸⁸ Fire was returned, but INQ 1918 did not see who fired, nor can he recall how many rounds were fired.⁸⁹ INQ 1918 made the point that "if something is not immediately happening to you, you

⁸⁰ Day 343/115/06-14; Day 343/139/08; Day 343/165/25-Day 343/166/06

⁸¹ Day 343/165/13-24

⁸² INQ 0768 believes that he was driving Pig 2. In fact he was probably acting as the vehicle guard for Pig 1. Both Sergeant O and INQ 1579 say that INQ 1579 was driving O's Pig, Pig 2. Furthermore INQ 0768 does not remember seeing any other Pig in front of him when waiting at Barrier 12, a factor that again suggests that he was indeed in the lead Pig. The reason for the error was that INQ 0768 drove Pig 2 from Belfast to Londonderry.

⁸³ As to which see further below.

⁸⁴ Day 342/081/10 - Day 342/082/01

⁸⁵ Day 342/102/03-Day 342/103/05

⁸⁶ C1918.2 paragraph 8

⁸⁷ Day 342/099/03-18

⁸⁸ C1918.3 paragraph 14; Day 342/099/19; Day 342/101/11

⁸⁹ C1918.2 paragraph 9

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do not focus on it. You are trained to focus on the task in hand and my task was to watch the crowd and to stay near Lieutenant N.”⁹⁰

7A-53 In addition to the occupants of Fig 1, Soldier U from Fig 2, who was on the ground before Fig 2 finally stopped on the car park, said in his statement to the Widgery Inquiry that, having run towards the Rossville Flats in order to cut off the retreating crowd, and *before* he arrested Mr Canning, he heard the sound of four or five low velocity automatic shots. He did not see where these came from, nor where they landed. He did not remember this shooting when he gave oral evidence to the Widgery Tribunal;⁹¹ however, it is his evidence to the present Tribunal that he was clear that, although he cannot now remember this burst of firing, it certainly happened: “If I say it happened, it must have done”.⁹² (U also explained that the incoming fire was not recorded in his RMP statement because he was told by the RMP to “Explain what [he] did, not what [he] saw, someone else will deal with that.”⁹³). This firing was probably the same as the firing heard by Soldiers V, S, 162 and INQ 0768 and, probably, 019.

7A-III THE SOLDIERS' ACTIONS HAVING DEBUSSED FROM FIG 1

7A-54 By the time P594⁹⁴ was taken Fig 1 had come to a halt. The soldiers debussed.

7A-55 Lieutenant N exited via the front passenger door with the intention of making arrests but was quickly involved in a fight with a man who was throwing lumps of concrete at him.⁹⁵ He grappled with the man, during the course of which his helmet strap broke and the man got away.⁹⁶ INQ 1918, the radio operator, made

⁹⁰ C1918.2 paragraph 10

⁹¹ B773 letter D

⁹² B787.010 paragraph 56

⁹³ Day 369/32/10. This explanation makes perfect sense in the light of what we now know about the RMP statement taking process. See Chapter 2 as to the evidential value of the RMP statements.

⁹⁴ Reproduced at paragraph 7A-29 above.

⁹⁵ B373; B398

⁹⁶ B438.008 paragraph 37; Photograph P272 shows Lieutenant N holding his helmet

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his way to join Lieutenant N. INQ 0768, as vehicle guard, stayed with the pig.⁹⁷ Corporal 162 headed north towards the Chamberlain Street alleyway and encountered a man with a metal stake, at whom 019 fired his baton gun.⁹⁸ Soldier 112, a baton gunner, headed across the waste ground, firing his baton gun to split up and disperse the crowd, and ended up at the corner of Block 1 of the Rossville Flats.⁹⁹ Soldier Q, detailed to act as cover for an arrest group, specifically a baton gunner (possibly Soldier 112, as the other baton gunner, Soldier 019, ended up at the Chamberlain Street wall with Lieutenant N and INQ 1918, although 112 does not now remember being paired with anyone¹⁰⁰), likewise ran towards the Rossville Flats in his covering role.¹⁰¹ He was aware of members of the crowd stopping to throw stones as they ran away.¹⁰² S, the driver made his way into cover at the rear wall of the Chamberlain Street houses.¹⁰³ Soldier V, also in a covering role for a snatch squad, ran towards the Chamberlain Street wall in order to satisfy himself that the person he saw there (who turned out to be a Knight of Malta, identified in the course of this Inquiry as Charles McMonagle) was not a threat.¹⁰⁴

7A-56 Soldier 112 was aware of members of the crowd running towards them.¹⁰⁵ Some of this was captured in P595 (below) which shows one soldier (circled, left) engaged at close quarters with a civilian and a further soldier (circled, right) probably about to be confronted by another, immediately after the occupants of Fig 1 debussed.

⁹⁷ C768.3 paragraph 16

⁹⁸ B1960

⁹⁹ B1730; B1732.4 paragraphs 17-20

¹⁰⁰ Day 320/87/09

¹⁰¹ B635-6; B642 letter A-C

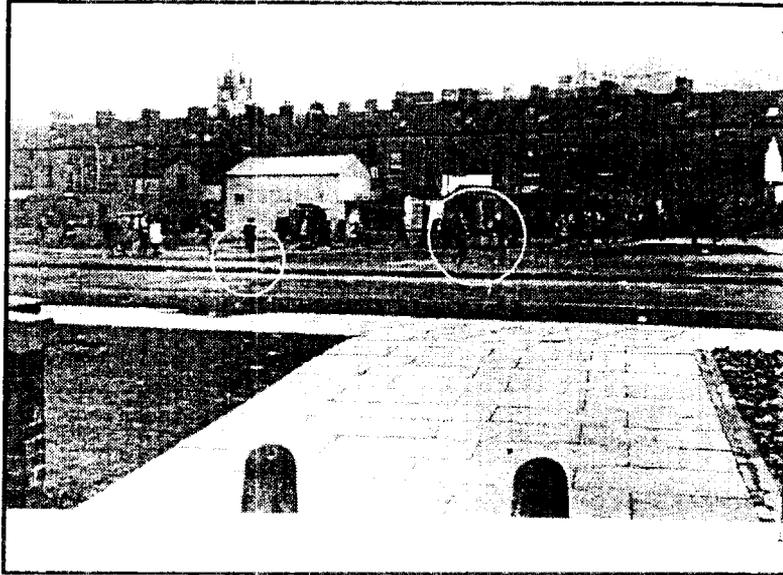
¹⁰² B657.3 paragraph 16

¹⁰³ B707

¹⁰⁴ B807 letter B; B821.3 paragraph 2.3

¹⁰⁵ B1732.004 paragraph 17

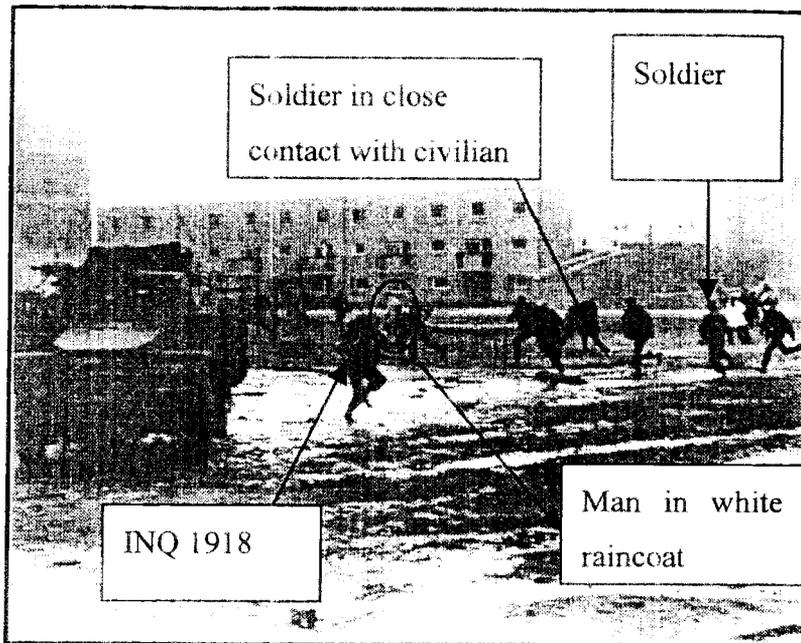
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7A-57 There is photographic evidence of what happened in the following moments, although, as has been observed by the Tribunal on many occasions, the photographs only show literally a snapshot in time and the absence of a photograph supporting a soldier's account does not mean that the incident or action described did not occur.

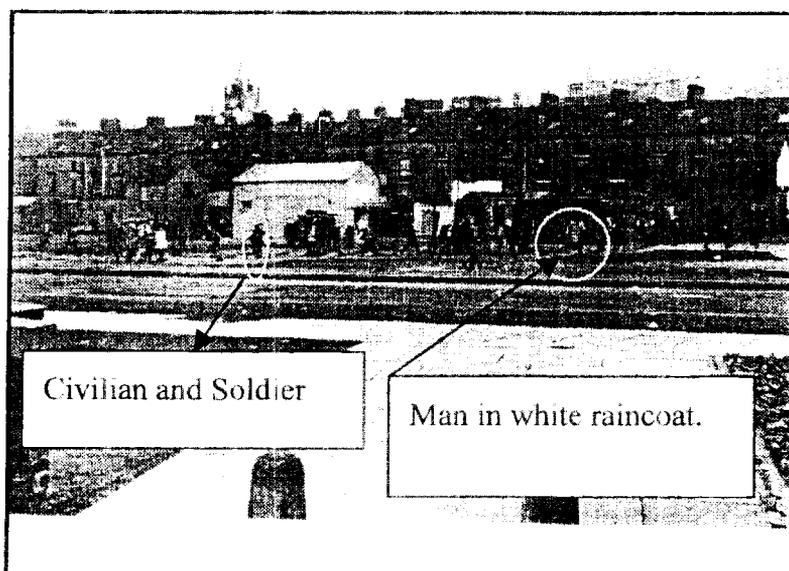
7A-58 Fulvio Grimaldi's photograph P515 (below), taken from the Chamberlain Street alleyway looking over the waste ground towards Kells Walk, shows that the man in the white raincoat has moved slightly further to the south and, by this time, both the driver's and front passenger's doors of Pig 1 are open. INQ 1918 (Lieutenant N's signaller) has left the vehicle and is in the foreground.

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7A-59 At the time this picture was taken Fig 2 was out of sight, having moved off Rossville Street. It is either behind Fig 1 or off the picture to the left, making its way to the Rossville Flats' car park.

7A-60 By the time of Mr White's photograph P595 (below), Soldier R had passed off to the right of the picture (the soldier who can be seen in the middle of the photograph is wearing a helmet and is therefore not Soldier R, who was not). The man in the white raincoat is still visible and he has moved further to the south.



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7A-61 By the time of Mr Grimaldi's second photograph from Chamberlain Street, P484 (below), clouds of CS gas are visible and a Mortar Platoon baton gunner is in the foreground. This may be Soldier 019. The man wearing the white raincoat has moved even further south, out of the picture.

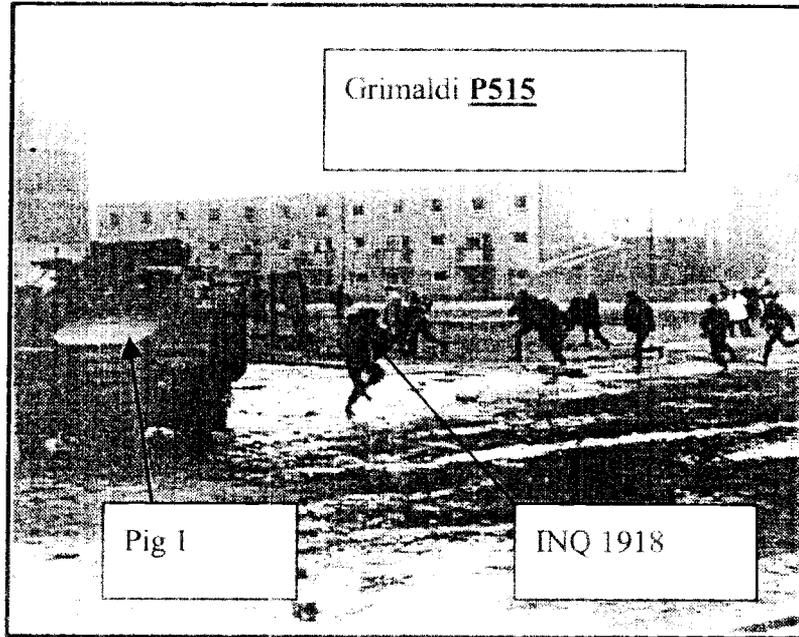


7A-62 The Heli-teli film shows soldiers debussing from Pig 1 as follows: first, a figure emerges from the rear door passenger side and heads nearly due north back towards William Street; more figures then emerge, namely, one soldier from the driver's side rear door who runs south of the Pig towards the Chamberlain Street wall and a group of three figures (including baton gunners on each flank (and a non-baton gunner in the middle) who emerge from the rear doors and head west / north west. The two baton gunners fire one shot each. They are Soldiers 112 and 019. The middle soldier is probably Soldier Q, as he was with 112. The northerly baton gunner is probably Soldier 019, as he must be the tall baton gunner in the Grimaldi photo P484 who is photographed on the north side of the Pig. 019 fired a baton round at the man with a stake attacking Corporal 162. It is therefore likely that the figure that first runs from the Pig heading back towards William Street is Corporal 162.

7A-63 The Heli-teli film shows a further figure emerging from the passenger side rear doors. This is probably INQ 1918 as he was the signaller and therefore sitting behind the driver and one of the last and slowest to get out – he too is photographed by Mr Grimaldi (P515, above/repeated below) on the north side of

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the Pig. There is also another figure who emerges on the driver's side at the rear doors – he may be INQ 0768 who was the vehicle guard and therefore would not have strayed too far from the Pig.



7A-64 Mr Grimaldi photographed INQ 1918, the Signaller, in P515. At this stage, Soldier S is still inside or by the Pig; Soldiers 112 and Q are heading away from the Pig south over the waste ground. Soldier 019 is still on the waste ground but will shortly be moving east so as to appear in Mr Grimaldi's next photograph. Corporal 162 is probably still north of the Pig. Soldier V may be at the Chamberlain Street wall. ¹⁰⁶

7A-65 At this stage Lt N was attacked by a civilian.

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CHAPTER 7B

LIEUTENANT N'S FIRST ENGAGEMENT

7B-1 LIEUTENANT N AT THE CHAMBERLAIN STREET ALLEYWAY;

INTRODUCTION

7B-1 Lieutenant N faced serious violence from the moment he debussed. He acted reasonably in taking the action that was likely to be effective in the time that he had to confront the real danger that threatened him and those under his command.

7B-2 Lieutenant N's shots, if only on the evidence analysed in Section 7A above, were not the first shots of the day, even in Sector 2.

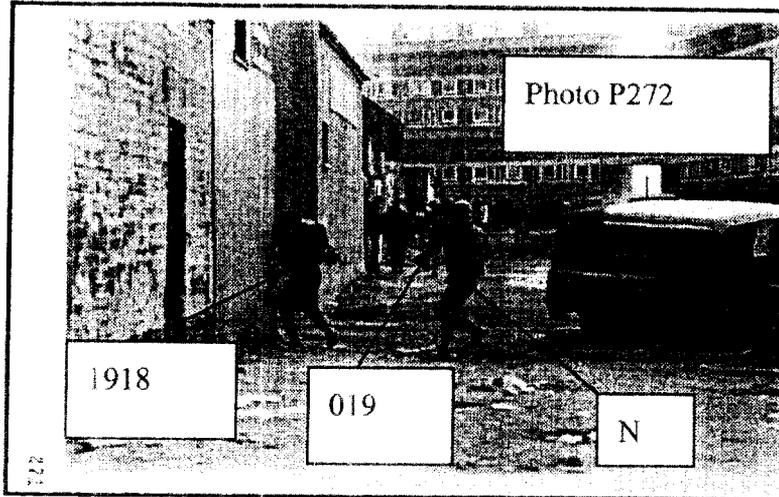
THE ARREST OF MR CLARKE AND THE CONFRONTATION WITH THE CROWD:

INTRODUCTION

7B-3 Lieutenant N had debussed from Fig 1. Almost immediately, one of the rioters hurled a chunk of concrete at him. N started to get hold of the man but had to fend off another blow with his rifle. During this his helmet strap broke and his helmet fell forward over his eyes.¹ It should not be overlooked that even this would have required some considerable force. The man ran away.

7B-4 Following the attack, N went towards the alleyway that leads from Eden Place to Chamberlain Street. Jeffrey Morris' photograph P272 shows N arriving at the alleyway holding onto his helmet. INQ 1918 is already at the alleyway and Soldier 019 can be seen in the background on his way to the alleyway.

¹ B418G - B419A



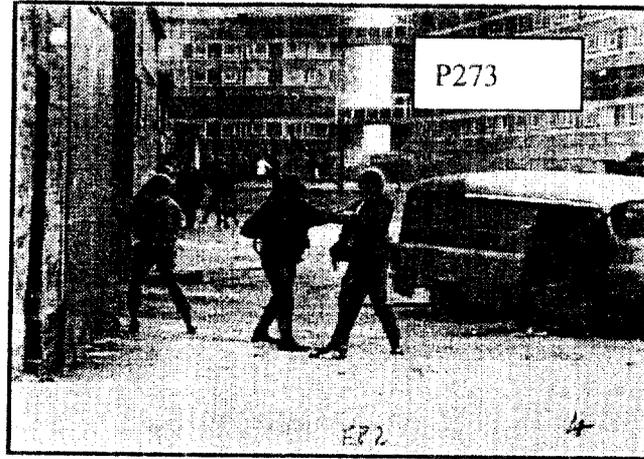
7B-5 Almost immediately after the soldiers arrived at the alleyway Mr Clark was arrested. Mr Morris captured part of the arrest in photograph EP 2.4 below. INQ 1918 is recorded as the arresting soldier on the Arrest Forms; his memory of the event only extends to recalling that another soldier handed Mr Clark to another soldier who told INQ 1918 to hold him.² Mr Clark was arrested for “throwing stones”.³

7B-6 Photographs P272 and P273 make it clear that the allegation that Mr Clark and other civilians were randomly selected for arrest when doing nothing that justified arrest is untrue. P272 and P273 speak for themselves. To the south of the pictures a man in a hat can be seen first walking past a soldier in a southerly direction, and then retracing his steps, again next to a soldier. He is clearly not interfered with in any way, or either occasion.

² C1918.2 paragraph 12

³ ARR. 9.2

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7B-7 Lieutenant N has no present recollection of this arrest, although he did have at the time he gave oral evidence to the Widgery Tribunal,⁴ but only to the extent of his awareness (after he had fired his three rounds over the heads of the crowd) that his Signaller (INQ 1918) had detained a man.⁵

7B-8 Shortly after the arrest of Mr Clark, Lieutenant N was confronted by a hostile crowd. Some were anxious to rescue Mr Clark, others were simply continuing the riot they had been engaged in at Barrier 14. Lieutenant N and the two soldiers near his position (019 and INQ 1918) were massively out-numbered by an aggressive crowd who were moving forward towards them, brandishing and throwing missiles. They were undeterred by baton rounds fired by 019. N thought to deter the crowd by first appearing threatening, then shouting at the crowd and finally had no realistic other option than to fire three warning shots over their heads.

The attempted rescue of Mr Clark

7B-9 Eamon Baker was a Barrier 14 rioter (and one of those who had been throwing stones from behind the corrugated iron shield). As the soldiers deployed, he fled down Chamberlain Street, passed Eden Place and saw a man run towards a soldier

⁴ Day 322/080/13

⁵ B421D

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intending to throw a stone at him. Mr Baker described what happened next in his BSI statement:

The soldier lifted his rubber bullet gun to fire at the man. The man threw his stone at the same time that as the soldier fired, but they missed each other.⁶

7B-10 Christopher Clarke Q.C. asked Mr Baker about the behaviour of the crowd at the alleyway:

You say that he stepped out and fired and you say in your statement, if you go back to AB2.3, paragraph 17 that there was a man running in front of you who ran towards the soldier in order to throw a stone at him?

A. Yeah.

Q. And the soldier lifted his rubber bullet gun, the man threw a stone at the same time at the soldier but neither of them hit the other; is that right?

A. Yeah.

Q. We have a photograph that is at P274. This is the alleyway, which we are talking about and there appears to be a discharge of smoke from the corner that you were pointing out a moment ago. Is that the place from which the soldier fired?

A. I believe so, yes.

Q. You do not recognise either of those two people, do you?

A. It is the first time I have ever seen that photograph, um, and I do not recognise either of them. I do not believe either of them are me, though -- no, I do not think I recognise either of them.

Q. But the boy in question, or the man in question had been throwing a stone at a soldier at that corner?

A. Yeah.

Q. Was it a man or a boy, what sort of age was he?

⁶ AB2.3 paragraph 17

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*A. Well, I was just approaching 21 then, it was someone around my own age I would think, yeah."*⁷

- 7B-11 Malachy Duddy said in his oral evidence that some of the crowd in the Chamberlain Street alleyway sought to rescue Mr Clark. To do so they had to close with the three, heavily out-numbered soldiers. Of those three soldiers, one was engaged with Mr Clark (INQ 1918), one had only a baton gun (019) and one had an SLR (N).
- 7B-12 Malachy Duddy had been rioting at Barrier 14, throwing stones⁸ and sheltering behind the corrugated iron hoarding.⁹ He described hurrying¹⁰ down Chamberlain Street and saw, at the Eden Place / Chamberlain Street junction, a confrontation between a soldier with a rifle manhandling / arresting a man, who must have been Mr Clark. Mr Duddy said that there were 15 – 20 others at the junction of Chamberlain Street / Eden Place as well, but thought that he was the first on the scene.¹¹
- 7B-13 Mr Duddy tried to pull the man away but then he saw other soldiers advancing upon him so he started to run. A baton round hit him on the back from a range, he said, of three metres causing him to fall.¹² He accepted in oral evidence that what a soldier would have seen was 15 –20 people advancing on him. Edwin Glasgow Q.C asked him about this:

Q. When that arrest was being made -- again, I do not blame you -- you decided you would go and rescue the person who was being arrested?

A. That is right, uh-huh.

⁷ Day 096/130/07-131/11

⁸ Day 081/122/08-15

⁹ AD 151.1 paragraph 5

¹⁰ Day 081/125/03

¹¹ Day 081/125/03-126/19

¹² AD 151.2 paragraph 7

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Q. You did not know whether that particular arrest was justified or not, but having been stoning yourself, you felt some sympathy for the man who was about to be arrested?

A. That is correct, yes.

Q. Did you physically get into contact with the man and the man who was arresting him, or did you just get close to them?

A. Just fairly close, almost beside him, yes.

Q. And while you were doing that, another 15 or 20 people were some yards behind you, but coming in the same direction?

A. Yes, that is correct, yeah.

Q. Mr Duddy, would it be fair to say, if another soldier had been watching that scene he would have seen you as an individual going to interfere with an arrest, he would have seen 15 or 20 people advancing on the soldier who was trying to make an arrest at the same time?

A. Yes, that is right.

Q. At about that time somebody fired at least one rubber bullet in the direction of you and the advancing 15 or 20?

A. That is correct, yes.

Q. And when that did not succeed, a live round was fired over the heads of the same crowd?

A. That is my recollection.

Q. That would be fair?

A. Uh-huh.

Q. Thank you very much.¹³

7B-14 Tony Morrison gave evidence that he actually tussled with a soldier trying to arrest Mr Clark in the Chamberlain Street alleyway.¹⁴ He explained how he ran

¹³ Day 081/152/03-153/11

¹⁴ AM 439.3 paragraph 5

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from Barrier 14 when he saw that the Army were getting ready to go through the Barrier, down Chamberlain Street and west along Eden Place:

There was a wee shop on the corner of Eden Place and the waste ground and just next to it I saw a wee man standing rubbing his eyes because of the gas in the air. He was wearing a black jacket and a white shirt and he was a heavy fat man. My friend and me had just stopped right next to the man at point B on the map (grid reference O13) when a hand came round the corner from the waste ground and grabbed the wee man ...I realised it was a soldier's hand. So I decided to pull him back. I grabbed the wee man and the soldier and me started pulling him back and forwards between us. The soldier was armed with a rifle or possibly a rubber bullet gun, but he had it in his left hand and was letting it hang down pointing to the ground while he was pulling with his right hand. He never aimed it at me.

7B-15 Mr Morrison said that, after a couple of minutes, a soldier then appeared and fired over the heads of the crowd, Mr Morrison "supposed, to scare us away." Mr Morrison was more shocked than scared; he considered that the soldier obviously did not want to kill him. But, nonetheless, it was "a fright" to have someone fire so close to him, so he let go of the man and ran away.¹⁵ N was, therefore, right next to some of the civilians in the alleyway.

7B-II LIEUTENANT N FIRES THREE WARNING SHOTS OVER THE CROWD

7B-16 Lieutenant N described the position in which he found himself in his SA statement:¹⁶

The situation here was not comfortable because some of the rioters who had run from the open spaces away via Eden Place into Chamberlain Street had returned and were throwing rock.

7B-17 INQ 1918, N's Signaller, agreed. He recalled, in his BSI statement, looking up a road,

¹⁵ AM 439.3 paragraph 6

¹⁶ B373.398 paragraph 8

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... A bit like looking up a tunnel and there was a crowd of civilians filling the road not more than forty yards away. They were within throwing distance of me. They were throwing stones and bottles and bricks towards us.¹⁷

7B-18 INQ 1918 recalled, in oral evidence, that the crowd was "sufficiently big to fill that road up from side to side",¹⁸ and that he had to "keep going back around the corner to get away from them."¹⁹ He said that they were moving "from side to side" and moving "backwards and forwards" towards him and Lieutenant N.²⁰

7B-19 Lieutenant N's reading of the intentions of this crowd was entirely in accordance with the evidence of the members of it who have given evidence (set out above):

Q. Have you in your mind's eye now any recollection of what exactly what it is that the crowd were doing immediately before you fired?

A. I can just remember seeing a wall of people. They were sort of -- it is like those undersea shots of seaweed moving. They were starting to come towards me. Um, things were being thrown, bricks and stones, I think.²¹

7B-20 Lieutenant N feared that the crowd would attack the arresting soldiers on the waste ground.²² He explained in his BSI statement that by this time most of his men had moved to his right, south. He explained his concern:

My immediate concern was that, if the crowd that I could see decided to come back onto the waste ground, as they appeared intent on doing, they would get behind us and there would be a dangerous confrontation. I had to deal with this immediate threat. I made my way to the gap in the wall. My radio operator came with me but I do not recall any other men in my unit being there

¹⁷ C1918.2 paragraph 6

¹⁸ Day 342/088/16

¹⁹ Day 342/088/22

²⁰ Day 342/089/08-19

²¹ Day 322/06104/11

²² Day 322/053/12

FS7.1365

*although I note from my 1972 evidence that one of my soldiers with a riot gun was also with me. ...*²³

7B-21 N estimated in, oral evidence, that the crowd by that stage numbered between 75-100 people.²⁴ Christopher Clarke QC sought clarification of the size of this crowd:

I want to ask you one last question about the size of the crowd. You have told us that you had, in the phrase you used, an impression of as it were moving seaweed [...] I think at one stage you said there might have been ten across the alleyway and ten deep.

A. I remember saying that yesterday, yes, to try to help the numbers.

Q. That obviously would make a crowd of 100. Is it possible that there were markedly less than that number but, because it was quite a small alleyway and they were gesticulating and throwing things, that they looked sizeable to you; and they may in fact have been, say, 20, 30 or 40?

*A. Four or five deep and, I would say 40 or 50, certainly. Certainly more than 20.*²⁵

7B-22 N further explained that the estimate which he had given to Lord Widgery was a "pure guess"; he explained what he meant:

By the time I got to the corner my estimate was that there were enough people at the far end of the alleyway to block the mouth of that street. Saying 75 to 100 is a -- is a -- well, it is a pure guess. They were thick, they were blocking, ten people deep, ten across the mouth of that alley, and suddenly you have got 100 people.

Q. Is this fair: after the incident with the man with the breeze block, you chased some people towards Chamberlain Street; you went for the alley and chased them towards Chamberlain Street; when you got to the mouth of the alley you could see people at the Chamberlain Street end, enough to block the mouth of the street, who then began to throw things at you?

A. Yes, that is correct.

²³ B438.008 paragraph 38

²⁴ B438.037 letter E

²⁵ Day 323/116/13-117/06

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7B-23 The civilian evidence corroborates N's account of the size and activities of this crowd. Kevin Leonard was rioting at Barrier 14.²⁶ Mr Leonard gave telling evidence that, far from being dismayed at the realisation that soldiers were deploying into the Bogside, he and his fellow rioters considered that this in fact presented itself as another opportunity to attack them.²⁷ Even in his NICRA statement he referred to hearing Pigs going into the Bogside and Rossville Street and "so everybody turned and some shouted to get stones – this was their chance of stoning the Saracen".²⁸ He was asked, by Mr Rawat, about the plan to throw stones:

After describing the Saracens going into the Bogside in Rossville Street, what you went on to say was: "So everybody turned and some shouted to get stones -- this was their chance of stoning the Saracen." Do you remember today people shouting to get stones?

A. Well, that was the normal words at that time.

Q. Does that mean, as people were running down Chamberlain Street, there was a plan to throw stones at the Saracens?

A. Well, we knew once we went in that was how it was going to finish up, you know.²⁹

7B-24 John Friel was in the alleyway armed with a stone, with the intention of throwing it at the soldier whom he could see a mere three or four metres away. He gave candid and compelling evidence as to the soldiers' perspective of his actions. He stated that he stood at the junction of Chamberlain Street and Eden Place and saw

²⁶ AL 7.5 paragraph 8

²⁷ This is not the only event in relation to which civilian witnesses have expressed this sentiment: see Section Chapter 7C (Rioting in the Car Park) and the evidence of Liam Mailey, M50, in relation to the reaction of the youths at the rubble barricade to the arrival of troops without body armour on Rossville Street. Furthermore, a significant number of civilians at the rubble barricade decided that they would try and rescue a man being arrested by a soldier, as various witnesses have described, including Paul McGready (AM219; Day 137/128), George Downey: "some fellow got arrested on the wasteground and a rioter jumped over the rubble barricade and started throwing stones and stuff like that....people went north of the barricade to try and release him and threw stones at the soldiers as they went" (Day 123/015-016); see also Thomas Melaugh (AM397.23), Gavan Duffy (AD155), and Noel McCartney (M55.8)

²⁸ AL 7.1

²⁹ Day 201/005/15-25

a crowd run across the waste ground and the Saracens going in. He then saw a soldier "only about four or five metres away," at the corner of Eden Place, with a rubber bullet gun who then disappeared. Mr Friel then:

...picked up a large stone or half brick. I intended to throw it at the soldier if he appeared around the corner again.³⁰

7B-25 Mr Friel was asked by Christopher Clarke Q.C. about the perspective that this scene would have presented to a soldier:

Q. If anybody looked your way, they would have seen you standing up with a stone or brick in your hand, is that right?

A. Yeah.

Q. Did you have your hand raised?

A. Yes, I had it raised, yeah.³¹

7B-26 Mr Friel was also illuminating in his answers to Edwin Glasgow Q.C.:

Q. Try, if you would, to put yourself in the position of the soldier with the gun: whichever corner he came round, as he came round that corner or as he looked round that corner, the sight he would have seen was you with half a brick in your hand ready to throw and a crowd behind you?

A. Yeah.

Q. And a lot of noise?

A. A lot of noise, yes.

Q. You do not know that?

A. A lot of noise.

Q. There was a lot of noise?

A. A lot of noise, yeah, just roaring and shouting.³²

³⁰ AF 33.2 paragraph 9

³¹ Day 076/006/15-20

³² Day 076/059/03-16

FS 7. 1368

7B-27 Patrick Walsh, who had been stoning the troops at Barrier 14³³ (and who could not be described as a youth), was at the alleyway and saw the soldiers arrive. He threw a brick at one of the soldiers before the soldier opened fire.³⁴ He gave evidence of a standoff, of about forty people in a line across Chamberlain Street, confronting the soldiers who had come through Barrier 12.³⁵ It was suggested to Mr Walsh by Christopher Clarke Q.C. that, given that no other witness gives evidence of such an occurrence, perhaps this actually occurred across the alleyway towards the soldiers at the mouth of the Chamberlain Street alleyway leading onto the waste ground. Although Mr Walsh rejected that as a possibility,³⁶ it is the only explanation of his evidence.

7B-28 N described the crowd as "extremely hostile" and:

*...threatening. They were sort of surging, beginning to come forward from the front, and the people in the crowd seemed to be coming forward as well.*³⁷

7B-29 It must be impossible for anyone who has not been in a similar position to imagine what it must be like or to anticipate how they might themselves react. (Although the incident took place much later, in 1988, one only has to think of the two Royal Signals' Regiment corporals, who were abducted, beaten and murdered by a Republican crowd in West Belfast, to see the dangers. Those two soldiers were armed, but chose not to use their weapons (beyond firing a shot into the air to defend themselves.³⁸)) The Tribunal also has the graphic series of photographs that tell the story of the incident at Demesnes Gardens where a hostile Derry crowd succeeded in isolating a single soldier from a number of his colleagues.³⁹

³³ Day 171/002/15-18

³⁴ Day 171/016/02-15

³⁵ Day 171/016/20-017/04

³⁶ Day 171/017/24

³⁷ Day 323/105/03-08

³⁸ *Lost Lives* 2922; 2923

³⁹ "The Battle of the Bogside" begins at OS8.52

FS 7.1369

7B-30 Lieutenant N was subjected to sustained criticism by Barry MacDonald QC as to his actions in the Chamberlain Street alleyway. This criticism ignores the fact that N fired only as a last resort. He tried first to look threatening in order to stop the crowd. As he told Mr MacDonald, he then "shouted words to that effect (that he threatened to shoot them) to try to scare them away".⁴⁰ That effort failed. He therefore chose as a last resort, to fire over the heads of the crowd. N explained in his SA statement the situation in which he found himself:

The situation appeared dangerous and there were only two of us there (apart from my radio operator who was just round the corner). I fired two SLR rounds over the heads of the crowd. They go back for a moment and then started to come forward again. I fired one more round and they went away. At one stage during the incident I had a stoppage and cocked my rifle. Since at the end of the operation I was one unaccounted for round short I think that I must have ejected it at this moment.⁴¹

7B-31 Lieutenant N explained his decision to Mr Clarke:

You say that the only way to stop the surge of the crowd was to fire a warning shot. Was this the only way? Did you ever stand your ground with a weapon aimed in their direction?

A. I -- I think my recollection of firing from the shoulder was when I was trying to scare them. I probably aimed or took up the firing position, um, to try to make them think I was going to shoot at them, um, and that did not work and I could not think of anything else to do.

Q. You have a recollection of doing that, do you: standing in the aim position in order to scare them?

A. I think that -- that came with the, um, trying to look sort of menacing and shouting at them. It is the only way to look menacing when you have a rifle.

Q. Was the soldier with the rubber bullet gun there at this stage?⁴²

⁴⁰ Day 322/157/01

⁴¹ B398 - B399 paragraphs 8-9

⁴² A very easy point to make in the comfort and safety of the Methodist Central Hall

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A. I -- I think he was, but I have -- he is not in my mental picture at the moment.

Q. But he did not fire a rubber bullet, nor did you order him to do so?

A. I -- I might have done; he might have done without being ordered. I have got no recollection of that.⁴³

7B-32 Soldier 019, the baton gunner, also described the crowd advancing on them and described N's shots and their effect. In his RMP statement he said that,

*The crowd started to advance on my position throwing bottles and bricks at both myself and N. At this point we were the only two persons at the junction and so N fired 2 x 7.62 rounds into a brick wall above the rioters heads in an attempt to stop them advancing. This had a complete effect and the crowds dispersed up Chamberlain Street in a northerly and southerly direction.*⁴⁴

7B-33 As to whether 019 fired baton rounds to try to disperse the crowd it is clear, on any reasonable and objective analysis of what occurred in those moments, that baton rounds were fired, and that they did not stop the crowd. Soldier 019 was frank in his BSI statement that he could not remember firing any baton rounds at the stage at which he saw a crowd of civilians, but he believed, he "probably would have done".⁴⁵ Mr Rawat asked him about this:

Q. You cannot, as you say in your present statement, recall whether you fired baton rounds, but looking at that where you say that you were trying to hold back the rioters and the crowd started to advance on your position, it seems clear, does it not, that you would have used your baton gun if you had to hold back a crowd; is that right?

A. Yes.⁴⁶

⁴³ Day 322/060/07-061/03

⁴⁴ B1494.008

⁴⁵ B1494.003 paragraph 12

⁴⁶ Day 343/115/15-22

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7B-34 Lieutenant N has always accepted that his firing was outside the terms of the Yellow Card, and was not "accepted conduct". It is a matter for the Tribunal to consider whether it was "acceptable" or, at the very least, understandable, in the circumstances which confronted him. It is our submission that what N did was justified, in accordance with his training, to bring about the safest result for all concerned.⁴⁷

Q. This is at paragraph 10 of your statement at 438.002. You describe there how you fired a warning shot; do you see that?

A. Yes.

Q. That was fired contrary to the Yellow Card; was it not?

A. Not contrary to it, it was outside of the scope of the Yellow Card.

Q. Outside of the scope of the Yellow Card?

A. Yes.

Q. I will come back to that in due course. In any event, you knew that it was not accepted conduct; did you not?

A. Yes.

Q. Why was it not accepted conduct?

A. The concept in basic training about riot control was that warning shots were not to be used, shots over the heads of the crowd, because the general picture would be that those shots could go anywhere and could cause damage and --

Q. -- injury to others.

A. And injury to others. What I did was to take careful aim at a wall into which the round would go, without causing damage to anybody else.

Q. You were acting in a manner that was contrary to the training that you had received?

A. No, the training I received was to react to the situation and to use my professional judgment to bring about the safest result for all

⁴⁷ Day 322/127/12-128/17

FS 7. 1372

concerned. This, I would suggest, had not been envisaged, this situation had not been envisaged when the Yellow Card was written. I took very careful aim to achieve an effect without causing or risking anybody.

7B-35 Barry MacDonald QC cross-examined Lieutenant N to the effect that his firing over the heads of the crowd was unacceptable conduct that was nevertheless acceptable within the Parachute Regiment. Mr MacDonald appeared to imply that 1 PARA in effect operated as undisciplined, yet condoned, mavericks:

Q. When the Yellow Card was drafted it was not envisaged that soldiers may come across hostile crowds?

A. In such a situation where the only solution was to fire an aimed shot into a wall above their heads.

Q. Although it was not really accepted conduct, according to your own testimony, it was acceptable within the Parachute Regiment; was it not?

A. How do you mean?

Q. Because it was accepted by your company commander that you could behave like that?

A. I certainly have no recall of being censured for this, but it certainly would not have been -- for example, I would not have ordered one of my soldiers to do this, I would have taken the responsibility myself.

Q. It was known you had behaved in this way because you had reported it in the usual way to your company commander, I think you said that yourself?

A. Correct.

Q. And you were not reprimanded or censured?

A. Correct.

Q. Or warned about your future behaviour in any way?

A. Correct.

Q. Because it was acceptable to him for you to behave like that?

A. You would have to ask him. I guess in the circumstances it had been acceptable.

FS 7. 1373

Q. Yes?

A. That does not mean it would have been acceptable in the future, or under different circumstances.

Q. But you proceeded on the basis, from that experience alone, if no other basis, that you could behave in a way that was unacceptable in general terms and contrary to your training and get away with it?

A. That is not the view I took.

Q. What other inference would you have drawn from the fact that you were not reprimanded or censured for behaving in this way?

A. That under the circumstances at the time it was an acceptable conduct.

7B-36 No action was taken against Lieutenant N for firing his weapon in breach of the Yellow Card, presumably for the very reasons that he gave to justify his shots. No one was hurt by these shots. The repeated suggestion that they were the first shots to be heard in this sector is not consistent with the evidence as a whole. In all probability a physical confrontation in which rioters and soldiers were likely to have been injured was avoided.

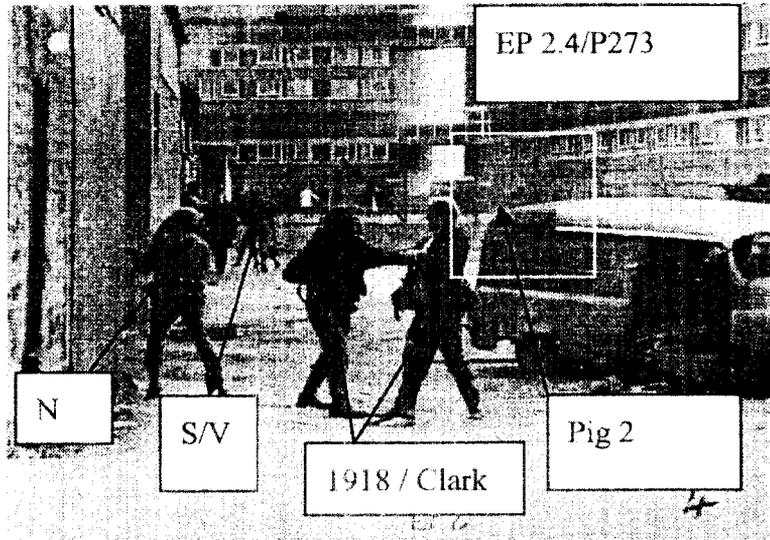
7B-III THE TIMING OF LIEUTENANT N'S SHOTS

7B-37 A number of the soldiers in Pig 2 debussed on Rossville Street (see Chapter 7A above). N's shots occurred before the remainder of the occupants of Pig 2 had debussed once the Pig had arrived at its final position in the Rossville Flats' car park. There is evidence of the Pigs being fired at as they drove down Rossville Street and of Pig 1 being shot at as it arrived on the waste ground. Lieutenant N's shots were not, therefore, the first of the day and nor were they confused by other soldiers in Mortar Platoon for hostile fire.

7B-38 According to the evidence of Jeffrey Morris, the Daily Mail photographer who was positioned at the Chamberlain Street wall, N's shots were fired down the

FS 7.1374

Chamberlain Street alleyway just after he took photograph EP 2.4.⁴⁸ From that it can be seen from that Pig 2 is in the background, not yet at its final position and that it still has its side doors closed. (Coleman Doyle's later photographs show Pig 2 with the front passenger seat doors open.)



7B-39 The occupants of Pig 2 are unlikely therefore to have heard N's shots, partly because they were still inside the vehicle and partly because of the noise that there would have been immediately around them, from the Pig's engine and the noise of the hostile crowd in the Rossville Flats' car park.

7B-IV SOLDIERS S AND V AND THE ALLEGED ASSAULT ON CHARLES MCMONAGLE

7B-40 Coleman Doyle's photograph EP 24/7 shows two soldiers (in all probability Soldier S and Lance Corporal V) making their way south, away from a Knight of Malta (Charles McMonagle) who is on the ground.

⁴⁸ Also referenced as P273

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7B-41 Soldiers S and V are making their way south towards the Rossville Flats' car park. In his book, *'Eye Witness Bloody Sunday: the Truth'*,⁴⁹ Don Mullan made the following assertion by way of a caption to this photograph: "In direct violation of the Geneva Convention, a young Knights of Malta paramedic is in a crumpled heap having been attacked by two members of 1 Para".⁵⁰ The photograph, of course, depicts nothing of the sort. The Knight of Malta is Charles McMonagle.⁵¹ Mr McMonagle's 1972 statement was not chosen for inclusion in the book, but it makes clear that Mr McMonagle was not on the ground as the result of an assault by soldiers:

When I reached the small wall at the big building in front of the high flats we found a man who had been hit by a rubber bullet and there I met L/Cpl Glenn. As we were treating this man someone screamed that they were coming up Rossville Street in armoured cars and when I looked up I saw 3 or 4 coming in the general direction of the flats. We picked up our patient and ran towards the car park at the back of the flats but there was a wire fence across so there was a very narrow gap for the crowd to get through. In the panic I tried to hold the crowd back to see to our patient but I was knocked down and trampled underfoot. As I lay against the wall as the paratroopers poured out of armoured cars. I lay on the ground with my hands outstretched. At this stage I was wearing a

⁴⁹ Wolfhound, 1997

⁵⁰ Don Mullen "Eye Witness Bloody Sunday The Truth"; published Wolfhound; 1998 edition

⁵¹ AM 367

FS7-1376

*gas mask. One paratrooper came dashing over and grabbed me by my uniform and pulled me up and stuck his rifle in my chest. I think he was going to fire and I just indicated wildly at my red cross badge which he looked at and released me and left me on the ground ...*⁵²

7B-42 Unfortunately, when he came to give his BSI statement to Eversheds Mr McMonagle failed to keep to the truth, although his distortion was not quite as extreme as Mr Mullan's:

*The para must then have seen me because he turned to his left and looked straight at me. I immediately put my hands up. I had my back to the wall. I was terrified and did not know what to do. I was in genuine fear for my life. He was shouting and screaming at me ... Because I could tell that he could not hear what I was saying I started to frantically point towards my Red Cross badge. I was shouting 'Red Cross. Red Cross.' The paratrooper then moved up to me and pointed his rifle at my chest and continued to shout at me. Another soldier then came from my right and they both roughed me up. At one stage they took my kit bag and rifled through it. They thrust the bag back at me. After a few seconds they threw me to the ground There is annexed to this statement a photograph which shows me on the floor and the two soldiers running through the gap.*⁵³

7B-43 It is for the Tribunal to decide why Mr McMongale chose, to put it at its most neutral, to give Eversheds the impression that the photograph shows him on the floor because soldiers threw him there: if anything it was the soldier who returned Mr McMonagle to his feet. When he gave oral evidence, having seen his 1972 statement, Mr McMongale had to accept that the 1972 version of events was accurate.⁵⁴

Q. ...the fact is, I think until you saw this weekend your manuscript notes, you had not remembered that it was the panicking crowd that had trampled you to the ground; that is right, is it not?

A. No, no, no, it was always my recollection that I was knocked over by the crowd, I have never believed otherwise.

⁵² AM367.8

⁵³ AM367.4 paragraphs 21 and 22

⁵⁴ Day 102/143/08-18

FS7-1377

Q. You had always remembered that it was they who had trampled you to the ground?

A. Yes, the crowd panicked, ran along the wall, that is how I know I was left behind at the wall.

7B-44 He was unable to explain why he had said what he did to Eversheds,⁵⁵ although it was not that he had forgotten the detail of being trampled by the crowd.⁵⁶

7B-V CONCLUSION

7B-45 Lieutenant N acted entirely justifiably in a very dangerous situation. Regardless of whether his firing was covered by the Yellow Card, his actions cannot reasonably be criticised.

⁵⁵ Day 102/146/16

⁵⁶ Day 102/143/15

FS7-1378

CHAPTER 7C

EVENTS IN THE CAR PARK OF THE ROSSVILLE FLATS

7C-I INTRODUCTION

7C-1 It is clear from the Heli-Teli camera footage that, when the Pigs appeared in Rossville Street, it was largely deserted other than for the odd rioter or stone thrower. It was clear of Civil Rights marchers. As the Pigs entered the waste ground, in the area they were intending to trap, or "hook", or "get behind" the rioters, the soldiers encounter a crowd composed principally of those who had fled from the rioting, a number of whom returned to rioting once the Pigs had stopped. No one gave evidence of having been a marcher when the Pigs appeared, and having then got caught up in the arrest operation on the waste ground. The Civil Rights meeting had begun at Free Derry Corner; that is where the vast majority of the Civil Rights marchers were, and where anyone who wanted to remain part of the Civil Rights demonstration and/or to be disassociated with rioting had ample time to get to.

7C-2 Furthermore, the claim that the soldiers were confronted with terrified Civil Rights marchers fleeing before them, whilst nothing was being thrown from the Rossville Flats balconies, and no stones were thrown from the car park, is untrue.

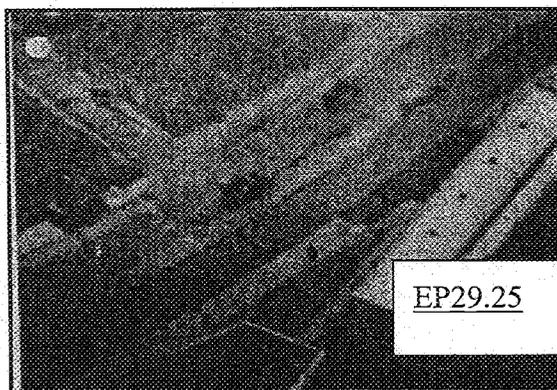
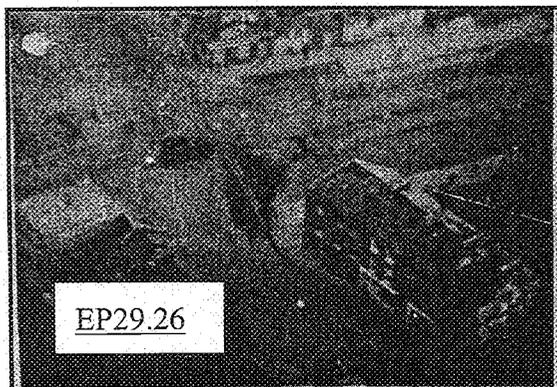
7C-II ROSSVILLE STREET WAS CLEAR OF MARCHERS AS THE PIGS DEPLOYED

7C-3 It is clear from the heli-Teli film that Rossville Street was clear when then Pigs deployed. The Civil Rights marchers had passed on and were at Free Derry Corner.¹ Two stills from the heli-teli film illustrate the point.²

¹ See also Video 48

² See also the Saville Inquiry's Expert's Report: "Report on the Timing and Order of Eight Photographs for the Bloody Sunday Inquiry" by Dr Steven Bell, H.M. Nautical Almanac Office 25th ...continued

FS7-1379



7C-III PIG 2 ARRIVES IN THE ROSSVILLE FLATS' CAR PARK

7C-4 The few soldiers (the minority of Mortar Platoon) left in Pig 2, not having debussed in Rossville Street, finally left the Pig when it had come to a halt at the entrance to the Rossville Flats' car park. Sergeant O initially stayed inside the Pig, observing events. The remainder, probably Lance Corporal INQ 1579, Soldier T, and Soldier 013, debussed.

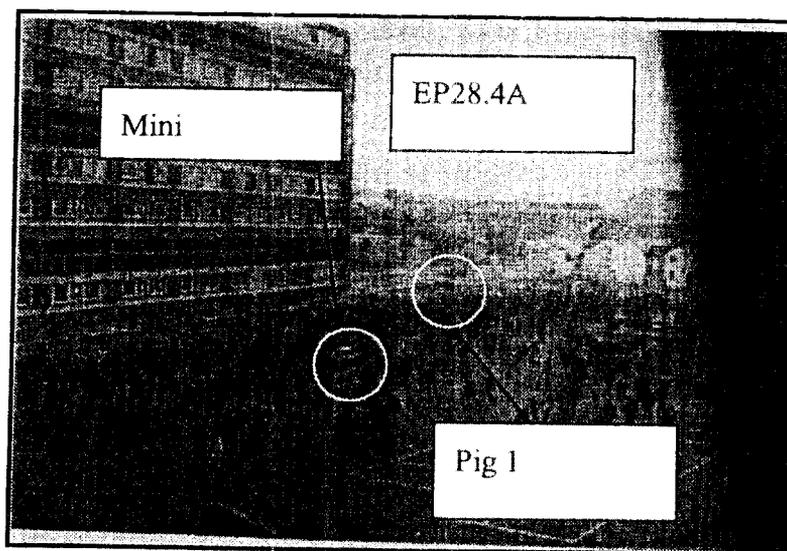
7C-5 Derrick Tucker's photographs record *part* of the movements of the crowd in the Rossville Flats' car park. The crowd that ran through the car park from the waste ground was comprised largely of those running from Barrier 14 down Chamberlain Street. These people, including the hard-core rioters from Barrier 14, only left Barrier 14 when they saw the Pigs crossing Aggro Corner on their way

March 2002 at E 26.1-16 on the Tucker photographs that firmly establishes that the arrival of the Pigs is at the conclusion of the sequence and therefore not when the crowd was thronging Rossville Street

into the Bogside. Mr Tucker's photographs only record the beginning of events in the car park. Coleman Doyle's photographs record the next stage, when the crowd from Barrier 14 started to arrive.

7C-6 Any suggestion that the photographs prove that there was no crowd in the Rossville Flats' car park that engaged the soldiers is contradicted by an objective consideration of the photographs. This, together with Lord Saville's warning against over-reliance on photographs to prove, by the absence of a photograph, that something did not happen, leads to the conclusion that Mr Tucker's photographs do nothing to disprove the soldiers' accounts of rioting in the car park.

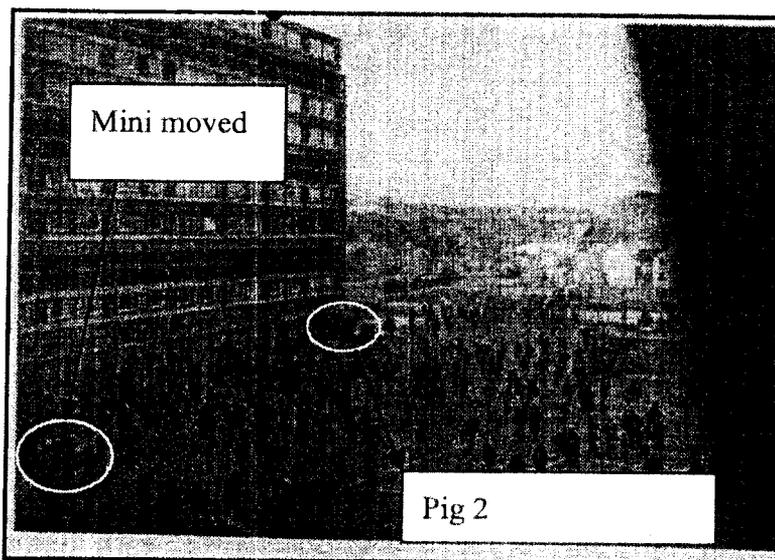
7C-7 Mr Tucker's photograph EP28.4A (below), taken from Block 2 of the Rossville Flats, shows some of the crowd running towards the Rossville Flats. In the middle background, and circled, is Pig 1 in transit as it moves across the waste ground. Pig 2 is not visible – which suggests it is now behind Block 1 having moved off from its stopping position. The only military vehicle on Rossville Street is the Support Company Command Vehicle.



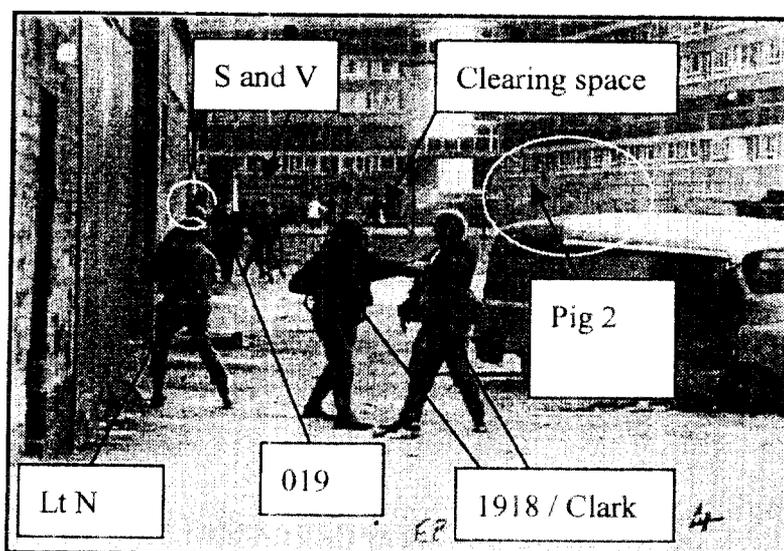
7C-8 EP 28.5 shows the arrival of Pig 2 in the car park: its bonnet appears at the northeast corner of the northern gable of Block 1. In the background, on Rossville Street, are the Command Vehicle, the Ferret scout car, another Pig and one of the four-ton lorries. The Mini that was in the car park has also been reversed south,

FS7-1381

back towards Block 2 of the Flats.



7C-9 The Pig can be seen moving across the car park in EP2.4.



7C-10 In this photograph the doors of Pig 2 are still closed and it is therefore either still moving or is just coming to, or has just reached, its final halt. The crowd in the car park appear to be thinning out and the immediate foreground is clearing of people. Coleman Doyle's photographs *follow* this picture and the crowd is larger, the rioters from Barrier 14 having entered the car park from the southern end of Chamberlain Street. These pictures capture a distinct sequence of events in the car park.

FS7-1382



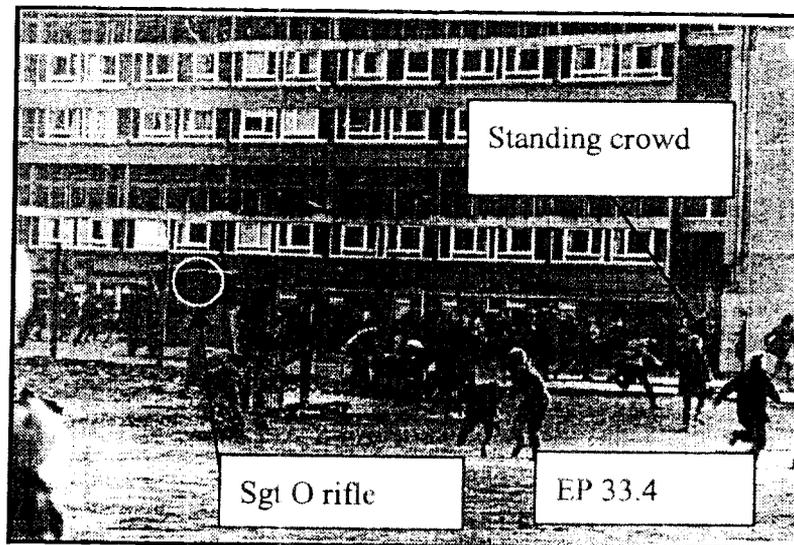
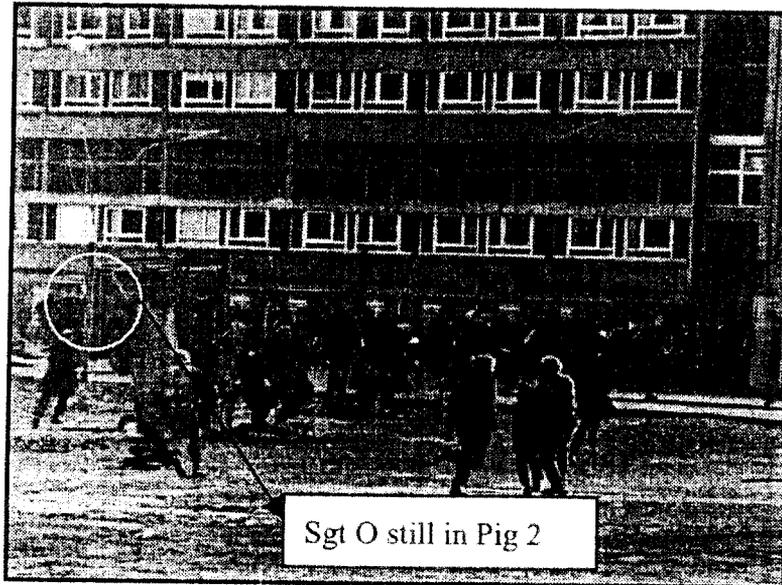
7C-11 In EP33.1 Pig 2 has its rear doors and front passenger door part way open. It has not, however, reached its final position: EP 24.2.001, the next photograph in the sequence, shows - using the fence posts as markers - that Pig 2 has moved slightly further to the east. By the time of EP33.1 the man in the white raincoat (who is a useful marker) has reached the hard stand of the Rossville Flats' car park; people can be seen around Pig 2 in the space hitherto clear. Not all of them are running away from the soldiers.

7C-12 The next Coleman Doyle photograph is best seen as EP 24.2.001 which shows the full, wider perspective. From this print it is possible to see that the man in the white raincoat is running away from the waste ground down the west side of Block 1 of the Rossville Flats.



7C-13 Another print of the same photograph is at EP 33.3 (below). At this stage

Sergeant O can still be seen sitting in the front passenger seat of Pig 2 (and, as already mentioned, it has moved slightly further on from its position in EP 33.1, above).



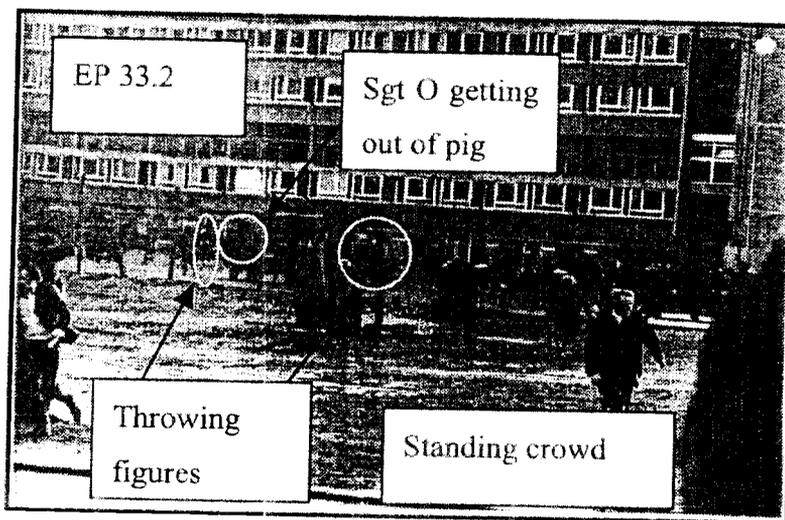
7C-14 Whereas there had been a thinning out of the crowd on the car park as the Pig arrived (see EP33.4 and EP 28.5 above), by the time of EP33.4 there are more civilians in the foreground. Those who appear in EP33.4 are the rioters who ran from Barrier 14 down Chamberlain Street when C Company deployed. Many of these rioters, on encountering Pig 2 and its soldiers, resumed their attack at close

FS 7-1384

quarters.

7C-15 Sergeant O is, on close scrutiny of the photograph, again visible sitting in the front passenger seat of the Pig. His rifle can just be seen, sticking out of the doorway. Meanwhile, the soldiers around him are engaged in dispersing the crowd and attempting to make arrests.

7C-16 Some of the crowd are running away, some are standing still and some are assisting a fallen figure. Some are running towards Pig 2.



7C-17 By this stage, Sergeant O is in the process of getting out of the Pig. There are also at least three civilians in the crowd who appear (at this moment) to be throwing objects towards the soldiers. Civilians are visible behind the low wall in front of Block 2. By Block 1 there is a crowd who continue to stand rather than disperse, despite the soldiers being only yards away.

7C-IV ALANA BURKE

7C-18 Pig 2 hit Alana Burke by accident. She had been badly affected by gas (such that she was very sick³ and was treated by a Knight of Malta⁴) whilst watching the riot

³ Day 076/075/04

⁴ Day 076/073/16; Day 076/073/24

FS 7.1385

at Barrier 14, and the heavy coat that she was wearing had been soaked by the purple dye.⁵ She was, in her own words, "in quite a sorry state."⁶

7C-19 When, to her surprise and fear,⁷ the Pigs entered the Bogside she began to run south towards the Rossville Flats in her waterlogged coat, wearing a skirt and high-heeled shoes, disorientated and ill from gas. She explained to Christopher Clarke QC that she "could not move because I was laden down. My clothes were covered in dye, it was a long coat and I was so heavy I could not move, I seemed to be rooted to the spot."⁸ She said to Jimmy McGovern that she had big high-heeled shoes on, and remarked, "Is it any wonder I could not move".⁹

7C-20 Miss Burke explained, in her BSI Statement, what happened:¹⁰

At this time I was looking for the female friend that I had lost and I was terrified. Everyone was running towards the alleyway between Block 1 and Block 2 of the Rossville Flats. Lorney McMonagle tried to pull me out of the way but he let go and I was hit by a Saracen which entered the Rossville Flats car park from Rossville Street. I was hit just behind the wire fence on the courtyard side.

7C-21 She elaborated in oral evidence to the Tribunal:¹¹

Q. When you say he tried to pull you out of the way but let go, tried to pull you out of the way of what?

A. Um, well at that stage, you know, the Saracens had started to come in to the waste ground and to the car park and when he let go that was it, I was on me own more or less.

Q. You say he let go?

A. Yeah.

⁵ Day 076/072/18 -073/07

⁶ Day 076/096/15-097/06

⁷ Day 076/079/13

⁸ Day 076/082/3

⁹ AB101.27

¹⁰ AB 101.1 paragraph 5

¹¹ Day 076/082/07

FS 7.1386

Q. Was he just pulling you along, or was he pulling you out of the way of either a soldier or a vehicle?

A. Well, I said that he was pulling me out of the way, it is quite possibly was he was pulling me out of the way because there was an army vehicle coming, but I distinctly remember holding him by the tie.

Q. Is your basic recollection that he pulled you along, but let go and then you were hit by a Saracen?

A. Yeah.

7C-22 Alana Burke was hit from behind.¹² This clearly was a glancing blow from the Pig when Mr McMonagle let go of her. Frank Campbell described it as such in his oral evidence.¹³ Had it not been a glancing blow, Alana Burke might well have been more seriously injured.

7C-23 Her being hit was, therefore, an accident, as Alana Burke said herself in interviews she gave shortly after Bloody Sunday (although she cannot now remember speaking to journalists¹⁴) whilst she was still in Altnagelvin Hospital. She said to The Irish News,¹⁵ "I couldn't say it was deliberate". and the Evening News quoted her as saying "I could not say if the Saracen deliberately ran me down".¹⁶ Sergeant O readily accepted, in oral evidence, that Pig 2 could have knocked someone over, and that he just did not see it.¹⁷ INQ 1579, the driver of Pig 2, remained convinced that the Pig did not knock over Alana Burke,¹⁸ but he has always acknowledged that the vehicle did, in the process of braking and coming to a stop, nudge a man who appeared spread-eagled directly in front of the vehicle, who then got up and ran away.¹⁹ It would be oddly inconsistent for INQ

¹² Day 076/100/14

¹³ Day 121/10/19-11/12

¹⁴ Day 076/093/01

¹⁵ L139

¹⁶ L94; also, Miss Burke did not, in her interview with Paul Mahon, say that she blamed the driver: X4.4

¹⁷ Day 335/027/05-028/12

¹⁸ Day 336/159/14

¹⁹ Day 336/159/16-162/16

f57-1387

1579 to acknowledge one incident with a civilian but to positively lie in denying another.

7C-24 Despite the true position, it remains part of the mythology of Bloody Sunday that Alana Burke was deliberately targeted by the driver of the Pig, knocked down and then pinned against a wall by the vehicle. Even now some witnesses have persisted in peddling this lie, seeking to convince the Tribunal that they were eyewitnesses to an event that Alana Burke explained did not actually happen²⁰. It is simply one further example of the distortion of what really happened on Bloody Sunday, which began on the day and has continued for the past 30 years.

7C-V THE RIOTING IN THE ROSSVILLE FLATS CAR PARK

7C-25 It is clear from civilian evidence that the arrival of Pig 2 in the car park presented an opportunity to the stone throwers that was not to be missed. Hugh Barbour,²¹ a 16 year old who was at the top of Block 1 at the north end of the Rossville Flats when the Army deployed into the Bogside, ran down to the second floor balcony singing to himself, "*Lets see some action*".²² He saw the soldiers debus. Directly in front of Block 2 were some of the younger men in the crowd who were jeering and taunting the soldiers and some were throwing stones and bottles. He could hear the sound of stones bouncing off the Pig.²³

7C-26 In oral evidence, he described what the crowd were doing:²⁴

Q. You say that you could see and hear the sound of stones bouncing off the Pig. Were some of the crowd running away at this stage, or were the people who were there at the time that you witnessed this the people who had stayed to throw stones at the soldiers?

²⁰ Day 096/104/22-105/01

²¹ AB10

²² AB 10.2 paragraph 8

²³ AB 10.2 paragraph 12

²⁴ Day 088/ 057/22-058/08

FS 7. 1388

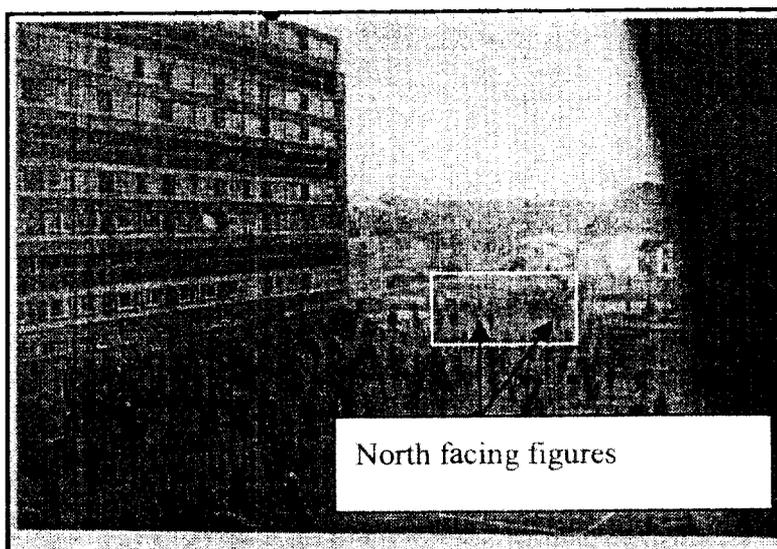
A. Well, the Pig had just arrived into the car park. Some people were running away. other people were confronting the soldiers.

Q. Can you give us any idea of the size of the crowd that was in the car park at that stage?

A. At that particular time, about, say, 250 to 300 people.

7C-27 Questioned further by Peter Clarke QC, he estimated that 15 – 20 people were throwing stones at the Pig and hitting it.²⁵

7C-28 As the crowd continued to move south and the soldiers followed them, the attack on the soldiers became focused on the Rossville Flats' car park. As the soldiers continued to attempt arrests around the area of the car park, the rioters continued the onslaught. Tucker EP 28.5 (below) shows the rioters facing or moving in a northerly direction – *i.e.* towards the arriving soldiers.



7C-29 Here the rioters were also able to make use of the height offered by the balconies of the Rossville Flats, which put the soldiers at a considerable disadvantage. David Capper,²⁶ a BBC journalist, described debris (tins and bottles) being thrown at the soldiers from the Flats. He told Lord Widgery that there was “*a hail of*

²⁵ Day 088/09610-16

²⁶ M9

FS 7.1389

missiles".²⁷ He recorded on his tape that people in the high blocks of flats above him had been firing down missiles of various sorts and that the troops had been firing back mostly with rubber bullets and with CS gas.²⁸ In oral evidence to this Tribunal he confirmed, in response to questions from Gerard Elias QC, that he saw missiles being thrown down from the Rossville Flats,²⁹ a general rain of debris that he thought was coming from the walkways, in particular from the middle and upper floor walkways and the roof. Significantly, Mr Capper also referred to civilians fighting the soldiers as they went to effect arrests, describing them as "struggling" and "fighting using fists".³⁰

7C-30 The rioters were not made up purely of young children or teenage boys. The term "Derry Young Hooligans" did not prohibit many grown men, including Patrick Walsh and Michael Bridge, from joining in. The motives of the "DYH" were hardly political, as Patrick McCallion confirmed:³¹

MR GLASGOW: Mr McCallion, can we start at the first page of your statement, AM74.1, please? Look at paragraph 6 at the bottom of the page. You, if I may say so, have been very frank about this: you went to have a good riot?

A. Yes.

Q. There was no political motive behind it, you were not going on a civil rights march, it was like any other opportunity, a good chance for a young man to have a riot?

A. Yes.

Q. You would have been rather older, I think 29?

A. That is correct.

Q. Rather older than most of what were called "the young hooligans", would you not?

²⁷ M9.16 letter B

²⁸ E3.0088; Day 073/114/16-22

²⁹ Day 073/131/23-132/08

³⁰ Day 073/127/01-04

³¹ Day 071/158/12-159/16

F57-1390

A. There were people older than me and they would have been in for a good riot as well.

Q. People of all ages were joining in, were they?

A. Yes, yes.

7C-31 The title itself did not originate from the military or the police; so satisfied with their activities and status were the rioters that they coined the phrase themselves and sought to bring to their gang official status. Eamon McCann described in his book how, "stupidly", the "Young Hooligans Association" "progressed far enough to elect a Committee, have badges printed, and organise a trip to Belfast" to meet its counterparts in Ballymurphy.³² He confirmed this in oral evidence.³³

7C-32 James McKinney saw, from behind the low wall in front of Block 2 of the Rossville Flats, stones and bottles being thrown at the soldiers from the balconies of Block 1 of the Flats.³⁴ A dozen or so people were running backwards and forwards throwing missiles.³⁵ There was "*a good continuation of stones being thrown at that stage*". They landed close to the soldiers.³⁶

7C-33 Floyd Gilmore,³⁷ the brother of the deceased Hugh Gilmore, whose failure to give oral evidence to this Tribunal has not been explained, also saw and heard bottles and stones being thrown down from the Rossville Flats into the car park below: "*This was completely normal and would have occurred in any riot situation had the police and soldiers ever come in that far*".³⁸ See also James McKinney, AM303, below.

³² AM77.31-32

³³ Day 87/158/06-159/13

³⁴ AM 303.5 paragraph 33 -34

³⁵ Day 081/118/05-119/08

³⁶ Day 081/115 - 116

³⁷ AG 39.

³⁸ AG 39.2 paragraph 11

FS7-1391

7C-34 Maureen Gerke (nee Barr)³⁹ lived on the ground floor of Block 3 of the Rossville Flats – known as Floor 5. She saw the arrival of the Pigs. Her account provides clear evidence from a civilian that acid was thrown, and therefore may put the issue beyond doubt: she saw people throwing acid from the roof of the Flats.⁴⁰ Despite her claims more recently in her BSI Statement and in her oral evidence that she could not remember that,⁴¹ she readily agreed with Edmund Lawson QC that she would not have made up her 1972 account of seeing acid being thrown from the Flats:⁴²

In your statement in 1972, you did say, did you not, that acid was thrown from the flats?

A. I did say that in my statement, yes.

Q. Are we to take it that your statement at the time was an attempt to be truthful?

A. Yes.

Q. So if you said that at the time, you must have meant it at the time?

A. I assume so.

Q. So acid was, it would seem, thrown from the flats at the soldiers; is that right?

A. Well, as I say, I cannot remember what I said at the time in the statement, but obviously when I read the statement, that is what I said in the statement at the time, so that is obviously what I believed at the time.

Q. And you would not have made it up, would you?

A. No, I certainly would not.

³⁹ AG 27

⁴⁰ AG 27.8

⁴¹ Day 133/ 84/07-85/03

⁴² Day 133 /107/14 – 108/06

FS 7. 1392

7C-35 The soldiers below felt the force of this attack,⁴³ and it seems clear that it included acid and that the acid hit Soldiers T and R.⁴⁴ In Soldier R's case the acid was sufficient to burn his denims and for him to feel a burning sensation on his legs.⁴⁵ He told the RMP initially that, "the rioters threw acid bombs one of which splattered across my legs."⁴⁶ In his second RMP statement he referred to having two acid bombs thrown at him, both of which struck his legs.⁴⁷ He referred to two acid bombs in his evidence to Lord Widgery and in his SA statement:

Just after I fired this shot [his first shot] acid bombs were dropped from the middle floor of Block 1 above me. The first one, which was a bottle, hit the ground about a yard in from me and the acid splashed on my trousers. Sergeant O shouted something like "that's acid, look out" and I stepped back. Then a second bomb came down and splashed me some more.⁴⁸

7C-36 Despite the evidence of Maureen Gerke (above), some at least of the Families, through their Counsel Barry MacDonald QC, challenged Soldier R's evidence of any acid attack. WOI Wood, who gave evidence after Soldier R, was not challenged when he told the Tribunal that he remembers having a look at R's legs during the statement taking process and that they were red. He said, in his BSI statement, "I could see that [Soldier R's] leg was reddened by something corrosive".⁴⁹

7C-37 The soldiers were also attacked by civilians on the ground. Sean Collins,⁵⁰ a ten year old watching from his family's Flat in Block 3 of the Rossville Flats, gave

⁴³ See, for example, Sgt O at B575.113, paragraph 34; and LCpl V at B806 and B808 at A.

⁴⁴ T: B741 at E, and B742 at G; R: B671 paragraph 5

⁴⁵ B691.003 paragraph 16

⁴⁶ B659

⁴⁷ B666

⁴⁸ B671 paragraph 5

⁴⁹ CW1.10 paragraph 59

⁵⁰ AC74

FS7. 1393

evidence of the Pigs' arrival and the soldiers' actions. He saw milk bottles⁵¹ smashing onto the roof of the Pig.

7C-38 Neil McLaughlin⁵² admitted to throwing stones at the Pig in the Rossville Flats' car park. He was questioned on this part of his statement by Christopher Clarke QC:⁵³

Q. Can we come back to AM347.2, paragraph 12? You describe there how, together with or other people not known to you at the time, you ran at the Pigs throwing stones at them. Can you tell me where you were when you were throwing stones? You had come out of Chamberlain Street and where did you go next, if anywhere?

A. Well, when I came out Chamberlain Street I would have turned right. In actual fact there was a gable wall there, the end house of Chamberlain Street to the right-hand side. I would have turned right and it was there where I seen the vehicles.

Q. Is it from there that you and others threw the stones?

A. It was there I threw the stones, yeah. I would not have been any closer.

7C-39 Francis Dunne, a schoolteacher, observed the rioting at the Army barriers but did not take part because of his profession. He was heading down Rossville Street when the Pigs deployed and ran into the Rossville Flats' car park. He saw people he described as children stoning the troops around the area of Pig 2's stopping place from near the gap between Blocks 2 and 3 (the children's play area).

7C-40 Billy Gillespie was asked by Edwin Glasgow QC about the stone throwing in the car park.⁵⁴ He admitted that the rioters were throwing bricks and anything else

⁵¹ Day 195/89/23-090/09. His attempt in oral evidence to maintain that there was only one milk bottle and that it was empty is not credible.

⁵² AM 347

⁵³ Day 091/05/19-06/10

⁵⁴ AG33

FS7.1394

they could lay their hands upon. He also told the Tribunal that the stone throwers on the car park included Michael Bridge:⁵⁵

Q. Again I think it right that you should know that nobody I think the Tribunal has heard from has admitted there was any stoning in that area at all; even in the light of that, is it still your admission to this Tribunal on oath that you and others – leave aside Mr Bridge for the moment -- were stoning in that car park?

A. Yes.

Q. It must have been perfectly obvious, for anybody who wants to give an honest account of what happened on that day, that you and others were stoning soldiers in that car park?

A. Yes, stoning.

Q. Can you say roughly how many of you there were doing the stoning at that stage?

A. I would say about eight to fifteen.

Q. Eight to fifteen?

A. Yeah.

Q. If we said about a dozen?

A. Round about a dozen, yeah.

Q. That would be a fair summary?

A. Yeah.

Q. I do not press it beyond this: is your belief, and you cannot go further than that, that Mickey Bridge was amongst them, or are you saying that you are certain?

A. Well, Mickey Bridge was angry when he run out.

Q. Angry, yes?

A. Yes, angry and shouting and he threw a brick.

Q. Threw a brick?

⁵⁵ Day 084/182-184/24

FS7.1395

A. Threw a brick at that soldier, that soldier at the corner.

Q. If we look again at P188, Mr Gillespie lighten it, if we may, for a particular reason: in the foreground of that photograph, P188, at the very bottom, we see what appears to be a square object?

A. Yeah.

Q. I do not want to put words in your mouth, what do you think that is?

A. That is a brick, that is what we would call a brick.

Q. That is what you would call a brick?

A. That would be a big one.

Q. Is that the sort of size of missile that you and the dozen or so of whom you were a part were throwing at soldiers?

A. Some would have been that size, as you can see there would have been smaller ones scattered over round there, there are other bricks scattered round there as well.

Q. Bluntly, anything you could get your --

A. Hand on, yeah.

7C-41 It is clear that those rioting on the car park were joined by those who had been at Barrier 14 and who had run down Chamberlain Street as C Company deployed through Barrier 14. These rioters re-grouped in the car park of the Flats and joined those already in the car park attacking the soldiers.

7C-42 Neil McLaughlin was involved in the rioting at Barrier 14 and described the way in which they ran down Chamberlain Street and attacked the soldiers in the courtyard. Michael Bridge was one of those attacking the soldiers. Mr McLaughlin described in his BSI Statement how with about twenty others he ran at the Pigs throwing stones, and that he was pretty sure that he hit one of them.⁵⁶ He was interviewed by the *Sunday Times* Insight Team and is recorded as saying that he and the group realised that "there were very few soldiers and a lot of them,

⁵⁶ AM 347.2 paragraph 17

FS7 1396

and that the soldiers weren't in riot gear. They surged forward towards the soldiers. Neil admits that in was in his mind to have a go..."⁵⁷

7C-43 Mr McLaughlin confirmed the situation in answer to questions from Edwin Glasgow QC:⁵⁸

Q. So the position again, without any comment or exaggeration, as the soldiers got out of the back of that Pig armed with whatever they had with them, they were confronted, on your evidence, with a crowd of about 20 people charging at them with missiles in their hands; that is your recollection?

A. Right, yeah.

Q. At that stage there were still a great many people around in the car park?

A. There were.

Q. Who had been the press of people that you had described as being with you in Chamberlain Street?

A. That is right, yeah.

Q. Hundreds of people?

A. Maybe a couple of hundred, yeah.

Q. You agree with that?

A. Yeah.

Q. So hundreds of people who would have seen this charge by 20 people armed with missiles on the soldiers as they emerged from the Pigs?

A. That is right, yeah.

7C-44 Mr McLaughlin also provides proof of the fact that the rioters from Barrier 14 arrived in the car park and resumed their rioting, putting the Tucker photographs into perspective:⁵⁹

⁵⁷ AM 347.12

⁵⁸ Day 091/054/04-24

FS7.1397

Q. So far as the crowd with whom you were, let us stick to the 20, Mr McLaughlin, those 20 whether known to you personally or not, would have been amongst those who would have been throwing stones at the barricade?

A. That is right, yeah.

Q. And all of you had succeeded in running the full length of Chamberlain Street before the army arrived on the waste ground?

A. That is right, yeah.

Q. And again I do not expect you to sympathise or agree with it, but the fact is that if those soldiers were to have any chance of arresting any out of your little bunch of stone-throwers, they had to come down that distance on that occasion?

A. Yeah.

Q. If they had not come that far, they would have stood no chance of arresting you. Again, I do not expect you to agree with it or to sympathise, Mr McLaughlin, the fact is if you had been arrested for rioting at the barricade, you could not really have complained?

A. That is right, yeah.

7C-45 Christopher Clarke Q.C. confirmed this point in his follow-up questioning of Mr McLaughlin centring around Mr Tucker's photograph EP 28.5:⁶⁰

We can see that most of the people here [in photograph EP 28.5] are running south. You must have begun throwing stones at the Pig at a time later than this photograph, when a proportion of the people that we see in this photograph must have got further down towards the exit, and it is possible that more people had come in to the entrance in the intervening period. Can you give us any idea, at the time when you were there throwing stones at the Pig, as to whether or not the people in the car park were spread all around it, as this photograph shows, or whether they were in any different disposition?

A. The car park was cleared by the time --

Q. The car park was clear?

⁵⁹ Day 091/055/23 - 056/20

⁶⁰ Day 091/061/04-064/08

FS7.1398

A. Yeah, there was no people at all. The only people in the car park, to my memory, was the people entering it from Chamberlain Street, including myself. Sorry, go on.

Q. Go on.

A. I was just going to say by that time the Saracen would have been in the car park, (inaudible) and all.

Q. At that stage, the people that you had come with down Chamberlain Street, the 20 or so who began to throw stones at the soldiers, and the rest of the car park, are you saying it had nobody in it or very few?

A. No, no, no, the number 20, I think, was the number put to the people who were attacking the vehicles, but there was hundreds come up Chamberlain Street into the car park on that day.

Q. What happened to those people that had come up Chamberlain Street, apart from those who were throwing stones?

A. I think they were trying to -- again they were trying to make their way to safety, you know, and where they went to I do not know, to be honest with you, which, which route they took to get out.

Q. Should we understand this picture: that as you put it, hundreds come down Chamberlain Street; a group of them are throwing stones at the Pig at the entrance to the car park, and the rest are somehow trying to get out of the car park?

A. That is right, yeah.

Q. When you came into Chamberlain Street -- when you came out of Chamberlain Street and turned right along the gable end, did you see people already in the car park?

A. No, I do not think so, no, no.

Q. You have a recollection of coming in to an empty car park, do you?

A. Well, I would not say I was the first in, but I knew that the people in the car park had come from Chamberlain Street. I think that is the only people I thought who were in the car park at that time.

Q. So these people that we see on this photograph, who look as if they were already in the car park before you arrived because the Pig has not yet come in to it, you think that these had got out of the car park, do you?

A. Sorry?

FS7-1399

Q. Do you think these people that we see in the photograph, who were people in the car park before the Pig arrives in the car park, had got out of the car park by the time that you had arrived?

A. I do aye, yeah.

7C-46 Paul McDaid,⁶¹ then 15 years old, was a rioter at Barrier 14 whose admitted intention was to injure soldiers (McDaid was convicted of possessing explosives in August 1972).⁶² He left Barrier 14 having seen the Army vehicles going down Rossville Street. The Pigs had reached the junction of William Street / Rossville Street and were going further down Rossville Street before anybody came through Barrier 14.⁶³ He then heard a shout that "the Brits are getting behind us" – *i.e.* further down Rossville Street. He feared being cut off. He saw soldiers coming through Barrier 14 towards the rioters ("us").⁶⁴ There were 50 to 100 people at the junction at this point including "hangers on".⁶⁵ He was the last to get away from the area around Barrier 14 and was in a crowd of about 30 or 40 people running down Chamberlain Street.⁶⁶ He reached the west gable end wall of Chamberlain Street and saw two Pigs at the northeast corner of the Rossville Flats and two or three soldiers standing at the front of the Pigs.⁶⁷

7C-47 Billy Gillespie (above) was frank about the rioting in the Rossville Flatscar park. He was a self-confessed hard-core rioter. He ran down Chamberlain Street away from the 1 PARA who had come through Barrier 14. He heard only rubber bullets as he ran⁶⁸ (Although he told the Tribunal that he came across Peggy Deery injured in Chamberlain Street,⁶⁹ his apparent failure to hear the rifle fire was not highlighted by either Counsel to the Tribunal or for any of the Families.) He

⁶¹ AM173

⁶² Day 090/135/17-24

⁶³ Day 090/136/16-21

⁶⁴ Day 090/137/05-18

⁶⁵ Day 090/137/19- 138/05

⁶⁶ Day 090/138/06-12

⁶⁷ Day 090/139/07-14

⁶⁸ Day 084/146/13-15

⁶⁹ Day 084/147/07-148/09

FS7.1400

entered the Rossville Flats' courtyard "and picked up some stones ready to throw".⁷⁰ He confirmed in oral evidence that there were others throwing stones,⁷¹ and numbered them at around "ten or fifteen",⁷² "eight to fifteen ... a dozen".⁷³

7C-48 Frank McCallion,⁷⁴ who has not given evidence to the Tribunal, was another rioter at Barrier 14. He fled down Chamberlain Street and heard shooting as he did so. He came out into the Rossville Flats' car park:

There was a crowd with me. I would estimate that there were about 50 or 60 of us at this stage. We stopped there and looked around to find out which way to go. It seemed to me that some of the crowd in the car park had stopped and intended to fight back with bottles and stones. It seemed that, despite the two shots I had heard in Chamberlain Street, the crowd still regarded this as a riot situation.⁷⁵

7C-49 At the end of the Chamberlain Street gable wall Mr McCallion saw soldiers just around the corner and saw a Saracen:

That was where people were rioting, throwing bottles and stuff. However, then somebody else shouted that they should not riot and people did seem to lose their enthusiasm for this then.

7C-50 The situation at the southern end of the waste ground and on the car park of the Rossville Flats can be seen in a series of photographs by Coleman Doyle.

7C-51 EP 33.1 (below) shows the scene as it developed.

⁷⁰ AG 33.2 paragraph 7

⁷¹ Day 084/149/01/09

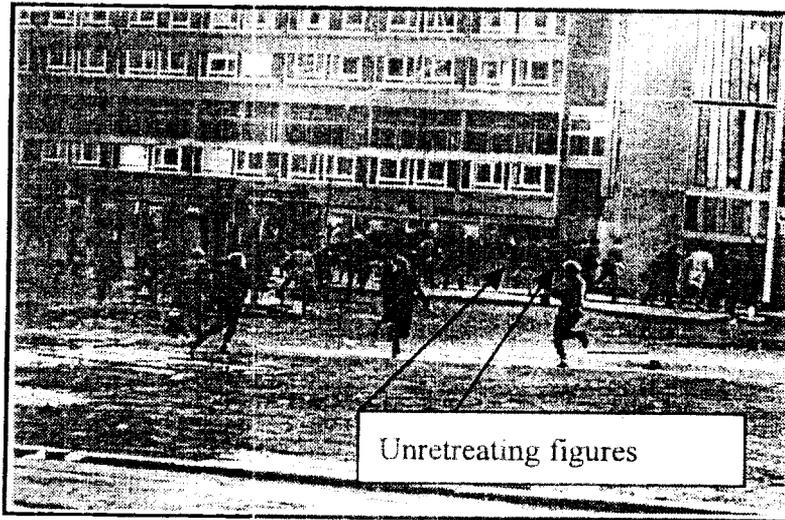
⁷² Day 084/168/12-14

⁷³ Day 084/183/10-18

⁷⁴ AM 481. He has not given oral evidence.

⁷⁵ AM 82.3 paragraph 13

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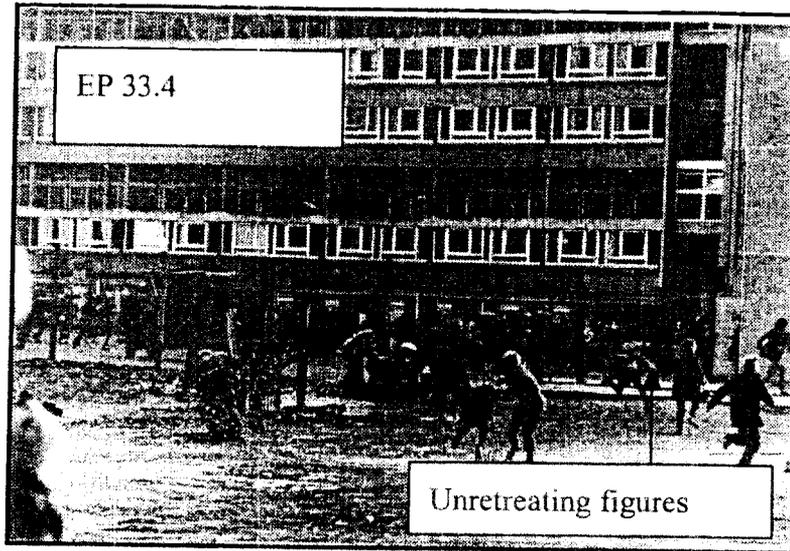


7C-52 The sequence continues with EP 33.3 below:

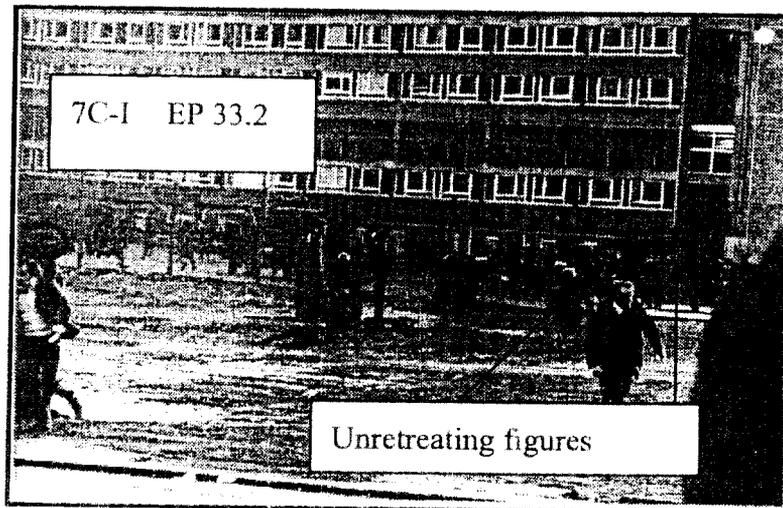


7C-53 Again, in EP 33.4 below the crowd can still be seen:

FS7-1102



7C-54 The last in the sequence (Coleman Doyle EP33.2 below) still has people facing the soldiers at the northeast corner. It is plain, therefore, that not all of the crowd are dispersing:



7C-55 It is unfortunate that here, as elsewhere, the Tribunal has not received the assistance it should have done from its civilian witnesses. A number of witnesses

FS7.1403

gave evidence of soldiers firing immediately they left their vehicles, without ever attempting to make arrests.⁷⁶ This was clearly untrue.

7C-56 The true position may be well illustrated by Neil McLaughlin's oral evidence. First, Mr McLaughlin was unequivocally clear that Pig 2, and the soldiers in attendance, came under attack; and secondly he was clear that "hundreds of people" must have seen it:⁷⁷

Q: If we look at paragraph 12 together, your recollection today is that when you ran at, it says "the Pigs", but it was the one Pig, was it not?

A. Yeah.

Q. Throwing stones at them, you think you hit one and suddenly the soldiers jumped out of the back of the Pigs; that would have just been the one Pig?

A. Uh-huh.

Q. The photograph helps you?

A. Yeah.

Q. Could we go back to the photograph, Mr McLaughlin, at P188? I, of course, remind myself and you that this photograph, we all agree, was taken much later because effectively everybody has gone with the exception of those that we see standing around?

A. Uh-huh.

Q. Did you see it help you to remember the position; do you now recall a scene like that when most people had gone?

A. Probably I was gone at that stage as well.

⁷⁶ For example, Kathleen Crossan: "The Saracen stopped and the soldiers jumped out. Some of them went down on one knee and started shooting rifles at the people." Day 121/104/20; Teresa Cassidy: "About five or six soldiers jumped out and started shooting into the back of the crowd." Day 144/042/06; Michael Lynch: "You say that soldiers jumped out of the Armoured Personnel Carriers and fired their rifles without taking up firing positions? A. Yes." Day 148/180/23 and AL38.2 paragraph 8

⁷⁷ Day 091/053/03-54/24

FS7-1404

Q. But you do now have a mental picture, a picture in your mind, of the Pig being roughly in the position that it is in the photograph, that was the one that you charged at?

A. Yeah.

Q. So the position again, without any comment or exaggeration, as the soldiers got out of the back of that Pig armed with whatever they had with them, they were confronted, on your evidence, with a crowd of about 20 people charging at them with missiles in their hands; that is your recollection?

A. Right, yeah.

Q. At that stage there were still a great many people around in the car park?

A. There were.

Q. Who had been the press of people that you had described as being with you in Chamberlain Street?

A. That is right, yeah.

Q. Hundreds of people?

A. Maybe a couple of hundred, yeah.

Q. You agree with that?

A. Yeah.

Q. So hundreds of people who would have seen this charge by 20 people armed with missiles on the soldiers as they emerged from the Pigs?

A. That is right, yeah.

7C-57 Whilst some allowance must be made for the point made by Charlie Downey⁷⁸, that by the very nature of the fact that the people were running away and therefore had their backs to the action and may have missed the violence directed towards the soldiers, the consistency between the evidence of the civilians set out above and that of the soldiers means that there are many witnesses who have simply not

⁷⁸ AD 133

FS 7. 1405

told the truth about the soldiers being attacked. The reasons for this will have to be addressed by the Tribunal.

7C-58 The evidence of those civilians who have been prepared to give honest accounts of what happened on the Rossville Flats' car park is entirely consistent with the accounts given by the soldiers.

7C-59 Sergeant O initially remained by his vehicle. He recalled:

There was lots of noise in the car park area with shouting and women screaming. All sorts of objects were being thrown off the balconies.. there were bottles, bits of rubble and cans of beans and anything the people could find in their flats to hurl at us.⁷⁹

7C-60 Lance Corporal V, who moved south on leaving Fig 1, recalled that by the time he ran up to the entrance of the Rossville Flats forecourt there was a large crowd to the left and in front of him around the end of Chamberlain Street throwing bottles, stones and bricks, and that there were bottles thrown from the Rossville Flats which might have contained liquid.⁸⁰

7C-61 Soldier Q had also been in Fig 1. He described the situation when he reached the car park as follows: "stones and bottles being thrown towards our position from where Chamberlain Street runs into the forecourt of the Rossville Flats".⁸¹ The barrage was sufficiently heavy for him to have to take cover at the north gable end of Block 1. From there he saw bottles being dropped by people on the balconies. As none of the civilian evidence set out above in relation to this stone throwing had been challenged by those representing a number of the families, Barry MacDonald QC's questions to Soldier Q on this subject⁸² were surprising. The issue was not pursued with Soldier S, who also made his way south from Fig 1, to

⁷⁹ B575.113 paragraph 34

⁸⁰ B801; B808 letter A-B

⁸¹ B624

⁸² Day 339/066/22 - 070/02

FS7.1406

see the crowd throwing stones and bottles being thrown from the top of the Rossville Flats.

7C-62 None of the civilians identified above has at any stage claimed that the soldiers fired their weapons during this attack. It is however clear that the attack on the soldiers continued after live rounds were fired. Danny Deehan⁸³ was another rioter who ran away from Barrier 14 and entered the Rossville Flats car park. He arrived before Pig 2 came to its final halt.⁸⁴ He saw people behind and in front of him, some of who were turning around and throwing stones at the soldiers. He saw two people fall.

Q. I do not mean to push unfairly, can I put perhaps the commonsense point to you again: is it your recollection that young men were actually stoning soldiers while they were firing live rounds?

A. No.

Q. Do you think that that incident of the stoning took place before you saw anybody hit, or is that where you get into difficulty on timing?

A. Yeah, that is where I get into difficulty on the timing.

Q. Very well, but your recollection is that there had been some live firing before that, such stoning as there was, before that started?

*A. Yes.*⁸⁵

7C-63 James Lynch said he could hear shooting and could see two soldiers at the north gable end wall of Block 1.⁸⁶ James McKinney went to throw a stone from the gable end Chamberlain Street wall and was pulled back.⁸⁷ He accepted that he moved out from the wall in order to do so, or else he could not have seen the

⁸³ AD21

⁸⁴ AD 21.3 paragraph 12; Day 102/007-010

⁸⁵ Day 102/030-031

⁸⁶ AL24.3 paragraph 15

⁸⁷ AL 24.3 paragraph 15 and see Day 101/093 -094

FS7-1407

soldiers at the north gable end of Block 1.⁸⁸ This demonstrates the propensity of civilians to emerge from cover, in this case from behind the Chamberlain Street wall, to throw objects at the soldiers even though live firing has begun. Such actions would have given soldiers at whom such objects were about to be thrown a very brief time indeed in which to make a judgement about the threat they faced, in the context where shooting was already taking place.

7C-VI CONCLUSION

- 7C-64 The soldiers were shot at and attacked as the Pigs drove down Rossville Street. They were attacked as they began to seek to make arrests. The attack was vicious and intended to cause serious injury and, if possible, death: bricks, chunks of concrete, bottles, acid and anything else that came to hand were thrown at the soldiers with the sole intention of causing as great an injury as possible. A number of soldiers were hit by missiles and Soldiers R and T were burned by acid.
- 7C-65 The rioters on the waste ground were soon joined by those who had been driven south down Chamberlain Street by C Company and a combined assault was launched against the troops.
- 7C-66 Despite these attacks, the soldiers continued to attempt arrests as planned. Only when gunmen fired at them were they forced themselves to return fire.
- 7C-67 A large number of civilian witnesses have attempted to disguise the reality of events on the waste ground and in the car park. It is surprising that to an extent, in the examination of some of the military witnesses, those representing a number of the families have joined them in doing so. Their reasons for doing so may lie in what happened next: civilian shooting at the soldiers carrying out the arrest operation.

⁸⁸ Day 101/106

FS7-1408

CHAPTER 7D

GUNMEN IN THE CAR PARK OF THE ROSSVILLE FLATS

7D-1 INTRODUCTION

7D-1 The evidence that there were gunmen firing at the soldiers in the car park of the Rossville Flats is overwhelming.

7D-2 The following gunmen were active in the car park of the Rossville Flats on Bloody Sunday and were engaged by particular Soldiers:

- (1) A man with a pistol firing from behind a red Cortina in front of Block 3, and engaged by Soldier O.
- (2) A man with an M1 Carbine firing from the balcony between Blocks 2 and 3 of the Rossville Flats and engaged by Soldier O.
- (3) A man, probably using the same M1 Carbine, firing from ground level in the gap between Blocks 2 and 3 of the Rossville Flats.
- (4) A man with a pistol firing from ground level in the gap between Blocks 2 and 3 of the Flats and engaged by Soldier R.
- (5) A man with a Carbine firing from ground level in the gap between Blocks 1 and 2 of the Rossville Flats engaged by Soldier S.

7D-3 The specific evidence relating to them is dealt with in the Submissions relating to individual Soldiers' engagements.

7D-4 In addition to these gunmen, the evidence establishes the following:

- (1) There was at least one further gunman firing at the soldiers from the Rossville Flats. A large body of evidence speaks of a gunman using a Thompson machine gun from the vantage point of the Flats. Other witnesses heard rifle and pistol fire directed at the soldiers.

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(2) A gunman, colloquially known as Father Daly's Gunman, was seen, and photographed, firing a pistol towards the soldiers from the southern gable of the Chamberlain Street houses.

(3) OIRA 4 fired from the car park.

7D-5 Furthermore, a number of witnesses, who did not identify specific gunmen, nevertheless heard incoming fire being directed at the soldiers and saw them reacting to that fire.

7D-6 Even after the soldiers had returned fire, automatic fire continued to be heard.

7D-II THE GUNMAN / GUNMEN IN THE ROSSVILLE FLATS

7D-7 A large number of witnesses have given evidence to the Tribunal to the effect that they heard automatic fire being directed at the soldiers from the Rossville Flats. Others have spoken of hearing rifle or pistol fire or of being told that snipers were operating in the Flats. The overall picture is of one or more gunmen exploiting the vantage point of the Flats to attack the soldiers carrying out the arrest operation.

7D-8 Peter Stewart, the BBC journalist who was subsequently threatened by both wings of the IRA,¹ wrote a report that was broadcast on the BBC Six O'Clock News on the evening of Bloody Sunday. It included the following statement:

Then in an obviously calculated demonstration the paratroops raced forward in armoured vehicles to be met with a fusillade of terrorist fire. They replied and by dusk two civilians had been shot dead, in addition to another body brought out earlier.²

7D-9 In his BSI statement Mr Stewart says with regard to this:

In retrospect I believe it would be fair to say that the term "fusillade" was an emotive rather than a factual one. I still believe, however, that the tragic events that occurred on Bloody Sunday

¹ The significance of this threat cannot be overestimated.

² M88.11

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were the result of a response by the Army to a deliberate attempt to overthrow the authority of the civil power.³

7D-10 In his oral evidence to the Inquiry he said he was prepared to stand by his contemporaneous reference to "a fusillade of terrorist fire" although he thought "a fusillade of fire" would be more accurate.⁴

7D-11 The cameraman with whom Mr Stewart was working that day was Mr Peter Beggin (now deceased).⁵ When Mr. Beggin's written evidence to the Widgery Tribunal⁶ was put to Mr Stewart,⁷ he agreed with it:

Q. Going on: "They contained paras in the same mixture of riot and combat gear, some of whom got out. Some of the paras who dismounted advanced across the open ground towards the Rossville Flats. I cannot remember whether they were carrying riot or combat weapons. Once again there was a flurry of shots, perhaps three or four. Paras in front of the Rossville Flats were at this time running along and none of them were to my knowledge in firing positions." I pause. That does accord with your recollection as to the way the paras were behaving?

A. Absolutely. The first shots -- I looked round because I thought that the army were firing at that stage, and I looked round very carefully, and none of the soldiers with whom I was had his weapon in a firing position.

Q. Having thought that they were firing, what struck you was that there was none in a firing position?

A. I made it my business to look.

Q. Again, if you cannot comment please do not, but what Mr Beggin purports to say on behalf of a number of people is: "My impression, which I shared with everyone there at the time, I believe, was that the shots were coming at us from the direction of the flats." If that was Mr Beggin's impression, is it one that he shared with you, or is it one that you yourself independently had?

³ M88.6 paragraph 17

⁴ Day 113/083/04

⁵ It is understood that Mr Beggin died before this Inquiry was established.

⁶ M4.3 paragraph 8

⁷ Day 113/081/22

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A. They were certainly -- the two that I heard were certainly coming from the front left of me as I ran down Rossville Street.

Q. Did you have the impression that any of the shots that you heard, in Mr Beggin's words, came from the direction of the flats?

A. They could have done.

7D-12 David Phillips, the producer of ITN's *News at Ten*, said in his statement made on 8th February 1972 that at 4.12 p.m. he saw the soldiers go through Barrier 14.

At that time I was standing at the corner of Waterloo Street and William Street when I heard a deep and long burst of automatic firing which I identified as coming from a Thompson machine gun. Immediately afterwards I heard a volley of single rifle shots from the same point. My impression was that the firing was coming from a point about 300 -400 yards away at an angle of about 45 degrees to the line of advance of the troops. I heard General Ford who was looking in the same direction as I was say, "That's is awful heavy firing." He then said, "We know that they have got seventy gunmen in there." I took him to mean the Bogside and Creggan area.⁸

7D-13 Mr Philips said in oral evidence that after the automatic fire there came a fusillade of shooting.⁹ He explained that he knew it was from a Thompson because he had heard firing in Londonderry the previous Friday and an Army marksman had identified it as Thompson fire. He also described two single incoming shots at a later point.¹⁰ In the case of the first, a paratrooper told him to get down.¹¹ His oral evidence to Lord Widgery was to the same effect: he explained that the automatic fire and single shots appeared to come from a point 45 degrees to the left as you faced down William Street.¹² In cross-examination it was made clear that that line ran to Block 3 and the City Walls,¹³ and that the automatic fire was the first shooting that he heard.¹⁴ He also indicated that a later incoming single shot had

⁸ M66.2

⁹ Day 139/061/10-13

¹⁰ M66.3

¹¹ M66.15

¹² M66.7

¹³ M66.12

¹⁴ M66.13

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come from high up and demonstrated that it seemed to have come from the western side of the northern tip of Block 1.¹⁵

- 7D-14 Mr Philips logged the incoming automatic fire at 4.15 p.m.¹⁶ Making necessary allowances for slight discrepancies in accuracy of time recording, this is nonetheless significant evidence. It demonstrates that there was a gap between the soldiers deploying and a gun battle occurring; it also demonstrates that the first firing was not military.
- 7D-15 The civilian evidence in Chapter 7A indicates that firing occurred as Pig 1 arrived on the waste ground, that firing was heard by civilians running away from Barrier 14 down Chamberlain Street, and that there was firing before Pig 2 came to a halt in the car park. Mr Philips' evidence is therefore consistent with him - although not hearing or appreciating this early firing, or indeed N's shots down the Chamberlain Street alleyway - hearing the hostile fire that precipitated the gun battle proper. The effect of Mr Philips' evidence is to support the fact that there was an arrest operation and that the soldiers only fired some time after deployment and in response to non-military fire.
- 7D-16 Peter Wilkinson, a cameraman, gave very similar evidence to Mr Philips of hearing automatic fire followed by military fire. He described in his written evidence to the Widgery Tribunal (unknown to him, echoing the aural experience of then Captain now General Sir Michael Rose¹⁷) how he heard a Thompson firing after the soldiers had deployed and then military fire thereafter. Mr Wilkinson described seeing "a snatch squad" go on foot through the Barrier in William Street, to be followed several minutes later by four Pigs. He followed the soldiers down William Street and took film of the snatch squad from the corner of William Street and Little James Street.

¹⁵ M66.8-9

¹⁶ M66.12.

¹⁷ See further below

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At about this time I heard a Thompson sub-machine gun open fire and from that moment on there was intense gun fire (ball fire) for three or four minutes from the direction of the open ground by Rossville Street.¹⁸

7D-17 During questioning by Michael Mansfield Q.C., Mr Philips reiterated the timing of the shooting:

LORD SAVILLE: I must have been misunderstanding you earlier, Mr Phillips, I thought you had told me you recall hearing what you have described as machine-gun fire as the last of the Paratroopers went through the barrier?

A. Can I refer myself back to the note, sir, which I have logged, okay? (Pause) I beg your pardon, yes, the sequence is definitely down: "4.12" Paras in; that is the first single file going in, capture flag. At 4.15 "real fire". I am sorry, that is the correct sequence

MR MANSFIELD: That is what I was putting to you, Mr Phillips. That is what you said this morning, I appreciate it is 30 years ago. Do you have difficulty remembering this?

A. No, I do not at all.¹⁹

7D-18 Mr Mansfield asked why it was that the sound of the automatic firing did not appear on the ITN news footage. Mr Philips explained:

Q. Can you explain if they are filming why the sound of a sub-machine gun is not recorded?

A. Yes, I can.

Q. Which is?

A. Because you are shooting in those days on film and you have only got a limited amount of film in the camera. You cannot squirt off the film – you cannot be running all the time, okay, you can only have the X number of feet in the can and we are carrying spares and that is, in any situation, the crew cannot be shooting all the

¹⁸ Although by the time he came to give his oral evidence to the Widgery Inquiry Mr Wilkinson appeared unable to remember the order in which he heard automatic fire and single shots (see M82.2), he was able to identify the automatic fire he did hear as Thompson Machine Gun fire: M82.4, at D; his confusion over timing does not detract from his written evidence.

¹⁹ Day 139/145/18-146/08

*time, so I imagine that Peter Wilkinson was switched off at that moment, okay, and then would catch up with the action.*²⁰

7D-19 When cross-examined by Lord Gifford, Mr Philips was resolute that he had heard automatic fire:

*A. The sound of the Thompson on the Sunday afternoon, the low, deep rumble was precisely the same and seemed to go on longer than the sound I heard on top of the OP on the Friday.*²¹

7D-20 It is unlikely to be a coincidence that the terms Mr Philips used to describe what he heard are pretty much the terms used, without any possibility of conferring, by the military, the police, other media witnesses and the few civilian witnesses who have been prepared to admit, then or now, that they heard a Thompson submachine gun firing.

7D-21 Many witnesses who heard the automatic fire tried to describe the sound that they heard. By way of example, Soldier 136, a Lieutenant in the Royal Green Jackets described the sound as a “boom noise”, “heavy and slow”;²² INQ 2238 described a “long low burst of Thompson Machine gun fire,²³ that sounded like someone “beating a war drum”, or a “baboon beating its chest”;²⁴ Soldier 011, Royal Anglian, described “a low thud” sound;²⁵ Corporal 033 of 1 PARA described a “slow thud thud sound”;²⁶ and INQ 736 (Lance Corporal C Company 1 PARA) described a “thump thump thump” sound.²⁷

7D-22 At the time he heard this firing Mr Philips was close to General Ford and it appeared to Mr Philips that General Ford’s reaction, in terms of the source of firing, was the same as his:

²⁰ Day 139/147/14-148/01

²¹ Day 139/163/09-12

²² B1838.003 paragraph 17

²³ C2238.3 paragraph 13

²⁴ C2238.2 paragraph 11

²⁵ Day 382/086/12

²⁶ B1621.005 paragraph 36

²⁷ C736.2 paragraph 8

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*His demeanour to me, he looked concerned, and he certainly did not think that it was his own men firing.*²⁸

*Mr Philips also rejected Lord Gifford's suggestion that the other members of Mr Philips ITN crew also reported hearing a Thompson firing only because Mr Philips had done so.*²⁹

7D-23 The reporter Nigel Wade, sheltering behind the low wall in front of Block 2, assumed that there was a gun battle between snipers "perhaps in the Flats" and that everyone was "caught in a very heavy cross-fire".³⁰ He had no idea from where the shots were coming, or who if anyone had been hit. He said that it was very hard to tell from where the shots were coming; the echo in the built up area meant that the noise was coming from all around,³¹ and that his impression was that there was firing from the Army and firing from the flats.³² He had the impression that there were snipers in the Rossville Flats³³

7D-24 Simon Winchester wrote in The Guardian Newspaper for Monday 31.1.72:

*There was certainly some firing from the IRA. I heard one sub-machine gun open up from inside the Flats and heard a number of small calibre weapons being fired intermittently ...*³⁴

7D-25 In oral evidence he confirmed that he had sufficient confidence in his recollection to have written this report "a matter of minutes after it had happened".³⁵

7D-26 Mr Winchester gave lengthy but at times conflicting accounts in both his BSI evidence and to Lord Widgery. It is important to remember that he considers his 1972 evidence the more reliable.³⁶

²⁸ M66.12

²⁹ Day 139/167/18-25; and confirmed this during questioning by Edwin Glasgow Q.C. at Day 139/190/02-191/03

³⁰ Day 109 /134/07-15

³¹ Day 109/132/03-133/12

³² Day 109/221/11-222/09

³³ Day 109/210/01-019

³⁴ M83.45

³⁵ Day 116/158/17-159/04

FS 7. 1416

7D-27 Mr Winchester then left the Rossville Flats car park via the stairwell, sheltered there for a few seconds and then ran through the stairwell out of the Flats to the back. At "about this time", just as he leaves or just after he exits the Rossville Flats heading south, he heard army fire and answering fire which he thought was low calibre .22 fire and, he thinks, some automatic fire coming from the general direction of the Flats.³⁷ Mr Winchester said that he could reasonably suppose that the automatic fire was coming from somewhere high up in the Flats.³⁸ He told Lord Widgery that it was when he was above the Fahan steps and after he saw two casualties fall at the rear of Joseph Place - that he heard the automatic fire.³⁹

7D-28 In cross-examination at the Widgery Inquiry, he said that he could not "consciously" differentiate between 7.62mm and .303 fire; but he could differentiate between an M1 carbine and a 7.62 mm weapon.⁴⁰

7D-29 Brian Cashinella a journalist in Chamberlain Street observed in his newspaper report for the next day "I thought there was at least one sniper attacking from the roof of the Rossville Flats."⁴¹ In a statement made in 1972 he said that he followed the soldiers down Chamberlain Street and had heard them firing. By the time he reached to the car park they had stopped. They were not firing while he was with them. They told him to keep his head down and that there was a sniper on the roof of the Rossville Flats.⁴²

Where Chamberlain Street comes to an end the wall on the left continues towards Rossville Flats and several paras were strung out along that wall standing in the doorways which are in it. There was a burst of firing which could have come from several directions. It is very difficult to tell where firing is coming from. It appeared to me to come from the area between Glenfada Flats and

³⁶ Day 116/028/07

³⁷ M83.27

³⁸ M83.33 Widgery evidence letters F-G

³⁹ M83.34 C-D

⁴⁰ M83.38 letters D-E

⁴¹ M11.18

⁴² M11.5-6 paragraph 28

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Rossville Flats. The firing might have come from either block of flats. It might have come from an area between the two blocks and not from the flats themselves at all. I just could not tell. Some of the paras who were there told me to get my head down as they had got their heads down.

I did as I was told. Although I heard the burst of firing I was not conscious of any firing coming near me or near the paras where I was at the end of Chamberlain Street.

...I should have said that when I first came into Chamberlain Street following the troops and looked down it towards Rossville Flats ... the paras at the bottom of Chamberlain Street were firing towards Rossville Flats. When I actually got down the street with them they had stopped firing and were not firing at the time I was down there with them and they told me to get my head down. They told me when I got down to them and I was told to get my head down that there was an IRA sniper on the roof of the flats. I did not see him.⁴³

7D-30 He stated that he then went back up to the top of Chamberlain Street and heard a further "burst" of firing.

7D-31 In his oral evidence to the Widgery Inquiry he stated;

The troops had positioned themselves behind an armoured vehicle and against the walls on both sides of Chamberlain Street. There was no firing taking place at that time, but several of the paratroopers had their rifles pointed towards the top of Rossville Flats: and again they said they thought there was a sniper up there and told me to keep out of sight.⁴⁴

7D-32 In cross examination he stated that before he joined the soldiers he heard a cacophony of noise, an awful lot of gunfire coming from that area, some 200-300 shots which he would think was rifle fire.

7D-33 In his BSI statement he stated;

I then continued walking up to the end of Chamberlain Street and came to a halt at the southernmost end of the street... where a troop carrier was parked horizontally across the mouth of the

⁴³ M 11.4 -5 paragraphs 23-28; Day 110/ 023-4

⁴⁴ M11.10 letters F-G

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street. At this point I remember seeing Paratroopers in the doorways of the houses on the eastern side of the street with their rifles pointing towards the Rossville Flats. Beside the last building on the left hand side of Chamberlain Street as I looked towards the Rossville Flats I remember seeing one Paratrooper lying on the ground and another standing up both with their rifles trained on the Flats. It was at this point one of the paratroopers said to me "Keep your bloody head down there's a sniper up there." Referring to the Rossville Flats. I could see the Rossville Flats clearly from where I was located but could not see any sniper... For the whole period that I was standing at the end of Chamberlain Street looking towards the Rossville Flats I did not see any paratrooper fire his weapon or come under any fire.⁴⁵

7D-34

His oral evidence was as follows:

Q. Can we then come back to M11.22, paragraph 10? You describe in that paragraph seeing paratroopers in the doorways of the houses on the eastern side of the street with their rifles pointing towards the flats and beside the last building on the left-hand side of Chamberlain Street, seeing one paratrooper lying on the ground and another standing up, both with their rifles trained on the flats; is that right?

A. That is right.

Q. How far down Chamberlain Street did you go? Did you go right to the end?

A. I do not think I did, no. No, I do not think I did. I went past the first Pig, I remember doing that. But I think, I think I was then warned by the paras to come back, because you know, they claimed there were snipers in Rossville Flats, get back again, you know, get out of the way.

Q. You describe how one of the paras said "Keep your bloody head down, there is a sniper up there"?

A. That is right.

Q. Was he a paratrooper who was somewhere down Chamberlain Street but not at the very far end?

A. He was to the right of the Pig we have just seen on the photograph and he was lying on the ground along with a colleague,

⁴⁵ M11.22 paragraph 10

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there was two of them there, this particular chap was lying on the ground with his rifle pointed at the Rossville Flats.⁴⁶

7D-35 He explained further:

Edwin Glasgow: Then at the foot of the page when you describe what you heard or saw at that moment:

"Answer: The troops had positioned themselves behind an armoured vehicle against the wall on both sides of Chamberlain Street. No firing taking place at that time, but several of the paratroopers had their rifles pointed towards the top of the Rossville Flats and again they said they thought there was a sniper up there and told me to keep out of sight."

A. Yes.

Q. There was not any doubt, was there, from what the soldiers were doing and saying, that rightly or wrongly, they believed there was a sniper?

A. They obviously did, yes.

Q. That was obvious to you

A. Yes, it was very obvious to me, yes.⁴⁷

7D-36 Patrick Clancy reported in the Daily Telegraph on 31st January 1972 that troops engaged snipers who were firing from the Rossville Flats.⁴⁸

7D-37 Monica Barr⁴⁹ observed the events in the car park of the Flats from the rear window of a house in Chamberlain Street. She saw someone fire a pistol from the eighth floor of Block 1 of the Rossville Flats towards the soldiers. Alphonsus Cunningham also heard a pistol fire from the direction of the Rossville Flats.⁵⁰

⁴⁶ Day 110/020/07-21/08

⁴⁷ Day 110/115/13 - 116/04

⁴⁸ L32

⁴⁹ AB 16

⁵⁰ AC125.3 paragraph 12

FS 7.1420

7D-38 Mrs Barr was resolute in the face of questioning from Barry Macdonald Q.C. that she did indeed see a man on the top floor of the Flats with a gun and furthermore that she heard the shot when he fired:

Q. What I have to ask you is whether it is possible that you heard a pistol shot when you were looking out of your window; you saw a man in the upper flats, on the top floor of Rossville Flats, perhaps with a camera, perhaps with a bottle. You saw a soldier fire in that direction and you formed the mistaken impression that the man or the hand at the window was firing a gun when in fact it was a man just under your own window; is that possible?

A. No, it is not possible. I saw the man on the top floor with a gun and I heard the pop when he fired.

Q. How can you be so sure it was even a man when you said in your statement to Eversheds that you did not see the shape of this person or even the face of this person?

A. Well, I presumed it was a man because all I saw was the arm coming out the window; I presumed it was a man.

Q. In any event, all this happened some time after you heard the first shots that day?

A. Yes.⁵¹

7D-39 Sally Moran made a manuscript statement on 4th February 1972 in which she stated that she was with her boyfriend Eamonn Deane at Free Derry Corner. Just as the meeting was starting the crowd came under fire from the William Street end of Rossville Street. There was continuous gunfire, both single and automatic.⁵²

7D-40 Patrick McGlinchey, a convicted PIRA terrorist, spoke of seeing six or seven rapid shots hitting the ground as he ran across the Rossville Flats waste ground. He assumed that this was automatic fire.

Q. May we move to your paragraph 10, please. You have been asked a few questions about the gunfire you mention in this

⁵¹ Day 148/032-33

⁵² AM 423.2 Ms Moran was only 23 years old in 1972 but has not provided any evidence to this Inquiry.

FS7.1421

paragraph. You, at least at the time you were speaking to Eversheds, and I think still today, were of the belief that the gunfire that you saw was from a machine-gun?

A. Yes, that was my belief. I never heard the actual shots, it is just because of the way the ricochets hit the ground, I took it that it must have been an automatic weapon.

Q. And you give a few reasons why you think it was automatic?

A. Yes.

Q. The number of rounds fired and the short period of time within which they were fired?

A. Yes.

Q. You have said today about six or seven rounds; that is your present recollection?

A. Yes.

Q. The fact that they were fired very rapidly?

A. Yes.

Q. And they were, as we can see in your paragraph 10, very evenly spaced?

A. Yes.

Q. The soldiers you had seen before you saw that gunfire, the actions of the soldiers that you had seen were consistent with an arrest operation?

A. Well, as I say, I only seen one soldier actually apprehend someone. As I say, he was beating him with the rifle butt.

Q. Could we look at the preceding paragraph, paragraph 9. We can see about halfway down that paragraph your belief at the time was that the Army was operating a snatch squad?

A. Yes.

Q. At the bottom of that paragraph that soldiers were trying to catch individuals in the crowd?

A. That was my general impression.

Q. That was your impression at the time. That is certainly inconsistent with soldiers firing a machine-gun at a group of civilians in order to herd them into an area further away from

them?

A. *What I said about the soldiers there or that individual soldier, that was just as I moved out of the bottom of Harvey Street, Chamberlain Street. You were talking travelling another 40, 30-40 yards before you actually reached the car park and that is when the different soldiers came in on the Saracen.*

Q. *Your assumption was that this was military gunfire?*

A. *Yes.*

Q. *But, as you have said, you did not see any soldier firing?*

A. *No. Q. You did not hear anyone firing?*

A. *No.*

Q. *My suggestion to you is that the gunfire was not from the Army, that it may have been from a civilian in the Rossville Flats. What you saw, I suggest, is equally consistent with that?*

A. *Well, if it was somebody in the Rossville Flats firing shots, they were either very poor shots or they were aiming at the crowd.*

LORD SAVILLE: *Mr McGlinchey, this is the Chairman again. I know it is very difficult and I know you were a lad and were running and pretty scared, but do you have in your mind's eye as you saw these strikes whether that Pig was moving or had come to a stop?*

A. *No.*

LORD SAVILLE: *You have got a memory -- sorry to interrupt you, I understand in your mind's eye you seem to remember seeing the rear of the vehicle and you were shown a photograph by Mr Roxburgh which, it is pretty certain that is where it ended up. Of course that show the front of the vehicle.*

A. *That is correct.*

LORD SAVILLE: *Do you have any recollection -- and do say if you do not -- as to whether or not when you noticed the Pig it was moving?*

A. *As I say, all of this happened in the space of maybe 30, 40 seconds from when the Saracen actually came in. My recollection was that it came in, it swung round and soldiers jumped out. As I say, I was still running while you are seeing all of that. As I say, I did not hear any shots. As I was still running I seen strike marks hitting the ground and they were going in the direction that the crowd was going and that was the reason I assumed that the only*

people to the right of me then was the Army.

LORD SAVILLE: I follow that entirely: just to make sure I have got the time sequence right as best you can remember it: you got down to the car park area; you were running just about as hard as you could, as I understand it?

A. Yes.

LORD SAVILLE: You saw this Pig; you saw soldiers; did you actually see them jumping out of the Pig or just running in near to the Pig.

A. There was actually individual soldiers who were in part of, you know, the vehicle and then the, the Saracen swung round -- from what I recollect and the soldiers jumped out of it.

LORD SAVILLE: And it was after that then that you saw these strikes; was it?

A. Yes.⁵³

7D-41 Leo Redmond Gallagher also heard automatic fire. He said in his BSI statement that he was proceeding south through Columbcille Court and Glenfada Park intending to go to Free Derry Corner when he heard shooting:

I did not know at the time that it was live fire but I knew that it was a sharp sound different from rubber bullets and CS gas guns. I heard three or four shots in quick succession like automatic fire. I had an impression that the shots were coming from the City Walls. My first thought was that the IRA had opened fire which I thought was a silly thing to do with so many people about.⁵⁴ I thought it was the IRA because at that time, when rioting took place at Lower Road or the junction of Little James Street and Sackville Street, the IRA would sometimes take a shot at the Army.⁵⁵

7D-42 Although Mr Gallagher told Miss McGahey that he could not tell the difference between high velocity fire and other types of live firing,⁵⁶ his reaction at the time

⁵³ Day 388/087/09-92/12

⁵⁴ It is worth noting that, contrary to one element of Bogside propaganda, Mr Gallagher did not immediately think that the firing could not be the IRA because the IRA did not use their weapons when doing so might result in injury to civilians.

⁵⁵ AG 25.3 paragraph 16

⁵⁶ Day 166/142/04-07

FS7.1424

had been to conclude that the gunfire he heard was IRA firing and that it sounded like automatic fire.

7D-43 Eamonn Hutton, who was 23 on Bloody Sunday, made a very brief statement in 1972 in which he described running along Chamberlain Street to get behind the High Flats. He said,

As we made for a wall about 3' high a burst of automatic fire from a 9mm gun rang out.⁵⁷

7D-44 Mr Hutton went on to say that one of the boys, who he did not know personally, fell about twenty yards off from the small wall. Mr Hutton stated that thirty to forty people tried to get to him and got within ten yards. It is possible that this was Jack Duddy.

7D-45 Brendan Harley said in his BSI statement;

During the course of the afternoon I am certain that I heard shots of a repetitive nature and which I would describe as automatic gunfire. They were definitely not single shots. The sound was more like shots being fired very quickly at short regular intervals but not so fast that it was impossible to distinguish each individual shot. I recall a break in the shooting – it was not a continuous flood of fire.⁵⁸

7D-46 Mr Harley thought that he was in Glenfada Park when he heard the automatic / semi-automatic gunfire. He described it as being “clearly audible” and “in the near vicinity.”⁵⁹

7D-47 In addition to the weight of non-military evidence of there having been automatic fire directed at the soldiers after they deployed in sector 2, there is also considerable military evidence (and not just from soldiers from 1 PARA) to the same effect.

⁵⁷ AH 94.1

⁵⁸ AH 35.4 paragraphs 21-23

⁵⁹ Day 121/129/18

FS7.1425

7D-48 The evidence of then Captain now General Sir Michael Rose is particularly clear. While in the area of St Eugene's cathedral he heard a burst of firing from a Thompson machine gun coming from the Rossville Flats area as he was tracking the "tail end charlies"⁶⁰ of the march as it went down Great James Street.⁶¹ The main tail of the march was "well past."⁶²

Q. Is there any doubt at all in your mind about the type of fire you heard?

A. Absolutely none at all. I was familiar by then with the sound of the Thompson machine-gun fire in Londonderry, extremely familiar with it.

Q. You have qualified your evidence in paragraph 19, after saying there it was a Thompson machine-gun, you said, "It was certainly not a high velocity weapon," was that to indicate it might have been some other form of low velocity weapon other than a Thompson?

A. No, it was merely to distinguish the fact that a Thompson was a low velocity weapon and I was reinforcing my view that it was a Thompson machine-gun fire that I had heard.

LORD SAVILLE: Would it be right, General -- tell me if it would not because it is only a guess on my part -- that you could describe a Thompson machine-gun as opposed to a high velocity weapon with the Thompson machine-gun being rather more a thumping type of noise than a crack, would that be inaccurate?

A. It was a lower rate of fire than you could have probably achieved with some other form of machine-gun, a high velocity machine-gun; it did have a sort of hollow thump sound to it, but it could not be mistaken for, for example, a Bren gun or some other form of machine-gun fire, it was very distinctive."⁶³

7D-49 General Rose then ran down the hill to Barrier 12. By the time he got there 1 PARA had already deployed into the Bogside. He crossed over the junction and

⁶⁰ Day 284/004/15

⁶¹ C21.3 paragraphs 19-21; Day 284/003

⁶² Day 284/004-19

⁶³ Day 284/004/23-05/23

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came under fire himself from what he identified as a Garand or similar weapon. He was in no doubt in oral evidence that this was not British Army SLR fire:

MS McGAHEY: In paragraph 20 you go on to say that having heard that sound you immediately accelerated your pace down the hill to try to find out what was going on. You say you think your route involved you walking down Great James Street and then down Little James Street to barrier 12.

A. I follow the route, ma'am, I follow the route.

Q. Can you give the Tribunal any indication of the length of time it took you, from hearing the fire to reaching barrier 12?

A. Three minutes maximum, I would think.

Q. You say in paragraph 21, that as you went through barrier 12 there were a number of soldiers moving through it and command group standing by the crossing point. As far as you could tell, had the main body of paratroopers already gone into the Bogside by the time you arrived?

A. I would think they had.

Q. You say there were soldiers moving through the barrier, were they moving through as part of an operation to go into the Bogside?

A. I would say they were following up the initial element that had gone through.

Q. From soldiers on foot in the vehicles you could see, could you gain any impression of how long they had gone in; were they still moving into the Bogside?

A. No, I had no impression as to how long they had been there. They were not part of the original force that had gone through, certainly, so they, I suppose, must have been there for a while, the initial element, the vanguard.

Q. You then say that you emerged at the junction of Rossville Street and William Street and, "Some incoming fire was going over our heads. You have identified for us your position at point A, just below the William Street/Rossville Street junction. Where was that incoming fire coming from, could you tell?"

A. It was certainly coming from a southerly direction, like from somewhere over the top of the Rossville Flats, I guess.

Q. You say from somewhere over the top of the Rossville Flats, did you have an impression of shots coming from a height down

towards you?

A. Yes, I mean, it would have been compatible with people in the Rossville Flats firing in our direction.

Q. Did you think that, because it was an obvious place from which fire might come, rather than because you could actually identify the direction from which it had?

A. It was the general direction of the Rossville Flats that the fire was coming and because you could not see beyond that, I seem to recall that was where I guess -- I thought it was coming from.

LORD SAVILLE: General, in my case a little knowledge is a dangerous thing, I do understand if you have high velocity fire coming over your head, you will hear the supersonic crack as it goes over. What were you hearing on this occasion?

A. Certainly hearing crack of rounds coming in our direction over our heads, there is no question of that.

MS MCGAHEY: You say that the fire was single shots from rifles of some sort and that you do not believe it was from Army fire. Could you tell the difference between fire from an SLR and fire from another form of rifle?

A. Not absolutely, but the SLR fire, it tends -- it is a slightly heavier noise than the sort of fire we were getting on that occasion. So my suspicion, it would have been either a Garrund or something like that. It did not strike me as being SLR, British Army fire at the time.

Q. Were you confident at that time in your ability to distinguish between SLR fire and other types of rifle fire?

A. I certainly would not put myself with a sort of 100 per cent guarantee, but I developed a sort of instinct for whether it was our own type of fire or whether it was, as I say, terrorist weapon fire and my thinking is it was definitely terrorist weapon fire.

Q. Do you have any idea now of the number of incoming shots that you heard?

A. (Witness shaking head). Not that many, I would think half a dozen, something like that.⁶⁴

⁶⁴ Day 284/006/06-09/13

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7D-50 General Rose dismissed any suggestion that the firing he heard was later on in the day:

Q. Could it be, General, that in fact you did hear fire from a Thompson sub-machine-gun, but it was not at the time that you now attributed to it?⁶⁵

A. Absolutely not. That would be quite impossible. The trigger for my moving down from Eugene's cathedral was undoubtedly and unequivocally and unambiguously and without any doubt at all, a burst of Thompson machine-gun fire.

Q. When you moved down from St Eugene's Cathedral, were you able to make any assessment as to whether the engagement was over or coming to an end or just beginning?

A. I was not able to make an assessment, or certainly did not make such an assessment.

Q. What I want to suggest to you, General, is that before any suggestion of a Thompson sub-machine-gun being fired was -- there was considerable other firing?

A. No, I was above the Bogside by St Eugene's Cathedral. The first sound of firing which prompted me to move forward was a burst of Thompson machine-gun fire, without any doubt at all.⁶⁶

7D-51 General Rose was far from alone in hearing a burst of automatic fire. A number of soldiers from C Company were on the wasteground. A group of three soldiers consisting of INQ 0444, Widgery 003 and INQ 0131 crossed the waste ground. Soldier 003, a Lance Corporal, armed only with a baton stick, was running across the waste ground when he heard firing break out. The firing, which moved from his right to his left, came from a Thompson sub-machine-gun.⁶⁷ He was with INQ 0131 who also heard firing. They were right out in the open and INQ 0131 recalls "seeing dirt jumping up in the ground in our general area" and joking to 003 that

⁶⁵ Mr Harvey made no attempt to tell the witness or the Tribunal what his alternative time was.

⁶⁶ Day 284/024-25 The General is not the only witness to have said that the first fire was Thompson fire: see Peter Wilkinson, including footnotes, above.

⁶⁷ B1366.004 paragraph 19; Day 309/084/02/14

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003 should go and hit the gunman with his baton.⁶⁸ INQ 0444, a Corporal recalls moving past the end of Chamberlain Street. He heard two bursts of Thompson Machine Gun fire, each burst being six or seven rounds.⁶⁹

7D-52 INQ 1799, a Lance Corporal in C Company, heard an automatic pistol and two distinct bursts from a Thompson as he was moving south down Chamberlain Street.⁷⁰ INQ 2045, a Private, heard the sound of automatic gunfire and single shots coming from south west of his direction as he ran down what would appear to have been Chamberlain Street.⁷¹ INQ 0622, a Sergeant, heard a short burst of automatic fire (between 2 and 4 rounds) that he thought came from a sub-machine gun as he was at the junction of William Street and Little James Street.⁷² INQ 0736, a Lance Corporal, was at the end of William Street when he heard high and low velocity shots and (as so many witnesses have described it) the thump-thump sound of Thompson machine gun, coming from the south in the direction of the Rossville Flats.⁷³ INQ 0587, a Private, heard shots from a Garand rifle (the weapon the then Captain Rose also thought he heard) and a Thompson Machine gun when he was on the south side of William Street close to Aggro corner.⁷⁴

7D-53 Colonel Tugwell was in Chamberlain Street when, after the Paratroopers had deployed, he heard firing that could have been automatic gunfire, machine or sub-machine gun fire of low velocity. He said "the gunfire appeared to come from the area at the bottom (southern end) of Chamberlain Street and around the Rossville Flats".⁷⁵ Although at some stage he had lost touch with General Ford, Colonel Tugwell may well have been near the General at this stage as Captain INQ 0002, ADC to General Ford, heard automatic fire when he was at the junction of

⁶⁸ C131.4 paragraphs 19-20

⁶⁹ C444.3 paragraph 21

⁷⁰ C1799.4-5 paragraphs 31-36; Day 294/163

⁷¹ C2045.2 paragraph 18; Day 309/189/03-190/07

⁷² C622.4 paragraph 28; Day 310/094/23-096/03

⁷³ C736.2 paragraph 8

⁷⁴ C587.3 paragraphs 12-18; Day 324/167/02/20

⁷⁵ B1333.003 paragraphs 14-18; Day 240

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Chamberlain Street and William Street coming from the south west after the soldiers had deployed.⁷⁶

7D-54 Colonel Ferguson of 22 LAD was at the corner of the Strand Road and William Street when he heard low automatic fire that sounded like a Thompson; 1 PARA had already deployed.⁷⁷

7D-55 INQ 0727, a Gunner in 22 LAD on William Street, heard a two to three second burst of automatic fire "a short time after the marchers had passed by" his position. He explained "I could not say how long had elapsed". The gunfire was coming from the south east.⁷⁸

7D-56 Lieutenant INQ 1324 of 30 Field Squadron Royal Engineers was in Sackville Street and the Strand Road area when he heard a Thompson fire. This was after 1 PARA had deployed.⁷⁹

7D-57 INQ 0119 was in Little James Street. He heard single shots and then heard two or three bursts of automatic fire coming from the direction of the Rossville Flats. He heard this both before and after 1 PARA had deployed.⁸⁰

7D-58 INQ 0022, a Lieutenant in the Coldstream Guards, was at Bligh's Lane when he heard one high velocity shot followed by shots from a Thompson coming from the Rossville Flats area as 1 PARA were carrying out their arrest operation.⁸¹ Another Coldstream Guards' officer, INQ 0133, was at Barrier 14 and heard, after 1 PARA had deployed, one or two bursts of Thompson fire.⁸²

⁷⁶ C2.95 paragraphs 55-56; Day 290/031/03-06

⁷⁷ B1122.15 paragraph 88; Day 281/067 He thought it was a Thompson because of the distinctive sound of the weapon used by friendly and enemy forces when he was in the Middle East.

⁷⁸ C727.2 paragraphs 9-10;

⁷⁹ C1324.3 paragraphs 22-27; Day 301/140/08-141/04

⁸⁰ C119.1 paragraph 8; Day 278/034/23-038/17

⁸¹ C22.4 paragraphs 15-17

⁸² C133.4 paragraphs 21-24; Day 295/075/05-076/06

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7D-59 Soldier 227, a Lieutenant in 22 LAD, heard “two distinct bursts of Thompson Machine gun fire, the first time was about four rounds and the second time about 5 to 6 rounds”.⁸³ This occurred during the arrest operation on the wasteground.⁸⁴ He categorically dismissed the suggestion that it was possible to confuse “a number of SLRs fired close together” with a Thompson Machine Gun.⁸⁵

7D-60 INQ 1115, a Lance Corporal, was by the “Gin Palace”. After the soldiers had deployed he heard automatic fire that could have come from a Thompson submachine gun.⁸⁶ INQ 0432, a Private in A Company heard a “burst of automatic fire” after the soldiers had deployed.⁸⁷ He was unsure of the direction but said that it seemed to be coming from the general direction of the High Flats. Soldier 033 described how the Thompson fire “came out of the blue. We were carrying out an arrest operation for rioting, then all of a sudden, there was Thompson fire.”⁸⁸ Soldier 033 described the “long low burst of about 15 –20 rounds as if the magazine were let off in one go. It seemed very quick 2 to 3 seconds. I saw strike of bullets on the ground ..”⁸⁹

7D-III FATHER DALY'S GUNMAN

7D-61 In addition to gunmen in the flats, there was at least one gunman (in addition to those engaged by the soldiers) firing in the car park itself.

7D-62 OIRA 4 has identified himself as being Father Daly's Gunman. As noted in chapter 4 of these submission, it is not clear or accepted that he was, but this section of the submissions is advanced without prejudice to that caveat, and on the basis that the Tribunal is, of course, able to decide that issue. OIRA 4 was, in any

⁸³ B2184;

⁸⁴ B2204.003 paragraph 15-16; Day 371/132/6-133/12; Day 371/134/21-135/003

⁸⁵ Day 371/134/6-8

⁸⁶ C1115.3 paragraph 16; Day 305/011/02-13/10

⁸⁷ C423.3 paragraph 19; Day 353/148/15-25

⁸⁸ B1621.5 paragraph 35

⁸⁹ B1621.5 paragraph 35

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event, a member of the OIRA Command Staff at the time. As such he had access to short arms for personal protection, that is “*defensive, not offensive purposes*”, and was carrying a .32 pistol on Bloody Sunday for his own personal protection.⁹⁰ OIRA 4 told Christopher Clarke that he was protecting himself from the RUC and the Army because it was a No Go area.

Q. You say that you were carrying this as a personal protection weapon. From whom were you protecting yourself?

A. Well, it was the no-go area; I was protecting myself against possibly British soldiers or the RUC.

Q. Did you believe yourself to be known to the Security Forces as an OIRA member?

A. I do not know the answer to that.

Q. Protecting yourself against anybody else, anybody other than the RUC or the Army?

A. No, I was not, no.⁹¹

7D-63 OIRA Standing Orders were that they could “defend any attack by the Brits and the RUC on the Bogside. We would therefore have had defensive positions set up in the area anyway such as barricades ... but they were not offensive positions; they were just to protect the no-go area.”⁹²

7D-64 OIRA 4 observed the riot at Barrier 14 for a while and then went down Chamberlain Street. At some point he began running with everyone else to get away from the snatch squads. As he ran he heard shooting for the first time that day.⁹³ He ran a few yards into the car park and saw the body of Jack Duddy being attended to by Father Daly. He lost his temper and took his weapon out “and fired

⁹⁰ AOIRA 4. 15 paragraphs 3-4

⁹¹ Day 394/011/16-12/01

⁹² AOIRA 4.15 paragraph 5

⁹³ AOIRA 4.16 paragraphs 9-10

FS7 1433

two, possibly three, shots towards the Saracen .. I did it out of pure anger at what was happening around me.”⁹⁴

7D-65 Most famously, Father Daly saw a gunman at the end of Chamberlain Street. He described what he saw happen in his BSI Statement:

Just as we were about to get up and move [with Jack Duddy], I saw a man move along the gable wall of the last house in Chamberlain Street. ... (In one of my contemporary statements I stated that this man appeared to be in his thirties and was wearing a brown car coat, although I cannot remember those details now). He suddenly appeared at the corner of this house and moved along the gable. I thought that his movements were rather strange and suddenly he produced a gun from his jacket. It was a small gun, a handgun, and he fired two or three shots around the corner at the soldiers. The soldiers in the area facing the flats were stepping out in the open from time to time. I cannot recall the soldiers reacting or firing in his direction. I do not believe that they were aware of the gunman. We screamed at the gunman to go away because we were frightened that the soldiers might think that the fire was coming from where we were located. He looked at us and then he just drifted away across the or into the mouth of Chamberlain Street. I did not see him after that nor, to the best of my knowledge, did I see him before then. I did not recognise him as someone I knew

At this point we decided to make a dash for it. We got up first of all on our knees and I waved the handkerchief which, by now, was covered with blood. There was another burst of gunfire at this stage. We lay down again. Eventually we got up. I went in front and the men behind me carried Jack Duddy. We made our way to Chamberlain Street, along the street and turned into Harvey Street ...⁹⁵

7D-66 Robert Brady saw a gunman firing. He gave a statement to the RUC in 1972. He was in the car park of the Rossville Flats looking up Chamberlain Street and saw the crowd from Barrier 14 running towards him chased by the army. It was then that he saw the gunman:

⁹⁴ AOIRA 4. 17 paragraphs 13, 16

⁹⁵ H5.6 paragraphs 24 and 25

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I was looking down Chamberlain Street towards William Street and I saw the crowd running towards me chased by the Army. This crowd ran up Chamberlain Street and most of them ran towards an exit at the left hand corner of the flats near the Home Bakery. When the crowd came into the car park area of the flats I saw a man fire two shots from a small revolver, the revolver was smaller than the one used by the RUC and could have been hidden in his hand. This man was standing at the gable wall of the last house in Chamberlain Street on the left hand side looking down in the direction of William Street. He fired towards the waste ground in the direction of the alley which runs off William Street at the back of Eden Place. The man was short, about 5 ft 7 and he had black hair which just hung over his ears. He was wearing a black checked overcoat with a fur collar and black trousers. I saw a young bloke shot in the car park and a priest and others go over to his assistance. This wounded person was being assisted by the Priest and others when the man opened fire. A photograph from the Daily Mail of 31st January 1972 shows the Priest I saw I think he saw the gunman because when he was helping him out of the area I saw him duck his head when he heard the shots. He was walking towards the gunman and probably saw him."⁹⁶

7D-67 Geread Greeve⁹⁷ was one of those running from Barrier 14 down Chamberlain Street. He heard shooting before he reached the Rossville Flats' car park. He saw Father Daly attending to a body on ground. He ran for the Gap between Blocks 1 and 2 and as he ran he saw a gunman at the Chamberlain Street gable wall moving towards Rossville Street. He did not see the man fire.

7D-68 It seems clear, therefore, that a gunman fired at the soldiers shortly after Jack Duddy had been shot. Father Daly saw that gunman when he was attending to Jack Duddy. There is, however, evidence of a gunman having fired at the soldiers earlier. William Harley was on the top floor of Block 2 of the Rossville Flats in "the exact centre."⁹⁸ He saw a gunman at the south west corner of the Chamberlain Street wall fire five or six shots without looking. The shots "simply hit the ground". The revolver had a 3" barrel and came from the man's right hand pocket

⁹⁶ AB 71.1

⁹⁷ AG 55

⁹⁸ Day 077/038/20

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As far as I can recall this all happened before I saw any soldiers on foot and before I saw or heard any gunfire from the soldiers. I do not believe that the soldiers were aware of this man or his actions. I then watched the man turn and walk towards the southern end of Chamberlain Street in a south east direction.⁹⁹

7D-69 This firing accords with a number of soldiers' and other witnesses' accounts of incoming fire prior to the soldiers returning fire. Mr Harley's attempt to alter the timing of the shots he saw fired to accord with those seen by other witnesses is incredible. His explanation for having stated that he had seen no soldiers and heard no firing before the gunman fire beggars belief.

MR CLARKE: Q. You say that you saw this all happen before you saw any soldiers on foot and before you saw or heard any gunfire from the soldiers. Had you seen Jack Duddy's body on the ground before this?

A. May I correct that statement, please?

Q. Yes, certainly.

A. That was a, an error on my part. The incident is exactly as I have described it, but the timing is completely wrong. The reason, at the time there were no soldiers anywhere near that gunman and that is what confused my thinking as to the time. I know now that he fired round that corner while Jack Duddy's body was lying on the ground.¹⁰⁰

7D-70 Given the controversy which for the past thirty years has surrounded the question of whether the soldiers opened fire first on Bloody Sunday, it is simply not credible that Mr Harley was mistaken into thinking that he had not heard any soldiers fire before seeing the gunman fire by the fact that there were no soldiers around the gunman. His explanation is nonsensical and is a patent attempt to alter his originally honest evidence to fit in with the accepted story about the gunman Father Daly saw. That there was a gunman firing at the soldiers from the gable end of Chamberlain Street has always been undeniable because, and perhaps only because, of the photograph of him, but his importance has been constantly played

⁹⁹ AH 36.5, 36.6 paragraph 30

¹⁰⁰ Day 077/029/11-23

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down, it being suggested that he only fired late in the day, ineffectually, in anger and in response to the soldiers' shooting of Jack Duddy. Mr Harley was, however, more honest in his BSI Statement but, realising he was out of step with the line being pedalled, he sought, we submit rather transparently, to alter his evidence to fit in with the accepted explanation.

7D-71 OIRA 4 also claims not to have fired any further shots. This is contradicted by, for example, Maureen Gerke's evidence, if it is OIRA 4 that she saw fire. She lived on the Ground Floor (which was also referred to as the 5th Floor) of Block 3 of the Rossville Flats. She saw a man with a pistol in the Rossville Flats car park who "quite late on", when Jack Duddy was no longer in the car park,¹⁰¹ was pointing a pistol into Chamberlain Street,¹⁰² not round the corner into the waste ground.

7D-72 It is possible that this is the firing which can be heard on the BBC film taken by Cyril Cave. Mr Cave, who was on the Rossville Street waste ground, accepted that there is a portion of film where he believes the sound of an incoming round is recorded. He was asked by Christopher Clarke Q.C. about this:

Q.. Is there anything in the previous clips of film that you may be able to spot from them but that we cannot simply by looking at the film?

A. In this sequence?

Q. No, in the whole sequences that I have been showing you?

A. There is one sequence where the troops are running across ground where there is a zip of a bullet which could have been incoming fire. There is only the one zip, you can hear it very close and I would assume that in Father Daly's statement, he saw a man fire a revolver and that would coincide with that particular sequence in my film. That could have been -- I did not notice it until the Inquiry sent me out a clip of the film and I was running through it -- because I never had a clip of the film and I was running it through and I noticed this, so I ran it very slowly and there is one, just zip and -- as soldiers run across. We would

¹⁰¹ Day 133/090/23-093/16

¹⁰² AG 27.4 paragraph 16

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assume the soldiers would not have been firing at their own men, somebody was firing at them. That is the only occasion I heard any or seen any incoming fire -- I did not see it, I did not know it existed until I saw that clip.

Q. I wonder if we can identify whereabouts --what is the piece of film you are talking about. Have you seen that as we were looking through it?

A. Yes.

Q. I wonder if you could stop it when we get there.

A. The troops are running towards the camera.

Q. Let us run it forward, please

(Video played)

A. There, that was the zip. You will have to run it back, it comes earlier in the sequence.

Q. It is just after the sequence with Father Daly. I for my part heard what could be called a zip on the film: that is not a defect in the soundtrack, is it? (Witness shaking head).¹⁰³

7D-73 This was further confirmed in answers to questions from Edwin Glasgow Q.C.

Q. It was only when you reviewed the film that the Tribunal sent you in advance of giving your evidence that you put two and two together and worked out in your mind that on the film there appeared to be evidence of a different kind of shot, which you thought was consistent with what you had heard about what we have called Father Daly's gunman; does that summarise it fairly?

A. I think that would summarise it fairly.

Q. So we have the picture complete, Mr Cave: your understanding and your confirmation of the order of your film is that the whining shot we hear with the whine of the shot on the film, that of course takes place on the film and took place in your recollection of where the film was, after Father Daly is already escorting the body of the young man carried down Chamberlain Street?

A. That is correct.¹⁰⁴

¹⁰³ Day 141/118/05-119/18

7D-74 By the time that this shot is heard, Father Daly had left the car park. Maureen Gerke saw a gunman fire up Chamberlain Street after Father Daly and the party carrying Jack Duddy had moved from the car park. Clearly then either OIRA 4 was still firing from the gable of Chamberlain Street, both up Chamberlain Street or on to the waste ground, or there was one (or theoretically two) further gunmen doing so. It is impossible on the present evidence to say which, but it cannot be doubted that there was continued fire being directed at the soldiers at this time.

7D-75 Consequently it is hard to establish whether it was OIRA 4 who continued to engage the soldiers, or another gunman. What is clear is that, having first headed towards the Nellis house, OIRA 4 at some stage returned to the car park.

I hadn't been there long when a man and a woman broke off from the group and walked away .. when I saw them leaving I decided to follow them. They were the first to break away, I was right behind them and I think some others followed us.

7D-76 OIRA 4 says that he now knows the woman and the man to be Susan North and Fulvio Grimaldi.¹⁰⁵ Ms North alleges that OIRA 4 told her that he was carrying a weapon. He himself does not recall telling her that he had a gun in his pocket but he considers that,

...it would tie I with my own recollections of being very conscious of the gun and I couldn't say it didn't happen. The man is therefore very likely to be me. I was certainly worried enough about having the gun in my pocket to have said something like that.¹⁰⁶

7D-77 It is plain on Susan North's account that this man was still at large, in possession of the pistol, after Father Daly had left the car park carrying Jack Duddy. She saw this man after she and Grimaldi had been into 33 Chamberlain Street and photographed the wounded Mrs Deery and Michael Bridge.¹⁰⁷ She then left the house and went to the gable wall of Chamberlain Street intending to move south

¹⁰⁴ Day 141/134/03-20

¹⁰⁵ AOIRA 4.19 paragraph 22

¹⁰⁶ AOIRA 4.19 paragraph 23

¹⁰⁷ M35.6 paragraph 31-34

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along the east of the Rossville Flats' car park to go through the Gap between Blocks 2 and 3. It was whilst she was there that he spoke to her and told her he had a pistol in his pocket.¹⁰⁸

7D-78 She told Christopher Clarke Q.C. that the man said he had not used the pistol (which was clearly not consistent with what OIRA 4 now claims). Once he crossed with her towards the Gap between Blocks 2 and 3 he left Susan North and went through the Gap.¹⁰⁹ Susan North said in her BSI statement that she and Fulvio Grimaldi "waited there a little while" before going through the Gap themselves.¹¹⁰ She said that she never saw the man with the pistol again.¹¹¹ Therefore, still armed with his pistol, OIRA 4 apparently preceded Ms North and Fulvio Grimaldi in moving into Sector 5; this is precisely where Soldier F encountered a man with a pistol.

7D-IV OTHER PROBABLE SIGHTINGS OF GUNMEN

7D-79. There are a number of other witnesses who saw gunmen at various times and places around the car park. Their evidence is vague and it is difficult to assert with certainty that they prove the presence of additional, specific, gunmen in the car park. What is clear, however, is that a number of people saw individuals carrying or firing weapons in the car park: they may be the gunmen seen by others at different times; they may be further gunmen. What is also beyond doubt is that there were a number of armed terrorists spread around the car park firing at the soldiers, just as the soldiers have always maintained.

7D-80 The following are sightings of the gunmen, in addition to those referred to above:

(1) Dennis Mullan, a trainee solicitor at the time, who had not been rioting, and was in Block 1 at level 2 witnessed - ninety seconds before the troops arrived

¹⁰⁸ M35.6 paragraph 31-34

¹⁰⁹ AOIRA 4.19 paragraph 24

¹¹⁰ M35.7 paragraph 36

¹¹¹ M35.6 paragraph 35

FS 7.1440

in Pigs - a man in a duffle coat being challenged by two or three people as being "bloody useless".¹¹² The impression that Mr Mullan had was that the man had a weapon on him,¹¹³ concealed in his pocket.¹¹⁴ This may have been the man who other witnesses saw fire from Block 1 of the Flats, or he may have been another. In either event, he appears to have been a gunman at the flats shortly before the soldiers arrived.

(2) Bernard Gilmore saw a gunman fire along Chamberlain Street. Although in oral evidence he said that he may be mistaken about that, it is improbable that he was. He described the gunman as "a big tall fellow wearing a mask."¹¹⁵ This description does not obviously fit with any of the known gunmen, but Mr Gilmore's evidence is clear. In oral evidence he wrote down the man's name. Christopher Clarke Q.C. said that the name was the same one that Mr Harley named. It may therefore be that what Mr Gilmore saw was in fact OIRA 4 firing up Chamberlain Street at some stage. OIRA 4, however, disputes Bernard Gilmore's description. He says that he was not a big tall fellow (and he patently was not) and he says he never wore a mask and that he did not fire up Chamberlain Street.¹¹⁶ There are only two logical possibilities: either Mr Gilmour saw OIRA 4 fire up Chamberlain Street or he saw another gunman. It is impossible to say which.

7D-V AUTOMATIC FIRING CONTINUED AFTER THE SOLDIERS RETURNED FIRE

7D-81 In addition to those who gave evidence of hearing automatic fire directed at the soldiers shortly after they deployed, there are numerous other witnesses who speak of having heard automatic fire in the Rossville Flats area after the Army had returned fire. In fact, the evidence shows that bursts of automatic fire were heard

¹¹² Day 092/046/16-048/22

¹¹³ AM 449.2 paragraph 13

¹¹⁴ Day 092/ 047/09-48/25

¹¹⁵ AG 38.4 paragraph 24

¹¹⁶ OIRA 4.26 paragraph 56.16

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by civilians after the Army had returned fire and even after civilian's had been hit. In short, at least one gunman in the Rossville Flats, armed with an automatic weapon, was engaged in a fire fight with the soldiers.

7D-82 Simon Winchester ran from the waste ground into the Rossville Flats' car park and sheltered behind the low wall in front of Block 2.¹¹⁷ He then left the car park via the stairwell where he sheltered for a few seconds before running out of the Flats to the back. His evidence was that "about this time", as he was just leaving or just after he had exited the flats heading south he heard army fire and answering low calibre fire. He thought that some automatic fire was coming from somewhere high up in the Flats,¹¹⁸ and reported that in the Guardian Newspaper the following day:

*There was certainly some firing from the IRA. I heard one sub-machine gun open up from inside the Flats and heard a number of small calibre weapons being fired intermittently....*¹¹⁹

7D-83 Ciaran Donnelly made a statement in 1972 in which he said that he heard a burst of automatic fire after he had run behind the Rossville Flats when the shooting started and after he saw that two men had been shot dead: "I then heard a burst of automatic fire followed by single shots from the direction of the parachutists."¹²⁰

7D-84 In his oral evidence to the Widgery Inquiry he stated that he heard a burst of automatic gunfire coming from "somewhere around the position the Army was moving into".¹²¹ It was quite a long burst – around 10 rounds,¹²² coming not from the Rossville Flats themselves but from "beyond the courtyard of the Flats."¹²³ It seemed to come from beyond the courtyard in Rossville Street. It was not in the

¹¹⁷ M83.26; M83.27

¹¹⁸ M83.33 letter F-G

¹¹⁹ M83.45

¹²⁰ M 22.2

¹²¹ M22.8 letter B-C

¹²² M 22.8

¹²³ M22.18 letter E-F

direction of Free Derry Corner.¹²⁴ It was a loud burst of machine-gun fire. "I took it to be pretty heavy calibre." He had not heard anything like that before.¹²⁵ He also said that what he heard could not be accounted for by a number of individuals firing simultaneously.

7D-85 In his BSI statement he repeats his account of hearing a burst of automatic fire. He states that throughout the period of shooting, which lasted about 15 minutes, he heard only one burst of automatic fire but he was adamant that he heard it:

*I have been asked if this could have been the sound of the blades of a helicopter. The answer is it was not a helicopter. What I heard was automatic fire.*¹²⁶

7D-86 He reiterated his certainty when questioned by Arthur Harvey QC.

*Could it be that continuous fire that you heard was simultaneous fire by a number of soldiers going across the barricade as you were trying to head out of Glenfada Park?*¹²⁷

A. I do not think so, it was a continuous burst with a specific rhythm.

Q. That fire, would it also be correct to say that at that time you took it in fact was coming from the army?

A. I took it at that time -- as I said I thought it was the big gun on top of the Ferret.

Q. Coming from the army, being fired in the direction of the crowd that had been cowering behind the barricade and in Glenfada Park North?

*A. Well, I could not say -- I could not see the vehicle, all I assumed it was shooting at something out on Rossville Street.*¹²⁸

¹²⁴ M22.18 letter F

¹²⁵ M 22.18 letter F

¹²⁶ M 22.21 paragraph 9

¹²⁷ Mr Harvey did not attempt to explain how this effect might humanly have been achieved.

¹²⁸ Day 071/053/01-18

In his oral evidence to the Tribunal he stated that he was probably taking photographs as a body was being carried across Rossville Street when this burst of gunfire (which in retrospect, having regard to the distinctive sound, he too thinks was a Thompson submachine gun) went out. It was then that he ran for cover.

Q. Going back to paragraph 9, you describe there hearing a burst of automatic fire. Can you place the timing of that; was that before you started taking photographs of the body being carried away or whilst you were doing so, or after you had finished?

A. I had -- I was probably still in the process of taking the photographs as that body was being carried across the street when this burst of gunfire went out and at the time that was when I decided there was more going on than I wanted to stay around to take pictures of and I legged it.

Q. Where did the automatic fire appear to be coming from or going to?

A. I could not actually see a gun firing. I could hear it, it was very loud. Within the confines of the flats, Glenfada Flats, it appeared very loud. Two things entered my mind at the time: the sound of the actual fire was something that I was not familiar with. I thought it may have been the big gun on top of the Ferret scout car, I had never heard one of those fired before, I thought it may have been that. In retrospect it may have been a Thompson sub-machine gun because I know they have a very distinctive sound, although before that day I had never heard one fired.

Q. Can we go to M22.8? This again, the first half, please, is your evidence to Lord Widgery. At B you describe how a crowd of youths came round the flats shouting that the army was coming again "I ran round the corner to escape -- to the access to the flats." Then you were asked this: "Question: Did you hear anything at this stage which was different from what you heard before? Answer: Yes. When I was over here taking this picture I heard what I thought was a burst of automatic fire", which is what you have just described. "Question: From which direction? Answer: It appeared to me to be coming from somewhere round here, the position the army were moving into." Could you just explain to me what you meant by that answer?

A. Yeah. I was in the middle of the forecourt -- the middle of the courtyard at Glenfada and, um, taking the pictures of the body being carried towards me when the burst of fire rang out. It seemed to come from either round the other side of the flats on Rossville Street or from somewhere within the courtyard complex and was bouncing off the wall -- the noise was bouncing off the wall inside the courtyard complex. The first thing that sprang into my mind

was that the Ferret car had moved forward into Rossville Street and had opened fired with the gun on top, that was the first thing occurred to me at the time, and I thought, "That is it, I am going now".

Q. When you say it appeared to be coming from the position the army were moving into?

A. Yeah.

Q. The army had been moving in a southerly direction down Rossville Street?

A. That is right, yes.

Q. So could you tell in which direction the firing was going?

A. No. It was just the noise, and the noise was very unusual. Um, I did not see any gun, I did not see any vehicle because it would have been in Rossville Street if it was the vehicle. All I heard was the noise and it resonated within the quadrangle of the flats. It was very loud.¹²⁹

7D-88 He said that he heard the automatic gunfire about three or four minutes after the two men had been killed on the rubble barricade. He made it plain that no-one could have missed the sound of the automatic fire:

I initially decided to disappear as soon as I saw the guys down on the barricade, but then I decided to walk back. As I walked back they were carrying the body out, through the flats.

Q. From the barricade?

A. From the barricade. I imagine that must have taken them a minute or two, 40 seconds to a minute.

Q. It is after that you hear the automatic fire?

A. They were actually carrying the body when I heard the automatic fire. It was at that instant that I heard the automatic fire and I decided to leave.

Q. And you describe that on two occasions in your own words as being "very loud"?

A. Yes.

Q. Noticeably louder than the other firing?

A. Yes, yes.

Q. Nobody in the area could conceivably have missed it?

A. No.

Q. Everybody who was in that area must have been able to hear that automatic fire?

A. Anyone who was in the quadrangle of the flats must have heard it.¹³⁰

7D-89 The ITN team of Gerald Seymour (reporter), Robert Hammond, (sound recordist) and Peter Wilkinson (cameraman) all heard automatic fire. Robert Hammond made a statement on 19th February 1972 in which he explained how, after the soldiers had gone through Barrier 14 on foot, he had moved to a position on the south side of William Street about 5 yards from the junction with Rossville Street. Mr Hammond is another witness who noted the distinctive sound of the Thompson submachine gun:

The firing that I heard was as follows. First of all I heard a lot of single shot firing which sounded as though it was coming from 150 to 200 yards away or maybe further from the area bounded by Free Derry Corner and the junction of Fahan Street and Frederick Street. The sound of this firing was of a deeper thud than of an SLR. Shortly after this firing I heard several bursts of machine gun fire from the same direction. The noise of the machine gun seemed to me to be similar to the noise of a Thompson machine gun which I had previously heard fired in the Falls Road, Belfast but I would emphasize that I am no expert on the sounds of gunfire. Then I became aware of SLRs being fired just around the corner towards the Free Derry Corner.¹³¹

7D-90 In his oral evidence to Widgery he stated that the gunfire :

¹³⁰ Day 071/091/17-092/14 This evidence will be discussed further relation to the civilians who were in Glenfada Park.

¹³¹ M37.1-2

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*.. started off with quite a few single shots and then there was definitely a machine gun, several bursts from a machine gun and also single shots.*¹³²

7D-91 He described the shooting as coming from the general direction of the Rossville Flats.¹³³ He had a (mistaken) idea at the time that it was the Browning on one of the Ferret scout cars that had fired.¹³⁴ Mr Hammond himself now considers that he was mistaken in relation to the Browning amidst the noise and confusion.¹³⁵

7D-92 He does not have any recollection now of hearing either the single shot or the automatic fire but stated that he felt "sure that if I said this in 1972 when events were fresh in my mind, it is likely to be correct."¹³⁶ He said in oral evidence, in answer to Christopher Clarke Q.C., that he "certainly" heard automatic fire that day.¹³⁷ When Arthur Harvey Q.C. suggested to him that he could not tell the difference between different weapons his answer was firm:

.. it would appear you are not able to distinguish between SLR, single shots or machine-gun fire; is that right?

*A. Sorry to correct you, I think it is not difficult to tell the difference between machine-gun fire and SLR shots. I hope I have not given that impression. I can tell the difference between a machine-gun and a single self-loading rifle, I think, yes.*¹³⁸

7D-93 Mr Harvey's second attempt to make the same point was equally robustly rejected:

Q. What we know as a fact is that there were other soldiers in Rossville Street and much further up in a number of army vehicles who had discharged rubber bullets. If they were discharging

¹³² M37.4

¹³³ M37.4

¹³⁴ M37.2

¹³⁵ M37.17 paragraph 11(d)

¹³⁶ M37.17 paragraph 11(b)

¹³⁷ Day 154/012/03-17

¹³⁸ Day 154/035/25-036/08

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*volleys of rubber bullets, could that have confused your ability to differentiate between machine-gun fire and other types of fire?*¹³⁹

*A. I do not think there is any doubting the difference between machine-gun fire and the sort of other single shot fire.*¹⁴⁰

7D-94 Mr Hammond (as had David Philips) explained that as the camera only recorded sound when it was running the sound of a machine gun would not have been recorded if it was not running at the time.¹⁴¹

7D-95 Gerald Seymour, the ITN reporter in the same team as Peter Wilkinson and Robert Hammond, said in 1972:

*We paused at the corner of William Street and Rossville Street down which the troops had passed some half minute before. At that moment I realised there was firing going on, of ball ammunition and not of baton round and at the Eden Place junction we saw a paratroop (sic) aiming and firing his SLR. He was aiming in the Chamberlain Street direction. The armoured cars were stopped in a line along Rossville Street and we kept behind them during the shooting. There was a period of very intense shooting though no rounds passed near us. I consider that at that time no shots were fired in our direction down Rossville Street. We did however hear automatic fire which we identified as a Thompson sub-machine gun.*¹⁴²

7D-96 In his oral evidence to Lord Widgery he said that he became aware of firing when he was at the junction of William Street and Rossville Street;

*Initially mostly single shots and then I identified amongst the single shots what I took to be one burst of automatic fire.*¹⁴³

7D-97 His immediate impression, as he stated both in oral evidence to Lord Widgery and in his 1972 Statement, was that it was a Thompson machine gun. He explained to the Widgery Tribunal that he had "heard Thompsons before in Northern Ireland

¹³⁹ Once again, Mr Harvey did not attempt to explain who this might have been the case.

¹⁴⁰ Day 154/041-13/22

¹⁴¹ Day 154/043/16

¹⁴² M72.2 paragraph 7

¹⁴³ M72.5 letter A

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and at that time my immediate impression was that I thought it was a Thompson."¹⁴⁴

7D-98 Father Carolan referred in his BSI statement to hearing automatic fire (fire that regrettably even he did not mention in 1972):

I should say that shortly after the two separate shots rang out [i.e. in William Street], the general shooting in the Bogside began. The shooting was coming from the army. It seemed that all hell broke loose. It was like a war zone. There was lots of shooting but I cannot say which direction the shots were coming from. I believe there was automatic fire. I was aware that there was a difference between the two types of machine guns which were used at that time, the Thompson and the Sterling, and that the Thompson had a very sluggish type of sound. It sounded to me like it was the Sterling¹⁴⁵ that was fired on that day.¹⁴⁶

7D-99 Father Mulvey spoke of hearing automatic fire after he had seen the soldiers deployed into Rossville Street and Columbcille Court. He first heard rubber bullets. The situation was relatively calm (such that he was able to stop and chat for a moment or two to a group of people) before he heard the first shot. After that first shot he heard about a dozen shots and then what, he told Lord Widgery, he assumed to be

...a burst of fire which I would describe as automatic fire. It was repeated sustained firing for two or three seconds.¹⁴⁷

7D-100 Father Mulvey recorded in his written statement for Widgery that there was "at least one burst of automatic fire for the space of two or three seconds. All the firing that I heard seemed to be in the area of Rossville Street near William Street."¹⁴⁸

¹⁴⁴ M 72.2 paragraph 7; M72.6 letter A .

¹⁴⁵ This analysis needs to be read in the light that Father Carolan was not prepared to admit to hearing any automatic fire in 1972.

¹⁴⁶ H3.3 paragraph 10

¹⁴⁷ H15.2 letters A-F

¹⁴⁸ H15.12 paragraph 4

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7D-101 This was probably what Father Daly was describing when writing in his BSI statement of the moment when he was running away from the Saracens in the direction of the Rossville Flats:

Then there was a burst of gunfire which caused terror. I could not swear whether they were shots from several weapons simultaneously or from one weapon. At that time I knew that they were live bullets.¹⁴⁹

7D-102 Hugh Foy gave evidence of hearing automatic fire from a machine gun intermingled with military rifle fire shortly after the seeing soldiers arriving in vehicles and then running towards the Rossville Flats' car park. Whilst Mr Foy may have blurred time and events to a certain extent - he said that he heard a single high velocity shot fired south down Rossville Street and then saw, from his position south of the Rubble Barricade, three "Saracens" travelling down Rossville Street - it is plain that Mr Foy heard machine gun fire - in effect, he heard a gun-battle.

7D-103 Mr Foy said in his BSI statement that he saw the Saracens come to a halt and soldiers pile out. He described soldiers running into the courtyard of the Rossville Flats in a manner that seemed to be one of taking cover.

There had been a gap of no more than a second or two between the Saracens coming to a stop and shots being fired. There were shots echoing all over the place. I clearly heard the same cracking noises as shots were fired and, at the same time, I could recognise the sound of shots being fired in one burst from a machine gun. The machine gun fire which I heard seemed to be coming from the same direction as the rifle fire, but from slightly further away from me, perhaps from the area of wasteground to the east of Rossville Street near to Pilot Row. There seemed to me to be shots being fired in the area near to me and shots being fired further away from me. I was not aware of any shots being fired from Block 1 of the Rossville Flats or shots being fired towards Block 1 of the Rossville Flats.

...The whole scene lasted no more than 30 seconds during which time there were perhaps a hundred shots which appeared to be

¹⁴⁹ H5.4 paragraph 17

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fired, but I may have been hearing the echoes of shots. There was just the one burst of machine gun fire.¹⁵⁰

7D-104 Mr Foy (who also recognised the distinctive sound of the Thompson sub machine gun) confirmed hearing the automatic fire in his oral evidence in answer to Mr Roxborough:¹⁵¹

Q. You also say that you heard -- this is paragraph 19, page AF29.4 -- the sound of a burst of machine-gun fire; is that right?

A. That is correct, yes.

Q. Which you thought was coming from the same direction as the rifle fire but from slightly further away from you.

A. Yes.

Q. Perhaps from the area of wasteground to the east of Rossville Street near Pilot Row.

Q. Had you ever heard machine-gun fire before this occasion, Mr Foy?

A. I cannot remember a specific incident, but I am sure I have.

Q. Can you describe what it was that enabled you to distinguish this as being machine-gun fire as opposed to being a large number of single shots?

A. It was rapid, repeated and sounded heavier than the sharp SLR.

Q. Can you estimate how long this burst of machine-gun fire lasted?

A. No, I cannot do that.¹⁵²

7D-105 Mr Foy went on to say that he heard rifle fire before the automatic fire, and that the automatic fire opened up during the rifle fire. His account was not challenged.

¹⁵⁰ AF 29.4 paragraphs 19, 21

¹⁵¹ Day 146/103/24-104/20

¹⁵² Day 146/103/20-104/24

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7D-106 John Friel gave the following account of what he heard as he ran down Chamberlain Street:

As I ran I heard a prolonged burst of rapid, heavy fire in the form of continuous shots. It lasted the whole time I was running from Eden Place to the south end of Chamberlain Street. I said to myself that there must be hundreds of rounds being fired. immediatly after the heavy burst of fire I heard the odd single shot which sounded like "crack, crack." I was in the Army cadets between 13 and 16 years old and I know the difference between automatic, semi-automatic and single fire.¹⁵³

7D-107 In his oral evidence to the Inquiry he stated that the burst of fire sounded like a machine gun and that the odd single shot sounded like an SLR. He could not tell in which direction the fire was going.¹⁵⁴ He was questioned by Edwin Glasgow QC about the prolonged burst of rapid, heavy fire:

Q. Those were the regular shots that you believed and believe were machine-gun fire?

A. Yeah, automatic fire, yeah.

Q. You have said that a number of times. I have to ask you because it may be a matter of very considerable importance to this Tribunal; are you sure about that?

A. Yes.

Q. You are?

A. Yeah, because I had thought the whole place just erupted, you know. After the soldier fired a shot I started to run, and it takes about 10 seconds to get down to the other end of Chamberlain Street and the firing just continued on, just steady firing.

Q. Could we look at the next sentence, please? You say:

"It lasted the whole time I was running from Eden Place to the south end of Chamberlain Street".

¹⁵³ AF 33.2 paragraph 10

¹⁵⁴ Day 076/009/06

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You remember Mr Clarke asked you roughly how long you thought that took?

A. Yeah, about 10 seconds, yes.

Q. It is the next sentence

"I said to myself that there must be hundreds of rounds being fired."

Again, I would like to know: is that just a turn of phrase; is that just you talking to yourself or do you really mean over 100?

A. No, a turn of phrase. I would say about 50 -- not --

Q. In one burst or more than one burst?

A. A continuous burst. Just the one burst, but it was continued.

Q. Although you were only 19 at the time, you had been in the Army Cadets?

A. Four years.

Q. For four years?

A. Yeah, 13 (inaudible).

Q. You are confident, are you, you can say on oath to this Tribunal that what you heard was automatic fire?

A. Automatic fire, yes.

Q. What you would describe as machine-gun fire?

A. Yeah.

Q. And it happened between the time when the soldier fired the shot that went over your head in Eden Place?

A. Yeah.

Q. And you getting to the bottom of Chamberlain Street

A. Yeah, shortly after I started to run until I got to Chamberlain Street.¹⁵⁵

7D-108 Patrick McCallion, in an undated manuscript statement, attributed various bursts of automatic fire to soldiers.¹⁵⁶ None of this appears in his BSI statement.¹⁵⁷ He admits throwing stones at soldiers from the rubble barricade in Rossville Street.

7D-109 Despite his silence on this issue when speaking not only to NICRA in 1972 but also, more disappointingly, to Eversheds for the purposes of his BSI Statement, Daniel McGowan made a statement to the Sunday Times in which he said that as he walked down the alley behind Joseph Place;

*...I heard what I thought were either high velocity shots or rubber bullets, I don't really know the difference. Then I heard four or five single shots, sort of high pitched cracking noises, and a short burst of what sounded like automatic fire.*¹⁵⁸

7D-110 Thomas Mullarkey made a statement on 15th February 1972. He described the Pigs coming down Rossville Street. He ran for cover in Glenfada Park:

*We waited until things appeared to quieten down and came out again on Rossville Street between the two blocks of Glenfada Park. A few minutes quiet, and another shot. Then I heard what sounded like a burst from a machine gun and said, "There's a Thomson. It's time we were out of here."*¹⁵⁹

7D-111 Mr Mullarkey said in his BSI statement that he could no longer remember hearing a burst of fire from a machine gun.¹⁶⁰ However, in his oral evidence he stated that when he re-read his 1972 statement, which he had forgotten, he could bring himself back to being able to say that he did hear a Thompson machine gun. He had grown up in an area near the Border in the 1950s and frequently heard the noise of a Thompson, so he was very familiar with the sound.¹⁶¹ He told the Tribunal that it was pretty clear in his mind when he made his statement in

¹⁵⁶ AM75.6-8

¹⁵⁷ AM 75.1-3 He has not given oral evidence

¹⁵⁸ AM 255.11

¹⁵⁹ AM 452.2

¹⁶⁰ AM 452.7 paragraph 31.9

¹⁶¹ Day069/058/09-059/24

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1972.¹⁶² He confirmed the same in answers to questions from Edmund Lawson Q.C, explaining that he was very familiar with the sound of Thompson machine guns.¹⁶³

7D-112 Bernard Smith said in his BSI statement that he ran across the Rossville Flats' car park from the bottom of Chamberlain Street and lay for twenty minutes behind the low wall that runs parallel to the north side of Block 2.

I remained at point C for about 20 minutes. I could hear constant shooting which sounded rapid as if it was coming from automatic weapons. The shots were very clear and were coming from close range. I kept my head down and did not see anybody actually shooting or being shot. I cannot tell whether the shots were being fired from low or high velocity weapons but I could determine that the gun fire was not coming from rubber bullet guns.¹⁶⁴

7D-113 His oral evidence to the Inquiry was as follows:

Q. So you describe hearing constant shooting which sounded rapid as if it was coming from automatic weapons. Were you familiar with the sound of automatic weapons at the time?

A. I did not take no -- much heed to it, more or less I was afeared, that is why I kept trying to keep my head down. There were a couple of other people lying down behind the wall, you know, you know they were the same as me.

Q. What I asked you was whether at the time you were familiar with the sound of automatic weapons?

A. No, no.

Q. You were not?

A. No.

¹⁶² Day 069/03/123-38/01

¹⁶³ Day 69/058/09-059/24; At the time of this firing Mr Mullarkey was between the two blocks of Glenfada Park; he then took shelter behind a wall in Lisfannon Park (AM 452.14 paragraph 31.10) and saw a wounded man being carried into a house; he then heard someone say 'Now will you for Christ's sake get the stuff' just before three young men rushed through the door of the house next door (AM 452.17).

¹⁶⁴ AS 26.2 paragraph 10

Q. When you say that you could hear constant shooting which sounded rapid as if it was coming from automatic weapons, what was it that made you think it was an automatic weapon that was being used?

A. You know, it kept repeating, you know, steady.

Q. You say that the shots were very clear and were coming from close range; were you able to tell how far away the shots were being fired from?

A. No.

Q. Were you able to tell the direction in which the shots were being fired?

A. No.

Q. Were you able to tell whether they were being fired in more than one direction?

A. No, I could not tell.

Q. Did you see anybody actually firing whilst you were there?

A. No.

Q. Approximately how many people were there sheltering behind the wall I think you say between 10 and 12?

A. Yes.¹⁶⁵

...

Q. Finally this, Mr Smith. You spoke in answer to Mr Clarke of hearing gunfire later on, rapid gunfire which kept repeating, yes?

A. Yes.

Q. As if it was coming from an automatic weapon, yes?

A. Yes.

Q. Like a machine-gun?

A. Yes.¹⁶⁶

¹⁶⁵ Day 067/013-14

¹⁶⁶ Day 067/026

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7D-114 To similar effect is the evidence of James Joseph Stewart who was sitting in the front of a milk van at Free Derry Corner. In his BSI statement he said:

"At that point I heard a burst of automatic machine-gun fire. It seemed to come from somewhere to my right (east), from the direction of the Derry Walls. It was definitely not coming from the direction of William Street or the Rossville Flats. At the time I was convinced that it was coming from the Walls. I am also certain that this was machine-gun fire that I heard. Having lived in Derry all my life, I was more than familiar with the different sounds of gunshots. I could clearly distinguish between automatic machine-gun fire and single reports from a rifle. I also could not have mistaken the sound of a helicopter's rotary blades for machine-gun fire. The machine-gun fire must have lasted for about two to three seconds in total."¹⁶⁷

7D-115 The accounts of the journalists, the priest and the civilians set out above establish that there was a burst of automatic fire in the area of the Rossville Flats shortly after the soldiers deployed and that, even after they had begun returning fire, automatic firing continued.

7D-116 That automatic fire from the flats was also heard by dozens of soldiers stationed around the Bogside. The following are examples only.

7D-117 INQ 0739, a Corporal in Guinness Force, heard bursts of fire from what he thought was an AK47 at around the time that the Guinness Force lorries stopped in Rossville Street. It was coming from the Rossville Flats towards the soldiers.¹⁶⁸ At the Platform OP, Sergeant 001 heard low velocity shots coming from, he thought, the Rossville Flats. Sergeant 025 of 22 LAD heard a "short burst from a Tommy gun" coming from the area around the Rossville Flats.¹⁶⁹ Major 159 was moving between Charlie OP and Butcher's Gate and heard two short bursts of automatic fire from a Thompson that he considered probably came from the

¹⁶⁷ AS 35.4 paragraph 20. Perhaps, given the terms of his BSI statement, rather surprisingly when he came to give oral evidence Mr Stewart said that what he heard could have been single shots and that he had only assumed it was machine gun fire. See Day 108/092

¹⁶⁸ C739.3 paragraph 22; Day 306/021

¹⁶⁹ B1540 paragraph 7; Day 361/018

FS 7.1457

Rossville Flats.¹⁷⁰ At the Roaring Meg OP Soldier 124 heard a “burst of machine gun fire” like a Thompson firing from the Rossville Flats.¹⁷¹ Soldier 156 heard automatic fire from the Rossville Flats that sounded like a Thompson.¹⁷²

- 7D-118 On the City Walls, between Butchers Gate and the Rossville Flats, INQ 0113 heard a Thompson firing from the Flats and INQ 0093, a Royal Green Jacket, heard what he took to be an AK47 fire from the same place. INQ 0555 was on the Walls to the right of the Rossville Flats and heard, coming from somewhere around the Flats, fast and furious gunfire and some machine gun fire. He described it as an “intense exchange”.¹⁷³
- 7D-119 Sergeant 040 heard automatic fire from the Rossville Flats. INQ 1259 of the Royal Anglians heard, coming from the Flats area towards Aggro Corner, several bursts of Thompson fire, followed by SLR fire.
- 7D-120 On barrier 17, soldier 122 heard low velocity automatic fire coming from Block 2 of the Rossville Flats. Soldier 149 heard low velocity automatic Thompson fire from Block 2 of the Rossville Flats. INQ 0212 heard low velocity firing north of the Rossville Flats.
- 7D-121 At Barrier 16, Sergeant 137 heard automatic fire that possibly came from the Rossville Flats and Soldier 153 heard two bursts of automatic fire from the Rossville Flats. Sergeant Major INQ 0176 of the Royal Green Jackets heard SLR, Thompson and other “smaller”¹⁷⁴ fire coming from the Rossville Flats area after the soldiers had deployed.¹⁷⁵

¹⁷⁰ B1953.002 paragraph 19; Day 349/120/15-121/11

¹⁷¹ B1777.002 paragraphs 9, 16;

¹⁷² B1939.002 paragraph 10; Day 348/128/05-131/22

¹⁷³ C555.2 paragraph 8; Day 346/090

¹⁷⁴ C176.2 paragraph 13

¹⁷⁵ C176.2 paragraphs 10-13; Day 305/036

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7D-VI THE SOLDIERS' REACTIONS

7D-122 In addition to the evidence set out above, of gunmen firing at the soldiers, there is further corroborative evidence of the soldiers' accounts from independent witnesses who describe soldiers' reactions on hearing the firing. They clearly believed themselves to be under fire, as indeed they were.

7D-123 Patrick Clancy of the Daily Telegraph went down Chamberlain Street. He observed that the soldiers considered themselves to be "genuinely fearful" that they were under sniper attack. He heard at least one soldier shout out "Watch for the snipers".¹⁷⁶

7D-124 BBC Cameraman Peter Begin (now deceased) gave evidence to the Widgery Inquiry about the reaction of the soldiers in Chamberlain Street to the shooting.

Answer: Yes, I heard a couple of shots.

Question: Were you able to tell what sort of shots they were?

Answer: I was of the opinion that they were of rifle shots of some sort or another rather than baton rounds or small calibre rounds.

Question: Had you heard any gunshots apart from baton rounds up to that point?

Answer: No.

Question: After you heard those two shots did you notice a difference in the way the soldier were moving?

Answer: Yes.

Question: What was that?

Answer: They became very much more alert, wary. They had changed from a fairly easy going attitude to one of caution and one of wariness and one of careful observation and taking up cover.¹⁷⁷

¹⁷⁶ M15.3 paragraph 6

¹⁷⁷ M4.6 letter A-B

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7D-125 He then moved to a position to the west of Chamberlain Street from which he had a view across the Rossville Street waste ground. He also observed the soldiers' demeanour as that of being under fire:

Mr Preston: As you watched the soldiers move over that open ground, Mr Beggin, did you hear any shots fired?

Answer: Yes, they had got quite a long way into the open ground before any shots were fired.

Question: How many did you hear?

Answer: Three or four.

Question: So far as you could see were they fired by the soldiers whom you were watching?

Answer: No, they did not appear to be. The soldiers scattered very slightly, but they did not appear to fire at that time.

Question: Did you have any impression as to where those shots had come from?

Answer: I assumed, without seeing the individual who fired them, that they had come from the direction of the flats.¹⁷⁸

7D-126 In his 1972 statement he says;

After they had gone through the barricade the Paratroopers divided up. One party in riot gear went up William Street to its junction with Rossville Street. Another party in combat gear, that is carrying rifles, took up positions on the corner of Chamberlain Street and William Street. The riot party obviously made some arrests for they returned with a handful of prisoners very soon, who were put in search positions against a wall at the corner of William Street and Chamberlain Street. This can be seen on film. Just before the prisoners appeared on the scene, I heard two shots fired. At this moment the attitude of the troops changed completely. Earlier they had been moving easily along the centre of the road and carrying their weapons at the trail. After hearing the shots their attitude was completely different. They quickly took up firing positions at the corners and were moving far more sharply and alertly.

¹⁷⁸ M4.7 letter A-C

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Immediately after this some Armoured Personnel Carriers came through the barricade. Some went up William Street and stopped there. One turned into Chamberlain Street and stopped. They contained Paras in the same mixture of riot and combat gear, some of whom got out. Some of the Paras who had dismounted advanced across the open ground towards the Rossville flats. I cannot remember whether they were carrying riot or combat weapons. Once again there was a flurry of shots, perhaps three or four. The Paras in front of the Rossville flats were at this time running along and none of them to my knowledge were in the firing positions. I do not think any of the Paras near me were firing. My impression, which I shared with everyone there at the time, I believe was that the shots were coming at us from the direction of the flats. Everyone took cover. The Paras on the open ground in front of the buildings scattered for cover too. There was then a slight pause with no more firing for a bit.¹⁷⁹

7D-127 David Capper reported that there had been some live rounds fired both by the troops and apparently by some of the civilians. He gave evidence that he was under the impression that soldiers were taking cover from live rounds.

Q If we go back to E3.88, you are obviously describing there missiles of various sorts coming down from the flats and rubber bullets and CS gas. But you then say: "But there have been some live rounds fired both by the troops and apparently by some of the civilians here"; can you recall what caused you to say that?

A. Thinking back on it, it must have been the sight of the -- some of the troops down behind the garden walls taking cover. The soldiers that were near me were not taking cover and I think I just put that in as something to, you know, check that and shots being fired back.

Q. You thought the fact that they were taking cover indicated that they were being fired on?

A. Possibly.¹⁸⁰

7D-128 Having been referred to his statement at M9.3 Mr Capper stated;

¹⁷⁹ M 4.2-3 paragraph 7-8

¹⁸⁰ Day 073/055

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The troops immediately in front of me were standing out in the open firing from the shoulder. There were troops further away behind garden walls.¹⁸¹

7D-129 He was then referred to his statement:

There were a number of paratroopers along this wall and there were more in there who were firing upwards into the flats.¹⁸²

and he stated;

That is my recollection, that they were behind the wall, firing down towards the flats and firing, firing from that position, which gave me the impression that they were under fire themselves, but I did not know.¹⁸³

7D-130 John Chartres, a Times journalist, made a statement in 1972 in which he described how when he was at 1 PARA "Battalion HQ", about ten minutes after Colonel Wilford had left the building, he heard an incoming message on the Battalion net that "We are under fire from the Rossville Flats and are returning fire."¹⁸⁴ He told Lord Widgery that the message was then repeated,¹⁸⁵ and that he sought clarification by asking the soldier that he was with whether this meant that "real lead" had been fired to which he received an affirmative answer.¹⁸⁶ He explained that he was able to hear because occasionally the signaller took his headset off, and the headphones would then act in effect as a speaker.¹⁸⁷

7D-131 Neil Dakin, a reporter with the Daily Express, made a statement in 1972 in which he described soldiers taking cover behind Pigs on the Rossville Street waste ground. He said that when the bodies were being taken away in ambulances he heard

¹⁸¹ Day 073/116

¹⁸² M9.8

¹⁸³ Day 073/117

¹⁸⁴ M14.2 paragraph 16

¹⁸⁵ M14.5 letter B

¹⁸⁶ M14.7 letter B

¹⁸⁷ M 14.7 letter C

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a burst of both automatic and single shot ball fire. There were two bursts with an interval of about a minute. The people who were gathered round screamed and either ran to the wall of the flats or fell down. I had no idea of the direction of the gunfire.

7D-132 It is unfortunate that there has been propagated the notion that soldiers stood about in the open, without any evident fear, as they fired round upon round towards fleeing civilians. It has been said that, because the soldiers stood exposed as they fired, this gives the lie to their claims to having believed that they were fired at. This myth was fostered significantly, and misleadingly, by Lena Ferguson of Channel 4. The actor in her programme spoke, not the soldier's answer, but Ms Ferguson's question. She was asked about this in her oral evidence.¹⁸⁸

Q. You yourself already confirmed, you asked him, in fact you put to him: "They were not doing that, they were in the open." He says he finds that a bit strange. But when you came to broadcast that, Ms Ferguson, you broadcast that question as being his words, through an actor; did you think that was fair? Bearing that in mind, on the left-hand page, we have it on the left-hand page, the second thing, you say: "The first thing you have got to do is get close to the building, into the shadows. Get yourself low, start looking, see if you can try and trace where the rounds are coming from "The Paras were not doing that", says the actor, briefed by you, "they went on arresting people." So you have the actor, speaking as if he is speaking the soldier's words, but actually speaking your question; did you think that was fair or careful or impartial and are you still proud of it?

A. There is not a question that I gave words to an actor that that soldier did not actually say, there is not a question about it.

7D-133 The effect of this is that there is a television news programme that has either planted or reinforced the notion that soldiers had stood about in the open and therefore were not under threat.

7D-134 It has also been suggested, in a similar vein, that, because some soldiers appear in photographs without helmets on, they cannot have been fired at. Sergeant O

¹⁸⁸ Day 210/163/11-164/07; the actor's script is at X1.6.37

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explained that it did not surprise him that soldiers were on the ground under fire but not wearing helmets;¹⁸⁹ he explained the fallacy in oral evidence:¹⁹⁰

Q. Can you explain to the Tribunal why the wearing of helmets is not regarded by everybody in your regiment as a precaution sensible to take against incoming fire?

A. The airborne helmet is heavy, cumbersome, it is not designed to stop high velocity rounds, it is designed to stop things like a -- shrapnel and so on. It is primarily concerned to save your head when you parachute and really they can be an imbugrance without a doubt, if you are moving about on the ground. They do get in the way, believe it or not, and in the situation certainly we were in on Londonderry on that day, we would have -- we did have helmets on when we headed for the barricade. I took my helmet off to put my gas mask on and I would imagine quite a lot of lads did the same thing.

7D-VII OTHER ACTIVITY IN THE CAR PARK

7D-135 In addition to the direct evidence of there being specific gunmen in the car park, of incoming fire being heard and of the soldiers taking cover, there is also some photographic evidence which, on the face of its, indicates something very different from a crowd of civilians fleeing from the soldiers. Two sequences of photographs in particular bear close inspection.

THE PERES SEQUENCE OF PHOTOGRAPHS – BLOCK 3 RETAINING WALL

7D-136 This sequence of photographs can only be explained by there having been some danger emanating from the lee of the retaining wall in front of Block 3. One figure in the sequence appears to be either concealing or removing something from his inside jacket pocket. Joseph Nicholas has identified himself as this man.¹⁹¹ A second figure appears to acquire a jacket from somewhere, and, rather than wear it on cold January afternoon in Derry, instead pushes it along the ground. This he

¹⁸⁹ Day 336/123/04

¹⁹⁰ Day 336/123/05-123/18

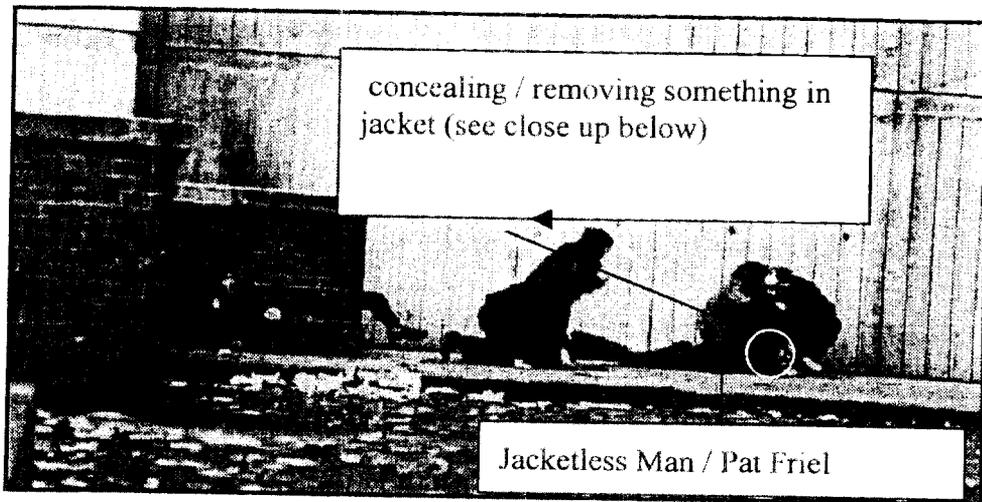
¹⁹¹ AN17.6 paragraph 28; AN 17.8 (photograph); Mr Nicholas was not asked about whether he was doing anything suspicious in this sequence of photographs

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does by pushing it at his side, rather than dragging it behind him. The impression is of there having been an object concealed under the jacket. This man is labelled as Pat Friel in the print at EP25.9.001.¹⁹²

7D-137 The actions of the men in these photographs are bizarre.

7D-138 Photo P796 below.

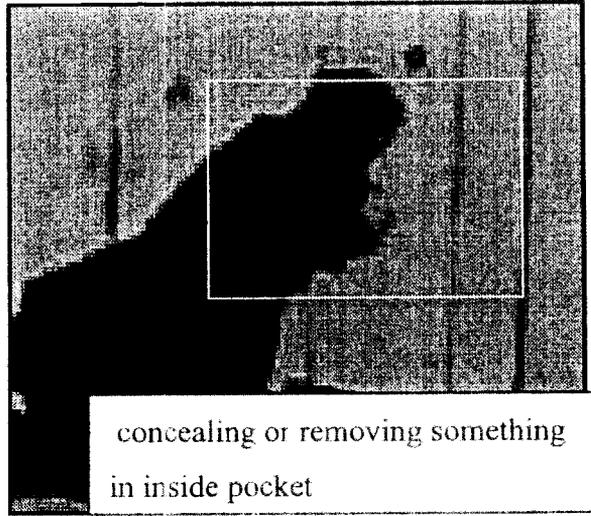


7D-139 The man in the jacket, kneeling the highest to the left of the photograph, appears to be either placing something in or taking something out of his jacket pocket. He then disappears from the photograph sequence. Meanwhile the man without a jacket (possibly called Pat Friel) can be seen.

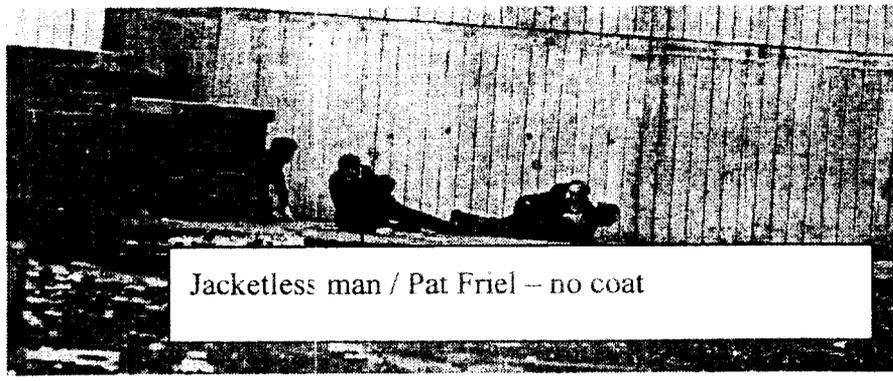
7D-140 Looking at P796 in detail gives an even clearer picture that the Jacketed Man is doing something with the inside of his coat.

¹⁹² John Patrick Friel AF32/Day 118 is not the man; John Friel AF 33/Day 76 is not the man although he did cross from Chamberlain Street to the gap between Blocks 2 and 3 by this route; Pat Friel AF38 (1972 only) is not the man (he was 59 years old at the time)

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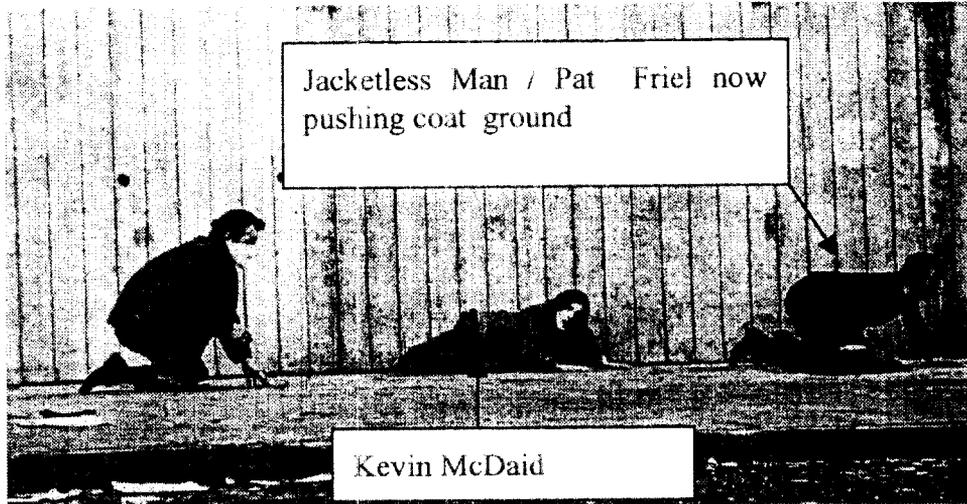
7D-141 In P797 below it can be seen that man without a jacket has no coat with him.



7D-142 Photo P798 below shows Patrick Doherty and two others, one of whom is the man without a jacket/ Pat Friel. He however has now acquired a coat of some sort. Instead of putting it on, however, he pushes it with him along the concrete and through the debris on the ground, this despite Sunday 30th January 1972 being, by all accounts, a very cold day -- there was ice on the ground. Patrick Walsh described it as a "very, very cold day" to Jimmy McGovern,¹⁹³ and that he could not "remember a colder day than that."¹⁹⁴

¹⁹³ AW5.42
¹⁹⁴ AW 5.47

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Kevin McDaid is the middle figure.¹⁹⁵ He said in oral evidence that he was unable to help with what was going on, and described the scene as “pandemonium” and “panic”.¹⁹⁶ He was asked whether there was a gunman in the Gap between Blocks 2 and 3 and refuted the suggestion.¹⁹⁷

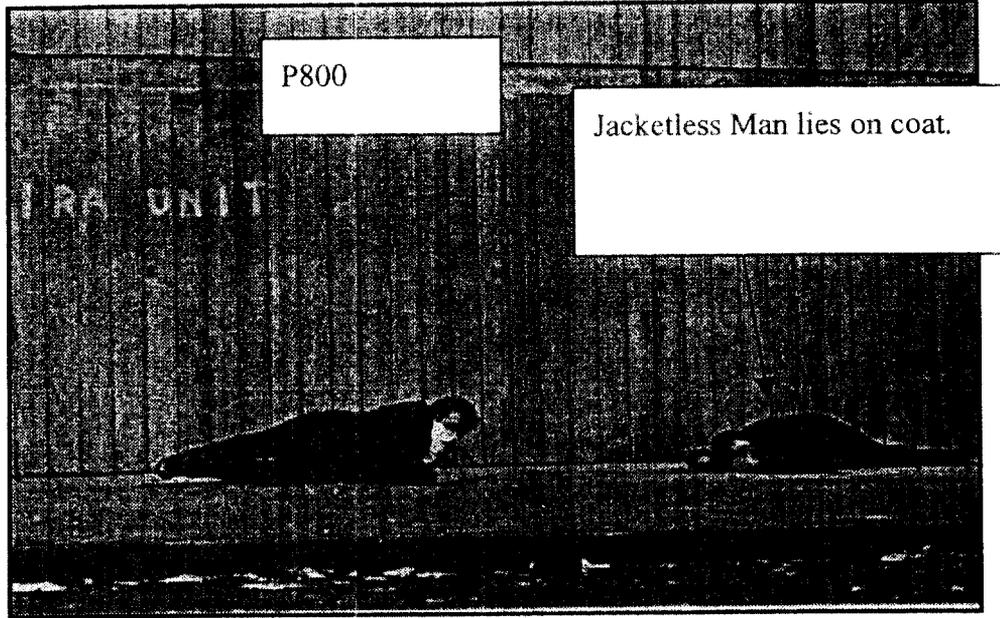
7D-143 Photo P800 below shows Mr Doherty and the man without a jacket/ Pat Friel apparently taking cover. The man without a jacket is now lying over his coat. He is now seen to be heading back in the direction from which all the men had come.

¹⁹⁵ AM 167

¹⁹⁶ Day 100/087

¹⁹⁷ Day 100/103

F57-1467

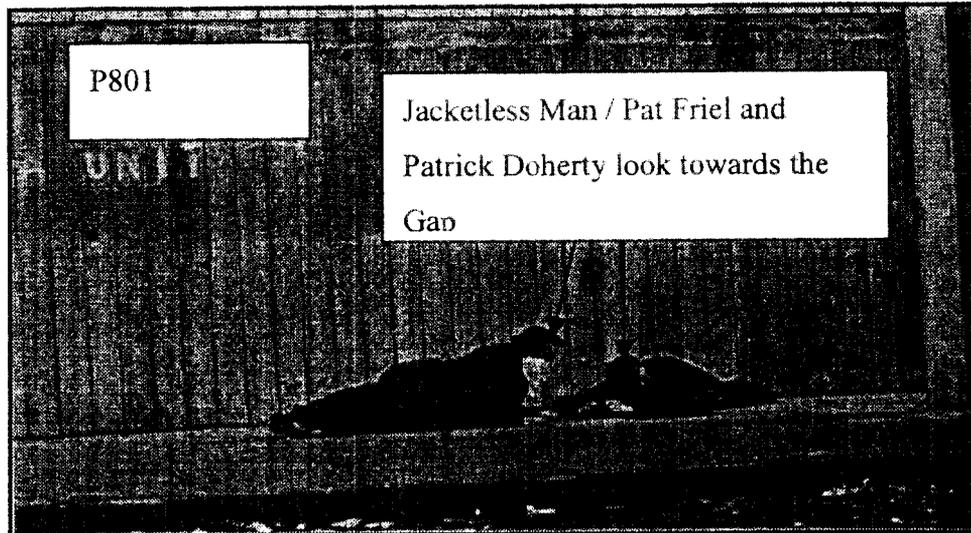


7D-144 Quite what was going on between these men, during this sequence, remains mystery. They are not, quite obviously, behaving in a normal manner and, in the circumstances, it might well be that what Mr Peres inadvertently captured was the transferring and concealing of a weapon.

7D-145 Moreover, Photo **P801** is striking because it clearly shows the two men in it looking anxiously towards the Gap between Blocks 2 and 3. Further, careful comparison of **P800** and **P801** reveals that, in the second of these, the jacketless man has crawled away from whatever it was that was causing concern in the gap between Blocks 2 and 3 a consideration of the orientation of articles of rubbish in the foreground against markings on the concrete wall in the background establishes that the photographs were taken from the same direction. The jacketless man has, however, moved approximately 18 inches or two feet away from the Gap between Blocks 2 and 3.¹⁹⁸ The angle of the fixed objects remains the same, whereas the jacketless man has moved.

¹⁹⁸ Note, by reference to the white piece of paper with the fatter end, in the gutter, and the two distinct grey rectangles on the concrete wall, the angle of the fixed objects remains the same whereas jacketless man has moved.

F57-1468



7D-146 Given that it is known that OIRA 4, armed with a pistol was around the Gap between Blocks 2 and 3 at some stage around this time, and that a gunman was seeing firing from that position, it may well be that this, or something similar, was what Giles Peres recorded the two men staring at.

PADDY BROWN NEAR THE GROUP HELPING JACK DUDDY

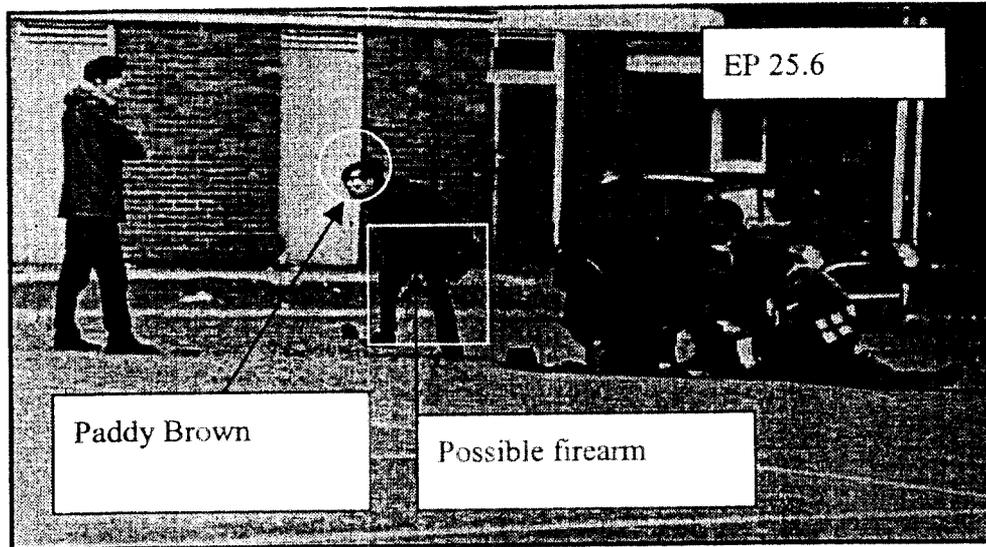
7D-147 A further sequence of photographs of the group around the fallen Jack Duddy likewise captures inexplicable behaviour that may well involve the removal and concealment of a firearm.

7D-148 Photo EP 25.6 below shows a man, apparently called Paddy Brown, who is holding what may well be a firearm. The man is plainly acting furtively. It was asserted by Arthur Harvey QC¹⁹⁹ that it can be seen on EP25.6 that Mr Brown has nothing in his hand. The Tribunal will be able to see from the best original print of that photograph that he plainly does. Additionally, his body position also shows that he is neither standing up nor crouching down; he is bending down, with legs almost straight and back bent to pick something up – an object can be seen in his hand. The fact that he is engaged in some worrying activity is also abundantly apparent from his own facial expression; from the fact that, despite all that is

¹⁹⁹ Day 078/074/12

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going on at this precise moment, it is his activity that is preoccupying both Liam Bradley (in the cap) and William Barber (standing); and from the fact that he alone scuttles off across what now appears to be a deserted car park in which all those who remain, to be seen in the photographs below, attend to Jack Duddy.



7D-149 It may be noteworthy that Fulvio Grimaldi attempted to offer an innocent explanation for what Mr Paddy Brown was doing, being the predictably ludicrous explanation that “he was trying to avoid bullets”.²⁰⁰ Patrick Brown made a BSI Statement, stating that he was in the car park, and that he thought that the man stooping “may” be him.²⁰¹ He did not address what he was doing at this point. He did not give oral evidence.

7D-150 Father Daly gave evidence that the man was not assisting the group around Jack Duddy. Edwin Glasgow Q.C. asked Father Daly about these moments in the car park:

Q. I would ask your help about the photograph you were shown by my learned friend, Mr Clarke, which was EP25.6. I wonder

²⁰⁰ Day 131/036/12

²⁰¹ AB98

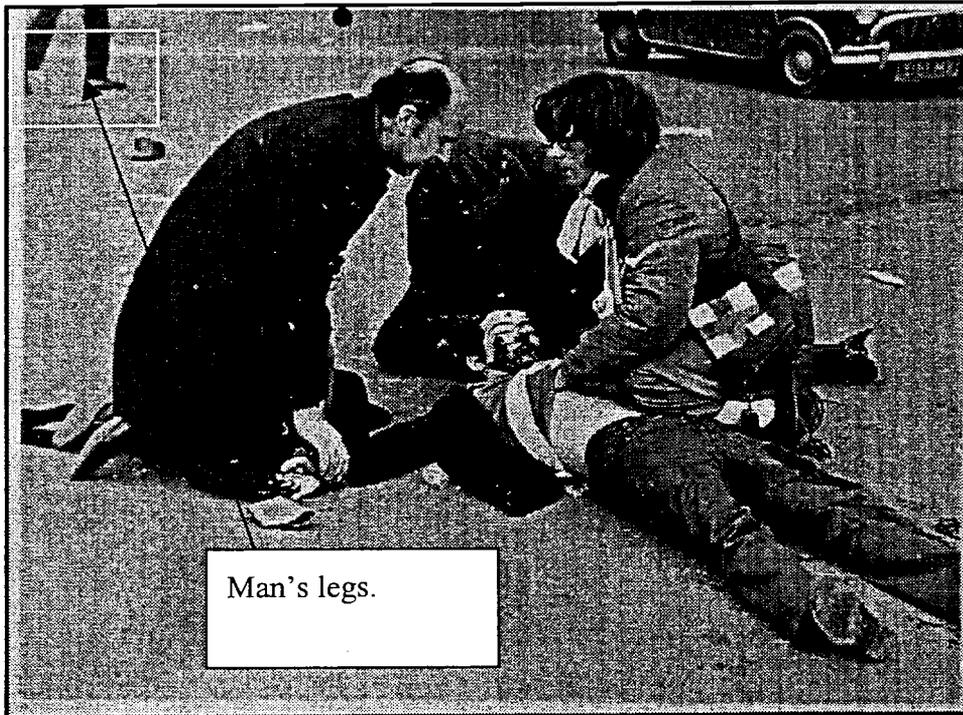
FS7-1470

whether we could have that on the screen again. I stress this is obviously of course after you have bravely come out from the protection of the wall and while you were obviously concentrating on Jackie Duddy?

A. The gentleman in the -- that is bent down there, is that?

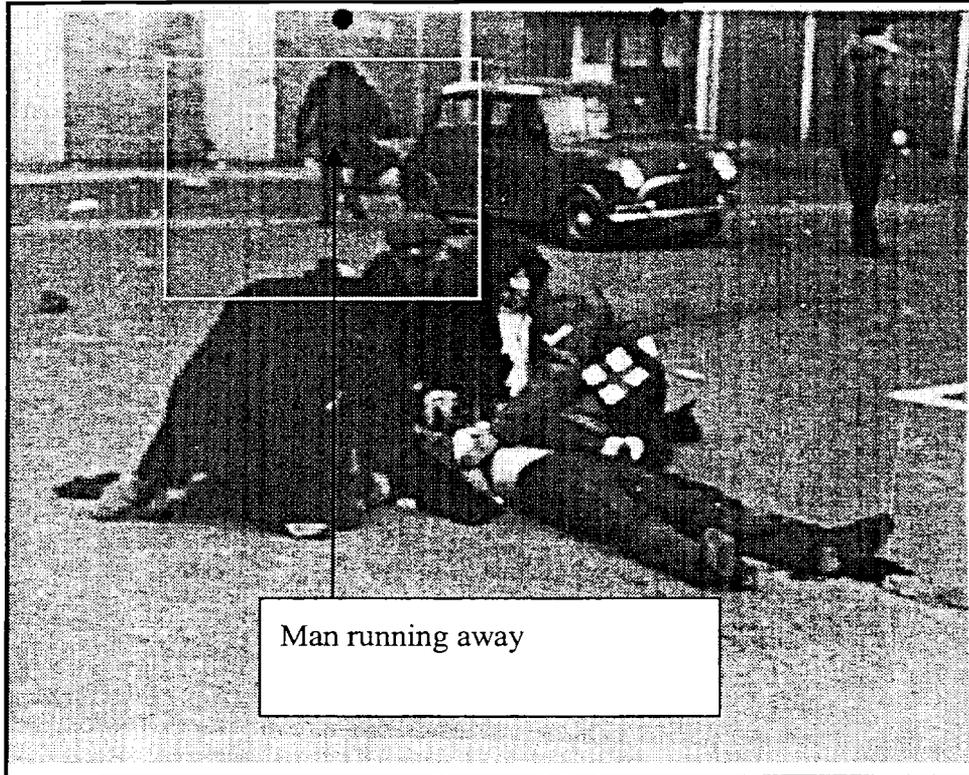
Q. All you can help about that is that he certainly was never any part of the party that helped you with Jackie Duddy?

A. No.



7D-151 Photo EP 26.12 above shows the man's legs as he moves away from the group.

FS 7-1471



7D-152 **EP 26.13** above then shows what is in all likelihood the same man as the one who was seen concealing a weapon now running away from the car park. He is wearing similar clothes to the man seen in photograph **P627** above – dark shoes, dark trousers and dark coat.

FS7-1472



7D-153 Some civilian witnesses have also identified the crouching man as Paddy Brown.²⁰² OIRA 4 also said that the crouching man is Paddy Brown, and that he died last year. Eversheds asked OIRA 4 if Paddy Brown is carrying a gun in this photograph. OIRA 4 said, "I am quite sure that he would never have had a gun. He might have supported the struggle but he wasn't a volunteer."²⁰³ Whether Mr Brown had a weapon on the day or whether he was simply removing a weapon of some kind from the car park will never be known. What is apparent is that, at a time when people were either fleeing from the gun battle that had broken out, or staying to tend those who had fallen, Mr Brown was doing neither. He was clearly removing something, and the probability is that it was a weapon, the only thing that would need removing.

²⁰² Billy Gillespie (AG33) Day 084/197; James Deenev (AD 26) Day 086/080

²⁰³ AOIRA 4.21 paragraph 33

FE 7.1473

7D-VIII CONCLUSION

7D-154 Even without considering the military evidence, it is clear that fire was directed at the two Pigs as they drove down Rossville Street. Firing, particularly directed at Pig 1, continued as the soldiers deployed.

7D-155 There was a gunman, armed with an automatic weapon, in all probability a Thompson submachine gun, in the Rossville Flats who opened fire as the soldiers were conducting their arrest operation and who continued to fire at them even after they had returned fire and individuals had been shot.

7D-156 This is the background against which the actions of the individual soldiers of Mortar Platoon fall to be judged: they had deployed to carry out an arrest operation. Having done so, and having started to make arrests, they were faced with an armed attack launched from the vantage point of the Rossville Flats, on three sides of their position. Each of them was under immediate threat. A failure to engage the gunmen would have resulted in their being killed.

FS 7. 1474

CHAPTER 7E

SOLDIER O

7E-I INTRODUCTION

7E-1 Soldier O engaged three separate gunmen in the car park of the Rossville Flats.

7E-II SOLDIER O'S FIRST TARGET – A MAN WITH A PISTOL AT A CAR IN FRONT OF BLOCK 3

7E-2 After Soldier O had arrested Mr Doherty and handed him into the custody of, in all probability, Lance Corporal 162, he “started to move back towards the vehicle. It was then that we came under fire.”¹

7E-3 This was the first firing of which Soldier O was aware and it was “like everything opening up at once”:²

*There was a minimum of 4 weapons firing there initially. I know this was not SLR or rubber bullets, it was mixed weapons and I think some if it was low velocity. I saw only one fall of shot and that was on the back corner of 36 Chamberlain Street, just on the corner 4 or 5 yards in front of one of my men. At this stage I did not notice any weapons being used except firearms, no petrol bombs or nail bombs; but we were under heavy stoning and bottling.*³

7E-4 Having embarked on the arrest operation immediately after getting out of his Pig, something happened which caused O and the soldiers under his command to stop making arrests and to take up positions of cover and to fire.

7E-5 On hearing this first firing, Sergeant O moved to the back of the Pig to “get the blokes sorted out” (as he said in cross-examination to the Widgery Inquiry) and he

¹ B487 letter C

² B467 paragraph 6

³ B467 paragraph 6

FS 7.1475

then moved to a firing position at the forward left wing of his position.⁴ The Tribunal will note (bearing in mind the points raised in Chapter 7D refuting the myth that the soldiers just stood about in the open without fear firing at civilians) that O's firing position used the Pig as cover. He was not just standing about in the open.

7E-6 At this stage Soldier O thought⁵ that he and three of his men were at the back of the Pig;⁶ two more men were in cover at the gable end of Rossville Street; two more had gone onto the Rossville Street side and one was close to the back of 34 Chamberlain Street.⁷ Having heard the firing his men spread out into firing positions and sought to identify the gunmen.⁸

7E-7 Sergeant O identified one of the gunmen behind a reddish or maroon Cortina parked in front of the wall in front of Block 3 of the Rossville Flats.⁹ The gunman was behind the wall and using the Cortina as cover.¹⁰ He was about fifty yards or metres away.¹¹ Sergeant O noticed this man in particular because he was stationary while everyone else whom he saw in the car park was moving as quickly as they could to get through the gaps between the Blocks.¹² He could only see the top half of the gunman. He was dark haired, wearing a dark jacket and dark shirt. He was pointing a pistol towards O's location with his right hand.¹³ O saw the kick of the pistol. He believed that the weapon was a semi-automatic as it fired too many rounds for a six shot revolver.¹⁴

⁴ B487 letter E

⁵ B575.113 paragraph 35

⁶ B467 paragraph 7

⁷ B467 paragraph 7

⁸ B475 letter G – B475 letter A

⁹ B440

¹⁰ B477 letter A

¹¹ B467 paragraph 8; B 477 letter D

¹² B575.114 paragraph 40

¹³ B467 paragraph 8

¹⁴ B467 paragraph 8

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7E-8 As O said in answer to questions from Christopher Clarke QC, the gunman “.... was firing in [his] direction, sir. It could have been me; it could have been one of the other men; it was just in my direction.”¹⁵ Soldier O returned fire, firing one “deliberate aimed shot, fired through sights from the shoulder” at the gunman. The shot missed and struck the car’s rear windows. Soldier O had broken the stock on his rifle whilst he had been making his arrest and this may account for his first shot having missed.¹⁶ The gunman continued to pose a threat to Soldier O and his men. He “corrected aim and fired two rapid shots”.¹⁷ He described in his SA statement what happened to the gunman:

The gunner was thrown backwards and fell out of sight behind the wall. A first aid man¹⁸ ran along the low wall from Chamberlain Street to the gunman, followed by two or three others. They were moving behind the wall. I saw them carrying him away out through the gap between Blocks 2 and 3.¹⁹

7E-9 Sergeant O believes that he hit the gunman in the chest,²⁰ but did not know if he had killed him. He said to the Widgery Inquiry, “I don’t know whether he was dead, or just wounded, or what.”,²¹ he told the present Inquiry that he thought he had hit the man.²²

7E-10 He opened fire because someone was firing at him and he was trying to save his life.²³ Once the gunman started firing Sergeant O had to return fire,²⁴ and “tunnelled down at him”.²⁵

¹⁵ Day 335/058

¹⁶ B575.114 paragraph 42

¹⁷ B468 paragraph 11

¹⁸ Not Charles Glenn – see BSI Statement B575.114 paragraph 45

¹⁹ B468 paragraph 11

²⁰ B575.114 paragraph 43

²¹ B478 letter C-D

²² Day 335/058

²³ Day 366/028

FS7-1477

7E-11 After the man had been shot, a Knight of Malta appeared and went quickly from the area around the south end of Chamberlain Street, behind the low wall,²⁶ to the gunman.²⁷ He was followed by a woman and, Sergeant O thought, three men, walking in a "crouched way, much more hesitantly and carefully".²⁸

7E-12 There are no grounds for rejecting Soldier O's account of his own actions and, to the contrary, there is independent evidence to corroborate important elements of it. In particular, the evidence before the Tribunal establishes that (1) there was a car, in all probability a red Cortina, in the position Soldier O described; (2) there was a man with a pistol sighted by civilian witnesses in the area around that car; (3) there is known to have been a man injured in that area who is not one of the known dead and wounded; (4) there was a man who was attended to by a Knight of Malta in the area and (5) a man and a woman set to the aid of a man in the area around Soldier O's target. Soldier O's evidence on each of these issues is therefore corroborated by others. It would be perverse to accept the truth of these elements of his account, while rejecting the balance of it, namely that he honestly believed that a gunman behind the car was about to fire upon him or others.

THE RED CORTINA

7E-13 Tony Morrison saw the car in front of Block 3 of the Rossville Flats. It is significant to note that his marked up map puts the car at approximately position H.²⁹ He described the car as a Viva in oral evidence, but did not disagree that that it could have been a Cortina.³⁰

²⁴ Day 366/030

²⁵ Day 366/029

²⁶ Day 335/061

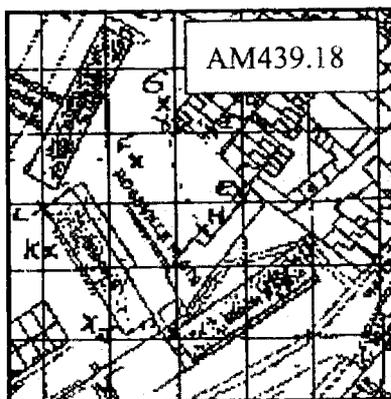
²⁷ B575.114 paragraph 45

²⁸ B575.115 paragraph 47

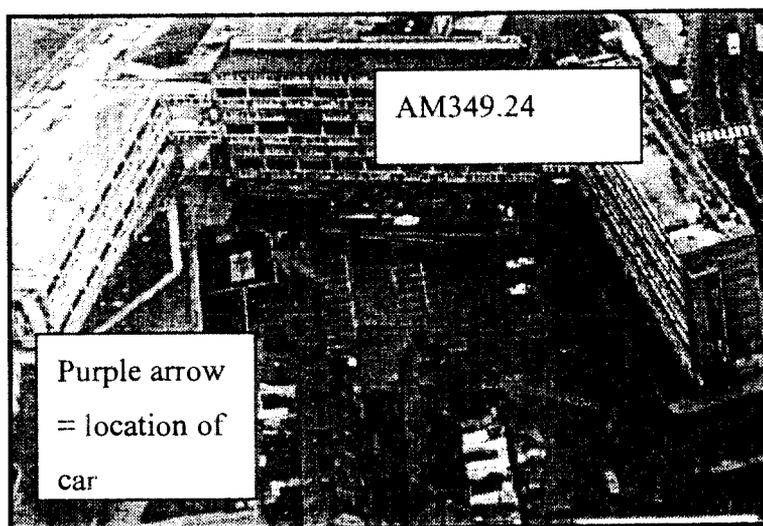
²⁹ AM439.18

³⁰ Day 184/151/01-11, saying "I was not too good on my cars on the day, you know."

FS7 1478



7E-14 Mr Morrison also marked up a photograph showing where the car was. Although a little further to the south than on his marked up map, the difference, in the context, is immaterial.³¹

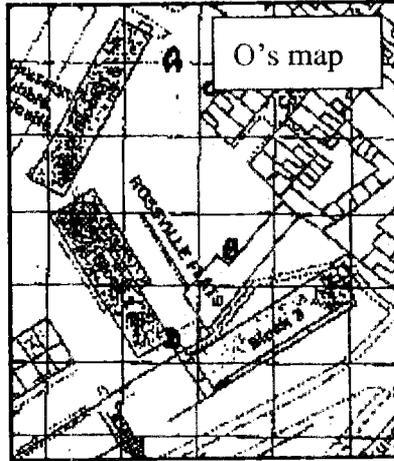


7E-15 Mr Morrison put the car, for all practical purposes, in the same place as that described by Soldier O (and marked on his plan as 'B').³²

³¹ AM349.12 paragraph 12; AM349.24; Day 184/114

³² B575.128; B575.114 paragraph 40. Soldier O has been consistent as to the location of the car. Mr McDonald's attempt to prove an inconsistency between Soldier O's marked up plan and the grid references given in his RMP statement proceeded on a mis-reading of the grid references – failing to appreciate that the first tenth of the square is 0, rather than 1. When the grid references are correctly marked on map OS 2.61 the car appears where it does on O's RMP map.

FS7. 1479



7E-16 Mr Morrison said in his BSI Statement that he saw two soldiers (one of whom was white and the other “definitely” black, rather than camouflage creamed) fire from position G on his map a number of shots at the car at position H.³³ Position G is just to the west of the south end of the Chamberlain Street wall – not far in approximate terms from Sergeant O’s position.³⁴

7E-17 One of the oddities about the car at which Sergeant O fired, whatever its precise location, make and colour may have been, is that so very few civilians admit to having seen it, despite the fact that it was obviously there to be seen at various stages by literally hundreds of people. Patrick McDaid, for example, went so far as to say firmly that “there was no cars” in that part of the car park.³⁵ Mr Morrison’s evidence is a good example of the untenable nature of such evidence; he referred to a group of civilians being terrified as a result of soldiers firing at the car. These people at least were obviously aware of both the car and the firing. This was clear from his answers in oral evidence:³⁶

³³ AM439.18

³⁴ AM 439.13 paragraph 12; Mr Morrison confirmed that point H on his map was the correct position of the car (Day 184/112/10-113/5). Although he had the car side on, pointing south towards Block 2 (Day 184/113/12-17), this is nonetheless good corroborative evidence given the passage of time.

³⁵ Day 092/129/14

³⁶ Day 184/152/20-153/04

FS7.1480

Q. And a large number of people around who could not conceivably have missed those shots hitting that car, or the shot if there was only one? Quite a graphic incident.

A. Could you repeat that, please?

Q. It was a very obvious incident; you could not have missed seeing it?

A. It was terrifying.

Q. Terrifying, and you have described a number of other people being terrified as well.

7E-18

Maureen Gerke also saw a car in the position described by Soldier O, in front of Block 3. Her evidence was clear – she saw the car and it was not one which appears in any of the extant photographs of the car park:

Q. Going on to paragraph 15, you refer to a car. I know you tell us you cannot remember any details about the car, but if you could have a look at a photograph, please, one you have seen before, AG27.14, does this look like the car that you saw?

A. No, I do not think that is the one I was referring to. The one I was referring to was further up the courtyard.

Q. Could we have on the screen, please, EP28.4A? You can see in the middle of that photograph what looks like a beige coloured mini?

A. Uh-huh.

Q. Is that in the position in which you saw the car?

A. No, as I recollect it, obviously, as I say it is a long time ago, the one I can remember was even further up the courtyard than this photograph actually shows.

Q. You mean further towards the waste ground?

A. No, I mean further towards block 3.

Q. Your recollection is that the car is somewhere towards the east where it is shown at the moment; is that right?

A. Yes, but further, further east.

Q. Even further?

A. Yes.

FS 7. 1481

Q. Would it still be on this photograph?

A. No.

Q. Is it parked immediately underneath block 3?

A. My recollection is that it was parked in that vicinity, yes.

Q. Can you give us any idea at all of its description?

A. Absolutely none.³⁷

7E-19 Brian McGhee also saw the same car and witnessed shots being fired and ricocheting off the ground, although none hitting it.³⁸

7E-20 Even if Sergeant O and those civilians were coincidentally mistaken as to the precise location of the car, and there has plainly been no collusion with Sergeant O, there was a car in the south eastern corner of the car park of which few civilians speak. Even if the car clearly shown in EP28.3A did not move from the position in which it plainly was when Mr Tucker took this photograph, there clearly was a car there.

A MAN WITH A PISTOL WAS SEEN CLOSE TO WHERE SOLDIER O SAW THE GUNMAN

7E-21 As Chapter 7D demonstrates, there were a number of gunmen operating in the car park of the Rossville Flats on Bloody Sunday. Two important factors must be borne in mind when considering the evidence of particular gunmen sighted by particular soldiers: first, there has been a demonstrable reluctance on the part of many civilian witnesses to give evidence about gunmen they saw on the day and, secondly, the gunmen operating on Bloody Sunday were not static. The importance of this latter factor is illustrated by Soldier O's first target.

7E-22 Soldier 030, a gunner in 22 LAD, was positioned on the City Walls just below Charlie OP.³⁹ He heard a number of low velocity shots and saw:

³⁷ Day 133/087

³⁸ Day 089/174

FS7.1482

...a youth who was holding what I could clearly see was a pistol from which I could see puffs of smoke coming in the gaps between Blocks 2 and 3 of Roseville (sic) Flats. I could not shoot him as there was a crowd of about 10 to 15 people gathered round him. I could see quite clearly that he was wearing a brown jacket, faded blue jeans and he had long dark well kept hair.⁴⁰

7E-23 Soldier 030 said in oral evidence to the Widgery Inquiry that the man was inside the courtyard, kneeling behind the wall.⁴¹ He then saw the body of a civilian lying on the ground who was not the gunman.⁴² He then heard Thompson automatic fire.⁴³ He said, as he confirmed in oral evidence to the Inquiry, he heard SLR fire after the first set of pistol shots.⁴⁴

7E-24 Soldier 030 marked on a photograph the position as best he could recall it of the gunman.

Q. Perhaps we could save that as B1612.031, the red arrow identifies or indicates the walls, the yellow arrow is Soldier 030's best approximation of the position of the first gunman he saw on 30th January 1972. Would that be an acceptable description, Soldier 030?

A. As much as I can remember.⁴⁵

7E-25 Gerard Elias Q.C. established, using Video 7, that it was possible for Soldier 030 to see some way through the gap as far as the brick wall.⁴⁶

7E-26 Whilst the pistol man that Soldier 030 was not in the same position as that described by Sergeant O at the time that Sergeant O saw the gunman fire, Soldier 030 nevertheless provides important corroboration of the fact that there was a man firing a pistol in that vicinity. He was a matter of yards away from where Soldier

³⁹ Day 366; Day 085/086

⁴⁰ B1612.1599 paragraph 3

⁴¹ B1604 letter B

⁴² B1604 letter C-E

⁴³ B1604 letter E-F

⁴⁴ B1611 letter A-B; Day 336/120

⁴⁵ Day 366/118

O saw his target and it may well be that he was the pistol man at whom Soldier I later fired. It was not, and cannot be, suggested that there was collusion between Soldier 030, of 22 LAD, and Sergeant O.

AN UNKNOWN MAN WAS SHOT NEAR THE RED CORTINA

7E-27 Of the known dead and injured in Sector 2, the only casualties that were in the location of the low wall in front of Block 2, and the area around the Gap between Blocks 2 and 3, were Michael Bradley and Patrick McDaid. Neither, however, was shot by Soldier O and Patrick McDaid was not shot by a 7.62 m lead bullet.⁴⁷ There was a third, as yet unidentified casualty: the gunman behind the car.

7E-28 This man was seen by Eamon Baker after he had been shot. Mr Baker was one of the rioters at Barrier 14. He ran down Chamberlain Street, seeing a confrontation between soldiers and youths at the Eden Place alleyway on his way,⁴⁸ and went into the car park. He ran up to a group around Jack Duddy, who was already lying on the ground.⁴⁹ After leaving that group, he ran along the low wall in front of Block 2 for the Gap between Blocks 2 and 3.⁵⁰ Just ahead of him was a man who said, "I'm hit" and fell to the ground. Mr Baker's identification of this man as Michael Bradley⁵¹ is wrong: the man Mr Baker saw (1) was in a materially different location from that in which Mr Bradley had been shot; (2) was wearing different clothes from Mr Bradley; and (3) had been shot in the back.

7E-29 Eamon Baker said that the man he saw seemed to slump to the ground in slow motion at GR L18: position B on the map:⁵²

⁴⁶ Day 366/124-129; Video 7 at time counter 21.25.12

⁴⁷ See Chapter 7O - Patrick McDaid.

⁴⁸ AB2.2 paragraph 16, AB2.3 paragraph 18

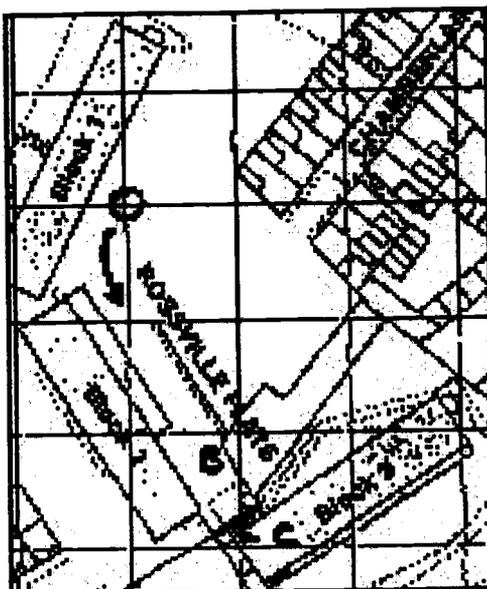
⁴⁹ AB2.3 paragraphs 18-19

⁵⁰ AB2.3 paragraphs 22-23

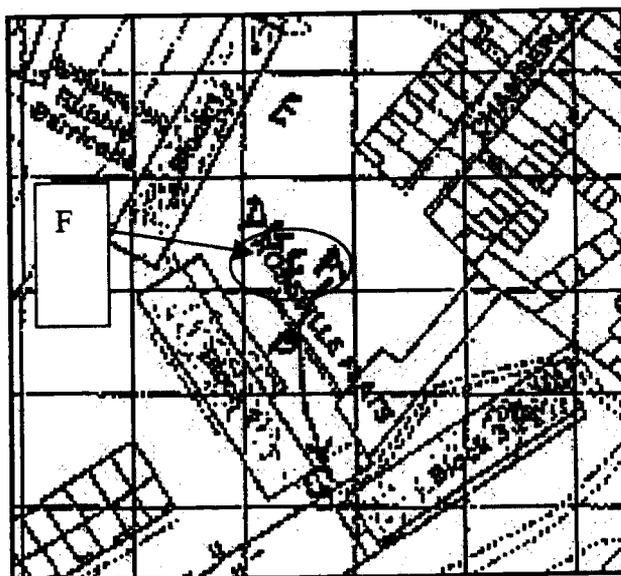
⁵¹ AB2.4 paragraph 24

⁵² AB2.6

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7E-30 This is not where Michael Bradley said he was when he was shot. Furthermore, when Michael Bradley was shot he was standing not behind the low wall in front of Block 2 but “six feet in front of [it].”⁵³ Michael Bradley marked his position when he was shot as being at approximately point F on the map:⁵⁴



7E-31 Clearly the man Mr Baker saw was not Michael Bradley.

⁵³ AB66.5 paragraph 16

⁵⁴ AB66.29; AB66.5 paragraph 16

FS7-1485

7E-32 Moreover, the man Mr Baker saw shot was wearing a big dark coloured coat that was either black or blue.⁵⁵ Certainly by the time that Michael Bradley was being put in the ambulance he was not wearing a big dark coat, as is apparent from the photograph of him on the ambulance trolley:⁵⁶



7E-33 Finally, the injury sustained by the man that Eamon Baker saw shot is not consistent with Michael Bradley's injury. Mr Baker thought that the man had been shot in the back.⁵⁷ Michael Bradley was shot in the arms. Christopher Clarke Q.C. asked Mr Baker how he now knew the man to be Michael Bradley. The witness answered that he thinks it was "roughly from that moment", because he grew up with him as a person around the Creggan, although he did not know him personally.⁵⁸ The lingering uncertainty as to the man's real identity that attaches itself to this, rather equivocal, answer becomes even more persistent when Mr Baker explained that the man was wounded in the shoulder.⁵⁹

Q. Where did you think Michael Bradley had been hit?

A. I thought he had been hit in the, in the -- I thought he had been hit in the back at the top left-hand shoulder.

⁵⁵ AB2.4 paragraphs 25-26

⁵⁶ AB66.16

⁵⁷ Day 096/140

⁵⁸ Day 096/136-137

⁵⁹ Day 096/140

F57-1486

Q. You thought he had actually been hit in the shoulder?

A. Yeah. I believed he was shot in the back. I have been informed since that is inaccurate, but that would be my belief.

7E-34 Mr. Clarke pressed Eamon Baker on the likelihood that he saw Michael Bradley, rather than another, shot:⁶⁰

Q. You have a recollection, do you, of seeing him fall to the ground?

A. I do, yeah, I do.

Q. And of his being somebody who previously had been running to the same gap as you were; you have a recollection of that, do you?

A. I have a recollection of being stood around Jack Duddy and an utter sense of people shouting and roaring and of confusion and of people wanting to help and a sense of panic and then a sense of more shots being fired and running -- running, as you put it, "like hell", to get away.

Q. Did you have a sense that he, Michael Bradley, was running like hell?

A. In my recollection that is my sense and --

Q. Go on?

A. I know that what I am saying and maybe what actually forensically happened do not quite coincide.

Q. They may not, for this reason: Michael Bradley has given evidence to this Tribunal?

A. Yeah.

Q. Were you here when he gave evidence?

A. No, but I read --

Q. You have read about it. Broadly speaking, his recollection was that he went out of the gap between blocks 2 and 3 and came back in again when he learnt that somebody had been killed and that he was actually shot when he was in front of the wall that runs

⁶⁰ Day 096/137-139

FS7.1487

parallel to block 2 and that he was shot after shouting obscenities at the soldiers in front of an army vehicle at the entrance to the car park and making a gesture at them like this (indicating), which is rather a different account from yours, which is of somebody running in front of you and then gasping out and saying that he was hit. Do you think that you may be mistaken about the details of how Michael Bradley came to fall and was hit?

A. I think I may be mistaken, but what is very clear to me was that right in front of me is a man who is saying, "I am hit, I am hit," and what is also very clear to me is it is a man who is unarmed and, um, it is clear to me that I am then involved with a number of people in trying to help him and get him round, away, as we would have seen it, from the line of fire.

7E-35 Eamon Baker helped, with others,⁶¹ to get the man around the corner.⁶²

7E-36 The man who Mr Baker saw was not Michael Bradley; nor was he Michael Bridge either. Michael Bridge was shot in the leg and then carried to Chamberlain Street. Similarly, the man cannot have been Patrick McDaid as he was not hit by a lead bullet.⁶³

A KNIGHT OF MALTA IN THE AREA OF THE GUNMAN

7E-37 Sergeant O gave evidence of his gunman being attended to by a Knight of Malta and there is independent evidence of a Knight of Malta (Eddie McLaughlin) in the vicinity of Block 3 and the Gap between Blocks 2 and 3. As Eamon Baker and Pius McCarron's brother were leaving the car park to return to Joseph Place, Eamon Baker saw Eddie McLaughlin heading through the gap between the two blocks. The witness heard people shouting, "There are people dying out here."⁶⁴

7E-38 James Lynch was sheltering at the Chamberlain Street wall when he saw a young girl, wearing a white red cross coat, making her way along a wall along the north west side of Block 3. She was crouching and crawling her way out over to a body

⁶¹ Day 096/133

⁶² AB2.4 paragraph 27

⁶³ See Chapter 70 - Patrick McDaid

FS7 1488

of a young man lying face down at GR 16. Mr Lynch thought that she came from the alleyway between Blocks 2 and 3 Rossville Flats.⁶⁵ In oral evidence Mr Lynch said that the girl crawled from Block 3 across the car park to the body, and not along the wall. He remained sure that she was coming from the direction of Block 3.⁶⁶

A MAN AND A WOMAN TENDED TO A MAN IN THE AREA AROUND SOLDIER O'S TARGET

7E-39 Sergeant O described a man and a woman going to the aid of the injured gunman behind the car parked in front of Block 3. These individuals were seen by others.

7E-40 Thomas Barr recalled seeing a couple coming out of the Rossville Flats and making for a car which had been shot at. He described in his BSI Statement how he saw a car parked "by the playground about 10 yards out from the retaining wall and was on its own."⁶⁷ Mr Barr then stated that a "youngish man in his mid-to late 20s or early 30's and a girl with black hair" approached the car from the Rossville Flats.⁶⁸ Mr Barr thought they were trying to drive the car away and thought them "mad" as he had "realised that everybody's life was at risk from the soldiers."⁶⁹

7E-41 Maureen Gerke, observing from the same flat in Block 3 also recounted a man and a woman approaching the car in front of Block 3:

Q. You say that a couple approached the car. Do you remember them or anybody moving it?

A. I think they were trying to move it, I think that is obviously what they wanted to do, they wanted -- whether at the wanted to get home or what they wanted to do, but my recollection is that they

⁶⁴ Day 096/144-145

⁶⁵ AL24.3 paragraph 17. It seems that, likewise, she may also now be mistaken as to where the girl came from, but the fact remains that a young woman was seen attending to the injured man.

⁶⁶ Day 101/097-98

⁶⁷ AB117.5 paragraph 29

⁶⁸ AB117.5 paragraph 28. Soldier O described the two individuals as coming from Chamberlain Street and it may be that, over 30 years after the event, Mr Barr is mistaken as to from where the individuals came.

⁶⁹ AB117.5 paragraph 28

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were trying to get to their car to sort of take their car away and sort of get out of the area.

Q. Did you see the car moved at all?

*A. No.*⁷⁰

7E-42 In the circumstances the couple must have had a compelling reason to head towards the car and the inherent likelihood is that they were the couple whom Soldier O described as going out to assist the injured man.

7E-III SOLDIER O'S SECOND TARGET – M1 CARBINE BLOCK 2

7E-43 After Sergeant O had fired at and, he believes, hit the gunman behind the car he saw another fall of shot that landed between the Pig and the Chamberlain Street wall. He saw the flash of a weapon on the lower of the two enclosed passageways joining Blocks 2 and 3 of the Rossville Flats. He saw a gunman at the Block 3 end with a weapon like an M1 carbine or small rifle.⁷¹ He told the Widgery Inquiry that the gunman was "triggering it off fairly fast."⁷²

7E-44 Sergeant O explained in his BSI Statement that he classified an M1 carbine as a "small arm,"⁷³ hence his description in his RMP Statement of coming under "constant small arms fire."⁷⁴

7E-45 Having located the gunman Sergeant O fired one aimed shot at him. His first shot missed because, he thought, of the broken stock on his rifle. He fired two more shots and thought that he had hit the gunman in the head (or shoulder)⁷⁵ from a range of about 75 metres.⁷⁶ The man was flung backwards against the concrete

⁷⁰ Day 133/087-088

⁷¹ B468 paragraph 12; B479 letters F-G; B575.115 paragraph 49

⁷² B478 letters F-G

⁷³ B575.123 paragraph 94

⁷⁴ B441-442

⁷⁵ B575.115 paragraph 51

⁷⁶ B468 paragraph 12; B575.115 paragraphs 50-51

FS 7-1490

wall of the balcony behind him.⁷⁷ Sergeant O is confident that he hit the man as his actions were consistent with his having done so.⁷⁸

7E-46 Sergeant O then saw some people moving along the veranda of Block 3, crouching. His impression was that they were going to the area where the body had fallen; he told Christopher Clarke Q.C. that his "natural conclusion" was that they were moving the body away.⁷⁹

THE GUNMAN WITH THE CARBINE

7E-47 There is considerable evidence of an automatic weapon being fired from the Flats at the soldiers: see Chapter 7D, above. Furthermore, there is independent corroboration for O's claim that he fired at a gunman with an M1 carbine on the balcony of the Rossville Flats: the gunman himself was seen firing at the soldiers before he was shot and his wounded body was seen after he had been shot.

7E-48 Billy Gillespie⁸⁰ was interviewed by the Sunday Times Insight team who recorded that:

...one civilian, whose name we agreed to withhold, told us that he did see someone with a carbine firing at the soldiers from the fifth floor of the flats. The man fired seven shots and three were returned at him. This gunman corresponds exactly with the man at whom Soldier O said he fired three shots and hit.⁸¹

7E-49 Peter Pringle was the Insight journalist who interviewed Billy Gillespie. Christopher Clarke Q.C. asked him about the accuracy of the contents of the note:

Q. Could we go to M68.150. These are, I think, the manuscript notes, are they not, of your interviewing Billy Gillespie?

A. Yes, in my notebook.

⁷⁷ B335/065

⁷⁸ Day 335/066

⁷⁹ Day 335/066-67

⁸⁰ AG 33; S260; L213

⁸¹ L213

Q. In your notebook, yes. If we look on the right-hand side we can see you have written, please correct me if I have it wrong: "5th floor flats. Man with carbine. Fired," was it "two" originally and "seven" has been substituted?

A. That is what it looks like.

Q. "Fired seven shots and then three shots fired at him." Does the circle round the full stop signify anything?

A. No.

Q. "By green sheeting," does that mean anything to you?

A. I am afraid I cannot help you there.

Q. Can I ask you this question generally: can we take it that the notes you took in your notebook recorded, to the best of your ability, what you understood the people were saying to you?

A. Yes.

Q. Can we take it that the typescript notes, insofar as they were not actual transcriptions of tapes, again represented what you understood the people to have said to you?

A. Yes.

Q. Did you leave anything out of those notes for any reason?

*A. Not that I recall."*⁸²

7E-50 Billy Gillespie presently maintains that he (a) saw no gunman, (b) would not have known what an M1 carbine looked like and (c) did not speak to the Sunday Times.⁸³ His denials are not, in our submission, credible, and the Tribunal may wish to consider why he has attempted to make them. Christopher Clarke Q.C. went through the detail of the Sunday Times' archive note with Mr Gillespie when he gave oral evidence; the striking similarities between Mr Gillespie's

⁸² Day 190/041

⁸³ AG 33.4 paragraph 23

FS 7. 1492

account and that recorded in the Sunday Times note give the lie to his current denials.⁸⁴

Q. Let us have a look at it together. What it records, is this: "Billy Gillespie, 22, brother of the above," were you 22 in April 1972?

A. 21.

Q. When is your birthday?

A. 6th May -- 6/5/50

Q. Just about to be 22. Your brother was Danny Gillespie?

A. Yes.

Q. Was he 31, or thereabouts?

A. I would not even know.

Q. "Helped to carry Mrs Deery into 33 Chamberlain Street ..."

A. Yeah

Q. You did, or help to carry her?

A. I did carry her, yeah.

Q. "... with Michael Bridge." Well, he did not carry her into Chamberlain Street, but he ended up there himself, did he not?

A. Yes.

Q. "Went with Bridge into the car park between the flats and saw Duddy shot." You went into the car park between the flats?

A. Yes.

Q. Did you go with Michael Bridge?

A. I cannot recall going with Michael Bridge and I cannot recall young Duddy getting shot. All that I know, there was people all running, people crouching down, people taking cover and, as I say, there were still some young 'uns there gathering stones to go ahead and fight on.

⁸⁴ AG 34.17

FS 7. 1493

Q. "He threw some stones at the soldier on the corner of the flats"; that is true, is it not?

*A. Yes.*⁸⁵

7E-51 It is inherently improbable that a senior journalist would create a note which contained otherwise accurate information but which also contains, on Mr Gillespie's account, total invention. Edwin Glasgow QC put this point to Mr Gillespie:

Q. I have to ask you, simply because it is only proper and right that I should, because I am going to comment on it -- in other words, I am going to say something about it probably in two and a half year's time -- and you should have the opportunity of dealing with what I am going to say so we can make a note of it and I will remind people of what you said, if you want me to, in answer to my comment. I shall be saying: it is a very odd thing that this senior journalist has a note with Mr Gillespie's name and age and a lot of accurate information, and appears to have invented a story about a gunman; can you help?

*A. Oh, I have no recollection at all of it, no, no recollection.*⁸⁶

7E-52 It is simply not credible that this account: (i) was coincidentally corroborative of O's account; (ii) was given by mistake or with the intention of persuading the Sunday Times that there was a civilian gunman in a position where there was none; and / or (iii) was inaccurately recorded by Mr Pringle.

THE GUNMAN AFTER HE WAS SHOT

7E-53 Soldier O believes that he hit his target and Eileen Collins saw the injured gunman outside her flat in Block 2 of the Flats.

7E-54 Eileen Collins was returning from her mother's (Mrs Shiels') house after helping to treat Donaghy and Johnson and having seen William McKinney. She lived in a Flat on the first Floor of Block 2.

⁸⁵ Day 082/162-164

⁸⁶ Day 084/192

FS7.1494

7E-55 In her 1991 "Talking in Derry" interview tape with Tony Parker she stated that she saw a body covered in blood on the Rossville Flats balcony outside her door:

Where we lived, my flat was on the first floor of the block, so I went round and up the back staircase to it. Inside the children were all safe ... all of them wanted me to let them out on the balcony and watch what was happening. I thought "Well I'll look out of the windows first to see if its safe. And still to this day I can't tell what I saw without the horror of it coming back to me. Right there outside my window lying on the balcony was a dead man, crumpled up with blood all over him. I straight away pulled the curtains together and told the children they weren't to open them: then I ran out of the door and along the corridor, to go down and see if I could fetch someone to help. At the bottom of the of the staircase at the front was another body lying. I had to step over it to get out, and it was someone I recognised: it was young Tony Doherty's father, who I knew.

Its still not easy for me to talk about it I'm sorry, I can't help crying, do you mind if we stop and I have a cigarette?

Death's a terrible thing and you can't mock it. If you're Irish you have to love Ireland don't you, love her more than you hate her? But sometimes it's hard to do, its very hard.⁸⁷

7E-56 Eileen Collins, like Billy Gillespie, now maintains that she saw no body and that she has no recollection of talking to Tony Parker.⁸⁸ Mrs Collins' attempt now to resile from her previous account is simply not credible. There was, in 1991, no reason why she or Mr Parker would simply have invented the account – which is what her evidence amounts to.

7E-57 Taken together with Billy Gillespie's evidence, Eileen Collins' evidence strongly corroborates Soldier O's account of his second engagement. Perhaps that is why both are keen to seek to retract their previous accounts.

7E-58 The strength of the corroborative evidence relating to Soldier O's second engagement is important for this reason: despite widespread community amnesia

⁸⁷ AC72.11-12

⁸⁸ Day161/120-122; Day 161/151-154; Day 161/167 -169

FS7.1495

and (in some case) the active suppression of evidence, Soldier O's account of his second engagement has been substantiated, by independent evidence which might generally be regarded as 'against interest'. In short, Soldier O's account of his second engagement has been shown to be true – he did engage and hit a man firing at the soldiers with a carbine from the Rossville Flats. If his account was, on this occasion true, the Tribunal should look even more carefully at the attempts similarly made to discredit the rest of his account?

7E-IV THE ACID BOMBER IN THE BLOCK 1

7E-59 After firing at his second target Sergeant O described there being a lull in the shooting. He went to the rear of the Pig and received reports from some of his men of acid bombs being dropped from the balconies of the Rossville Flats. Maureen Gerke saw such activity and the Tribunal will recall her evidence of seeing people throwing acid from the roof of the Flats.⁸⁹ Despite her claims more recently in her BSI Statement and in her oral evidence that she could not remember that,⁹⁰ she said in oral evidence that she would not have made that up.⁹¹

7E-60 Soldier T gave evidence to Lord Widgery of seeing, from behind Pig 2, bottles being thrown from the Flats. He knew from his in experience in Belfast⁹² that because of their "distinctive smell" some of them contained acid.⁹³

Q: How were you going to determine whether a bottle was an acid bomb or just a bottle?

A. You can see most bottles coming down: they are all empty. This one contained the same liquid as what the others did ... it was greenish coloured liquid in the bottle.⁹⁴

⁸⁹ AG 27.8

⁹⁰ Day 133/ 084 -085

⁹¹ Day 133 /107/14 – 108/06

⁹² B744 letter E-G

⁹³ B735; B741 letter C-E

⁹⁴ B744 letter C

FS 7. 1496

7E-61 Soldier T said in his SA Statement that he had not seen any of the people who were throwing acid bottles but "had I done so I would have taken aimed shots at them".⁹⁵

After this my platoon sergeant O, who was behind me, told me to open fire if I saw anybody throwing acid from the flats. At this time a bottle broke very close to me and splashed my trousers up to the waist. I was definitely sure from where the bottle had come. It came from one of the verandahs of one of the flats very nearby to the position where I as. After this bottle had been thrown at me I saw the man who had thrown it go back into the flat and I was waiting for him to come out again from that general area to see if he had another bottle with him I could see that this man was wearing a white shirt with a dark suit and a tie the same colour.⁹⁶ He came out on to the verandah again and directly he came out I saw him throw a bottle. This bottle landed very close to me at the rear of the vehicle and also splashed me with acid ... The man could have come from anywhere within the Flats. What I saw the man do was to come quickly up to the wall of the verandah which reaches as high as the waist and throw the bottle in my direction with a sideways movement of the arm rather than overarm. I fired one aimed shot at this man in fact before the bottle I have described hit the ground. The man stood by the pillar apparently waiting to see where the bottle would land when I fired the second aimed shot at him which hit the wall a few feet above his head. As a result of this he disappeared.

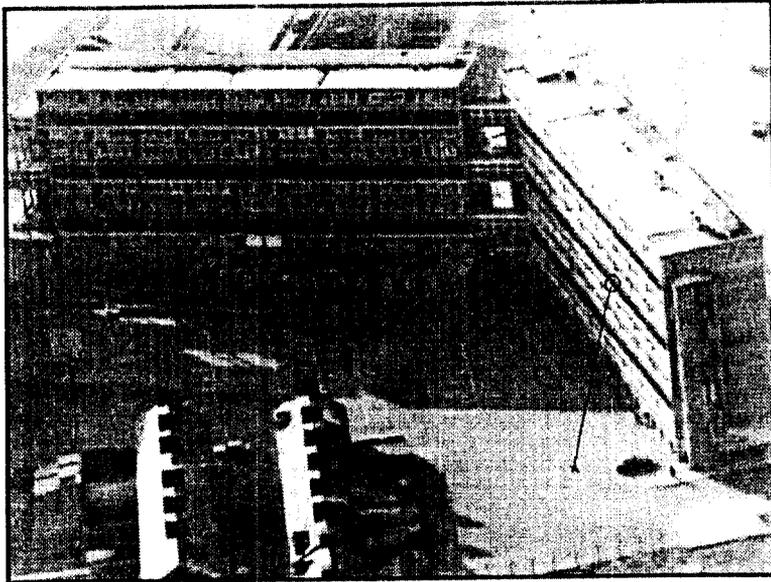
7E-62 Soldier T's marked up photograph shows the respective positions of T and the acid bomber:⁹⁷

⁹⁵ B735

⁹⁶ Sergeant O gave the same description: B468 paragraph 14; B575.117 paragraph 63

⁹⁷ B747

FS7-1497



7E-63 Sergeant O, in his BSI Statement marked up a photograph with his best recollection of the approximate location⁹⁸ of where the acid bomber was.⁹⁹



7E-64 Sergeant O's attention too was drawn to the stone and bottle throwing and he too smelt acid.¹⁰⁰ He described what happened to Lord Widgery:¹⁰¹

⁹⁸ B575.117 paragraph 63

⁹⁹ B575.136

¹⁰⁰ B468 paragraph 14

¹⁰¹ B480 letter E-G

FS7-1498

When I had finished engaging the second gunman I moved to the back of the vehicle. I could smell the acid then. Apparently one had already been thrown.¹⁰² I looked up and there was an acid bomb coming over the verandas there. They are very distinct when they do come, the colour of them. They are a creamy colour, all the ones that I have seen, at least. They have got screw on tops whereas your normal bottle throwing, a milk bottle, like that, hasn't got a screw on top. Wherever it came off, I shouted it was an acid bomb. It struck the ground in front of me, but in between the acid bomb and myself there was one of my soldiers. Soldier T was standing between me and the acid bomb.

Q. Was he affected by that acid?

A. It splashed him up his legs.

Q. Did you give him an order?

A. I said, if any more acid bombs are thrown from that area, I told them to return fire on it."

7E-65 Sergeant O turned to go back to his original position. He heard Soldier T fire two rounds and¹⁰³

....at the same time I heard the busting of a bottle. We turned round and again it was an acid bomb that came off the block.

7E-66 Soldier T did not hit his target:

Q. As far as you could tell, did it [the first round] strike him?

A. No.

Q. So what did you do?

A. When I saw that the first round didn't hit him, I fired another one. The first one must have alarmed him, because he stepped back, and I saw the round hit the roof of the building.

Q. Afterwards did you see he come out again?

A. No.¹⁰⁴

¹⁰² Sergeant O was told so by Soldier T; see BSI Statement B575.117 paragraph 61

¹⁰³ B480 letter G

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7E-67 T described how he then felt a tingling in his leg. He poured water on his trousers to weaken the acid solution and changed his trousers. He eventually gave them to Warrant Officer Wood of the SIB and signed what would appear to be an exhibits label.¹⁰⁵

7E-68 Soldier R was also hit by acid. When he gave oral evidence to the present Inquiry, R no longer had a recollection of an acid bomb splashing a few yards away from him; nor was he any longer able to recall Sergeant O giving orders to Private T to fire at the acid bomber.¹⁰⁶ However Soldier R's 1972 account records that he was struck by acid. He recalled there being holes burnt in his denim trousers and he felt a burning sensation on his legs.¹⁰⁷ He described in his SA statement how he was caught by acid bombs dropped from above the soldiers:¹⁰⁸

Just after I fired this shot acid bombs were dropped from the middle floor of block 1 above me. The first one, which was a bottle, hit the ground about a yard from me and the acid splashed on my trousers. Sgt O shouted something like "that's acid, look out" and I stepped back. Then a second bomb came down and splashed me some more. As the second bomb was thrown I saw one of our platoon (I think T) take aim and fire at the bomber. At the time the acid bombs went off there were no civilians in the area between the Pig and the wall of block 1.

7E-69 He was asked about the acid bombs at the Widgery Inquiry:¹⁰⁹

Q. An acid bomb came from above?

A. Yes.

Q. What happened?

A. It struck me against the leg, sir. I stepped back for cover, and then my Platoon Sergeant said something like "It's acid, look out".

¹⁰⁴ B742 letter F

¹⁰⁵ B736

¹⁰⁶ Day 337/040

¹⁰⁷ B691.003 paragraph 16

¹⁰⁸ B691.016 paragraphs 5-6; B688 letters A-G

¹⁰⁹ B679 letter B

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T turned round and took aim. Another acid bomb was on its way down. It was T at that time I presume because I was taking off and once more I was hit by the acid as it struck the floor.

- 7E-70 Sergeant O recalls seeing Soldier R and that Soldier R's trousers were removed. He also remembers water being thrown on R's legs.¹¹⁰
- 7E-71 Furthermore, a number of other Mortar Platoon soldiers saw that at least one of their colleagues had been struck by acid. Lieutenant N saw two of his men whose clothes had been affected by acid burns. He recorded that, "one had some physical discomfort but neither were in serious pain".¹¹¹ He still retained a memory of seeing the two casualties when he gave his oral evidence to the present Inquiry.¹¹²
- 7E-72 Soldier 019 recalls seeing Soldier T close to a Pig and someone cutting T's denims off.¹¹³ INQ 1579 recalls the smell of acid bombs and he was aware that one man had burns on his clothing but cannot recall who that was.¹¹⁴ Soldier 006 remembers the fact that Soldier T was hit by acid but cannot remember the circumstances or being a witness to it actually happening.¹¹⁵ INQ 1918 recalled either witnessing or being told that Soldier R was hit by acid¹¹⁶ and Soldier 112 recalls R's uniform being "in tatters and it seemed as if he had been struck by an acid bomb."¹¹⁷ Major Loden confirmed in oral evidence to the Inquiry that he recorded in his Diary of Operations the fact that two men had been struck by acid.¹¹⁸

¹¹⁰ B575.119 paragraph 71

¹¹¹ B399

¹¹² Day 323/110

¹¹³ B1494.004 paragraph 19

¹¹⁴ C1579.4 paragraph 30; Day 336/168

¹¹⁵ B1377.008 paragraph 36; Day 334/084

¹¹⁶ C1918.003 paragraph 15; Day 342/104

¹¹⁷ B1732.005 paragraph 20

¹¹⁸ Day 346/019

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7E-V SERGEANT O'S THIRD ENGAGEMENT

7E-73 When Sergeant O returned to the front of the Pig, he saw a group of people coming down to ground level from Bock 3 carrying a body which he assumed to be the body of the gunman he had hit up on the balcony.¹¹⁹ The body was taken through the gap between Blocks 2 and 3. He then, "almost instantaneously,"¹²⁰ came under fire from a gunman that he saw step out from the gap, bring a weapon up to his shoulder and fire.¹²¹ O assumed that the weapon was an M1 carbine,¹²² indeed the same weapon that had been fired from the balcony.¹²³

7E-74 Sergeant O fired two aimed shots at the gunman and "he either jumped or fell back." Sergeant O stated that he "cannot say if I hit him".¹²⁴ After this incident, Sergeant O recalls, "things appeared to quieten down."¹²⁵

7E-75 It would appear that this exchange of gunfire, later on as it was in the sequence, would have taken place at about the time when the last civilians were exiting through the Gap between Blocks 2 and 3, and when Mr Doherty and the "jacketless man" / Friel were both simultaneously looking, with obvious concern, at the place from which this gunman fired.

7E-VI CONCLUSION RELATING TO SOLDIER O'S ENGAGEMENTS

7E-76 Soldier O's accounts, which have been given to different people, in different circumstances, in and since 1972 have been consistent over 30 years. There is independent corroboration for important elements in his evidence. In particular, there is clear evidence that there was a gunman on the balcony of the Rossville Flats firing at the soldiers with an M1 carbine. There is also clear evidence of an

¹¹⁹ B575.118 paragraph 66

¹²⁰ B575.118 paragraph 67

¹²¹ B469 paragraph 15

¹²² B480 letter A, C

¹²³ B575.118 paragraph 67

¹²⁴ B469 paragraph 15; B480 letter C-D; B575.118 paragraph 67

¹²⁵ B575.118 paragraph 67

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injured man being seen in the location that Soldier O indicated he saw his second target fall.

7E-77 In the circumstances, it is clear that Soldier O's account of his second engagement is independently corroborated in a number of important respects. In order to reject his account, the Tribunal would have to determine that, not only was Soldier O lying for the past 30 years (a conclusion for which there is no evidence at all), but also that Billy Gillespie and Eileen Collins were also, for no discernable reason, lying when they spoke to Peter Pringle and Tony Parker, respectively.

7E-78 Moreover, if Soldier O's account of his second engagement is true, the Tribunal should consider with even greater care what possible basis is therefore rejecting the balance of his evidence? True, there is less corroborative evidence, but were it not for the existence of incontrovertible journalists' notes of statements, the makers of which are now prepared to deny under oath, there would be little direct corroborative evidence of his second engagement. In short, given the evidence available to the Tribunal, it is much more likely that potentially corroborative evidence of gunmen being seen operating in the south east corner of the car park has been suppressed than that Soldier O's account is inaccurate.

7E-79 Soldier O has been consistent over a very long period of time in recounting his actions that day in his own words, from the Sergeants' Mess interview,¹²⁶ to the Widgery Tribunal, to Peter Taylor, in his BSI interview and in oral evidence to the Tribunal

7E-80 Soldier O did not shoot any of the known dead and injured. He opened fire in circumstances where he honestly believed himself and his men to be under lethal threat. He should not, in our submission, be criticised for having done so.

¹²⁶ Nb see the correct version of the transcript as annexed to O's BSI Statement at **B575.125** **paragraph 102** and **Appendix 23** at **B575.165** as opposed to an incorrect version attaché to the SA Statement.

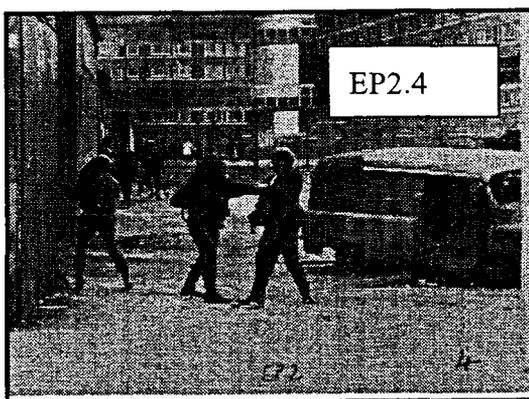
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CHAPTER 7F

SOLDIER V

7F-I INTRODUCTION

7F-1 Soldier V made his way from Pig 1 south down the Chamberlain Street wall together with Soldier S. EP2.4 shows, in all likelihood, S and V making their way forward.



7F-2 As V and S made their way to the end of the Chamberlain Street wall they came under fire, so far as Soldier V could judge, from the Gap between Blocks 1 and 2.¹ There was a group of civilians to V's left near the end of Chamberlain Street who were throwing stones and bottles. Soldier V estimated the crowd to number "approximately 100."² Some were stationary and some were moving, some coming forward to throw and some "generally milling about in the area."³ It was from within this crowd that Soldier V's target emerged.

¹ B821.019 letter D-F

² B821.019 letter F- B821.020 letter B

³ B821.020 letter B-C

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- 7F-3 The man was wearing a dark suit, white shirt, was of medium build and had long dark hair.⁴ He had his right arm “in a throwing position”, holding a bottle with a lit fuse attached.⁵
- 7F-4 V recalled in his BSI Statement seeing a white shirt in his sight.⁶ He took aim and fired one round at the man. He believes he hit the man. The bomb did not explode.⁷ Soldier V, 30 years on, no longer recalls the act of firing.⁸
- 7F-5 His explanation to the Widgery Tribunal was that “for a fraction of a second someone ran in front and obscured my aim, but as soon as I was clear I fired My shot struck the man and threw him backwards.”⁹ He went on to say that, “It was afterwards that I realised he had already thrown the bottle during the fraction of a second that he was obscured from me.”¹⁰
- 7F-6 Christopher Clarke Q.C. questioned V on the precise detail of his firing at the bomber. V explained to the Tribunal in response to Mr Clarke’s direct question, that he now has no “clear recollection” of what was occurring in front of him as he moved towards the place from which he fired the shot.¹¹ He also pointed out that his contemporaneous statements fail to convey the reality of the position in which he found himself; referring to his SA statement he said,¹²

I think what it does not convey is that, um, first of all, there was a lot going down; we were taking fire from different directions and that there were a few things happening in a very, very short space of time and the incident of me actually engaging the petrol bomber happened in a fraction of a second. I do not think that conveys that accurately, in as much as the target was identified and an accurate

⁴ B821.020 letter D-E

⁵ B821.020 letter D-F

⁶ B821.004 paragraph 2.5

⁷ B821.020 letter G – B821.021 letter C

⁸ B821.004 paragraph 2.6

⁹ B809 letter A

¹⁰ B809 letter B-C

¹¹ Day 333/060/04

¹² Day 333/065/04-13

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shot was fired at a petrol bomber, endangering the life of somebody it was my duty to protect. I do not think it does that well enough.

7F-7 Soldier V explained that, as Soldier S was engaging his target, S's life was endangered by a bomber V had identified, and he therefore engaged him. However, this all happened, as V made clear, in "a flash", "very quickly."¹³

7F-II SOLDIER V'S EVIDENCE

7F-8 Soldier V fired a single round on Bloody Sunday. He believes that he hit his target. Soldier V's reason for opening fire is disputed. Put shortly, Soldier V maintains, and has maintained for 30 years, that he believed that he and S were under threat at the time that he opened fire. That is disputed by the representatives of a number of the families who maintain that he had no such belief. Importantly, Soldier V is not merely being accused of firing when he was not under threat but of doing so at a time when he cannot be reasonably believed that he was: he fired for some other, unspecified, reason, intending to kill or seriously injure the person at whom he aimed.

7F-9 The issue of what was in Soldier V's mind at the time when, on Sunday 30 January 1972, he fired his one aimed shot, is one about which only Soldier V can give evidence: only Soldier V knows (or more importantly knew) what he honestly believed at the time. Accounts of Soldier V's actions have been recorded (or purportedly recorded) on the following occasions:

- (1) In his RMP statements.
- (2) In a memorandum of an interview with Mr Heritage on behalf of the Widgery Inquiry.
- (3) In his SA statement to the Widgery Inquiry.

¹³ Day 333/066/04-21

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(4) In his oral evidence to the Widgery Inquiry.

(5) In his BSI statement and oral evidence to the present Inquiry.

7F-10 The Tribunal will have to consider each of the various recorded accounts of what Soldier V has said was in his mind at the time he fired, and give each of them such weight as they may reasonably bear before determining whether it can be sure that he did not believe he was under threat and therefore shot a man in the car park of the Rossville Flats for some other reason.

7F-11 Soldier V himself has emphasised to this Inquiry that his oral evidence to Lord Widgery is the most reliable account of what he believed: it is the only contemporaneous account which Soldier V himself gave – it is Soldier V's account under oath and not someone else's interpretation of what he had said. Soldier V is not someone who was, particularly as a young soldier, especially adept at expressing himself well verbally in the somewhat artificial and formal context of statement or note-taking. He preferred to give his account in his own way rather than have it, in effect, filtered or adapted into someone else's words. The Tribunal should therefore be very cautious before preferring what was written for him, to what was spoken by him.

SOLDIER V'S RMP STATEMENT

7F-12 The circumstances of the taking of the RMP statements are set out in Chapter 2 above. The following facts are of particular relevance:

- (1) The RMP statements were intended to be brief contact reports and not comprehensive statements. They were designed to record who fired, how many rounds they had fire, what they had fired at and what the line of fire was. They were expressly *not* designed to investigate criminal responsibility, let alone to provide those who might be accused of serious wrong doing with an opportunity of fully and carefully explaining what they had done in the knowledge that the record which was being made of their explanation might be held against them in the future.

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- (2) They were taken late on 30 January or early on 1 February 1972 from soldiers who had been on duty all day and in a fire fight.
- (3) The vast majority were taken by inexperienced corporals.
- (4) Soldier V gave his RMP statement
 - (a) Under compulsion.
 - (b) Without caution.
 - (c) Without legal representation.
- (5) The statements were taken in circumstances that were expressly designed to circumvent the protection afforded by the Judges' Rules.

7F-13 Corporal (INQ 1855) took V's RMP Statement. He has not made a statement to the Inquiry. Corporals should not have been taking statements from those who had fired live rounds. Sergeant Major INQ 1831 said of Corporals that, "they were trainees and would not have recorded statements from those Para involved in the shootings but only back up corroborative statements."¹⁴ The SIB were under great pressure at the time of Bloody Sunday and therefore, as INQ 1831 said in oral evidence to the Tribunal, the good practice of experienced SIB personnel taking statements from soldiers who had fired live rounds, simply could not be followed in the circumstances that existed after Bloody Sunday.¹⁵

7F-14 As a record of what Soldier V honestly believed at the time that he fired his round on Bloody Sunday, the statement taken from him and recorded by the RMP should be relied upon only with caution: its purpose was not to investigate Soldier V's state of mind and it did not do so. It provides no satisfactory basis for

¹⁴ C1831.2 paragraph 11

¹⁵ Day 258/143/15

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disbelieving Soldier V's own contemporaneous evidence of what he honestly believed when he fired.

MR HERITAGE'S MEMORANDUM

7F-15 Mr Heritage and Major Bailey held what Mr Heritage described as a preliminary, informal conversation / meeting with Soldier V before his statement to the Widgery Inquiry was prepared.¹⁶ During the course of that meeting Mr Heritage broke off the interview and made a note purporting to record what Soldier V had said in the course of part of the meeting.

7F-16 Soldier V has no recollection of the meeting in question or of meeting Colonel Overbury during it.¹⁷

7F-17 Mr Heritage's note records the following:¹⁸

In the course of my preliminary interview with V, before recording his statement, I invited him to tell me his account of what happened. He told me that he saw a man throw a bottle with a lighted fuse at its end. The bottle landed near S, but the fuse came out in the air and the bottle did not explode. He said he kept an eye on the man who had thrown it, as he moved back in the crowd. As soon as the movement of the crowd gave him a clear sight of the man he shot at him and believed that he had hit him. In answer to Major Bailey he said he thought the man might have been stooping just before he shot. I asked him if he could see anything in the man's hand. He replied 'No, sir, I cannot honestly say that I did'. Major Bailey then intervened and said he wished to discuss the position of this witness with Colonel Overbury before we proceeded. I agreed.

Major Bailey confirms that this is a fair and accurate record of what V said in our presence.

7F-18 This note is the basis for the allegation that Soldier V did not, at the time that he opened fire, honestly believe that he or others were under threat. This is the

¹⁶ Day 251/88/17-89/1

¹⁷ 333/069/14-333/070/01; 333/071/10-12; 333/071/20;

¹⁸ B821.002

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evidence on which the Tribunal are invited to conclude that they are sure that Soldier V shot an individual intending to kill or seriously injure him, not believing himself to be under threat, and for no apparent reason.

7F-19 There are powerful reasons why the Tribunal cannot rely upon Mr Heritage's note as reliable evidence of what was in Soldier V's mind at the time he opened fire. In particular, before placing any reliance upon the note, the Tribunal must bear in mind its provenance. It was produced over 30 years ago. It carefully records the agreement of those present to its accuracy; all those present except, of course, Soldier V. It was not produced to the Widgery Inquiry and V was never asked whether it was an accurate record of the meeting, was never asked whether it recorded what he actually said, was never asked what he meant when he said what he is alleged to have said. Instead, Soldier V gave his account to the Widgery Inquiry, on oath, and was cross examined on it. Thirty years later, the memo surfaced. Soldier V has no recollection of the meeting, let alone of what was or was not said, or what he did or did not mean.

7F-20 All of the usual safeguards that surround the taking of statements in cases involving potential criminal liability were absent during the meeting with Mr Heritage. Soldier V was there because he was ordered to be there. He was not cautioned or given any advice on his right not to answer questions that might incriminate him. He was not legally represented. These safeguards are not mere technicalities: they are designed to ensure that statements recorded in interviews may properly be relied upon as

- (1) an accurate record of what a witness actually said;
- (2) an accurate record of what the witness intended to say; and
- (3) an accurate record of what the witness *meant by what they said*.

7F-21 At the meeting with Mr Heritage it seems that Soldier V was asked to recount his actions on Bloody Sunday. Part way through his having done so, Mr Heritage formed the view that Soldier V replied to a question that "appeared to me would incriminate him", and considered the "possibility" of giving V a warning that his

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evidence “might” incriminate him.¹⁹ He asked a question intended to clarify Soldier V’s account: “I asked him if he could see anything in the man’s hand. He replied ‘No, sir, I cannot honestly say that I did.’” Following this ambiguous answer (Soldier V is not saying that the man did *not* have anything in his hand, merely that he could not say that he saw that he had),²⁰ the interview was terminated and Mr Heritage and Major Bailey left the interview. It was never recommenced and Soldier V was asked no further questions. Such a situation could never had occurred if the usual safeguards had been followed – in particular if Soldier V had had a legal representative present who could have ensured that what was recorded by Mr Heritage was what Soldier V actually said, and that what he said was what he actually meant. As it was, Mr Heritage explained to the Tribunal that “I did not ask [V] how long that interval was.”²¹

7F-22 It was never explained to Soldier V why the interview had been terminated and he was given not opportunity to comment on what he had said or been thought to have said. Instead, the record of this brief meeting was only shown to Soldier V thirty years after the event, when he has no recollection of the meeting,²² or of his shooting on the day, and is, therefore, in no position to contradict the content of the note or comment on what he meant.

7F-23 What Soldier V can and does say is that the only evidence before the Tribunal which records his own account of what he believed at the time he fired on Bloody Sunday is the transcript of his oral evidence, on oath, to the Widgery Inquiry. That evidence makes clear that, at the moment that Soldier V fired his single aimed shot in the car park of the Rossville Flats, he honestly believed himself and others

¹⁹ **KH6.10 paragraph 22;** in oral evidence Mr Heritage said he had to “consider the possibility” of whether to give a warning: **Day 251/63/08-11**

²⁰ It is known from Soldier V’s oral evidence to the Tribunal that once he had spotted his target and gone into the aim position his view was that of his “sight target” – *i.e.* the white shirt: that was the view that V had at the time that he fired. It would appear that he was neither looking at, nor could see, the man’s hands. It is hardly surprising therefore that he could not at that point see if there was anything in the man’s hands when he fired.

²¹ **Day 251/64/09-13**

²² **Day 333/071/24-333/072/02**

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to be at risk of serious injury²³ and he honestly believed that it was necessary to shoot the man attempting to throw the petrol bomb in order to avoid that injury.

7F-24 In the circumstances, the best evidence that the Tribunal has of Soldier V's belief at the time of firing is his evidence to Lord Widgery. The evidence which appears to contradict Soldier V's own account is too unreliable for the Tribunal to be sure that Soldier V did not hold an honest belief that he was under threat at the time he fired.

7F-III DID SOLDIER V SHOOT JACK DUDDY?

SOLDIER V'S TARGET WAS IN A DIFFERENT LOCATION THAN JACK DUDDY

7F-25 The allegation that Soldier V shot Jack Duddy is based, in large part, on the suggestion that Soldier V described his target as being in a position close to that where Duddy is known to have fallen. This is not correct.

7F-26 Barry MacDonald QC, on behalf of the Duddy family, suggested that Jack Duddy's fallen body was "extremely close" to V's target as V had described its location.²⁴ V agreed with Mr MacDonald that his target was "a reasonable distance, a close distance" from the position where Jack Duddy's body was;²⁵ he agreed that the 30 yards that Mr MacDonald estimated it to be, and the 18 to 22 yards that Lord Saville calculated it to be, was "fairly close".²⁶ However, in the context of the limited area of the Rossville Flats' car park, 54 to 90 feet is not particularly close.

7F-27 Jack Duddy fell at a point between the two sets of car parking grids in the Rossville Flats' car park. The westerly grid consisted of one row of spaces

²³ Soldier V being faced with a man about to throw a petrol bomb was lawfully entitled to shoot the man. That the Yellow Card did not list a petrol bomber as a permissible target is irrelevant to the lawfulness of Soldier V's actions which must be judged as a matter of law.

²⁴ Day 333/158/24

²⁵ Day 333/159/01

²⁶ Day 333/159/14-25

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running approximately north-north-east on a bearing of approximately 35 degrees; its south west corner starting on a point from an imaginary line extended out from the north west gable of Block 2. The second grid is a double set of car parking spaces that are contained well within the parameters of the extent of the western gable wall of the end of Chamberlain Street.²⁷ It is clear from photograph P627 that Jack Duddy's body, whilst lying between the two sets of grids, is appreciably over to the northwest (or left hand if facing north) grid. (See further chapter 7L.)



7F-28 V's target, described to Major Loden as being at GR43281679, is incorrectly marked on OS 1.807. It is out by one square. It should be the square to the top right or northeast from the position plotted. The point wrongly marked on OS 1.807 as V's target is in the top right hand corner of square 43271678, which is the square to the south west or bottom left of the correct square. The grid reference correctly plotted would place V's target further to the east and slightly further to the north from the position in which Jack Duddy's body fell.

7F-29 Furthermore, the marked up map attached to Soldier V's the RMP Statement²⁸ shows V's target more to the south and west, in fact slightly closer to the position

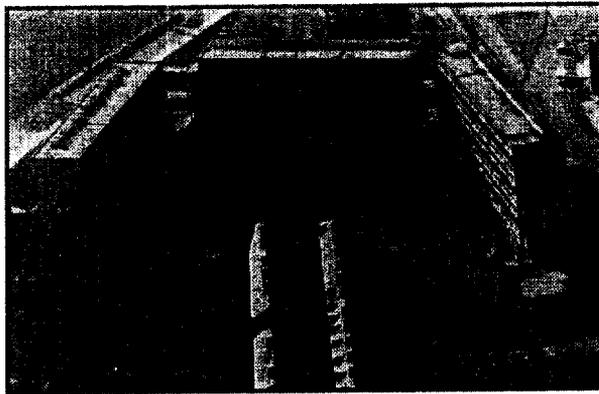
²⁷ See Virtual Reality and the photographs utilised in Hotspot 71

²⁸ B790

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of Jack Duddy,²⁹ immediately in front of the low wall at the point at which it ends. In spite of being slightly closer, this position is still materially different from the position of Jack Duddy, as Soldier V's target is within the easterly grid of car parking spaces and not in between the car parking spaces as Jack Duddy was. No reliance should be placed on the RMP Plans in any event as they were just that: plans marked up by the RMP.

7F-30 Soldier V's target as marked on his trajectory photograph³⁰ again does not correspond with the position where Jack Duddy fell:³¹



7F-31 If the line of sight is extended beyond the figure 1, it travels on a bearing that crosses the second set of grids, *i.e.* the easterly double set of spaces, at its southwestern corner. The angle of shot is bearing away from Jack Duddy's position as opposed to towards it.

7F-32 Mr MacDonald suggested to V that, at the stage when he marked up the trajectory photograph, he had changed his target's position from his earlier account to Major

²⁹ This, incidentally, contradicts Mr MacDonald's suggestion that V attempted to move his target away from the true position of Jack Duddy.

³⁰ V does not remember putting marking either on the maps or photographs. However he said that, given the option, he would probably have chosen to mark the photograph because it would have been easier to look at a photograph and pick out where he was, rather than picking a grid reference which he understandably could not relate to because he did not have a map at the time of the incident.

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Loden and to the RMP in order to distance himself from responsibility for Jack Duddy's death. Mr MacDonald did not, however, explain how Soldier V could have been aware so precisely of the position in which Duddy fell. Of course he was not so aware and the suggestion is baseless.

JACK DUDDY WAS SHOT BEFORE SOLDIER V FIRED HIS ROUND

7F-33 Soldier V did not shoot Jack Duddy: Soldier V fired his shot *after* Duddy had already been shot.

7F-34 Sergeant O's evidence was that either he or Soldier S opened fire first.³² (It may have been Soldier S whom Sergeant O saw at the rear wall of Chamberlain Street when the shooting broke out.)

7F-35 Soldier S stated in 1972 that, when he was at the rear of 34 Chamberlain Street, he saw a body lying on the ground to Soldier S's front.³³ He was asked at the Widgery Inquiry whether he saw the body before he started firing:³⁴

Mr Hill: Did you see that body before you first started firing at the man you say you saw, or afterwards?

A: I think it was after when I went into my position, sir

Q. At the time when you saw that body had you discharged all of your shots or not?

A. No sir.

Q. Had you fired at all at that stage when you saw that body?

A. I may have, sir, but I don't think so.

7F-36 Consequently, Soldier S saw what in all probability was the body of Jack Duddy *before* he opened fire.

³¹ **B788.821**

³² **B476 letter B**

³³ **B721 letter E**

³⁴ **B722 letter A-B**

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7F-37 The third important fact is derived from what V saw and did after he had fired at his target. Having fired, V moved into the Chamberlain Street wall behind Soldier S.³⁵ V saw that Soldier S was returning fire into the gap between Blocks 1 and 2 of the Rossville Flats.³⁶ V then watched Block 1 of the Rossville Flats before ordering Soldier S, who had finished firing at his target, back to the Pig.³⁷ It is significant that V was asked at the Widgery Inquiry how many shots he saw Soldier S fire. He initially replied that he could not say, but when pressed answered, "Approximately four".³⁸

7F-38 As Soldier S fired twelve rounds, in four groups of three, V's evidence of seeing S fire approximately four rounds, and then ordering him back to the Pig, means that V fired no earlier than late into Soldier S's firing sequence, and, probably, just before S's fourth, and last, batch of three rounds.

7F-39 Taking these events in sequence, starting from Soldier S recalling that there was a body on the ground before he started firing himself, and that V only fired well into S's sequence and therefore cannot have shot the body that S saw on the ground, the logical conclusion is, that if the body that S saw was that of Jack Duddy, then V cannot have shot Jack Duddy. If the body on the ground was not Jack Duddy then it is a missing casualty.

7F-40 V told the Widgery Inquiry that he thought that one of the group that attended the body that he hit was a Priest.³⁹ V said to the Tribunal that that was his perception, but he thinks he may have been mistaken.⁴⁰ However, the body that was attended to by Father Daly cannot be said to be V's target. V explained in his oral evidence

³⁵ B821.021 letter C

³⁶ B821.021 letter E-F

³⁷ B821.022 letter B; Soldier S confirmed this: see B 718 letter D

³⁸ B821.030 letter C-D

³⁹ B821.030 letter G

⁴⁰ Day 333/147/05-09

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that the description of the person that he hit does not match Jack Duddy as he is seen in the photographs of Father Daly attending him.⁴¹

7F-41 The reason, as V explained to the Tribunal, why it is perfectly feasible for him to have made an error in attributing the person attended to by a Priest with his target, is the likelihood that V, in the time of the movement back to the Chamberlain Street wall, confused the body he saw on the ground being attended to by a priest with the body that he himself had hit. V explained what he would have done having hit his target:⁴²

.. As soon as he [the target] has gone over and I have seen he is no longer a threat my attention is then looking around for other threats in the area, checking out the area where S is engaged in and looking for more targets. So, because he has posed no more threat, I am not worried about him, so I cannot help you on that one.

Q. You did not see him, so far as you recall, being carried away somewhere.

A. I really cannot remember.

V'S TARGET DOES NOT FIT JACK DUDDY'S APPEARANCE

7F-42 Jack Duddy's appearance on Bloody Sunday does not fit Soldier V's description of his target in two important respects. First Soldier V's target was wearing a white shirt, as opposed to Jack Duddy's red shirt and, secondly, V hit his target in the stomach whereas Duddy was shot in the right shoulder. Neither of these is a minor or insubstantial difference.

CONCLUSION

7F-43 Taking the evidence as a whole it is submitted that Soldier V cannot have shot Jack Duddy:

⁴¹ Day 333/147/16-18; 333/148/03-5

⁴² Day 333/091/18 - 333/092/01

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- (1) The man Soldier V shot was in the process of throwing a petrol bomb. There is no evidence that Jack Duddy was doing so when he was shot.
- (2) Soldier V's target was in a different position to Jack Duddy when he was shot.
- (3) Soldier V's target was wearing a white shirt and was hit in the stomach; Jack Duddy was wearing a red shirt and was hit in the shoulder.

7F-IV DID SOLDIER V SHOOT PEGGY DEERY?

7F-44 Christopher Clarke Q.C. asked V whether he shot Peggy Deery. V firmly denied that he did. He explained that the target he fired at was knocked down with the force of the round, and was wearing a dark suit, white shirt and had long hair.⁴³ V has also referred to his target as male.⁴⁴

7F-45 Mrs Deery was female, hit in the leg and not wearing a white shirt.

7F-46 Furthermore, for the same reason that V cannot have shot Jack Duddy, because of the sequence of firing, V cannot have shot Peggy Deery as she was shot before Jack Duddy.

7F-V CONCLUSION

7F-47 Lance Corporal V fired one round on Bloody Sunday. He hit his target. It has been alleged that he was responsible for shooting Jack Duddy. There are good reasons for doubting that V in fact shot Jack Duddy. In particular, the man at whom Soldier V fired was, or appeared to be, in the act of throwing a lighted petrol bomb and there is no evidence that Jack Duddy was throwing a petrol bomb when he was shot. Further, Soldier V's target was in a position between

⁴³ Day 333/90/02-333/092/20

⁴⁴ B788

FS7-1518

approximately 50-100 feet from where Jack Duddy was shot and was wearing a white, as opposed to a red, shirt.

7F-48 When Soldier V opened fire, he honestly believed that the man he fired at was about to throw a bomb, thereby endangering him and those around him. The best evidence of Soldier V's belief at the moment at which he fired is the only evidence that reliably records his own account, in his own words: his sworn testimony to Lord Widgery. None of the other accounts of Soldier V's belief at the moment of firing provide a safe basis for the Tribunal to reject Soldier V's own account and to conclude that they are sure that Soldier V did not at that moment believe he and his colleagues were under threat.

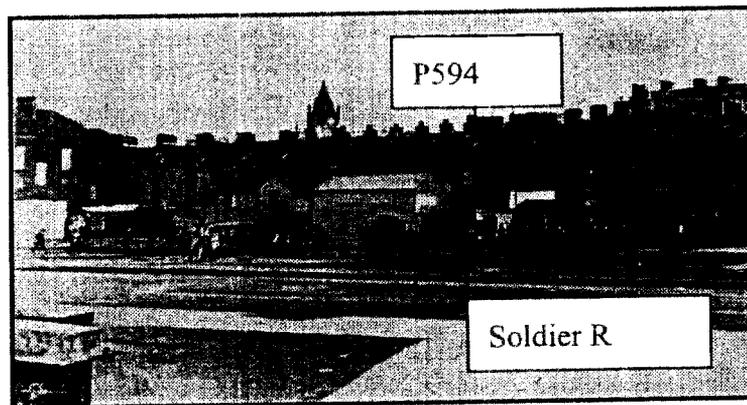
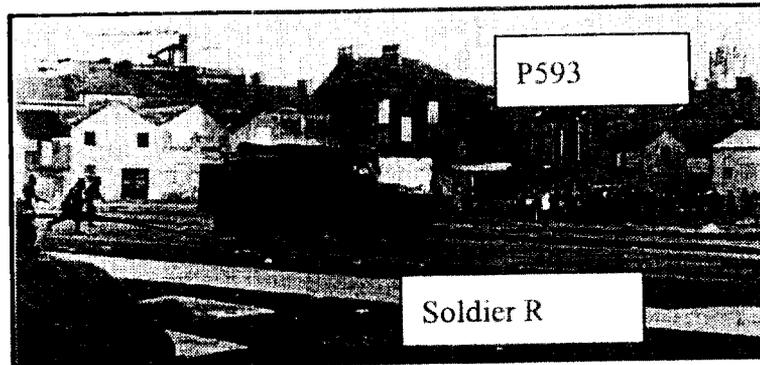
FS 7.1519

CHAPTER 7G

SOLDIER R

7G-1 SOLDIER R'S ACTIONS ON DEBUSSING

7G-1 Soldier R was one of the group of soldiers who debussed from Pig 2 when it came to a halt in Rossville Street. As the vehicle guard he then ran after the Pig as it set off again towards the Rossville Flats.¹ It is likely that photographs P593 and P594 show Soldier R first in a group of three soldiers behind the Pig and then more alone, running towards the Rossville Flats. Soldier R agreed with Christopher Clarke Q.C. that it is "possible" that this is him.



¹ B670; Day 337/018

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7G-2 As Soldier R ran towards the Pig he was attacked. In oral evidence to the Widgery Inquiry he said that as he ran the people around him threw stones and bottles at him. He was hit once on the thigh, once on the calf and was bruised just above the hip.² Looking at the position of Soldier R in photograph **P594** and knowing the direction in which he had to run, it is clear that his path would have crossed with that of civilians, some of whom admit to having thrown missiles at soldiers, as Soldier R headed south towards the Rossville Flats' car park. It is therefore hardly surprising that Soldier R would have become merged with the crowd.

7G-3 There is ample evidence of civilians attacking soldiers in the area of the waste ground, with missiles in the manner similar to that described by Soldier R. This is dealt with in Chapter 7C.

7G-4 It appears from Soldier R's RMP Statement that he heard two bursts of fire,³ one as he ran to the Pig and the other when he reached the Pig, saying "as I reached the Humber I again heard the sound of shots". The first firing occurred shortly after R debussed from the Pig. He was, he has described, halfway across to the Pig from where he had started to run on Rossville Street, having gone approximately 10-15 yards,⁴ when he first heard incoming fire.⁵ It was this that prompted him to cock his weapon.⁶ Then, having made his way through the crowd to the Pig, and having reached the Pig, he heard shots, both high and low velocity.⁷

7G-II SOLDIER R'S FIRST TARGET

7G-5 Soldier R saw a crowd along the west side of the Rossville Flats' car park, from amongst which was a man emerged and prepared to throw, with his left hand, what Soldier R identified as a bomb.

² **B677 letter D-E**

³ **B658-659**

⁴ **B677 letter A**

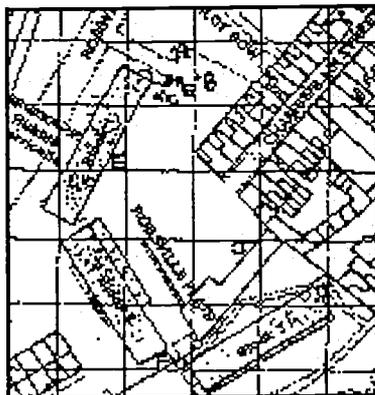
⁵ **Day 337/021-022; B684 letter A**

⁶ **B658; B677 letter C-D**

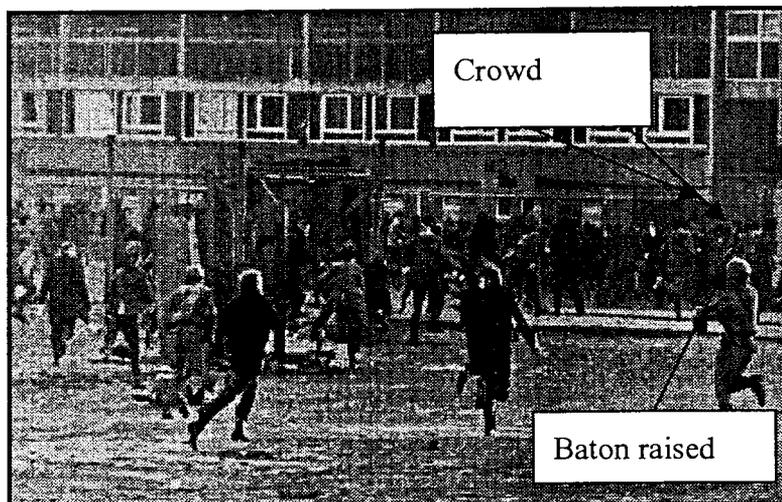
⁷ **B659**

FS7.1521

7G-6 Soldier R marked on his BSI Statement map the group of civilians and their position against the wall of Block 1 of the Flats in position E.⁸



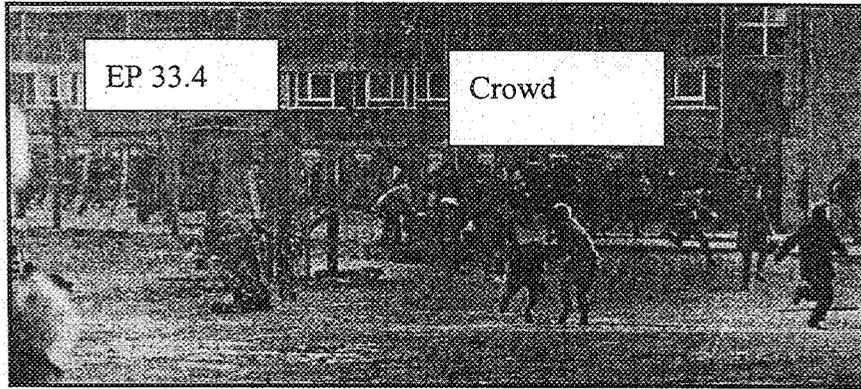
7G-7 There was indeed a group of civilians clustered around the west side of the Rossville Flats' car park. Coleman Doyle's photographs show such a group.⁹



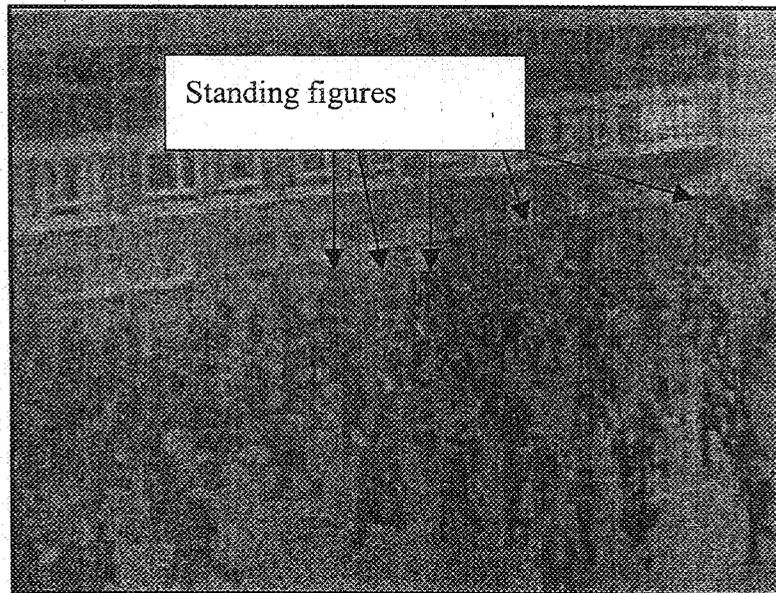
⁸ **B691.008**

⁹ **EP33.1 – EP 33.4**; and note that one of the soldiers has a baton rather than an SLR

FS7. 1522



7G-8 Detail in one of Derrick Tucker's photographs,¹⁰ taken earlier than Coleman Doyle's, shows people standing along the wall of Block 1, despite the arrival of the Army so far into the Bogside.



7G-9 In his RMP Statement, Soldier R said that the man he targeted was running with the crowd, stopped, stood at an angle and attempted to throw a bomb.¹¹ In his SA Statement Soldier R said that he noticed a man about thirty yards away "who was not moving in the same direction as the others", who "seemed to come out turning

¹⁰ EP 28.5

¹¹ B659

as he did so.”¹² In his BSI Statement Soldier R said that he noticed one man in particular against the wall, to whom the rest of the group did not want to get too close, take a few steps forward from the wall out into the car park of the Flats, turn in his direction, with a smoking object in his left hand that Soldier R took to be a bomb of some description. The man drew his arm back, “in a position similar to a bowling action, as though he was about to throw the object”.¹³

7G-10 In summary, Soldier R saw a figure who caught his attention, moving in a way contrary to that of the body of the crowd. The man moved and turned and was about to throw what Soldier R took to be a bomb.

7G-11 He took aim (at the body¹⁴) and fired a single shot. He believes that the bullet hit the man “high up on the right shoulder, causing him to spin around”.¹⁵ Soldier R cannot say exactly where the bullet struck, but he told Christopher Clarke Q.C. that that is where he presumes he hit him.¹⁶ He saw the man spinning and presumes that he fell.¹⁷ Almost immediately after firing, Soldier R was hit by acid¹⁸ and took cover behind the vehicle.¹⁹ Soldier R does not know what happened to the man after that, other than that a crowd gathered around him²⁰ and that he was carried towards and through the Gap between Blocks 1 and 2 of the Flats.²¹ Soldier R was shown the photograph of Father Daly’s group carrying out

¹² B670 paragraph 5

¹³ B691.003 paragraph 14

¹⁴ Day 337/31

¹⁵ B691.003 paragraph 14

¹⁶ Day 337/031

¹⁷ Day 337/031

¹⁸ See Chapter 2C re acid bombs being thrown from the Flats. The hair was permanently burned from Soldier R’s legs and he has since developed sweat gland fatigue. He was downgraded from A1 Soldier to grade 7: B691.004 paragraph 20

¹⁹ B679 letter B-D

²⁰ B691.003 paragraph 14

²¹ Day 337/038

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the body of Jack Duddy. The group that R saw removing the nail bomber was a different group.²²

7G-12 Soldier R does not know whether the man was killed. When asked, at the Widgery Inquiry, whether he thought he had killed the man, he answered, "No, sir. At that time I did not think I had because of the way he fell".²³ Christopher Clarke Q.C. asked Soldier R why it was that he thinks he did not kill the man. Soldier R answered,²⁴

A. Because I believe I hit him high up on the shoulder and I do not think it was, like I say, a shot that actually would have killed him.

Q. Is that because you think it would have gone through the front of his shoulder to the back?

A. Yes, something of that description, yes, maybe.

7G-13 The bomb the man was in the process of throwing did not explode. That is not particularly surprising: as Soldier R said in his SA statement, "... a fair number of these home made bombs fail to go off, and if anyone had got to it in time they might have pulled the fuse out."²⁵ The Tribunal will recall the evidence of PIRA 24 and Mr Gurney to the effect that, at the time, nail bombs quite often failed to go off.²⁶

7G-III SOLDIER R DID NOT SHOOT JACK DUDDY

7G-14 Soldier R shot a man he believed was in the process of throwing a nail bomb. His target was next to the east side of Block 1 of the Rossville Flats. The man was carried from the car park through the gap between Blocks 1 and 2 of the Flats.

²² Day 337/039

²³ B690 letters A-B

²⁴ Day 337/142/21 – 337/143/02

²⁵ B672 paragraph 8

²⁶ See further Chapter 70.

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7G-15 The basis on which it is suggested that Soldier R might be held to have been responsible for the shooting of Jack Duddy was encapsulated in Christopher Clarke QC's questioning of Soldier R:²⁷

Q. ... I should also tell you this: the Tribunal has heard evidence from a considerable number of civilian witnesses, including a considerable number who were in the car park of the Rossville Flats, running towards one of the two alleyways between the two blocks; do you follow?

A. Yes.

Q. None of those witnesses speaks of a man falling, having been shot, at the point identified by you on your photograph or of that man having been shot, being carried away through the gap between Blocks 1 and 2; do you follow?

A. Yes.

Q. That raises the possibility that there was in fact no man with a nail bomb as you describe and that your first shot was in fact directed towards the crowd or somebody who was in the crowd running away and was fired without any justification at all; is that the position?

A. No.

Q. If that were so, that which I have been suggesting to you was so, it would follow that your account of a man with a nail bomb in a left-arm bowling position was invented; did you make that up?

A. No, I did not.

7G-16 In order to conclude that Soldier R was responsible for shooting Jack Duddy, the Tribunal would have to reject Soldier R's evidence *in toto* and conclude that he did not see or believe he saw a nail bomber, did not fire where he said he fired and that he fabricated the account of the man being carried from the car park through the gap between Blocks 1 and 2. Furthermore the Tribunal would have to conclude that Soldier R shot at Jack Duddy for no discernible reason and then

²⁷ Day 337/144/11-145/09

FS7.1526

fabricated an account of firing at a nail bomber. There is no evidence before the Tribunal on which it could reach such conclusions.

7G-17 The paucity of evidence from civilian witnesses who describe seeing the nail bomber at whom Soldier R fired, or seeing him carried away, does not lead to the conclusion that Soldier R's account is untrue. Scores, if not hundreds, of witnesses have been prepared to tell the Tribunal that they saw no armed men Bloody Sunday, that they saw no gunmen fire, in circumstances where it is now incontrovertibly established that there were gunmen, that they did fire and that that firing could not have been missed by truthful witnesses. Over the past 30 years more and more evidence of gunmen operating around the Bogside on Bloody Sunday and firing at the soldiers has emerged. The picture has slowly developed, but it is very far from complete. In such circumstances, and with no other grounds for rejecting Soldier R's account, it would be unreasonable to rely upon the absence of clear corroboration as evidence of untruthfulness. It would be even more unreasonable to rely upon it as evidence leading to the conclusion that Soldier R must be responsible for the shooting of Jack Duddy, even more so would it be unreasonable to rely upon it as evidence of the fact that Soldier R did not honestly believe himself to be under threat.

7G-18 There is, in any event, available to the Inquiry evidence that indirectly corroborates a number of elements of Soldier R's account. For example:

- (1) There is photographic and video evidence of Soldier R's movements on the day;
- (2) There is civilian evidence of civilians attacking soldiers with missiles in a similar manner to that which R described in the area of the wasteground;
- (3) There is evidence that there were civilian gunmen firing in the area of the car park corroborating Soldier R's evidence of hearing incoming fire; and
- (4) There is evidence that acid was thrown and that Soldiers R and T were hit by acid bombs.

FS7.1527

7G-19 The absence of detailed corroboration of other elements of Soldier R's account does not logically result in its being untrue. On the contrary, that much of Soldier R's account is corroborated, suggests that, in the absence of evidence to the contrary, the balance of it is also more likely to be true.

7G-IV SOLDIER R: SECOND TARGET

7G-20 After being hit by the acid bombs, and clearly before the acid burnt through his demins and started to burn his skin, Soldier R engaged a second target, a man firing a pistol from the Gap between Blocks 2 and 3. He saw an arm emerge and fire between 2 and 3 shots. Soldier R saw the first round being fired, and then as it fired again he fired two rounds. He does not think that he hit the target.²⁸ The arm withdrew and he did not see the pistol again. Soldier R marked on photograph P292 where he recalled the hand had emerged with the pistol.²⁹

7G-21 Soldier R agreed that it is possible that the shots that he fired at the man with a pistol may have missed and struck the retaining wall of Block 3 as witnesses have said.³⁰

THE GUNMAN

7G-22 There is evidence to support Soldier R's account of a seeing a man firing a pistol from the Gap between Blocks 2 and 3 of the Rossville Flats as set out in Chapter 7E, in relation to Soldier O's first target. That evidence is only consistent with a man in that location firing a pistol towards the soldiers.

7G-23 There is also evidence, set out in Chapter 7D, of highly suspicious activity around the Gap between Blocks 2 and 3 of the Flats and of those crawling in the lee of the building looking anxiously towards the Gap.

²⁸ B671 paragraph 7

²⁹ Day 337/145/10 -337/147/06

³⁰ Day 337/048

FS7-1528

7G-24 Furthermore, it is now known that OIRA 4, armed with a pistol left the car park of the Flats by that exit. Strikingly, the manner of firing which Soldier R describes – the gunman hiding behind the corner of a wall and firing blindly – is identical to the way in which OIRA 4 described his own firing around the gable of the Chamberlain Street Houses. Soldier R does not believe that he hit his target.

7G-25 Given these factors, it seems likely that OIRA 4 may well have been the pistol man at whom Soldier fired.

7G-V CONCLUSION

7G-26 Soldier R was 18 years old on Bloody Sunday. He fired for the first time on the day. He was burned by an acid bomb.

7G-27 Soldier R fired at two targets: he believes that he did not hit the second and that he probably injured, rather than killed, the first.

7G-28 There is no evidence to support the allegation that he shot Jack Duddy. The paucity of civilian evidence corroborating his account of his first engagement cannot rationally form the basis of a conclusion that he shot Jack Duddy. For the past 30 years there has been widespread suppression of evidence proving that gunmen engaged the soldiers in the Bogside on Bloody Sunday and only latterly has it been shown, beyond doubt, that there were a series of gunmen in action on that day. The picture is so very far from complete that the absence of positive corroboration of a gunman or nail bomber in action cannot reasonably be used as the basis for a conclusion.

FS 7. 1529

CHAPTER 7H

SOLDIER Q

7H-I INTRODUCTION

7H-1 On Bloody Sunday Soldier Q was 19 years old.¹ He had never fired a live round in hostile circumstances before that afternoon. He had, however, experience of riot situations in Belfast.² He now has only a vague recollection of the events of the day.³

7H-2 Soldier Q fired at a man throwing what he took to be nail bombs from the shelter of the corner of the Gap between Blocks 2 and 3. His shot was one of the latest to be fired in Sector 2. This would have occurred at about the time when the last few civilians were making their way out of the Rossville Flats' car park. In all likelihood the group that included Patrick McDaid may well have been crossing to the Gap between Blocks 2 and 3 at this late stage.

7H-II SOLDIER Q'S ENGAGEMENT

7H-3 Soldier Q debussed from Pig 1 and made his way, as the baton gunner Soldier 112's cover, to the Rossville Flats. There he positioned himself at the gable end of Block 1.⁴

7H-4 His attention was drawn to a man who appeared at the Gap between Blocks 2 and 3. He was throwing round, dark coloured objects in the direction of troops at the end of Chamberlain Street that Q thought were nail bombs.⁵ One of them exploded: Soldier Q told Lord Widgery that the man first threw "two or three and

¹ Day 339/034/10-12

² B657.1 paragraph 6

³ B657.1 paragraph 1; 339/029/18-25

⁴ B642 letter A-E

⁵ B644 letter B-E

FS 7. 1530

they just rolled".⁶ (He clarified, in answer to Christopher Clarke QC, that he now recalls seeing at this stage two nail bombs thrown.)

7H-5 As Soldier Q told Lord Widgery, the next bomb to be thrown exploded:⁷

Q. Did you see any of these objects land?

A. Yes sir

....

Q. What did they do?

A. Well he threw two or three and they just rolled and then he threw another one and it exploded.

7H-6 Soldier Q described the noise: although very audible,⁸ it was "a dull crump".⁹ Although it may have been audible to civilians in the car park, and to the soldiers around the Pig,¹⁰ the fact that it was a "dull crump" may explain why other Mortar Platoon soldiers did not hear it exploding, particularly as there was a great deal of other noise in the car park. Only Soldier Q saw these bombs being thrown. He saw one explode and heard the noise as it did so – the "dull crump". The Tribunal must not overlook the combination of sight and sound: other soldiers may, to varying degrees, have heard the noise but did not see the nail bomb explode, so did not register the noise as being a nail bomb. The fact that Soldier Q did not see nails fly out from the exploded bomb led him, in evidence, to consider that the bomb might in fact have been a blast bomb.¹¹

7H-7 Soldier Q fired one round at the man when he appeared again with another bomb.¹² The man was preparing to throw it, and was shot when he was in the act

⁶ B644 letter F-G

⁷ B644 letter F-G; Q referred to only one explosion in his BSI Statement: B657.4 paragraph 20

⁸ Day 339/032/01-13

⁹ Day 339/031/24-25

¹⁰ Day 339/032/08-13

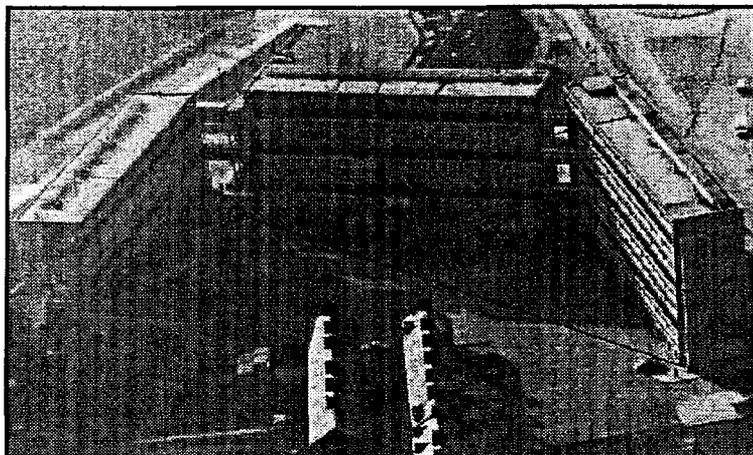
¹¹ Day 339/032/20-24

¹² B645 letter A-D

FS7.1531

of throwing it. Soldier Q fired at a man he honestly believed to be a threat and therefore fired in self defence and in order to defend others.

7H-8 Soldier Q's marked up trajectory photograph shows the approximate position of the bomber:¹³



7H-9 He thought he hit the man and that he was dragged away.¹⁴ Soldier Q believes that the man was killed.¹⁵

7H-10 Soldier Q no longer remembers the sequence of events.¹⁶ It seems clear however, that his shot was among the last to be fired in the car park of the Flats. He explained to Lord Widgery that after he had fired his shot he remained in position for about four or five minutes and then moved to the centre of the north gable end of Block 1 "behind the stairway";¹⁷ he was there "about another five minutes."¹⁸

Q. Then what happened?

A. Well, the armoured vehicles came back and I climbed on to them.

¹³ B657

¹⁴ B645 letter B-C

¹⁵ Day 339/60/04-06

¹⁶ B657.7 paragraph 45 (e)

¹⁷ B645 letter D-E

¹⁸ B645 letter F

FS 7. 1532

Q. After the time when you shot the man until the vehicles came back and you got into your vehicle, did you hear any more shooting?

*A. No sir.*¹⁹

7H-11 His 1972 evidence makes clear that he fired after Soldier T²⁰ had been hit by acid.²¹ This puts his firing after Soldier O's first and second engagements. Secondly Soldier Q did not record hearing any SLR fire after he had fired, which again suggests his shot was amongst the last. Not long after he fired he returned to the Pig.

SOLDIER Q DID NOT SHOOT ANY OF THE KNOWN DEAD OR WOUNDED

7H-12 Christopher Clarke QC asked Soldier Q whether he was responsible for shooting either of Michael Bradley²² or Jack Duddy.²³

7H-13 Soldier Q fired late in the engagement and after he had moved from the car park gable end of Block 1 to the Rossville Street side and back again.²⁴ He clearly fired after Jack Duddy had been shot, as Jack Duddy was shot at a very early stage. It was whilst Jack Duddy was being attended to in the car park that Michael Bridge and Michael Bradley were shot. Soldier Q did not recall seeing Jack Duddy in the car park. This may be because Soldier Q was observing at the Rossville Street side of Block 1 whilst these events unfolded.

7H-14 In any event, regardless of the timing issues, Soldier Q could not have shot either of Mr Bridge or Mr Bradley as neither of them were shot close to the location of the target identified and shot at by Soldier Q. Timing and circumstances also rule

¹⁹ **B645 letter F**; he then heard, but not see, a baton round being fired: **B645 letter G – B646 letter A**

²⁰ **B675.5 paragraph 30**

²¹ **B624-5**; (RMP); **B636 (SA)**; **B643 letter F – B 643 letter G**;

²² **Day 339/055/18 –060/09**; but *nb* Michael Bradley's counsel accused R of shooting Mr Bradley.

²³ **Day 339/050/21- 051/22**; but *nb* counsel for the Duddy family accused V of murdering Jack Duddy.

²⁴ **B657.3 paragraph 19**

FS7.1533

out Soldier Q having shot Peggy Deery. The only remaining known casualty is Patrick McDaid and he was not hit by a lead bullet.

7H-15 There is a striking similarity between the Tribunal's experts' description of Mr McDaid's wound having been caused by a "slicing disc" and injury likely to be caused by a nail bomb in a tin can malfunctioning and blowing the bottom off the can, failing to scatter the nails, but sending a disc slicing through the air. Early nail bombs had a propensity to mal-function. Soldier Q's shot (later in the sequence of military firing) and Mr McDaid's journey across the car park and his realisation, once he was at the foot of the steps in front of the Gap between Blocks 2 and 3, that he was injured, were around the same time.

7H-III THE NAIL BOMBER BETWEEN BLOCKS 2 AND 3 ROSSVILLE FLAT

7H-16 There is evidence that there was a man throwing nail bombs from around the Gap between Blocks 2 and 3 of the Flats.²⁵

7H-17 It is not, and has never been, suggested that Patrick McDaid was armed with or throwing a nail bomb. Nor is it suggested that he was Soldier Q's target. Mr McDaid was, however, one of the last to be wounded in Sector 2 and he sustained a wound which might well have been caused by a slicing tin can lid such as were used at the time in the construction of nail bombs. (His wound was inconsistent with his having been shot).

7H-18 Furthermore, Giles Peres' sequence of photographs, showing a number of men crawling along in the lee of Block 3 of the Flats, strongly suggest that there was suspicious activity in the Gap between the Blocks which might well have been a man throwing, or about to throw, a bomb. This may be all the more likely when it is borne in mind that a man was photographed throwing a nail bomb from the

²⁵ See Section Chapter 7 O

FS 7.1534

alley way behind Joseph Place, a matter of yards from the Gap between Blocks 2 and 3.²⁶

7H-IV CONCLUSION

7H-19 Soldier Q fired one round at a man he believed was in the process of throwing a nail bomb. That man had already thrown one device that had exploded, albeit perhaps not properly. Soldier Q is unclear whether the bomb thrown was a nail or blast bomb.

7H-20 Soldier Q's round did not hit any of the known dead or wounded.

7H-21 There is circumstantial evidence that is suggestive of nail bombs having been thrown around the area of the Gap between Blocks 2 and 3 of the Flats.

²⁶ P323

FS 7. 1535

CHAPTER 7I

SOLDIER S

7I-I S' ENGAGEMENT

CURRENT RECOLLECTION

7I-1 Soldier S's recollections of the events of Bloody Sunday have significantly diminished over the years. S explained in his BSI statement that during his military career he has been involved in many serious incidents, and that therefore, although he does not trivialise Bloody Sunday, the events of that day have "faded quite significantly".¹ Soldier S said that the transcript of his oral evidence to the Widgery Tribunal is the most reliable account of his actions on the day.²

7I-2 His lack of memory is illustrated by the fact that he cannot even remember objects being thrown from the Flats into the car park³ or a shot being fired at the Presbyterian Church.⁴ Both clearly happened and Soldier S recalled them in 1972. It would seem to be unlikely that there can be any reason why Soldier S should wish to pretend that he has no recollection of these events. He no longer has a detailed memory of the events of the day.

7I-3 Of his firing, S can only now remember being near to a wall, Sergeant O being to his right at the front left hand side of his Pig,⁵ and that he had an exchange of fire with a gunman or gunmen in the alleyway between the Flats.⁶ His only recollection of that is that "the exchange was over quite quickly."⁷

¹ B724.001 paragraph 7- B724.002 paragraph 10

² B724.002 paragraph 11

³ B724.005 paragraph 25.14

⁴ 331/80/15-23

⁵ B724.003 paragraph 19

⁶ *ie the Gap between Blocks 1 and 2*

⁷ B724.003 paragraph 18

FS7. 1536

SOLDIER S'S 1972 EVIDENCE

- 7I-4 Soldier S left Pig 1 under fire and made his way south down to the end of the Chamberlain Street wall.⁸ From that position he saw a hail of bottles, including acid, being thrown from the Flats,⁹ and he saw a gunman in the gap between Blocks 1 and 2.¹⁰
- 7I-5 The man was kneeling, facing towards a soldier. He fired four shots from, most likely an M1 or possibly M16.¹¹ The gunman then got up and, in so doing, exposed his rifle to S.¹² As soon as S identified him as the gunman, he fired three aimed shots at him. He did not think he hit him.¹³
- 7I-6 The gunman went out of S's view but then was seen again, after maybe thirty to forty seconds, in the same position, kneeling.¹⁴ The gunman fired at S again. S saw the muzzle flashes¹⁵ and fired three more rounds at the gunman.¹⁶ This time he thought that he hit the man.¹⁷
- 7I-7 Soldier S then saw either the same gunman or a different man (he "could not say" which) but still in the same position.¹⁸ Three or four rounds were fired at Soldier S who returned fire that, he thought, missed.¹⁹ S then fired three more rounds and "thought" that he hit the target on this occasion, as his body "jerked backwards".²⁰

⁸ B724.023 letter D-G

⁹ B724.024 letter A-B

¹⁰ B724.024 letter A

¹¹ B724.024 letter D-G

¹² B724.025 letter A-B

¹³ B724.005 letter B

¹⁴ B724.025 letter C-E

¹⁵ B724.025 letter F

¹⁶ B724.025 letter F

¹⁷ B724.026 letter A

¹⁸ B724.027 letter A-B

¹⁹ B724.027 letter D

²⁰ B724.028 letter A-B

FS 7. 1537

- 7I-8 Lord Widgery asked Soldier S whether the gunman was the same man throughout. He replied that he “could not say whether it was the same man or not”.²¹ It seems most probable that Soldier S hit only one person, if indeed he hit anyone. It is certainly not clear whether the man was killed or injured, or the degree to which he was injured. S did not see the man after he jerked backwards as more people crossed his line of sight and obstructed his vision.²²
- 7I-9 Soldier S was then ordered back to his Pig.²³ (Lance Corporal V recalled ordering S back to the Pig, having fired his one round before S fired his last batch of three.²⁴)
- 7I-10 All the time that Soldier S was in his firing position, and before he fired his first shot, he thought there was a person lying on the ground to his front, and that he was already there when Soldier S first went into his position.²⁵ He was asked whether he had fired at all at the stage at which he saw the body and replied, “I may have sir, but I don’t think so.”²⁶ If the body that S was being asked about was that of Jack Duddy²⁷ he was already on the ground before Soldier S fired and, if that is right, Soldier S cannot have been responsible for shooting him. As Soldier V fired late into S’s sequence of shots, (between S’s third and fourth batches),²⁸ Soldier V cannot have shot Jack Duddy either.²⁹

²¹ B724.028 letter C

²² B724.028 letter D

²³ B724.029 letter C-D

²⁴ See Section 7F - Soldier V

²⁵ B724.032 letter E- B724.033 letter B

²⁶ B724.033 letter B-C

²⁷ There was a question specifically about whether a Priest was near the body: B724.032 letter G

²⁸ V saw S fire “approximately four shots” B821.030 letter C-D. When S had finished firing Lance Corporal V ordered Private S back to the Pig B821.022 letter C-E, B821.013.

²⁹ See also Chapter 7F - Lance Corporal V

FS7-1538

CORROBORATION

- 7I-11 Sergeant O saw Soldier S's gunman when the gunman was firing from a kneeling position. O saw the muzzle flashes and Soldier S engaging the gunman.³⁰ Sergeant O, as the Platoon Sergeant, said in his BSI Statement that, "knowing Private S as I did, I knew that he would not shoot until he was able to fire a clear aimed shot at the gunman. He would not have shot wildly in the direction of the gunman and I did not continue to watch what happened in the exchange of fire between Private S and this gunman."³¹
- 7I-12 Soldier V saw that S was taking aim and returning fire in the direction of the gap between Block 1 and 2.³² He saw flashes coming from that direction, but he did not hear the shots. V saw S fire approximately four shots.³³
- 7I-13 INQ 444 also saw a gunman in the gap between Blocks 1 and 2.³⁴ He saw the man move quickly from left to right, carrying a rifle in both hands. He was not aiming the rifle. "I do not recall seeing the man fire any shots. It happened so quickly that by the time I registered seeing him, he was out of sight. It is almost like a photograph in my mind."³⁵ INQ 444 said that he was "pretty certain"³⁶ that this was a rifle. Soldier 110 (a Second Lieutenant in C Company, 1 PARA) also saw a gunman cross the gap with what looked to be a rifle.³⁷

³⁰ B575.116 paragraphs 55-58

³¹ B575.116 paragraph 59

³² B821.021 letter D-F

³³ B821.030 letter C-D

³⁴ C444.5 paragraph 31

³⁵ C444.5 paragraph 31

³⁶ Day 344/103/09-11

³⁷ B1726.5 paragraph 22

FS 7.1539

SOLDIER S'S PREVIOUS ACCOUNTS

7I-14 Soldier S readily accepted that there were inaccuracies in his earlier statements that he did not condone; indeed he regretted signing "them".³⁸ He explained that, being an 18 year old soldier at the time, making a statement to the RMP was "a frightening affair in itself".³⁹ It had been quite late at night and there were "bits that had been added by the RMPs".⁴⁰

7I-15 Soldier S also stated that it was wrong for his RMP Statement of 4th February to say that he had seen a gunman firing from a ground floor window.⁴¹ He accepted that this was untrue.⁴² He said⁴³

I am not saying that it was put into my mouth, but I am saying that things may have been altered to suit things at the time and the RMP come along and they tell you: this is what, you know, actually happened to you or – but if you wanted to make some sort of supplementary statement, you know, they would more or less tell you to shut up and be quiet, just deal with the question you are being asked to deal with ..

7I-16 Soldier S was asked by Barry MacDonald QC whether he regretted anything that he did on Bloody Sunday. Soldier S answered:⁴⁴

A. I regret the whole incident, yes. I mean, can I, can I just -- I do not intend, I do not intend to be flippant in any way on this. Can I just -- will you bear with me a moment, please, sir: even the man that I identified as a gunman, who was obviously posing a threat to us in the alleyway, if I did hit him and kill him, it is still a tragedy, is it not; it is still -- somebody grieved him. Although I had a duty to do that, it is still a tragedy to his family; is it not? I am being rhetorical, but I am trying to say that I am not without compassion on this issue; I am a Christian person, sir, I have Christian beliefs,

³⁸ Day 331/61/1-62/2

³⁹ Day 331/61/14-18

⁴⁰ Day 331/61/6-62/2

⁴¹ B703

⁴² Day 331/7521-76/1

⁴³ Day 331/74/16-25

⁴⁴ Day 332/12/7-13/12

FS7.1540

I live by a Christian standard myself. This is a tragedy, it is a tragedy for everybody, I realise that and I am sorry that innocent people got killed on that day, I am very, very sorry for that, but for my action on the day, my particular action, I believe was justified in what I did. I am not saying that these errors in my statement -- I am not saying that I am condoning those errors at all, but the action I took was the correct action on the day.

Q. The answer to my question is: you do not regret anything that you personally did on Bloody Sunday, in the sense that you now feel that your conduct, your personal conduct was wrong?

A. No, I do not think my personal conduct was wrong, sir, in the action that I took.

7I-17 S went onto say that he felt "a weight of responsibility" about the RMP statements, and that the families present when he gave his evidence "deserve the respect and an explanation from me" about the inaccuracies in the RMP Statements.⁴⁵

7I-II WHOM DID SOLDIER S SHOOT?

7I-18 There is a body of evidence before the Tribunal which suggests that a wounded man (in addition to Kevin McElhinney) was taken into Block 1 of the Rossville Flats. It is not clear where that casualty came from.

AN ADDITIONAL CASUALTY INSIDE BLOCK 1

7I-19 There was plainly at least one additional, unknown casualty inside Block 1. The evidence relating to this casualty is set out in detail in the Submissions on Behalf of the Clients of Mr Robert Aitken and are not repeated here. In addition to the evidence there relied upon, two further witnesses saw a unidentified casualty.

7I-20 Dennis Mullan, who was in Block 1 level 2 when the Pigs arrived, saw, *three flights of stairs* up in the south stairwell of Block 1, an injured man with longish dark hair, thin faced, about 19 years old with a droopy collar shirt and shiny V

⁴⁵ Day 332/016/5-9

FS 7.1541

neck jumper with a stomach injury being treated by a Knight of Malta and Dennis Bradley. The people were saying that they could not find a pulse.⁴⁶ This clearly was not Kevin McElhinney as the colour morgue photographs show him to have been wearing a brown roll neck jumper.

7I-21 Donal Deeney also went up the stairs of Block 1 and saw someone who had been shot being looked after by lots of young girls. Mr Deeney did not know who he was.⁴⁷ He thought he was Kevin McElhinney, but said in oral evidence that he was not sure.⁴⁸ The injured man had fair hair and Kevin McElhenney had dark hair.

7I-22 It is not possible to ascertain from where the unidentified casualty came. He may well have come from the gap between Blocks 1 and 2 and therefore be the man that S believed he had hit. It is also possible that Soldier S did not kill his target. His target may have been wounded, and even then not necessarily seriously.

7I-III THE KNOWN DEAD AND WOUNDED

7I-23 It does not seem at all likely that Soldier S shot any of the known dead or wounded. Soldier S did not shoot Peggy Deery for the reasons set out in Chapter 7K. Soldier S pointed out in his oral evidence that had Mrs Deery been shot in a position close to the Chamberlain Street wall, that would have occurred "reasonably close" to him and he was "certainly not" conscious of her, or of a woman being shot in the leg, near him.⁴⁹

7I-24 Soldier S did not shoot Jack Duddy because Jack Duddy had already fallen before Soldier S started to fire. Furthermore, he explained that he did not shoot towards a crowd of people and hit Jack Duddy.⁵⁰

⁴⁶ AM 449.4 paragraph 26

⁴⁷ AD 26.12 paragraph 17

⁴⁸ Day 086/50/5-6

⁴⁹ Day 331/89/23 - 91/12; Christopher Clarke QC remarked, "The evidence is very confusing about Mrs Deery, but one possibility is that she came out from there: Day 331/092/5-7

⁵⁰ Day 331/089/15-22

FS 7. 1542

7I-25 Michael Bradley was shot in front of Block 2 of the Rossville Flats and therefore was in the wrong position for Soldier S's target. Michael Bridge cannot have been shot by Soldier S if, as Soldier S said in evidence, he would not have shot someone who simply strayed across his line of fire,⁵¹ and Soldier S did not shoot anyone in the leg.⁵²

7I-26 Soldier S was adamant in his evidence to the Tribunal that he would not have shot an unarmed civilian.⁵³ "I would not have shot an unarmed civilian, it is as plain and as truthful as that, I would not shoot an unarmed civilian." This emphatic rejection of any suggestion of unlawful or reckless shooting was firmly endorsed by Sergeant O.⁵⁴

7I-IV CONCLUSION

7I-27 Soldier S now has little recall now of the events of the day. He fired at a gunman, possibly hit him, but by no means necessarily killed him. Soldier S seems very unlikely to have shot any of the known casualties. In the unlikely event that he did, he did so unintentionally, honestly believing that he was firing at a gunman.

⁵¹ B724.005 paragraph 25.12

⁵² Day 331/94/20-24

⁵³ Day 331/089/4-14

⁵⁴ B575.116 paragraph 59

FS 7.1543

CHAPTER 7J

SOLDIER N'S SECOND ENGAGEMENT

7J-1 INTRODUCTION

- 7J-1 Having repelled the crowd and assisted INQ 1918 in escorting Mr Clark to Pig 1. He described what happened next in his SA Statement:

I then moved straight to the back of the Chamberlain Street houses again to get cover. As I was moving up towards my men a civilian stepped out beyond the end house. He came out in a throwing attitude with his right arm back in the attitude of someone about to bowl. He was about 30 or 40 yards away and appeared to me about to throw the object in his hand at my platoon sergeant's Pig. The object in his hand seemed to me to be a nail bomb. His throwing attitude was the attitude of a bomber and not a stone-thrower. I thought too that I saw smoke coming from the object. I fired one shot at him from the shoulder and aimed. I think that I hit him in the right thigh. He put his hands down towards his right thigh and staggered off as if his leg was not working properly. I saw no explosion.¹

- 7J-2 Christopher Clarke Q.C. asked N what recollection he had now of the incident, over thirty years' later. N replied:

A. I can remember my attention being caught by somebody down at the far corner who seemed to duck back and then came forward again just as it is described there.

Q. When you say "duck back," duck back where?

A. Out of my line of sight.

Q. Out of your line of sight and then come back again?

A. Yes.

Q. Could you see what he was doing the first time he appeared?

¹ B399

FS7:1544

A. No. That caught my attention out of the corner of my eye, I think.

Q. When he first came round the corner, do you recall whether he showed any sign of seeing you?

A. No, I have no idea.

Q. Can you help us as to what other soldiers were around in the area at this stage?

A. Not clearly. Over towards my right, in against the lower edge of the flats, were some of my soldiers, and I was moving -- I was beginning to move across towards them.

Q. That is in towards what we know as Block 1, is it? The block nearest to the Rossville Street ...

A. Yes, the first block, the block nearest to our Pigs.

Q. What about around Sergeant O's Pig, were there soldiers there?

A. I cannot recall seeing his Pig from that position.

Q. Do you recall how long you had him in your sight before you fired?

A. It was a fleeting incident."²

7J-3 N explained that of the Trajectory Map and the Trajectory photograph, he thought that the photograph more accurately represented the event.³ This indicates that N was some way out from the Chamberlain Street wall when he fired:

² Day 322/090-91

³ Day 322/092; B438

FS7.1545



7J-4 In his BSI Statement N said that his current recollection is that his target was wearing an old-fashioned tweed jacket.⁴ His present recollection is very limited and, in his oral evidence to the Inquiry, he indicated that his 1972 account of the man wearing a blue anorak was probably more accurate.⁵

7J-5 After N had shot him, the bomber disappeared out of N's line of sight, staggering off as if his right leg was not working properly. N assumes that the man took the object with him because he did not see it after that.⁶ His general recollection is that order was restored very quickly and that it only took a matter of seconds after he fired to determine that there were no other visible threats.⁷ This remains his present recollection.⁸

7J-6 Lieutenant N was justified in opening fire. He acted in defence of those soldiers around Sergeant O's Pig who were the likely target of the nail bomber. He honestly believed that the man he saw, who had emerged from behind the Chamberlain Street wall in a bowling action with a smoking object, was about to

⁴ B438.011 paragraph 43.

⁵ B374; Day 322/095-096

⁶ Day 322/093-094

⁷ B438.012 paragraph 47

⁸ Day 322/094-095

FS 7-1546

throw a bomb. A nail bomb was a lethal weapon and was expressly covered by the Yellow Card. N said in his BSI Statement that he "... *only saw him for a split second, but [his] immediate reaction was that he had a bomb and was about to lob it ...*"⁹In the circumstances Lieutenant N's reaction was, it is submitted, both honest and reasonable.

7J-7 Although at the time that N shot at the nail bomber he honestly believed that his men were under threat, thirty years' later he is frank that his recollection of events is less clear and he cannot now be as certain as he originally was. He told Christopher Clarke Q.C:

*At the time I fired that shot, I was absolutely confident, there was no doubt in my mind at all.*¹⁰

7J-8 Despite this confidence, N has continued to question whether he might have been mistaken when, in a split second, thirty years' ago, he thought he saw a nail bomber. The doubt cast on the forensic evidence before Lord Widgery, the continued publicity claiming that only innocent people were shot and killed that day made N increasingly question his own actions.¹¹

Q. Is the position that you have, as I think you have explained in your statement, had doubts since as to whether the target that you shot did in fact have a nail bomb?

A. Yes, I expressed those doubts to Eversheds.

Q. And I think you say that this is an incident that has bothered you for years and you had increasingly questioned whether he was in fact a nail bomber; is that right

A. I, I had no doubt in my mind that when I fired that shot, I was convinced I was shooting at a nail bomber, but since then, with nothing to go on but all the press reports saying that there was no shooting that day, there were no nail bombs, there was nothing, then, as each year passed, I began to wonder if the, if my man had

⁹ B438.011 paragraph 43

¹⁰ Day 322/092

¹¹ B438 paragraphs 43-46

FS 7.1547

*had a nail bomb or not, but at the time I fired that shot, I was convinced I was entirely justified in doing so.*¹²

7J-9 N suffered from clinical depression in the mid 1990s. He told the Tribunal that his sense of doubt about his shooting of the nail bomber was only one factor in that depression: "there were several negative elements" in his life and he was certainly not "wracked by guilt" then or now by his actions on Bloody Sunday.¹³

7J-10 That Lieutenant N should, three decades on, be less certain in his own mind of precisely what occurred in those few seconds in the car park of the Rossville Flats than he was at the time, is hardly surprising. Whatever his present doubts, at the time at which he opened fire Lieutenant N honestly believed that he was firing at a man about to throw a nail bomb and it is, of course, the honesty of his belief at the time that must be judged.

7J-II WHO WAS LIEUTENANT N'S TARGET?

7J-11 Lieutenant N believed in 1972, and believes now, that he hit the man he was aiming at. Although it was suggested to him that he was responsible for shooting either Michael Bridge or Peggy Deery, it is clear that his target was neither and remains unidentified.

MICHAEL BRIDGE?

7J-12 Michael Bridge was at the alleyway in Chamberlain Street when Lieutenant N fired his warning shots. He then ran down Chamberlain Street and into the Rossville Flats' Car Park. Lieutenant N did not, however, shoot Mr Bridge: first, Mr Bridge was in a wholly different location from Lieutenant N's target when he was shot and, secondly, Lieutenant N's target was holding a smoking object which he was in the process of throwing in a bowling action.

¹² Day 322/092-93

¹³ Day 323/022

FS7.1548

Mr Morgan cross examined Lieutenant N about the location of his target relative to the parking space markings on the car park:

Q. If a person is walking from the double spaces to the single spaces, they would come into your view at some point just before reaching the single spaces; is that correct?

A. Yes.

Q. Do you accept it is a possibility that the reason you did not see the group around Duddy was because that group was so far over into the unmarked space that they may have been out of your view?

A. Could have been.

Q. Do you accept, therefore, as a possibility, that if Mr Bridge made his way from that group towards O's Pig and in the course of doing that was manoeuvring himself closer to the single set of car parking spaces, that he may have so manoeuvred himself that he actually came into your view at some stage?

A. If he was moving he would have come into my view, yes.

Q. Do you accept, at least a possibility, if that is what happened, he may have been the person that you shot, believing him to be a nail bomber?

A. If he had something in his hand, um, was acting in such a way as to make me think he was about to throw a nail bomb, then that is a possibility, if he was close to that, that corner of the wall.

Q. You say, "if he had something in his hand," but without trespassing on the territory that has already been covered, you now have your doubts about whether in fact the person that you shot did have a nail bomb in his hand?

A. I do now, but at the time I did not.

Q. I understand that, and I am not taking issue with you on that, but you are now recognising the possibility that the person you shot did not in fact have a nail bomb in his hand and that you made what I can describe as an error of judgment, in what you have described as very difficult circumstances?

A. I am recognising that as a possibility now, yes.

Q. Therefore, do you recognise the possibility that you in fact shot Mr Bridge?

A. I do not know Mr Bridge.

FS7-1549

7J-14 Mr Clarke questioned N further on the possibility that he was responsible for shooting Michael Bridge. N explained that Mr Bridge appeared to have been shot in a different position to the man he shot:

Mr Bridge is the man who appears in photograph P741 that I have just put on the screen. Leaving aside his name, do you recognise the possibility that you in fact shot the man who appears in photograph P741?

A. That is not possible.

Q. Despite the matters that Mr Morgan was putting to you?

A. Yes.

Q. That is not possible because ...

A. It does not fit in with the -- the positioning.

Q. Why does it not fit in with the position?

A. The person I shot was much nearer the corner and was in the -- looked very much in the process of throwing a nail bomb."¹⁴

7J-15 When N was shown the photographs that purportedly show Michael Bridge being shot¹⁵ N pointed out that the man that he hit was coming out from behind the gable wall at the back end of Chamberlain Street.¹⁶

May we go back to B741. Is it possible that the person whom you shot is the person whom we see depicted in these photographs?

A. No.

Q. Why do you say "no"?

A. If you follow the line of -- the lines, one sees standing between.

Q. Yes.

A. Can I have this?

¹⁴ Day 323/118

¹⁵ Day 322/097-098

¹⁶ Day 322/098

FS7-1550

Q. Yes, certainly. Can we give control to Lieutenant N, please.

A. Thank you. Then it does not look to me as if he is out of my line of sight.

Q. Sorry, what –

A. I presume from this my firing position was round the corner to the right, somewhere behind that wall.

Q. That is round -- what do you mean by the right, it is in one sense round the corner to the left, it is on the west side of the back end of Chamberlain Street?

A. Yes.

Q. Where your yellow arrow is?

A. The man I shot was coming out from behind that, from behind that corner and fell back behind that corner out of my line of sight. This chap in the photograph looks very much as if he is in my line of sight quite a bit, so it would not have been him that I shot.¹⁷

7J-16 Although he might now have doubts as to whether the man he shot was in fact in the process of throwing a nail bomb, he remains "very confident" of the sequence of events that led up to the shot that he fired and of the location of his target.

PEGGY DEERY?

7J-17 Lieutenant N cannot have shot Mrs Derry: Mrs Deery was shot before Pig 2 had crossed the waste ground and parked in the Car Park. She must have been inside 33 Chamberlain Street by this time. (See the submissions in relation to the shooting of Mrs Deery in Chapter 7K.) Lieutenant N assisted in the arrest of Mr Clarke. Mr Clarke's evidence was that, at the time that he was put into the Pig, there was already another man in the Pig, who can only be Mr William Doherty. Sergeant O assisted in the arrest of Mr Doherty. Therefore Sergeant O's Pig must have already parked, and Mrs Deery already have been shot, by the time that Lieutenant N assisted in taking Mr Doherty to the Pig. His second engagement

¹⁷ Day 322/098

FS7.1551

cannot, therefore have resulted in injury to Mrs Deery as she had already been shot.

7J-18 Additionally, in view of the candour with which N has openly conceded his current doubts about precisely what he did and why, the Tribunal should consider very carefully whether it would be fair to conclude that N would continue to maintain that his target was a man if there was any room for real doubt in his mind as to that.

7J-19 The principal ground upon which the accuracy and honesty of N's belief that he saw and fired at a man who was throwing something which "seemed to be a nail bomb" is challenged is that there is said to have been no one throwing anything in the area into which N fired. While it is accepted that there is a body of civilian evidence which, taken at face value, would support that contention, the far more limited but far more reliable evidence of those who have been prepared to admit that they saw or participated in the rioting in this area contradicts the premise on which the case against N rests. Given that the fundamental basis of the attack on N can be shown to have been groundless, the Tribunal should be exceedingly cautious before concluding that he was mistaken, let alone that he had not an honest belief in the threat that he claimed to have been under. The absence of a witness prepared to admit to seeing anything thrown that was, or could have seemed to have been, a nail bomb does not render N's evidence unreliable.

7J-III CONCLUSION

7J-20 Lieutenant N fired on two occasions during the course of Bloody Sunday. In both instances it is submitted that his shots were justified. Moreover, and more importantly, on both occasions he honestly believed that he had no alternative but to open fire. The Tribunal has no basis for doubting the honesty of that belief.

FS 7. 1552

CHAPTER 7 K

PEGGY DEERY

7K-I INTRODUCTION

7K-1 The accounts of how Mrs Deery came to be shot vary greatly and are markedly and irreconcilably inconsistent. All that is certain is that she was hit relatively early on, and no later than during the soldiers' deployment down Rossville Street and across the waste ground. She was hit by a single bullet of an unknown type and velocity. It entered the front of her left thigh, passed through her leg, and exited at the rear. The person who shot her was positioned to her front. She was carried to 33 Chamberlain Street – before Michael Bridge and was treated there by Otto Schindlwein.

7K-2 The evidence of the circumstances in which Mrs Deery was shot is so inconsistent that it is not even possible safely to conclude that she was shot by a soldier.

7K-II MEDICAL EVIDENCE

7K-3 Records from Altnagelvin Hospital recorded on 7 February 1972 that Mrs Deery's gunshot wound consisted of "a small entrance wound on front of thigh and very large exit wound on back of thigh. There was extensive damage to thigh muscles and comminuted fracture of the femur."¹

7K-4 Dr Shepherd and Mr O'Callaghan reported to the Inquiry that:²

Peggy Deery is recorded to have had an "extensive wound on the back of her left thigh" and a complex and compound fracture of the left femur. At operation a wound to the front of the lower left thigh was recorded as simply being present but the wound on the back of the lower left thigh was described as "extensive". The track of the

¹ D1077

² E 10.005

FS 7.1553

wound is therefore more likely to be from front to back than the reverse. No comment can be made about the nature of the projectile.

7K-III THE CIRCUMSTANCES IN WHICH MRS DEERY WAS SHOT

7K-5 It seems clear that at some stage in the afternoon Mrs Deery was at Barrier 14 watching the riot. Anthony McCallion recalled seeing her when he was near the junction of Chamberlain Street and Harvey Street; "I remember saying to her "don't head up there, they're rioting". She just smiled and walked on north up Chamberlain Street".³

7K-6 Mrs Deery recorded in her first statement dated 29 February 1972, that she approached Barrier 14, but left after the Army fired dye:⁴

At this point there was no stone throwing or trouble that I could see, but then again I was in the middle of the main crowd. The Army then fired coloured dye and I ran like hell towards Rossville Street at the back of the high flats. By this time my sister and I had got separated in the crowd.

7K-7 Beyond these facts, the evidence surrounding the circumstances in which Mrs Deery came to be shot are hopelessly confused, in part because of significant inconsistencies in her own accounts over the years.

7K-8 Mrs Deery was very seriously injured in circumstances in which no criticism is made of anything that she was doing. She clearly gave markedly inconsistent accounts of what happened to her which do not provide any satisfactory basis for making allegations against any of the soldiers.

7K-9 There are significant differences in the available evidence as to:

- (1) The circumstances of the shooting of Mrs Deery – what she was doing immediately before and after she was shot;

³ AM 65.2 paragraph 8

⁴ ED 62.2

- (2) Next to whom Mrs Deery was standing at the moment she was shot;
- (3) The location in which Mrs Deery was shot; and
- (4) The description of the soldier who was alleged to have shot Mrs Deery.

THE SHOOTING

Mrs Deery's Accounts

7K-10 In her first statement made to the RUC dated 27 February 1972 Mrs Deery said:⁵

The Army then fired coloured dye and I ran like hell towards Rossville Street at the back of the high flats. By this time my sister and I had got separated in the crowd. I ran round to the back – I was round the back of these high flats running towards the wee gate at the back of the flats when ever I tripped and fell. There were hundreds of people in this area running to get away from the Army who had driven into the back of the flats in Saracens. A man had fallen on top of me and he got up and ran around the corner. Whilst I was on the ground I was able to see the Army men in front of me and I saw and heard them shooting. I attempted to get up but I slipped and cut my head and nose. I then saw a soldier in front of me and he appeared to be taking aim at me and I then felt a blow to my left thigh. I called to a man to help me which he did and he took me to a house in Chamberlain Street..

7K-11 In this account Mrs Deery says she was shot whilst she was on the floor after having slipped and fallen to the ground and after a man had fallen on top of her.

7K-12 The *Sunday Times*' Insight Team recorded a very different account. Mrs Deery told them how she was:⁶

... just standing out on the waste ground by Eden street, actually it was where Pilot Row used to be and I heard a man nearby shout "the army's coming in.]I looked over towards Rossville Street and there were the big pigs coming in and one headed over towards where we were. Then I saw a soldier with the red para hat come up

⁵ ED 62.2

⁶ AD 33.1

from the pig that was near us and he took aim I thought at me or the man standing next to me (she doesn't know who he was). I shouted to this chap "for gods sake watch out that ones going to shoot" and as I moved towards the man for protection like, I felt this big thump in my leg, in my thigh really. Its funny, I never heard the bang.

7K-13 This account is impossible to reconcile with the one taken by the RUC on 29 February 1972. In that statement she describes falling over, a man falling on top of her, her attempting to get up, but of slipping and cutting her head. She then sees a soldier taking aim and then she was shot. In this statement however she describes herself standing on the waste ground, seeing a soldier "in a red para hat" – as opposed to a helmet - taking aim, shouting to a man standing next to her and then moving towards him for protection. . In the RUC statement she does not mention the 'chap' standing next to her. In addition, Mrs Deery described, "moving towards the man for protection" – and was, therefore, standing, not lying on the ground when shot as described in the RUC statement.

7K-14 Mrs Deery explained further to the *Sunday Times*' Insight Team that⁷:

I tried to get up, I didn't realise I was shot then and I staggered forward and fell again and cut my eye open (deep cut over left eye). When I was down the second time I saw a chap suddenly fall and crawl away round the corner into Chamberlain Street. I thought he was shot, but then he came back round and him and Michael Kelly carried me round into Chamberlain Street.

7K-15 Mrs Deery's undated statement at AD33.5 records:⁸

On January 30 the soldiers were firing CS gas. I ran towards Chamberlain Street. Someone shouted that the soldiers were coming. I looked at the courtyard of Rossville Flats and saw 8 or 9 Saracens coming in. Soldiers jumped out of the Saracens. There was a man standing there. He seemed to be mesmerised, I ran towards this man. I told him that I thought that the soldiers looked as if they were going to shoot. I looked. I saw a soldier take aim and fire. I got up and fell down again. I hadn't realised I had been

⁷ AD 33.1

⁸ AD 33.5

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hit by a lead bullet. I didn't see anyone else fall down. A man came to help me. The man pulled me round the corner. A young fellow I knew, Michael Kelly, helped the man to carry me into a house."

7K-16 Clearly Mrs Deery gave different accounts of her shooting on different occasions.

7K-17 In a file note dated 25th January 1983,⁹ Mrs Deery is recorded as saying that she will "never forget his face. I can't forget his face", that she still remembers eleven years on the soldier who deliberately shot her from a range of less than 10 feet. She is here recorded as saying,

after the initial burst of firing, Peggy and her friends had run in panic through the Rossville Fats car park and into Chamberlain Street. There she had seen a soldier lift his rifle and point it at her. She threw herself against a Mr Leo Deehan shouting "get down, he's trying to kill us", when she felt a terrific blow on her leg. As she lay on the ground unaware that she had been shot she was trampled on by the fear stricken crowd. She could hear someone yelling "that woman's been shot" and she remembers Michael Kelly and another man crawling towards her and dragging her into a house in Chamberlain Street.

7K-18 In this account Mrs Deery apparently claimed to have been in Chamberlain Street and to have been trampled by the crowd. There is no mention here of a soldier in the "red para-hat" to whom she spoke after her shooting, nor is there any mention of his hair or its colour.

7K-19 In her statement to the Inquiry, Helen Deery provided further details of her mother's account of her shooting:¹⁰

My mother talked about Bloody Sunday a lot afterwards. She said she would never forget the face of the soldier. After he had shot her he had cocked his gun and she had said that she was a widow with four wee ones. He had then put his head down and walked away. She said that he had red hair. She said that he had shot her at close range.

⁹ AD 33.6

¹⁰ AD 32.3 paragraph 20

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7K-20 She was also told by her mother that, as she lay on the ground, Michael Kelly approached her and said "Jesus, Peggy, its you", and then carried her to Chamberlain Street.¹¹ Helen Deery told the Tribunal that she was sure that it was the Michael Kelly who was shot on Bloody Sunday who assisted her mother; both she and her mother knew Michael Kelly well. Helen Deery was able to identify him in photograph P635, fallen at the rubble barricade.¹²

7K-21 Mrs Deery's son, Owen, said his mother pushed a man out of the way at the moment she was shot:¹³

She told me that she had been standing a few yards from a soldier who was pointing his gun at a man standing very close to her. My mother pushed the man out of the way but the soldier still fired a shot which hit her. My mother always said that she would be able to immediately recognise the soldier who fired the shot by his red hair.

7K-22 Mrs Deery pushing the man out of the way, is in direct contradiction to other accounts which speak of her seeking his protection.

7K-23 Nell McCafferty wrote a book about Mrs Deery's life.¹⁴ She recorded an account of Mrs Deery's shooting. Christopher Clarke QC asked her about it:¹⁵

I wanted to ask you about one paragraph in your book, which is the paragraph that deals directly with the wounding of Mrs Deery. It begins at the bottom of page 12 and refers to the soldiers running down Rossville Street, Peggy seeing them coming, running through a courtyard of a nearby block of flats, heading for the presumed safety of Chamberlain Street: "A bullet struck her in the back of her left leg. She called out to a fleeing priest, "Father, I think I am shot" and he called out, "Keep on running" and she did, and then she collapsed on the step of a back door of a Chamberlain Street

¹¹ AD 32.3 paragraph 20

¹² Day 077/085/07 - 086/12

¹³ AD 34.2 paragraph 17; Owen Deery has not given oral evidence

¹⁴ "Peggy Deery: A Derry Family At War". Attic Press 1988, Virago Press 1989

¹⁵ Day 168/150/11; Nell McCafferty also referred in her book twice to the fact that there were 28 injured casualties: "Upstairs, doctors operated on the twenty-eight wounded" p13; Chronolgy pp 142-143

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house. As she lay on the ground a soldier with red hair came alongside. She looked at him and said she was the mother of fourteen children. He ran on. People ran over her as she lay there. She felt their shoes strike and hurt her head. Her wounded leg felt cold. A man pulled her down an alleyway and in the front door of a house in Chamberlain Street.

7K-24 Mr Clarke asked Nell McCafferty where this account had come from:¹⁶

Q. Do you know where the fairly specific contents of that paragraph came from; can they have come from her nieces if they were not there when she was shot?

A. No, but it would have come from the story, I presume. It would have come from her family. The story would have been told and retold over the years how Peggy was shot. She would have told them herself and they recited it.

7K-25 The account that Nell McCafferty has recorded combines elements of other accounts together and provides further twists: she is now shot in the back of the leg; she was heading for the shelter of Chamberlain Street; a Priest is now involved; she kept on running instead of collapsing and being trampled by the crowd and the conversation with the red-headed soldier appears again; but there is no suggestion that it was he who shot her or that she saw, or could have seen, the soldier at the time when he shot her.

NEXT TO WHOM WAS MRS DEERY STANDING?

7K-26 The Sunday Times' Insight Team recorded that Mrs Deery told them:¹⁷

Bernard Gallagher was standing very close Mrs Derry when she was hit. He places it as just out from the end gable of Chamberlain Street where a group of some 20 people were standing. This was the gable nearest the wasteground and Mrs Deery was standing on his right, nearer the wasteground. Gallagher recalls that she was instantly picked up by several men and whisked into 33 Chamberlain Street.

¹⁶ Day 168/151/05-13

¹⁷ AD 33.3

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7K-27 They also recorded that a man called Billy Kelly said that he was thumping a soldier who was¹⁸

in turn duffing the grey haired man up”, when Kelly, if it is he, believes that Mrs Deery - “a little woman” rushed over and pushed him out of the way as a soldier was about to shoot him. Mrs Deery puts it somewhat differently.

7K-28 In a file note dated 25th January 1983, Mrs Deery is recorded as saying that she “threw herself against a Mr Leo Deehan shouting “get down, he’s trying to kill us”, when she felt a terrific blow on her leg.¹⁹

7K-29 Of the three names mentioned variously (Bernard Gallagher, Billy Kelly, Leo Deehan) as being the man either close to Peggy Deery or being the one whom she was trying to protect, there are no statements to the Inquiry to that effect. Leo Deehan did write an account entitled “My Experience on Bloody Sunday” (AD 178), and there are the Sunday Times’ notes referring to Billy Kelly and Bernard Gallagher. (A Bernard Gallagher (AG3) has made a statement but he does not refer to Peggy Deery.) Had Mr Kelly or Mr Gallagher seen a woman shot by a soldier from a range of less than ten feet in cold blood, or at all, it would be expected that they would at least have recorded that in a statement at the time, and it is highly surprising that they did not do so, and have not done so. Similarly, although a number of witnesses refer to seeing an elderly man being struck by a soldier(s) in the Rossville Flats’ car park, none of them refers to a soldier opening fire at a woman “at less than ten yards” as Mrs Deery has claimed.

7K-30 The fact that Mrs Deery managed to name three different people as being the man next to her when she was shot, is even more strange, as it will be recalled that she told the *Sunday Times*’ Insight Team that she “doesn’t know who he was”.²¹

¹⁸ AD 33.4

¹⁹ AD 33.6

²¹ AD 33.1

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7K-31 Christopher Clarke QC showed Helen Deery her mother's various accounts, and asked if the names Bernard Gallagher or Billy Kelly meant anything to her, or whether her mother ever referred to a Billy Kelly. She answered no to both questions.²²

WHERE WAS MRS DEERY WHEN SHE WAS SHOT

Mrs Deery's Accounts

7K-32 In her first statement made to the RUC dated 27 February 1972 Mrs Deery said:²³

The Army then fired coloured dye and I ran like hell towards Rossville Street at the back of the high flats. By this time my sister and I had got separated in the crowd. I ran round to the back – I was round the back of these high flats running towards the wee gate at the back of the flats when ever I tripped and fell.

7K-33 This account has –significantly, given that she was shot in the *front* of the leg, - Mrs Deery running *towards* the Car Park of the Rossville Flats, *ie* south, the 'back' being used locally to refer to the courtyard and the 'front' to the shops on the Free Derry Corner side of Block 2.

7K-34 The Sunday Times' Insight Team however recorded that she was²⁴

... just standing out on the waste ground by Eden street, actually it was where Pilot Row used to be and I heard a man nearby shout "the army's coming in".

7K-35 Mrs Deery cannot, however, have been shot in this location by a soldier who had deployed from the Pigs. Had Mrs Deery been shot along the Chamberlain Street wall in the region of Pilot Row journalists like David Capper, who was standing against the west wall of the Chamberlain Street houses observing the soldiers deploying on the waste ground, or the photographers like Jeffrey Morris and

²² Day 077/096/23 –098/08

²³ ED 62.2

²⁴ AD 33.1

Coleman Doyle would have seen it and they did not. They can hardly have failed to have noticed any of the kind of scenes which Mrs Deery herself had variously described. Neither did Knight of Malta Charles McMonagle, who encountered Soldiers S and V making their way south along the wall.

7K-36 Other evidence of Mrs Deery's account puts her in Chamberlain Street when she was shot. A file note dated 25 January 1983 states that²⁵

...after the initial burst of firing, Peggy and her friends had run in panic through the Rossville Flats car park and into Chamberlain Street. There she had seen a soldier lift his rifle and point it at her.

Others' Accounts of where Mrs Deery was Shot

7K-37 Charles McCarron has also stated that Mrs Deery was shot in Chamberlain Street. He said in his NICRA statement:²⁶

I was walking home along Chamberlain Street there was a woman in front of me and she fell with a bullet wound in the leg, the shot was far from behind her from William Street. Myself and two other men lifted her into [] house in Chamberlain Street.

7K-38 John Tyer saw Mrs Deery being picked up in Chamberlain Street at a point some way from its southern end, which (unless she was put down and picked up again – which no one has suggested) would be inconsistent with her having been shot anywhere other than in Chamberlain Street itself.²⁷

When I was near to the south western end of Chamberlain Street facing towards the Rossville Flats car park, I heard shooting for the first time. I cannot remember exactly where I was when I heard the shots but I was definitely passed Harvey Street, probably around the point marked F on the attached map (grid reference N15). I head a steady crack and an echo. I knew it was shooting as I had heard SLRs firing before in the Bog and the Creggan. The shots were not ahead of me but coming from somewhere behind me

²⁵ AD 33.6

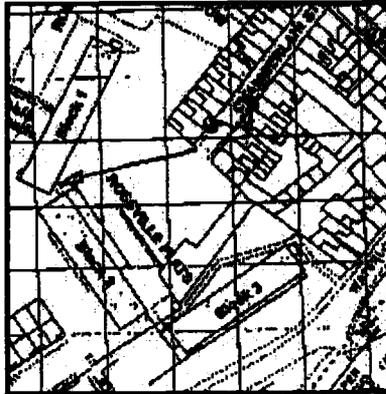
²⁶ AM 80.2

²⁷ AT 20.2 paragraph 10

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although I could not say where. I could not look back. The crowd was running towards the car park. There was some panic, girls were shouting and squeeling.

As I ran I saw a couple of men lifting a girl off the ground at about the point marked G on the attached map (grid reference M15). I could see that the back of the right leg, just above the knee was hanging off."



7K-39 Other witnesses say Mrs Deery was shot on the Rossville Street waste ground. Gerry McBride²⁸ said that he heard someone shout for help and saw a woman lying on the west side of the back of the houses in Chamberlain Street, "about three up from the bottom"²⁹ (further south therefore than Pilot Row), and that she had a wound in the top of her right thigh.³⁰ He did not see her being shot.³¹ Mr McBride did not hear any shots at that moment.³² Mr McBride helped carry her to the house in Chamberlain Street.

7K-40 Peter Gallagher gave a strange and inconsistent account of Peggy Deery being shot. He claims that she was pushed out from the end of the Chamberlain Street gable wall.³³

²⁸ another rioter who refers to the army deploying through Barrier 12 before the rioters left Barrier 14
– AM 46.1 paragraph 4

²⁹ Day 079/076/01-03

³⁰ AM 46.3 paragraph 11; note: this is the wrong leg

³¹ Day 079/076/10-13

³² AM 46.3 paragraph 11

³³ AG 23.3 paragraph 15

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I had my back to the Gable end wall [of Chamberlain Street] and was facing the Rossville Flats car park. Immediately to my right hand side there was an attractive dark haired woman who was about 25 years old. There was a lot of pushing and shoving going on. The force of the crowd pushed the women into the open area just beyond the end of the Gable end wall, i.e. to a position at about G on the map (grid reference L15) The girl suddenly fell to the ground and I realised that she had been shot. The shooting continued. Although I could not see any soldiers I assumed that they were shooting from the waste ground at Eden Place and Pilot Row. This is because I had seen the Saracens in that area earlier.

I bent down on the ground and stretched out an arm to drag the girl back towards me, to the cover of the Gable end wall. She was not carrying a weapon of any description.

7K-41 Mr Gallagher confirmed in oral evidence that this was his recollection, and that it was he who pushed her out.³⁴ He went on to say that the woman was shot in the back of her thigh and was taken into a house in Chamberlain Street.³⁵

WHO SHOT MRS DEERY?

7K-42 It is impossible from the descriptions of the soldier who was allegedly seen to shoot Mrs Deery to identify an individual who was in fact responsible.

7K-43 In her RUC Statement dated 19th February 1972 Mrs Deery does not describe the soldier that shot her at all. She simply states:³⁶

I then saw a soldier in front of me and he appeared to be taking aim at me and then I felt a blow to my left thigh...

7K-44 If Mrs Deery had been able, a relatively short time before making her Police Statement, reliably to give anything like that kind of detailed description which was so clear and firm that she was able to tell her family that she will “never forget his face”, it is very difficult to understand why she did not even attempt to

³⁴ Day 083/41/05-; 043/015-;070/14-

³⁵ AG 23.3 paragraph 16

³⁶ ED 62.2

give any description at all to the RUC of the soldier whom she was alleging had taken aim at her.

7K-45 The very graphic description given to the Sunday Times Insight Team was that:³⁷

...the soldier was not more than 25 yards, I could recognise him clearly if I saw him again. He was about your height (5'10"), fatter than you with a round fat face and a little dark of complexion, although he also had that black stuff streaked over his face.

7K-46 Mrs Deery's son, Owen, also reported his mother saying that the man who shot her had red hair:³⁸

My mother always said that she would be able to immediately recognise the soldier who fired the shot by his red hair.

7K-IV WAS MRS DEERY SHOT BEFORE THE SOLDIERS FIRED?

7K-47 A number of witnesses' evidence to the Tribunal suggests that Mrs Deery was injured as or before the soldiers deployed down Rossville Street and before any of them fired.

7K-48 Mr Nellis was a photographer who left the march at Barrier 14 and went to his mother's house at 33 Chamberlain Street.³⁹ All was quiet until he heard the sound of a crowd running down Chamberlain Street. He stepped out of the house and saw a "panic situation".⁴⁰ He heard the sound of bullets striking, "hitting the house somewhere high up, perhaps at the eaves ... in a short burst, as if there had been regular bursts of fire from an automatic weapon".⁴¹ He described the bursts in oral

³⁷ AD 33.1

³⁸ AD 34.2 paragraph 17; Owen Deery has not given oral evidence

³⁹ AN 9.2 paragraph 8

⁴⁰ AN 9.2 paragraph 12

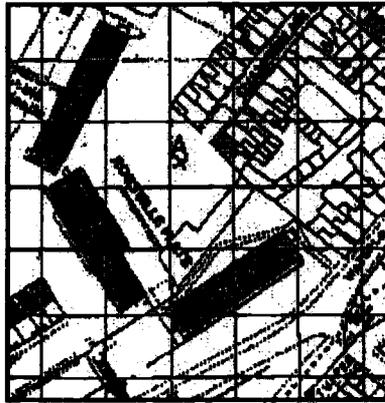
⁴¹ AN 9.2 paragraph 13

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evidence to the Tribunal as “maybe three or four, may be two bursts”,⁴² striking the eaves of three houses in a line.⁴³ .

7K-49 It would not be possible for a soldier firing from either the waste ground or from the Rossville Flats’s Car Park to have struck the eaves of the houses on the east side of Chamberlain Street.

7K-50 Mr Nellis began to run towards the Rossville Flats with the crowd. He saw, after a short way, a body lying on the ground. He noticed a crowd “trying to avoid something on the ground, either by jumping over it or moving to the left or right of it.”⁴⁴ It was the body of a young boy approximately 14 to 15 years old at GR M16 marked with the letter A on his BSI Statement map.⁴⁵ A man said he was dead.⁴⁶



7K-51 The body was on its back, the head pointing south. He had dark hair and was wearing a light shirt. Mr Nellis could not remember any blood on him.⁴⁷ He told the Tribunal that he “still has no idea who he was”.⁴⁸

⁴² Day 103/146/10-16

⁴³ Day 103/149/23 -150/3

⁴⁴ AN9.2 paragraph 14

⁴⁵ AN 9.2 paragraph 14

⁴⁶ AN9.2 paragraph 15

⁴⁷ AN 9.2 - 9.3 paragraph 15

⁴⁸ Day 103/087/16-088/2

FS 7. 1566

- 7K-52 Mr Nellis continued to move towards the Rossville Flats. Then, after moving only 15 to 20 feet he vividly recalls coming across Mrs Deery. She had blood pumping from a thigh wound.⁴⁹ Mr Nellis saw that two men had already got to her and begun to lift her.⁵⁰
- 7K-53 Mr Nellis did not hear any gunfire or see any soldiers or army vehicles (although was not looking consciously or over to Rossville Street).⁵¹ He told the Tribunal that he was in the Rossville Flats' courtyard for three minutes.⁵² He returned to his mother's house where, shortly afterwards, Peggy Deery was carried in.⁵³ Then, he recalled, some other men carried in another man shot in the leg.⁵⁴
- 7K-54 The only explanation for George Nellis's hearing rounds hitting the east side of the Chamberlain Street eaves, and for his hearing them so early on, is that there was someone in or close to the Rossville Flats firing out northwards, in the direction of Chamberlain Street and the waste ground. This accords with the evidence of some of the soldiers and the non-military witnesses about hearing non-military fire on the waste ground before any soldiers fired.
- 7K-55 Martin McGuinness also saw Peggy Deery being carried away, injured, before he heard any shooting. In his draft statement Mr McGuinness explained that he was walking south down Chamberlain Street when people started running behind him. He assumed that an Army snatch squad has been sent in. He looked back up Chamberlain Street but *did not see any soldiers*, so he continued walking. Before he reached the opening between the Blocks of Flats he saw, some distance away, a group of men carrying a woman who he later assumed was Peggy Deery.⁵⁵

⁴⁹ AN 9.3 paragraph 16-17

⁵⁰ AN 9.3 paragraph 18

⁵¹ AN 9.3 paragraph 19

⁵² Day 103/089/08-18

⁵³ AN 9.3 paragraph 20

⁵⁴ AN 9.3 paragraph 20; presumably Michael Bridge.

⁵⁵ KM 3.4

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7K-56 Mr McGuinness did not know, on this account, what had happened to the woman. He had not heard any shots at this stage.⁵⁶ Shortly after passing through the opening to the flats he then heard rifle fire.⁵⁷ This sequence was confirmed in his BSI statement. Mr McGuinness recollected seeing a woman being carried to his left before he walked through alleyway between Blocks 1 and 2. He has a recollection of "having some visual sense of blood coming out of her leg" but is uncertain as to the reliability of that.⁵⁸ He reiterated the important point that, "At the time I saw this woman being carried I had heard no shots being fired."⁵⁹

7K-57 Mr McGuinness was asked about seeing Mrs Deery in his Praxis interview.⁶⁰

Q: Did you see Dearie shot?

A: I didn't see her being shot but I seen her shortly after she was shot. As she was being carried into the house. She was bleeding profusely from a thigh wound.

Q. And there were some people carrying her.

A. She was carried, there were all sorts of people around her.

7K-58 He was questioned by Christopher Clarke QC about the injured woman that he saw.⁶¹

Q. Could we have on the screen, please, KM3.9. Can we have a look at paragraph 7, this comes from your Eversheds statement. You say that you have a recollection of seeing a woman being carried and you say your best recollection is that it was before you reached the alleyway between blocks 1 and 2 and to the left of you as you made your way. You record that at this time you had not heard any shots and you did not see her get shot and your impression is that she was being carried towards Chamberlain Street, though you accept that wherever she was, she may just have fallen off a wall and injured herself. Am I right in thinking, is this a

⁵⁶ KM 3.4

⁵⁷ KM 3.4

⁵⁸ KM 3.9 paragraph 7

⁵⁹ KM 3.9 paragraph 7

⁶⁰ KM3.75

⁶¹ Day 390/078-081

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fair way of summarising it, that you are not at all certain that the person whom you describe was in fact Peggy Deery, who we know was shot in the leg on the day?

A. Well, at the time I did not know whoever she was, but since that I have learned that it was Peggy Deery.

Q. I wonder. You recollect a woman being carried and you say that you have some visual sense of blood coming out of her leg, but it is right, is it not, that at this stage you had heard no shot fired; is that right?

A. That has always mystified me, yes.

Q. And you had not seen either a soldier or an Army vehicle in the Bogside?

A. No, not at that stage.

Q. You were not in a position to recognise Peggy Deery?

A. No.

Q. Did you recognise who was carrying her?

A. No.

Q. In those circumstances, when you had not seen a soldier or a vehicle and had not heard a shot, would you accept that it may not in fact have been Peggy Deery that you saw being carried?

A. Well, I suppose that is a possibility. This is an area where I am not speaking with 100 per cent certainty.

Q. You may be right but it is difficult on the timing to fit in what you describe in circumstances where you had not heard a shot and had not seen any soldiers. Can you help me on this, can we have on the screen P205. This is an aerial photograph of the Bogside -- of the carpark of the Rossville Flats. You came out of Chamberlain Street here. You made your way over to the gap between what we call Blocks 1 and 2. Are you able to, by reference to this photograph, if we give you control of the screen, to recall where it was you saw the person in question being carried?

A. Well, as I say, I am not certain about this at all, but my recollection is that she had come from this general area. (Marked with yellow arrows - KM3.124)

Q. Right?

A. Maybe even further back. I mean, I am not sure.

FS 7.1569

Q. Further towards the southeast, the top left-hand corner of the photograph?

A. Towards this direction.

Q. Towards that direction?

A. But, I mean, I could be wrong.

Q. I wonder if we could preserve that image as KM3.124.

7K-59 While the object of this line of questioning on behalf of the Tribunal is wholly understandable, it is based on the assumption that, notwithstanding the evidence (both civilian and military) of firing before and while the soldiers were moving in, Mrs Deery must have been shot by a soldier. The questioning may also, with respect, overlook not only the fact that Mr McGuinness had said that he had learned that the woman he saw being carried was Mrs Deery but, in his interview with Praxis recorded at KM3.68 he had (admittedly with some exaggeration) said that "Peggy Deery was shot beside me" and later in the same interview, where he was being invited to say precisely what he had seen, he said he did not see her being shot but saw people carrying her.⁶² That account, if truthful, of a woman "bleeding profusely from a thigh wound" can only have referred to Mrs Deery.

7K-60 Billy Gillespie's evidence also suggests that Mrs Deery was shot very early on, and not by military fire. He was running down Chamberlain Street, away from the soldiers deploying through Barrier 14, when he came across Peggy Deery injured in Chamberlain Street. He helped lift her into a house in Chamberlain Street.⁶³ Mr Gillespie only heard rubber bullets being fired as he ran down Chamberlain Street.⁶⁴ Once again he had not heard any military firing either on the wasteground or down Chamberlain Street before seeing Mrs Deery.

7K-61 Patrick Moore gave evidence that he saw what must have been Mrs Deery being carried in Chamberlain Street before the Army vehicles arrived in the Rossville

⁶² KM 3.75

⁶³ Day 084/147/04 -148/09

FS 7. 1570

Flats' Car Park and before the soldiers appeared there on foot. Mr Moore was at the corner of Chamberlain Street and Harvey Street heading north when he saw soldiers (in all likelihood Lieutenant N and his two men) in a consolidating position at the Eden Place / Chamberlain Street junction roaring like some sort of battle cry.⁶⁵

7K-62 He then ran south down Chamberlain Street and slowed at the car park entrance where he saw an "elderly looking woman being carried towards me hastily by two people" with a third assisting. She had a badly wounded leg – "which had a large wound to it. Her thigh had been ripped open and I remember being able to see her thigh bone".⁶⁶ He also recalled:⁶⁷

In the same split second I thought I saw somebody else being carried north from the car park (passing behind me) and up Chamberlain Street. I am not sure as I could only have seen it out of the corner of my eye."

7K-63 This may well have been the further casualty seen by Mr Nellis.

7K-64 Mr Moore then started going south with his brothers across the car park to the middle of the car park at GR M17 when "all of a sudden" he saw two or three Pigs arrive in the car park and the soldiers taking up firing positions.⁶⁸

7K-65 When Lord Saville sought to clarify the time sequence Mr Moore repeated that his recollection was "probably clear", but accepted, effectively, that if he was wrong, he was wrong. Notwithstanding that reasonable and courteous concession it would seem that Mr Moore retained the recollection which he had explained and that on

⁶⁴ Day 084/146/13-15

⁶⁵ AM 417.3 paragraph 17. This, of course, is consistent with Soldier N's evidence that he shouted at the advancing crowd before he fired his warning shots.

⁶⁶ AM 417.4 paragraph 20

⁶⁷ AM 417.4 paragraph 21

⁶⁸ AM 417.4 paragraph 22

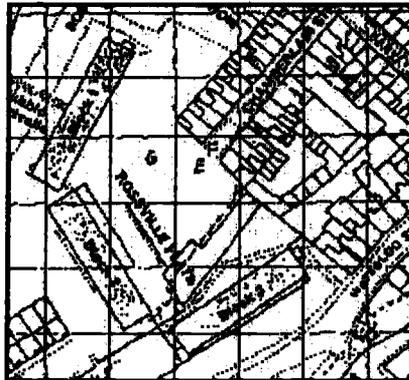
FS 7. 1571

any view of his evidence, he believed that he had seen Mrs Deery before he heard any shooting.⁶⁹

LORD SAVILLE: Mr Moore, in paragraph 20 of your statement you give your recollection of seeing this lady with her wounded thigh and then in paragraph 22 you say you started proceeding south across the car park when the Saracens arrived. How sure are you of that time sequence; are you sure you saw the wounded lady before those Saracens arrived, or is your recollection not clear in which order those events took place?

A. It is probably clear, your Lordship, but I would not be quite sure if it was correct. I felt I saw the lady first and then I approached the opening to try and get away, that is when I seen the Saracen. The timeframe of that was very quick, very sudden, so really I would stand corrected if it is not the exact sequence, you know.

7K-66 Patrick McDaid also gave evidence suggestive of Mrs Deery having been shot before the soldiers arrived in the Car Park. He ran down Chamberlain Street with the crowd that was running from Barrier 14.⁷⁰ As he reached the end of Chamberlain Street he came across a group of men who were lifting a badly injured woman. He helped them carry the injured woman to a house in Chamberlain Street. He did not know then, but was told later, that this was Peggy Deery. Mr McDaid first saw Mrs Deery being carried by a group at point E on his BSI map below:⁷¹



⁶⁹ Day 098/037/02-17

⁷⁰ Day 092/105/23 - 106/04

⁷¹ AM 172.26

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7K-67 He confirmed in oral evidence that he saw Mrs Deery early on – before he had heard any shooting. Mr McDaid agreed that he would have run the distance down Chamberlain Street, having already made his way a little down Chamberlain Street heading for Free Derry Corner, in a very short time.⁷² To Edmund Lawson QC he said that he had not heard any shooting in the short time that had elapsed between starting to run and his seeing Mrs Deery:

Q. I want your help about this, because at the beginning of the next paragraph, I am interested maybe in timing, again to remind you, by the time you had run that very short distance down Chamberlain Street, it appears Mrs Deery -- you now know her name, although you did not at the time -- Mrs Deery had already been shot?

A.. Yes.

Q. That is right, is it?

A. It is, yes.

Q. You did not hear any shooting at that stage?

A. No.

Q. And you were not aware of any shooting at you or near to you when you were running down Chamberlain Street; that is right, is it?

A. It is, yes.

Q. By the time, a very short time had elapsed, then, before you emerged from the end of Chamberlain Street, Mrs Deery had been shot and was already being carried round into the bottom house at Chamberlain Street?

A. She was, yes.

Q. Did you have any idea, did you hear anything at the time as to how or where she had been shot?

No.

Q. Nothing at all about it?

⁷² Day 092/123/06 – 124/14

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A. No.

- 7K-68 Mr McDaid then stood at point F on his BSI map and saw a person run from the western gable wall of Chamberlain Street towards the Gap between Blocks 1 and 2, and be shot, falling at point G on the BSI map.⁷³ Mr McDaid was told later that this was Jack Duddy.⁷⁴ He saw a group around the body, and someone waving a handkerchief, although he did not discern that one of those was a Priest.
- 7K-69 If the person Mr McDaid saw shot was Jack Duddy, then it follows that Mrs Deery was shot very early on, and before Jack Duddy fell.
- 7K-70 There is therefore a persuasive body of evidence that Mrs Deery was shot as or before the soldiers deployed down Rossville Street and across the waste ground.
- 7K-71 It goes without saying that the shot which injured Mrs Deery so grievously must have come from somewhere; but if it had been fired by a soldier who had entered the area in one of the Pigs, (which seems rather to have been taken for granted) it is very odd that such a number of witnesses did not hear or see that or have that impression.

THE ABSENCE OF WITNESSES

- 7K-72 A particularly curious feature of the shooting of Mrs Deery is the fact that there are no witnesses to the actual moment that she was shot. If Mrs Deery had been shot by a soldier from ten feet, in full view of the running crowd, the rioters and bystanders in the Car park, and the observers in the Rossville Flats, then there would have been witnesses in 1972 and before the present Inquiry who would have given evidence of it. Yet there are none. The witnesses that do exist all describe seeing Mrs Deery after she was shot.

⁷³ Day 092/109/7 - 110/7; AM 172.3 paragraph 12

⁷⁴ Day 092/110/8-11

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7K-73 Furthermore, those variously named men said to have been standing next to Mrs Deery when she was shot have not materialised as witnesses, either by NICRA statement or by BSI Statement. The hearsay accounts of how Mrs Deery described her shooting are variously inconsistent.

7K-74 A significant number of witnesses saw her injured before they saw soldiers or heard shooting.

7K-V CONCLUSIONS

7K-75 In the circumstances it is impossible for the Tribunal to determine who shot Mrs Deery. So poor and contradictory is the evidence that it is not even possible reasonably to conclude that she was shot by a soldier. The only evidence going to support such a conclusion – the reports of Mrs Deery's own accounts – are so inconsistent and contradictory as to make it unsafe to rely upon them at all.

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CHAPTER 7L

JACK DUDDY

7L-1 INTRODUCTION

7L-1 It is not, and never has been, alleged that Jack Duddy was doing anything which justified his being shot. It is accepted that he must have been shot by a soldier and submitted that, whoever that soldier was, he did not intend to shoot him.

7L-2 The death of Jack Duddy, understandably, has iconic status in the events of Bloody Sunday.¹ It is said that he was running, in a crowd, across the Rossville Flats' waste ground to the safety of the Flats and was shot dead when there was no justification for any shooting at all. It is submitted that, on any view of the evidence as a whole, the circumstances in which he was shot were far more confusing and confrontational than that.

7L-3 Within 30 minutes of Jack Duddy having been shot,² Father Daly gave an interview to the BBC television reporter John Bierman. What Father Daly said in that interview must, understandably, have had a major influence on people's perception of the circumstances in which Jack Duddy died. Father Daly was still on the street where the events had occurred, in a highly charged and emotional atmosphere. His words were broadcast locally, nationally and around the world that night and no doubt repeatedly over the next few days and weeks.

¹ As Barry MacDonald QC, Counsel for the Duddy family, said when questioning Edward Rigney:
Day 410/117/03-05

² John Bierman interviewed Father Daly first, then General Ford. He put the timing of his interview with General Ford as "very roughly half past four. It may have been between half past 4 and twenty to five."M6.19 letter E-G

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J.B. "Can you tell me what happened when the Paratroopers came in, Father?"

F.D. "They came in, they just came in firing, the people.... There was no provocation whatsoever.... Er they...."

J.B. "Firing what, rubber bullets?"

F.D. "No, it was lead bullets they fired, they seem to fire in all directions, there were some rubber bullets too, they didn't even seem to fire gas it was just, it was completely outrageous, disgraceful, I don't know its, they call themselves an army, its utterly disgraceful, I think....."

J.B. "Are you quite sure that nothing was fired at them first?"

F.D. "There was nothing fired at them first I am absolutely certain of that, I can speak of this without any difficulty whatsoever because I was there I was just standing there at the flats when the Saracens moved in first of all and there was nothing fired at them whatsoever. There weren't even stones fired people ran in all directions and they opened fire most people had their backs to them when they opened fire at them...."

J.B. "A short while ago we filmed you leading the way with a white, a white handkerchief....."

F.D. "Yes"

J.B. "for a party who were carrying a boy who was dead or dying, now how was he shot?"

F.D. "That little boy was shot when he was running away he, he was just a little bit behind me when he fell I heard the shot, I looked around I saw him die...."

J.B. "You saw him?"

F.D. "Yes, and he was shot....."

J.B. "He was a young man was he?"

³ ED 6.2

F.D. "He was a young boy I would say about 15, thereabouts."

J.B. "He didn't have a weapon?"

F.D. "No, he had nothing, he was just, he was just a young boy about 15, he was running, I was running too. "

7L-5 According to the evidence given, and already examined in this chapter of the submissions (but for these purposes ignoring all soldiers' evidence) it is in our submission clear that there had been civilian gunfire before Jack Duddy was shot; that there had been some rioting in the car park, close to where he was shot; and that missiles had been thrown at soldiers. Taking even that evidence as a whole, it seems plain that the situation in the car park had been far more confusing and violently confrontational; and far less one sided, than this account would indicate.

7L-6 Jack Duddy is likely, in our submission, to have been shot whilst he was within or close to the crowd that was rioting in the car park of the Rossville Flats. The evidence given (and challenged) which would appear to indicate that Jack Duddy had earlier been part of the crowd that had rioted at Barrier 14 is relevant only because it tends to support the evidence that he was also within or close to the crowd that continued, or renewed, that attack on the soldiers once in the Rossville Flats' car park That account of what happened was given by Neil McLaughlin to the Sunday Times:⁴

Two men were at either side of her [Mrs Deery]. Neither knows the other; both confirmed her story. One of them, a young boxer called Neil McLaughlin, even provides a plausible cause for the Para firing. McLaughlin and several friends, among them Jack Duddy, had surged up Chamberlain Street and rounding the gable into the car park, gave tongue when they saw the Pig drawn up. They surged towards it on their way, most if not all of them, to the back of the car park.

⁴ AM 347.5

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7L-7 Mr McLaughlin confirmed in his BSI Statement that he had been throwing stones at Barrier 14,⁵ and, that once he fled Barrier 14 and reached the car park he, and about twenty others, attacked the Pig,⁶ with missiles in their hands:⁷

Together with about twenty other people (who were not know to me at the time), I ran at the Pigs throwing stones at them. I am pretty sure that I hit one of them.

7L-8 It is therefore probable that Jack Duddy was accidentally hit at a time when he was among or close to a hostile crowd that was throwing objects at the soldiers, and when a soldier aimed at another person.

7L-II TIMING AND LOCATION

7L-9 There is a large body of evidence which places Jack Duddy's body between two of the sets of car parking grids marked on the car park. He was therefore shot close to or at a point between those grids. It is not possible to determine precisely where he was when he was shot: some witnesses have given evidence of his body rolling on the ground after it was hit, or of the body being dragged a little way south. Nonetheless, the approximately location in which he fell is clear.

7L-10 The westerly grid consisted of one row of spaces running approximately north-north-east, its south west corner starting on a point from an imaginary line extended out from the north west gable of Block 2. The second grid is a double set of car parking spaces that were contained within the parameters of the western gable wall of the end of Chamberlain Street.⁸

7L-11 The photographs of Father Daly attending to Jack Duddy demonstrate that he was lying more to the west within the space between the grids. P627 shows his body,

⁵ AM 347.1-2 paragraph 7-8

⁶ AM347.2 paragraph 12; confirmed as Pig in the singular: Day 091/053/03-13

⁷ Day 091/054/21-24

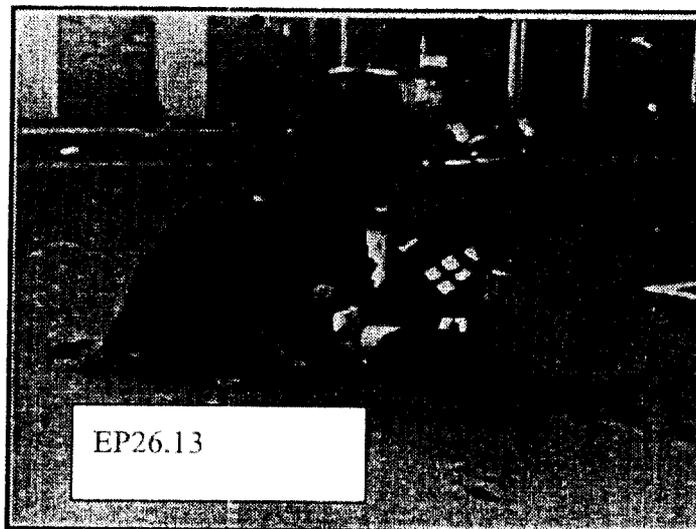
⁸ See Virtual Reality and the photographs utilised in Hotspot 71

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whilst still lying between the two sets of grids, appreciably over to the northwest (or left hand if facing north) grid.

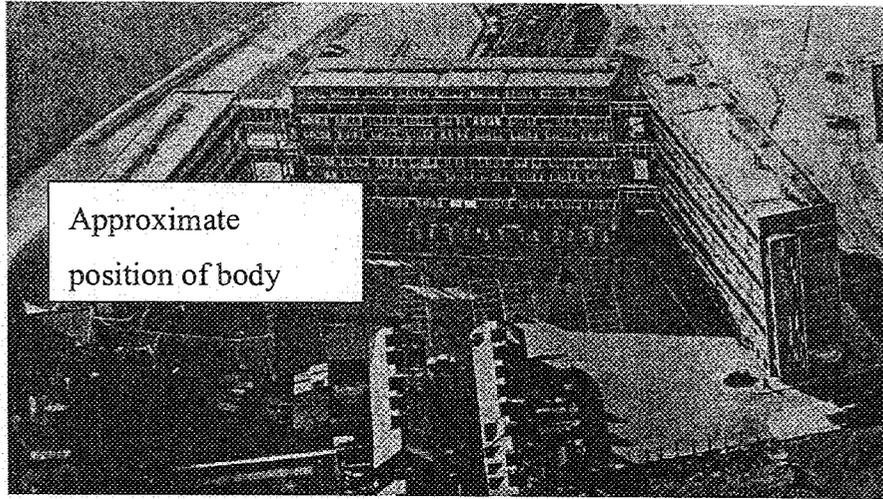


7L-12 Jack Duddy's body was also to the south of the car park. Closer detail can be seen in photograph EP26.13:



7L-13 Consequently, Jack Duddy is likely to have been shot around the position marked on the aerial photograph EP21.5 below:

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7L-14 Leaving aside Peggy Deery and the peculiar circumstances of her shooting,⁹ it is likely that Jack Duddy was the first of the known casualties to have been shot by the soldiers in the car park. He was shot before Michael Bridge and Michael Bradley, both of whom have explained that they were shot as they reacted to the sight of Jack Duddy lying on the ground and both Michael Bridge and Michael Bradley were shot before Patrick McDaid was injured, according to the time sequence from Giles Peres who photographed the injured Patrick McDaid after Father Daly had left the car park with Jack Duddy.¹⁰

7L-III FORENSIC EVIDENCE

7L-15 The bullet that struck Jack Duddy entered his body on the outer side of the right shoulder.¹¹ Dr Shepherd and Mr O'Callaghan reported to the Inquiry that they had concluded that Jack Duddy was¹²

.. struck by a single bullet in the right shoulder which entered the back of the right side of the chest, damaged the right lung, spine, major blood vessels and the left lung and then through the left upper chest.

⁹ See Chapter 7K - Peggy Deery

¹⁰ M65.1.1 paragraph 6 – M65.1.2

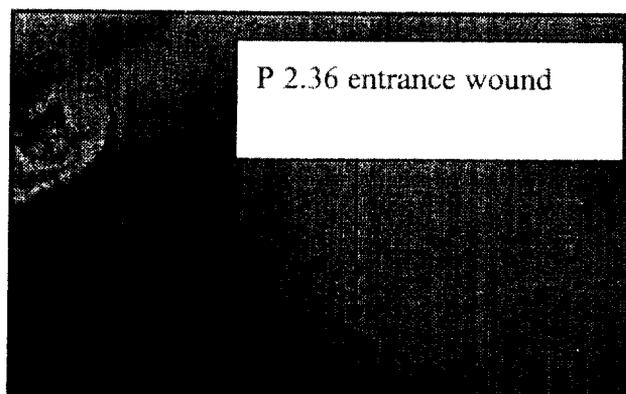
¹¹ E 2.31 paragraph 7.5.1

¹² E 2.32 paragraph 7.5.3

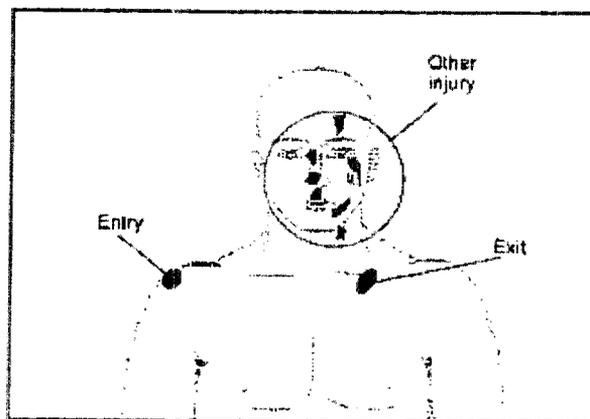
Assuming the Normal Anatomical Position the initial track clearly passed from right to left and there is probably a slight angle backwards. After deflected by the scapula the track passed forwards into the chest where it was again deflected this time by the spine. The greatest care must be exercised in interpreting the track angles in this injury since the mobility of the shoulder may allow for many different positions of the chest and body with the arm in the same position.

The other injuries are minor and due to blunt trauma. The injuries to the face and knee are consistent with a collapse, the injuries to the hand may have been caused in the same way but other forms of minor blunt trauma cannot be excluded.

7L-16 Photograph P2.36 shows the entrance wound:¹³



7L-17 Dr Shepherd's Report identifies on a drawing the site of the entrance wound:¹⁴



¹³ P 2.36

¹⁴ E 2.74

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7L-18 As Jack Duddy was shot in the outer side of his right shoulder, all that can be concluded is that he would have had to be presenting, at the moment of impact, the right side of his body towards the individual who shot him. As he was running diagonally across the car park from Chamberlain Street towards the gap between Blocks 1 and 2 of the Flats, it is unlikely, but not impossible, that he was shot by a soldier to the east of the car park: his torso would have had to have been turned almost 180° around whilst running, which seems improbable.

7L-19 Given the mobility of the shoulder, it is impossible to draw any further conclusions from the forensic evidence as to the direction in which Jack Duddy was facing, or the location from which he was shot.

7L-IV IT IS IMPOSSIBLE TO DETERMINE WHO SHOT JACK DUDDY

7L-20 No soldier describes firing at a target that matches the description or location of Jack Duddy.

7L-21 The civilian evidence as to where the soldier who shot Duddy was located is very confusing. Witnesses have described variously the location of the soldier who fired, with varying degrees of certainty, assumption and qualification. The firer and his location have variously been put as: a soldier from or by Pig 2;¹⁵ a soldier at the gable end of Block 1 of the Rossville Flats;¹⁶ a soldier at the gable end or west wall of Chamberlain Street;¹⁷ and a soldier by a Pig in Rossville Street;¹⁸

7L-22 Given this confusing evidence, and the evidence as a whole, the Tribunal is not in a position to determine who shot Jack Duddy.

¹⁵ Sean Collins AC 74.2 paragraph 11 -13; James Deeney AD 72.2 paragraphs 9-10; Day 075/126/5-15; Day 075/148/14-150/20

¹⁶ For example Brian Doherty AD 57.4 paragraphs 23-26; Isobel Duffy AD 158.2 paragraph 12-15

¹⁷ For example Christopher McKnight AM 312.3-4 paragraphs 12-13 (no oral evidence); Elisabeth Dunleavy AD169.2 paragraphs 8-9

¹⁸ James McKinney AM 303.4 paragraph 22; Day 81/112/24 -113/12

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CHAPTER 7M

MICHAEL BRIDGE

7M-I INTRODUCTION

7M-1 It is not, and was not, alleged that Michael Bridge was doing anything that, if correctly understood by the soldiers, justified his being shot. He was not shot because he was a rioter.

7M-2 In view of the confusion and contradictions in his own, and in the witnesses, evidence, as to what Mr Bridge was doing at the time when he was shot, and as to what was then happening in his immediate vicinity, the Tribunal cannot be satisfied either as to what was happening or as to how it might, or did, appear to the soldiers who faced it.

7M-3 There is, in any event, such conflicting evidence as to the circumstances in which Mr Bridge was shot, and as to where he was shot from, that the Tribunal should not, in our submission, make a finding as to who shot him.

7M-II MICHAEL BRIDGE'S ACTIONS ON BLOODY SUNDAY

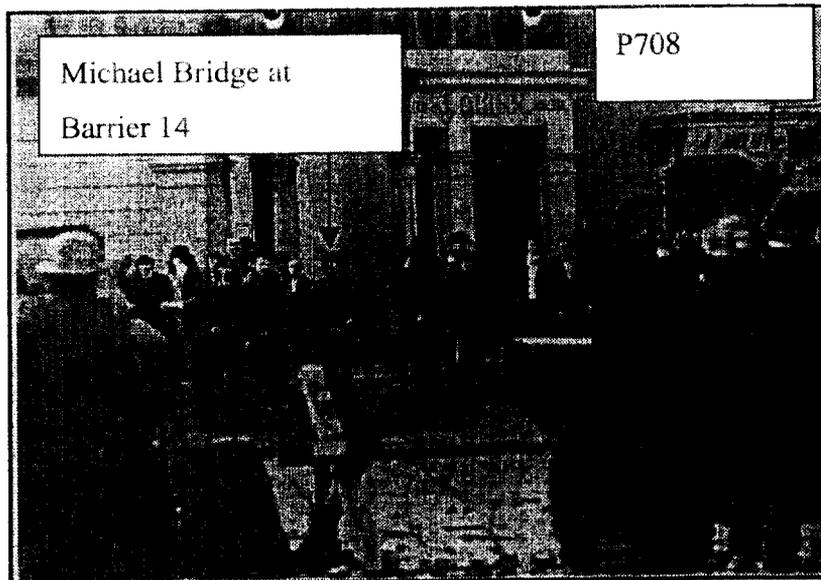
7M-4 The Tribunal has evidence that Mr Bridge was a man with a criminal record for violence; that he had been rioting at barrier 14; and that he advanced towards soldiers shortly before he was shot and injured in a menacing way. None of that evidence is relied on as justifying the fact that he was shot. It is, however, relevant to the issue as to the scene that would have confronted the soldier who shot him and as to the honest and reasonable perception of that soldier as to the threat which he faced, either from Mr Bridge, if he was that soldier's target, or from a person close to him, if he was not.

7M-5 The question of which soldier may have shot Mr Bridge has already been addressed in this chapter and is considered further below. It is referred to again only because it is also important here also to acknowledge the fact that the soldier

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who shot him may well, in all the circumstances, not have intended to and not have realised that he had done so.

7M-6 At the time of Bloody Sunday Michael Bridge was 25 years old. He had a criminal record including disorderly behaviour and unlawful wounding (a stabbing) for which he had been sentenced to three years imprisonment in 1965.¹ Perhaps remarkably, he was a steward on the March. In due course, he, with other stewards, lined up at Barrier 14 and attempted to encourage the marchers to move to Free Derry Corner. However, this did not last very long and soon Mr Bridge was, as he himself admitted, involved in stone throwing at Barrier 14.² Photograph P708 captured him at the Barrier.



7M-7 Subsequently, he was overcome by the effects of the gas and went back up William Street into an alleyway and was sick somewhere in the area of Eden Place.³ He claims he was also hit in the foot by a rubber bullet.⁴ There were then

¹ Day 093/059/16 -060/3

² Day 093/030/14 - 031/15

³ AB 84.3 paragraph 16

⁴ AB 84.4 paragraph 19

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shouts from the crowd that the Saracens were moving in and so he ran down Chamberlain Street.⁵

7M-8 He ran into Eden Place and saw Pig 1 and a number of soldiers.⁶ He alleges that the soldiers debussed from Pig 1 and fired their rifles immediately.⁷ There is overwhelming evidence that this is untrue.

7M-9 Having heard Lieutenant N fire his warning shots, Mr Bridge went back into Chamberlain Street and heard a young man shouting something like 'a boy has been shot up there' (meaning somewhere in the area of the Rossville Flats' car park). Mr Bridge came out from the bottom of Chamberlain St into the car park and saw Jack Duddy's body. He went straight up to him⁸. There were two or three people crouched over Jack Duddy at the time, one of them was a priest and the other was a first aid man.

7M-10 Michael Bridge then turned and, on his own evidence, walked towards the soldiers in the car park entrance, where Pig 2 had arrived and the soldiers had debussed. He was shot in the upper left thigh by a soldier in one of five positions – either the northern corner of Block 1 of the flats; to the east of Pig 2; near to or west of the same Pig; at the back of the Chamberlain Street houses; or from the direction of the waste ground.

7M-11 Mr Bridge was carried to 33 Chamberlain Street and into the back garden.⁹

7M-12 Michael Bridge had previously admitted that he had something in his hand that he intended to throw at the soldiers. He has, however, denied that in his evidence to the Tribunal. Those witnesses, whose evidence is considered below, who claimed

⁵ AB 84.4 paragraph 21

⁶ AB 84.4 paragraph 22

⁷ AB 84.4 paragraph 22; Dav 093/075/6 – 079/9

⁸ There are differing accounts from the witnesses regarding the direction from which Michael Bridge approached the body. Some say that he came from the gable end of Chamberlain Street; others say that he came from in front of Block 3 or from behind the low wall in front of Block 2.

⁹ AB 84.6 paragraph 46

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to have seen Mr Bridge with anything in his hands were, very properly, challenged on his behalf by his Counsel.

- 7M-13 It is not alleged that he had anything more than a stone or piece of brick and this evidence is also relevant only to the issue of what soldiers might reasonably have thought he was doing, and to the fact that he has given inconsistent accounts of what he claims to have done.
- 7M-14 What appear to be notes of an interview with Michael Bridge by the Sunday Times' team records that 'he did chuck half a brick just before getting shot'.¹⁰ Michael Bridge claimed to have no memory of making this statement or speaking to journalists and has suggested that somebody else wrote the note.¹¹
- 7M-15 Paul Mahon's material contains a recording of Michael Bridge admitting that he had picked up some stones when he was shot.¹²

I turned away, and I gathered up some stones and the soldiers at this time were... the Saracens, were [just at the high flats on the waste ground]. There was one soldier in particular. He was [along a well]. I started throwing stones at him.

[Indecipherable references to hands in the air and verbal abuse] "You can shoot anybody, so shoot me?" It sounds stupid, but you'd never believe that they would do it, you know. But he shot. He shot five or six shots [at me into the leg{indecipherable}] [but I didn't feel it]. I thought I was hit by a rubber bullet.] I could sense the bullets flying around me. [A boy run out from Chamberlain Street. He grabbed me.] [I was spinning, he grabbed me. He pulled me down to the first wee house in Chamberlain Street.

- 7M-16 In addition, a number of witnesses have given evidence that Michael Bridge did have something in his hands. Billy Gillespie said that Michael Bridge had half a red brick and that he threw it at the soldier at the corner of Block 1. He described

¹⁰ AB84.24

¹¹ Day 093/052/17 -055/18

¹² X4.3.5

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Michael Bridge as being part of the small body of rioters in the car park throwing stones at the soldiers. He could clearly see the half brick:¹³

Q. You describe how when you got to the car park you picked up some stones ready to throw; were there other people throwing stones at that stage?

A. Yes, there were a few and as I say Mickey Bridge was there and -- Mickey, I will never forget, had half a red brick and there was a soldier had came to the corner of the first flats and Mickey lifted the brick and I threw me stones, Mickey threw his and Mickey was shouting something, then he shouted, "shoot me, you bastards, something like that, you know, and the next thing the soldier just standing there and he just shot like that there. (Indicating). He was standing up at the time when he fired the gun and it was just like a fountain of blood out of Mickey's leg. I could not tell you now which leg it was, it was like a fountain of blood just out of his leg, just spurted out. (Indicating).

....

Q. You have described yourself as throwing stones and Mickey as throwing a brick?

A. Yes.

7M-17 Mr Gillespie was firm, under questioning from Mr Bridge's counsel, Mr Kennedy, that Michael Bridge threw a brick; he was not, he said, mistaken.¹⁴

7M-18 Bernard Doherty gave evidence that a man who had been a steward in William Street, no longer wearing his armband,¹⁵ ran at the soldiers in the crowd in the Rossville Flats' car park shouting "Come on, lets get the bastards!"¹⁶ He was carrying a piece of brick in his hand.¹⁷ Mr Doherty heard a shot ring out, and then

¹³ Day 084/149/1-17; Day 084/ - Day 084/150/1-3

¹⁴ Day 084/172/16-19

¹⁵ AD 54.3 paragraph 13

¹⁶ AD 54.3 paragraph 14

¹⁷ AD 54.3 paragraph 14

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“all hell broke loose”.¹⁸ He did not see what happened to the man but later learned that this was Michael Bridge.¹⁹

7M-19 William McClintock,²⁰ watching from the Rossville Flats recorded in 1972 in his NICRA Statement how people threw milk bottles from the Flats, and that the soldiers were “lined along the wall opposite the back of the flats”. He saw a man stepped forward with half a brick and throw it. A soldier opened fire and hit him in the leg.²¹

7M-20 Hugh Barbour stated in his BSI statement, and also remained resolute in oral evidence, that Michael Bridge had a piece of wood in his hand when he was shot.²² In oral evidence he described it as being 10 inches long.²³ Mr Barbour said that Mr Bridge had a reputation as a hard man.²⁴ (This echoes Neil McLaughlin’s view, noted by the Sunday Times’ Insight Team, that apart from “Bridges” and two others, the casualties that day were “harmless”.²⁵) Michael Bridge was “extremely angry” at the shooting of Michael Bradley.²⁶ Full of adrenalin, he “made a go” for the soldier on the opposite side of the Pig to the soldier who had shot Michael Bradley on the east side of the Pig shouting “Fucking bastards”.²⁷ He was shot by the soldier he was aiming for.²⁸

7M-21 Mr Barbour confirmed that he knew Mr Bridge at the time as one of his oldest peers in the area in which he lived. He explained that he had not mentioned Mr

¹⁸ AD 54.3 paragraph 13

¹⁹ AD 54.3 paragraph 14

²⁰ AM 113.1 - NICRA only; no oral evidence.

²¹ He also stated that eight shots were fired from an M5 carbine at the Saracen in Glenfada Park.

²² AB 10.3 paragraph 18

²³ AB 10.3 paragraph 18

²⁴ AB 10.3 paragraph 18:

²⁵ AM 347.15

²⁶ AB 10.3 paragraph 17

²⁷ AB 10.3 paragraphs 17-18

²⁸ AB 10.3 paragraph 19

FS7. 1589

Bridge in his NICRA statement because of the shock of the time, but he did witness Michael Bridge being shot.²⁹

7M-22 Whichever soldier shot Michael Bridge, if he was that soldier's intended target (and there were others around him, in addition to OIRA 8, whom we consider below)³⁰ may well have honestly and reasonably believed him to be a potentially lethal threat at that precise time.

7M-23 The fact that, notwithstanding the evidence summarised above, Mr Bridge persisted, in his evidence to the Tribunal, in his denials that he had anything in his hand as he advanced on the soldiers, should cause the Tribunal to consider why he should maintain that deception unless it is that he is aware of the fact that he, and those around him, were presenting a very much more lethal threat to the soldiers than has been admitted.

7M-24 OIRA 8 claims to have witnessed the moment when Mr Bridge was shot. He has told the Tribunal that he was standing "close to" Michael Bridge when he was shot. He has told the Tribunal that he was standing "close to"³¹ Michael Bridge, "possibly slightly behind him"³² in the Rossville Flats car park when suddenly a shot rang out. OIRA 8 felt that the shot was aimed "at both of us"; he thought it was fired by a soldier at the north end of Block 1.³³ OIRA 8 knew OIRA 4, but did not manage, somehow, to see him firing his pistol at the soldiers (as OIRA 4 has claimed he did).³⁴

7M-25 It is submitted that the Tribunal can and should attach no weight to what OIRA 8 claims or admits to having been doing, or not doing, at any time on Bloody Sunday. It may, however, be very significant that OIRA 8, who of course knew

²⁹ Day 088/089/5- 089/23

³⁰ The evidence of Billy Gillespie is that there was a crowd throwing stones at the same time or thereabouts, and that certainly Mr Gillespie was: see Day 089/149/1-12; Day 089/150/16-21

³¹ Day 410/067/18-25

³² AW14.2 paragraph 10

³³ AW14.2 paragraph 11; Day 410/049/24-050/14

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OIRA 4, failed to see or hear OIRA 4 fire his shots (if he did) nearby at this time. It may be equally significant that neither OIRA 4, nor Mr Bridge, nor any other civilian witness, admits to having seen OIRA 8, or any IRA volunteer "close to" and "possibly behind" Mr Bridge at the time when he was shot.

7M-III WHERE WAS MR BRIDGE SHOT FROM?

MICHAEL BRIDGE'S OWN ACCOUNT

7M-26 Mr Bridge's own evidence was that he did not see where the soldier who shot him was located. He said:³⁵

I do not believe anybody, witness or people was hit at the time, they can give an impression. The circumstances that happened -- the circumstances that the people were in, and I have heard people relating about who shot who and give the impression about who done it. I do not believe you can do that given the circumstances at the time. I believe you can see a person shooting a gun, but I do not believe that you can identify where that man is aiming at. I think the only person who can do that is the man who puts you in his sights, lines up the weapon and shoots you because that is a very deliberate act and the soldiers describe it very well and they describe their actions very well. I truly believe in the circumstances at the time, the only precise people that knew was the soldiers that pulled the trigger.

Q. You did not actually see, or you have no recollection of seeing the soldier who shot you?

A. No.

Q. Is that right?

A. No.

7M-27 He said in his BSI Statement that the soldier that he *thought* shot him was positioned a couple of feet off the back wall of the last house in Chamberlain

³⁴ Day 410/047/19-048/5; Day 410/065/20/-067/25

³⁵ Day 093/056/24 -057/19

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Street.³⁶ He said in oral evidence that he now however thinks it was Lieutenant N.³⁷ Given that Mr Bridge admits that he did not see the soldier who shot him, it is difficult to see on what basis he arrived at this conclusion. Furthermore, the evidence of others who saw him shot contradicts Mr Bridge's assumption.

CIVILIAN ACCOUNTS

7M-28 There are a large number of civilian witnesses who give evidence as to where Michael Bridge was when he was shot and what he was doing. However, these witnesses give a number of different accounts of the direction from which the bullet came and hence the location of the soldier who shot Michael Bridge.

7M-29 The soldier who shot Mr Bridge is variously said to have been at the corner of Block 1 of the flats; to the east of or in front of Pig 2; at the western gable end of the back of Chamberlain Street; on the waste ground; or on the driver's side or close to Pig 2.

A Soldier at the end of Block 1?

7M-30 There are a number of witnesses who state that a soldier at the end of Block 1 of the flats shot Michael Bridge, although not all say specifically that they saw the soldier shoot.

7M-31 Bishop Daly said in his BSI statement that while he was by Jack Duddy's body, a young man with long fair hair dashed past. Just in front, a little to the right, he began dancing up and down and screaming at the soldiers. He thinks it might have been 'shoot me, shoot me', something of that nature. "I then saw a soldier stepping out from the gable end of Block 1 of the Rossville Flats, going down on one knee, taking aim at him, firing, and the young man staggered and then he started running crazily around for a few minutes. .. I knew he had been struck by a

³⁶ AB 84. 5 paragraph 31 –AB 84.6 paragraph 32; Day 093/047/21-048/19

³⁷ Day 093/016/22-25

FS7.1592

shot from that soldier who took deliberate aim.”³⁸ Father Daly also agreed, after questioning by Brian Kennedy QC that it was possible another soldier could have shot Michael Bridge but he stated that it was very unlikely³⁹.

7M-32 Billy Gillespie helped carry Mrs Deery into 33 Chamberlain St. He said that he then ran into the car park and saw Michael Bridge. He could clearly see that he had half a brick in his hand. He explained in oral evidence how Michael Bridge and others were throwing missiles at the soldiers, and how he prepared to do the same:⁴⁰

Q. You describe how when you got to the car park you picked up some stones ready to throw; were there other people throwing stones at that stage?

A. Yes, there were a few and as I say Mickey Michael Bridge was there and -- Mickey, I will never forget, had half a red brick and there was a soldier had came to the corner of the first flats and Mickey lifted the brick and I threw me stones, Mickey threw his and Mickey was shouting something, then he shouted, "shoot me, you bastards, something like that, you know, and the next thing the soldier just standing there and he just shot like that there. (Indicating). He was standing up at the time when he fired the gun and it was just like a fountain of blood out of Mickey's leg. I could not tell you now which leg it was, it was like a fountain of blood just out of his leg, just spurted out. (Indicating).

Q. It was a soldier who was against the wall at the top of block 1?

A. Yes.

Q. You describe him as not being very tall or very big?

A. Yes.

Q. Could you see what colour soldier he was?

A. I think he was white.

³⁸ H5.5.paragraph 21

³⁹ Day 075/059/18-22

⁴⁰ Day 084/149/1 - 152/12

FS 7-1593

Q. You have described yourself as throwing stones and Mickey as throwing a brick?

A. Yes.

Q. Were there others around at that time who were doing something similar?

A. Well, there were people sort of running here and then, as I say, there was more shooting, this was actually more shooting, you could hear more shooting and people were running for cover, that is then, as I say, Mickey put his hand on my shoulder. I cannot even mind if Mickey went down on the ground or what, but the next thing there was people coming to Mickey's aid and I moved away, then I moved over along the wall, that would be over at the back block of flats, I think that is block 3.

Q. Before we get to that, when you had been throwing stones and he had been throwing a brick, you were presumably throwing at somebody?

A. Throwing at the soldier at the corner.

Q. At the soldier at the corner?

A. Yes.

Q. Was he the only soldier that you noticed or were there others?

A. The other soldiers then were starting to run up and the Saracens were coming up the waste ground.

Q. Was there any Saracen at this stage at the entrance to the car park?

A. No, there were no -- I have no recollection of a Saracen at that point. As I say they were moving up the Bog then, in the Saracens, towards us, towards the flats.

Q. Could we have on the screen photograph P188? This is a photograph that was taken on the day?

A. Yes.

Q. Can we lighten it up, please. It has been suggested that that shows, on the left-hand side, Mickey Bridge?

A. Yes.

Q. Do you recognise that as him?

A. Yes.

FS 7.1594

Q. There is a Saracen in the photograph between block 1 of the flats and the back of the Chamberlain Street houses. Seeing that photograph, do you recollect the presence of that Saracen?

A. No, sir.

Q. You do not?

A. No.

Q. Was the soldier who shot Mickey Michael Bridge in the position approximately as shown, of the soldier in this photograph?

A. That soldier, yes.

Q. And Mickey Michael Bridge, when he threw a brick, where was he?

A. He had actually been facing that soldier there.

Q. Was he in the position that he appears in the photograph, but facing the soldier, or was he in some different position?

A. I think we were more round towards that soldier.

Q. Closer to the soldier?

A. Closer.

7M-33 OIRA 8 described Michael Bridge standing in the car park of the flats facing in the direction of a soldier in camouflage gear who was kneeling at the northern end of Block 1.⁴¹ OIRA 8 went out and stood next to Michael Bridge, possibly slightly behind him. He stated that both Michael Bridge and himself were shouting 'stop shooting'. Michael Bridge was extremely angry and shouted at the soldier 'Shoot us you bastards'. At this point, the soldier stopped and aimed his rifle at them. A shot rang out. OIRA 8 was sure that the soldier who shot Michael Bridge was at the gable end of the Rossville Flats: he stated, "I am sure that Mickey was shot in the leg and I am sure that particular soldier shot him".⁴²

⁴¹ Note however that Michael Bridge's evidence is that he was facing Chamberlain Street.

⁴² AW14.2 paragraphs 9-11

FS 7-1595

7M-34 Gerard Doherty has described Michael Bridge as being approximately 10 feet to his right as he faced southwards. He stated that Michael Bridge was facing northwards and threw his fists up in the air. He could not remember if he had a stone in his hand or not. He said that Michael Bridge was 'just standing there roaring at the Brits and calling them all sorts of bastards'. Then he flinched and kind of hopped back holding his right thigh.⁴³ He said that the nearest soldier was about 400 yards was leaning against the side of the wall at the northern end of Block 1 of the flats near the door into Block 1. ⁴⁴ He had his rifle aimed. Mr Doherty thinks that he is the only one who could have shot Michael Bridge.⁴⁵

7M-35 In his BSI Statement Bernard Gilmore described the soldier that he said shot Michael Bridge in the following way:⁴⁶

...he was skinny with a blackened face. He was scared looking as if he was hyper. His height was about 5'6" and he was young with dark hair, wearing a beret. He was standing at the north east corner of Block 1 of the flats...He shot Michael Bridge from the waist. I saw the recoil of the rifle so I know it was him who fired.

7M-36 In his 1972 statement however, he said that the soldier was kneeling. This was a mistake, he told the Tribunal.⁴⁷

7M-37 Patrick Brown⁴⁸ described in his BSI statement that he ran over to Jack Duddy and turned him over.⁴⁹ At about the same time and slightly behind him to his left was Michael Bridge. He was screaming 'Go home you English bastards'. He noticed that there was a big tall soldier standing at the north eastern corner of Block 1 of

⁴³ AD 65.4 paragraph 20

⁴⁴ AD 65.4 paragraph 20

⁴⁵ AD65.4 paragraph 21

⁴⁶ AG 38.4 paragraph 22

⁴⁷ Day 088 049-50

⁴⁸ Patrick Brown is in photograph EP 25.6 behaving suspiciously, with a look of concern on his face, possibly having picked up an object from the ground that is concealed in his coat. Mr Brown did not give evidence; it is understood that he has died.

⁴⁹ AB 98 .1 Paragraph 10

FS7-1596

the flats,⁵⁰ who, without moving his upper arm, brought the rifle up with his lower right arm to hip level and shot from the hip,⁵¹ hitting Mr Bridge in the right hip.⁵² (Michael Bridge was in fact shot in the left thigh.)

7M-38 James Deeney described in his BSI Statement how he was at Jack Duddy's body when Michael Bridge appeared. He stated that Michael Bridge made a run for a soldier at the northern gable end of Block 1 of the flats. He thought that Michael Bridge might have been carrying a broken bottle in his hands;⁵³ he could not tell, but his hands were certainly forward of his body.⁵⁴ Mr Deeney said that Michael Bridge was shouting at the soldier and calling things out. Mr Bridge moved to within 3 yards of the soldier, and Mr Deeney had moved to within 1 yard to the left of Michael Bridge. Mr Bridge was then shot by the soldier at the north gable end, he thought in the leg.⁵⁵ Mr Deeney went on to say that the soldier fired a second shot that he thought hit Michael Bridge in the stomach as he remembered seeing blood there.⁵⁶ During his oral evidence, Mr Deeney also stated that he remembered at least a dozen people rioting at the edge of the waste ground and that between 15 and 20 soldiers were involved.⁵⁷

7M-39 Other witnesses that suggest a soldier at the north end of Block 1 include Brian Ward⁵⁸ and Joseph Nicholas.⁵⁹

⁵⁰ Contrast description with those of Mr Gillespie and Mr Gilmore who both described the soldier as not very big.

⁵¹ AB 98.2 paragraph 11

⁵² AB 98.2 paragraph 12

⁵³ AD 26.4 paragraph 16 In his oral evidence, Mr Deeney was not so clear, stating that he had been pushed in questions from Eversheds and that Michael Bridge may not have been carrying a bottle: Day 086/031/19 – 32/2.

⁵⁴ AD 26.4 paragraph 16

⁵⁵ AD 26.4 paragraph 16

⁵⁶ He qualified this in oral evidence, he admitted that this may just be his memory – it could have been an echo or maybe he moved his hand and saw blood and imagined there was another shot fired.

⁵⁷ Day 086/ 020/2-11; Day 086/165/6 – 166/9 Mr Deeney specifically endorsed Mr Gillespie's evidence regarding the rioting in the carpark.

⁵⁸ AW6.4 paragraph 15

FS 7.1597

A Soldier to the East of/ In Front of Pig 2?

7M-40 There are a number of witnesses that give evidence to the effect that Michael Bridge was shot by a soldier either to the east of, or in front of, Pig 2

7M-41 Hugh Barbour, who was a very nervous and distressed witness, described how two or three soldiers got out of the back of the Pig. One moved to the west side and the front, the other two stayed to the rear and the east of the Pig.⁶⁰ The younger men in the crowd were throwing stones and bottles at the soldiers. He could see and hear the sound of stones bouncing off the pig.⁶¹ He said that the soldier on the west side of the Pig then started firing into the crowd from the hip and as he fired, Mr Barbour noticed, Michael Bradley stagger and fall backwards towards Block 2. Mr Barbour said that Michael Bridge got angry following Michael Bradley's shooting. He said that Michael Bridge had a piece of wood in his hands, and that he made a go for the soldier on the opposite side of the Pig (ie the eastern side) from the soldier that had shot Mr Bradley. He was asked about this in oral evidence:⁶²

Q. In paragraph 20, you describe how, when he was hit, he was around the area that you have marked C on the photograph and that you knew he was shot because, as he ran forward towards the Pig, he seemed to stagger and fall forward. I quite follow that you saw that happen to him, did you actually see the soldier towards whom he was running do anything?

A. Well, he shot him

Q. Did you see that?

A. Yes.

Q. What did you see the soldier do, in what position was he?

⁵⁹ AN 17.4 paragraph 15; Day 078/012/3-12. Mr. Nicholas also stated that he practically bumped into a male civilian with a gun who was on his own. He states that the man was holding a small handgun and had his arm by his side. He did not see this man shoot: AN 17.4 paragraph 16

⁶⁰ AB 10.2 paragraph 9

⁶¹ AB10.2 paragraph 12

⁶² Day 088/062/21 - 063/11

FS 7-1598

A. Well, a firing position.

Q. Was he standing?

A. Aye, yes, he was standing.

7M-42 William Harley⁶³ also said that he saw Michael Bridge shot by a soldier at the eastern side of the Pig: "I saw the soldier fire and I saw the man fall."⁶⁴ Martin Tucker⁶⁵ attributed the shot to a soldier by the passenger side of the Pig (which he also described as the offside of the vehicle⁶⁶).⁶⁷ Hugh McMonagle,⁶⁸ Sean O'Neill⁶⁹ and Francis Dunne⁷⁰ describe, with differing degrees of detail and contradiction - a soldier by a Pig shooting Michael Bridge.

A Soldier at the back of the Chamberlain Street Houses?

7M-43 There is also, often inconsistent, evidence that Michael Bridge was shot by a soldier standing at the back of the Chamberlain Street houses. In 1972, Michael Bridge himself strongly believed that it was a soldier at the back of Chamberlain Street who shot him. Now, however, he believes, based on N's statement to the Tribunal he was shot by N from the waste ground. Having not seen the soldier who shot him, and have altered his view to fit Lieutenant N's evidence after the event, his present opinion is just that, an opinion or submission. It therefore takes the matter no further.

7M-44 At various stages and to varying degrees Francis Duddy,⁷¹ Charlie Downey,⁷² Joseph Moore⁷³ and Brian Baker⁷⁴ each say they saw, or attribute, the

⁶³ AH 36.3 paragraph 18; Day 077/015/15-23

⁶⁴ Day 077/015/22-23

⁶⁵ AT 17; Day 98

⁶⁶ Day 098/097/05

⁶⁷ Day 098/098/05 - 099/03

⁶⁸ AM 369.4 paragraph 20-21;

⁶⁹ AO 65.5 paragraph 26; no oral evidence

⁷⁰ AD 173.27 paragraph 18

⁷¹ AD 144.4 paragraph 16; Day 089/071/10-073/14

⁷² AD 133.4 paragraph 23; Day 091/101/1-11

FS 7. 1599

shooting of Michael Bridge to a soldier at the rear of the Chamberlain Street houses.

A Soldier on the Waste Ground?

7M-45 Joseph Moore⁷⁵ (in his NICRA statement), Peter Gallagher,⁷⁶ and Brian Baker have each suggested that a soldier in the waste ground shot Michael Bridge

A Soldier Near to or on the Driver's Side of Pig 2?

7M-46 Denis Mullan was, at the time of the march, a trainee solicitor. He now practises in Derry. He stated that he saw two soldiers debuss from the back of Pig 2 and take up firing positions immediately. One was facing south towards Block 2 of the Rossville Flats. In oral evidence he said that the first soldier was to the right of and slightly in front of the open rear doors of the army vehicle, on the side between block 1 and the vehicle.⁷⁷ He then saw a person who he later found out was Michael Bridge. He described him as having mousy, ginger hair, a moustache and a triangular shaped face. He was wearing beige or tan coloured trousers and a jumper with the sleeves hiked up,⁷⁸ and was saying something like 'here I am, shoot me' with his fists clenched and his hands splayed outwards by his sides. One of the soldiers on the driver's side of the Pig shot him.⁷⁹

Other Evidence

7M-47 Further witnesses state that the soldier that shot Michael Bridge was positioned in none of the positions described above or have given evidence that is not entirely clear. Michael Bridge, a cousin of the injured Michael Bridge, is one example. He

⁷³ AM 413.4 paragraph 17; Day 089/130/25-132/19

⁷⁴ AB 1.2 paragraph 10; Day 088/108/8-110/5

⁷⁵ AM 41310

⁷⁶ AG 23.3 paragraph 19;

⁷⁷ AM 449.3 paragraph 16-18; Day 092/ 09/08 - 15

⁷⁸ Michael Bridge was wearing grey trousers and a green anorak.

FS7-1600

stated that Michael Bridge was facing Chamberlain Street with his arms in the air. He described a soldier of average build who was either black or with a blacked out face, standing between Rossville Street and the back of the houses on Chamberlain Street.⁸⁰ Michael Bridge's oral evidence in relation to the shooting was as follows:⁸¹

Q. "The soldier was holding his rifle at shoulder level"; is that right?

A. Yes.

Q. "Pointing it at Michael Bridge." You stopped to watch for a couple of seconds and saw the soldier shoot Michael Bridge, although you cannot recall seeing the flash from the gun or any recoil, but you heard a bang; is that right?

A. That is correct.

Q. And you saw Michael Bridge's posture change immediately. Did you notice what happened to the soldier at that stage?

A. I did not, no.

Q. Were you conscious of there being an army vehicle at the approach to the car park, or anywhere else in the car park?

A. No, I do not think I was, no.

7M-IV CONCLUSION

7M-48 Despite his public protestations, it may well be the case that Michael Bridge has sought to conceal evidence rather than establish the truth about what really happened on Bloody Sunday. The contradictions in the evidence about the circumstances in which he was shot deprive the Tribunal from being able to conclude what the true circumstances were, or from where (and therefore by whom) he was shot.

⁷⁹ AM449.3 paragraph 18; Day 092/09/05-17

⁸⁰ Day 088/122/5; AB 83. 1 paragraph 6

⁸¹ Day 88/122/14-123/5

FS 7-1601

CHAPTER 7N

MICHAEL BRADLEY

7N-1 INTRODUCTION

- 7N-1 It is not, and was not, alleged that Michael Bradley was doing anything which, if correctly understood by the soldiers, justified his being shot.
- 7N-2 He was shot in front of Block 2 of the Rossville Flats in the period following Jack Duddy's shooting and most probably shortly after Mr Bridge had been shot.
- 7N-3 There is such conflicting evidence about the circumstances in which Mr Bradley was shot that it is simply not possible even to make realistic submissions about them, save that it is submitted that the Tribunal will not be able to determine with confidence what those circumstances were, or from where or by whom he was shot.
- 7N-4 We examine below the inconsistencies in the accounts which Mr Bradley himself has given about what he was doing immediately before, and at the time when, he was shot but do so only for the purpose of illustrating the extent to which those to have compounded the lack of reliable evidence as to what he was in fact doing and as to the scene which actually confronted the soldiers at the time when he was shot.
- 7N-5 Based on his own accounts over the years, and despite his assertion to this Inquiry, Mr Bradley was throwing something at the soldiers when he was shot. It is not clear what else was happening in his immediate vicinity.
- 7N-6 It appears to be likely that Mr Bradley was shot by a soldier by accident: either because whatever Mr Bradley was actually doing when he was shot caused that soldier mistakenly but honestly and reasonably to believe that he was in the course of throwing a lethal weapon or because someone in his immediate vicinity was, or was believed to be, doing so.

FS 7-1602

7N-7 The Tribunal will recall that there is both civilian and military evidence of the soldiers coming under attack from stones, bottles and acid in the Rossville Flats Car Park. That evidence has been examined in section 7C of this chapter of the submissions. The situation was still threatening and confusing at the time when Mr Bradley was shot and there is very little evidence about what was going on in his immediate vicinity.

MEDICAL EVIDENCE

7N-8 Dr Shepherd and Mr O'Callaghan reported on Michael Bradley's injuries:¹

Mr Bradley had a through and through wound right forearm, a through and through wound to the left forearm and two apparently minor injuries to the front of the right lower chest. The injuries to the right arm were the most severe of these injuries.

In a discharge summary dated 22 March 1972 Mr Fenton suggests that the injuries to Michael Bradley's left arm are less severe because it was struck first and a bullet "went straight through". Further they record that Mr Fenton suggests that the right arm was the most severely injured because the bullet was "probably spinning" when it struck. It is clear that there was damage to both the bones and the nerves of this arm.

A report on a x-ray of Bradley's right forearm taken on 30 January 1972 indicates that "Several small metallic foreign bodies are projected in the soft tissues...". The presence of those fragments was confirmed on the X ray films made available to us.

However no foreign bodies were recovered at operation and neither were there any records or reports from DIFS.

It is not possible to determine if the injuries to the arms were caused by one or more than one projectile or if they originated from left or right. No comment can be made concerning the nature of the projectile or projectiles.

The injuries to the chest are only described as "a superficial wound" in the operation note of 30 January 1972 and as "two small wounds" in the operation note of 11 February 1972. The injuries to the chest may have been caused by fragments of bone, by

¹ ED 10.006

FS 7.1603

fragments of one bullet or of several bullets or by some other object or objects.

7N-9 It is, accordingly, by no means certain that Mr Bradley was shot by a soldier but it is accepted that the evidence taken as a whole makes that more likely. The medical evidence, however, can provide no assistance as to the direction from which the soldier fired.

7N-II THE SHOOTING OF MICHAEL BRADLEY

7N-10 Mr Bradley has, over the years, given many accounts of how he came to be shot on Bloody Sunday. Despite his protestations in his BSI Statement and in his oral evidence, he was probably throwing something and is, in any event, likely to have been close to others who were throwing objects at or towards the soldiers.

7N-11 The various sources of his accounts include: a NICRA statement dated 28.2.1972; a Statement dated 7.2.1972; a note by the Sunday Times' Insight Team (undated); extracts from Fulvio Grimaldi's book (undated); an interview by Praxis for "Secret History"; and an interview with Paul Mahon – all of which are referenced and considered below.

7N-12 In his BSI Statement Mr Bradley said that, having left the Rossville Flats' Car Park (because he saw that soldiers were deploying) he returned to it because he heard that a young boy had been shot.²

7N-13 He ran along the low wall in front of Block 2. He said in his BSI Statement that he saw a sight that he said was "crystal clear", of a Pig arriving in the Car Park and the soldiers immediately starting to shoot as soon as they de-bussed from the Pig.³ He said that they "burst out of the Pig, landed and then fired".⁴ Mr Bradley withdrew this phrase, in oral evidence, with an apology, as having been a

² AB 66.4 paragraph 12

³ AB 66.4 paragraph 15

⁴ AB 66.5 paragraph 15

FS 7.1604

'colloquialism'.⁵ This account, however described, and how ever much corroborated by others who sought to give the same impression, cannot be reconciled with the photographs taken by Coleman Doyle, and indeed the considerable body of evidence that the soldiers did not debuss and immediately start firing, but embarked on dispersing the crowd, making arrests and defending themselves from attack.⁶

7N-14 Mr Bradley was, he said, behind the low wall in front of Block 2 when he realised that the boy who had been shot was Jack Duddy, who was known to him. He did not know that it was Jack Duddy until someone said his name because there was a crowd of about six or seven people around the body, so he could not see who it was.⁷

7N-15 Mr Bradley lost his temper and jumped over the wall into the car park so that he was out in the open facing the soldiers. He explained that he was full of "venom", and started to swear and shout at the soldiers. He described how⁸ "all the time I was shouting, I was standing about six feet in front of the low wall away from block 2 at almost the point marked 'F', at a slight angle moving my hands in a rapid beckoning motion, inviting them to have a go. I was pointing to myself. I did not have my fists clenched. I was turned slightly so my left side was slightly nearer to them."

7N-16 He also claimed to have shouted out "Shoot me".⁹

I stood up straight to take stock and jumped over the low wall I started swearing at the soldiers "You bastards, you fucking pigs, cunts. You killed a young boy; you murdered him. Shoot me, shoot me you fucking bastards.... All the time I was shouting I was standing at the point marked F at a slight angle moving my hands in a rapid beckoning motion, inviting them to have a go. I was

⁵ Day 94/38/4-7

⁶ AB 66.6 paragraph 20

⁷ AB 66.4 paragraph 14

⁸ AB 66.5 paragraph 16

⁹ AB 66.5 paragraph 16

FS7.1605

pointing to myself. I did not have my fists clenched. I was turned slightly so my left side was slightly nearer to them. I was so angry I didn't even see my friend Mickey Bridge coming across the car park. I have no recollection of throwing any stones or bending down to pick up any stones. I just know that I was really angry".

7N-17 He went on to state that he definitely did not have anything in his hands when he was shot:¹⁰

As I was standing shouting at the soldiers, this was the same noise with the same crack. I did not hear any different sounds. I do not recall any acid bombs. As far as I am aware nothing was coming down from the Rossville flats but I was not looking up. I was just concentrating on Jack Duddy and the soldiers. However if bottles had been thrown I would have heard the sound of smashing glass which I did not. There were no nailbombs thrown - I would not like to have been in that square if a nailbomb had gone off.

The next thing I remember is feeling a heavy thud on my right upper arm ... my first reaction was that I had been hit by a rubber bullet and I remember saying I am hit I am hit. A young man close to me said I was not hit but that I had been shot. I then saw the blood. It was streaming down my arm. I turned and staggered over to the low wall behind me in front of Block 2. I always thought that I dragged or pulled myself over the low wall and along the wall to the gap between blocks 2 and 3 of the flats crouching as I went along. I remember crouching down because I thought if I had been hit once I could be hit again. I have been told since that I was helped along to block 2. I headed back towards the gap between blocks 2 and 3 of the Rossville flats.

I definitely did not have anything in my hands when I was shot. The soldiers took me at my word when I shouted at them to shoot me. I was so close to the soldier leaning over the mud-guard of the Pig that he had to see that I was unarmed. I do not know who shot me, I just always remember seeing this particular soldier. I was sideways on to him.

7N-18 In his interview with Fulvio Grimaldi he is recorded as saying:

So, first thing that came to my mind was.... I was just mad with anger. Though I was carrying nothing at the time, I had neither

¹⁰ AB 66.6 paragraphs 20-22

ES7.1606

brick, stone, nor nothin' in my hand, I turned round and started using a lot of swear words, bad language, at the soldiers.

7N-19 Mr Bradley went as far as to say in his BSI Statement that he did not throw any stones at the soldiers on 30 January 1972. This would seem to be wrong. The note of his interview on 1 March 1972 with Mr Jacobson and Mr Pringle of the Sunday Times' Insight Team records:¹¹

He then heard the crowd shouting that someone was dead and the name of Jackie Duddy (they were neighbours at the Creggan) and he looked across the car park and saw a body lying there with Father Daly and a group of others round it. He ran out into the car park and was shouting abuse at the soldiers. "There was a dull thud and my whole body shook and I realised I had been hit. There was a lovely clean hole through my left arm, two in my upper abdomen and the muscle of my right forearm was ripped open."

7N-20 At the side of the document is the note:

He agrees he was almost certainly stoning them, cannot really recall.

7N-21 The account given by Michael Bradley to Derek Humphrey of the Sunday Times, together with the accounts of others for an article that was eventually not published, record:¹²

Michael Bradley, 22, house painter. 'I was throwing stones at the soldiers - my blood was up, you know. I had just finished throwing a stone when I saw a soldier aiming at me from about 20 yards away and I was hit in the arm and chest. I just caught a glimpse of him - he was to one side of me and I did not throw the stone at him, at a Saracen.

7N-22 An article published in the Irish Times on 30 January 1985 gives what purports to be Mr Bradley's account:¹³

¹¹ AB 66.25

¹² M71.30

¹³ L232

FS7.1607

I came back into the forecourt of the flats. I saw the body and my nerves got to me. I lifted stones and started throwing. The Army were sitting there. A Saracen was on the forecourt at the Chamberlain Street corner. I saw soldiers shooting. I could see soldiers taking aim and shoot.

7N-23 Mr Bradley was interviewed by Praxis, who recorded him saying:¹⁴

I automatically, with the anger being in me and the bitterness being in me, I looked around, looking around the ground for something to throw. Picking up these two stones, which I had held, one in my right and one in my left hand. I threw the stones. I just threw them. I did not even know where I was throwing them. I just threw them straight in front of me, straight in front of me just. And as I thought when I let the stone go, I went to throw, I felt this heaviness in my right arm, right upper arm and I grabbed my arm such as this. I thought someone had given me a thump, like a thump in the arm and I grabbed the arm like this. I looked over, and there I was in astonishment. The blood was just flowing out of me. Blood was flowing down out of my arm.

7N-24 Mr Bradley accepts he said this to Praxis. He sought to explain the error by saying that he became very distressed in the interview.¹⁵ He did not elaborate and his explanation is inherently implausible.

7N-25 The *Derry Journal's* twentieth anniversary publication in relation to Bloody Sunday records Michael Bradley saying:¹⁶

I lost the head and looked around to see what I could pick up to throw at the soldiers who were pouring into the area. I grabbed two pieces of brick and was just about to throw them when I was shot. I know I had been hit, but I was still on my feet. At first I thought I had been struck by a rubber bullet, but then I felt a heavy thud on the top muscle of my right arm and saw blood pouring from my hand.

7N-26 Paul Mahon interviewed Michael Bridge. In that interview he said that having seen Jack Duddy, "I lost control .. I found two stones .. picked them up and I was

¹⁴ O1.17

¹⁵ AB 66.13 paragraph 80

¹⁶ L257

about to throw them at the soldiers that was directly in front of me.” Mr Bradley was shot “as I went to throw these two stones.”¹⁷

7N-27 There are, therefore, a number of accounts given by Mr Bradley over the years which confirm that he was shot, either after he had just finished throwing a stone or after he had just started throwing stones or after he was about to throw two pieces of brick.

7N-28 That account is in stark contrast to Michael Bradley’s present recall as recorded in his BSI statement. In oral evidence Mr Bradley said that,¹⁸ “I know I have said on several occasions (about picking up a stone) ... It is because, when speaking to so many people, you get the reaction that maybe you did pick up a stone and maybe you did not, and do not forget I was angry, so I had every option to pick up the stone. I possibly could have picked it up, but my recollection today is I do not remember.”

WHO SHOT MICHAEL BRADLEY?

7N-29 Mr Bradley only recalled seeing two soldiers within the Car Park. One was leaning over the front mudguard on the right hand side of the Pig as Mr Bradley looked at it, and the other was standing on the Chamberlain Street side, *ie* the left hand (passenger) side of the Pig.¹⁹ Mr Bradley has expressly stated that he does not know who shot him.²⁰ In oral evidence he said that all that he really recalled was that they both looked in his direction.²¹

Q. You describe how you could hear shooting; could you actually see any soldier shooting?

¹⁷ X4.2.12/13

¹⁸ Day 94/19/11-17

¹⁹ AB 66.5 paragraphs 17-18

²⁰ AB 66.6 paragraph 22

²¹ Day 94/3/15-4/4

FS7-1609

*A. It would be fair to say at this stage, not in particular, no.*²²

7N-30 It is not possible for the civilian evidence to establish from where the shot that hit Mr Bradley came.

7N-III CONCLUSION

7N-31 Mr Bradley does not know who shot him and there is no evidence from which it is possible to establish who was responsible for his shooting.

7N-32 There is evidence that Mr Bradley was throwing something at the time that he was shot. It is not clear: what he was throwing; at which soldiers he threw anything; in what manner he did so; from what position he threw; who was close to him or what they were doing.

7N-33 In considering the difficulties which have to be faced in reaching any firm conclusion, either about precisely what Mr Bradley was doing or about what others may have been doing close to him, the Tribunal may have regard to the submissions made in chapter 2 above to the effect that Mr Bradley would, regrettably, appear to have been quite closely involved in activity which has prevented the Tribunal from obtaining the information and assistance that it was entitled to expect would be provided to it.

7N-34 Mr Bradley has given so many inconsistent accounts of what he was doing shortly before he was shot that the Tribunal will need to consider why that may be. While it may be understandable that the circumstances in which he was injured, the fact of the injury, and the passage of time, may all have contributed to confusion and unreliability, the fact remains that the Tribunal cannot properly and confidently make findings about the precise circumstances in which Mr Bradley was shot. In the same way the Tribunal cannot properly and confidently determine what he and others in his immediate vicinity may actually have been doing, or appeared to the soldiers to have been doing.

²² Day 94/25/5-8

FS 7-1610

CHAPTER 70

PATRICK MCDAID

70-I INTRODUCTION

70-1 Patrick McDaid was probably wounded as he flung himself over the wall in front of Block 2 of the Rossville Flats as he made his way towards the gap between Blocks 2 and 3. The Tribunal's expert evidence is that he was not hit by a lead bullet.

70-2 Mr McDaid may have been hit by a malfunctioning nail bomb.

70-II PATRICK MCDAID'S MOVEMENTS

70-3 Patrick McDaid ran down Chamberlain Street with the crowd that was fleeing from Barrier 14.¹ As he reached the end of Chamberlain Street he came across a group of men who were lifting a badly injured woman. He helped them carry the injured woman to a house in Chamberlain Street. He did not know then, but was told later, that this was Peggy Deery.

70-4 Patrick McDaid confirmed in oral evidence that this happened early on – before he had heard any shooting as set out in Chapter 7K.

70-5 Having apparently seen Jack Duddy fall, Patrick McDaid then ran for the Gap between Blocks 2 and 3, and dived down some small steps leading from the playground area to the pathway in front of Block 2. He landed on that pavement, and someone else landed beside him and told him that he had been shot.² Mr McDaid explained in his BSI Statement that "He said to me, "I think you're shot in the back." I said "No, they've missed." I did not feel as though I had been

¹ Day 092/105/23 – 106/04

² Day 092/112/10 – 115/24; AM 172.3 paragraphs 13-14 – AM 172.4 paragraph 15

FS 7. 1611

shot.”³ The man placed his hand on Mr McDaid’s clothing and showed him the blood on his hand. Mr McDaid understandably began to panic.⁴

70-6 Mr McDaid was, on his own account, wholly unaware of where he was and what he was doing when he was shot. It may have been that he sustained his injury at some time before he was told he was injured.

70-III THE FORENSIC EVIDENCE

70-7 Dr Shepherd and Mr O’Callaghan state in their Report that:⁵

Mr McDaid had a ragged 3" x 2" lacerated injury over the upper part of the left scapula. No true entrance or exit wounds are described. The wound was surgically debrided by Mr Malhotra who recorded that the wound had "black edges (carbon) lot of carbon particles"

A letter to the Royal Ulster Constabulary from Mr Bennet, Consultant Surgeon, dated 7th February suggested that the injury was a "glancing wound" fired as the patient was "ducking down" which "did not indicate a direct hit from behind". He drew attention to the carbon particles which he suggested "would indicate a fairly close range discharge". In a discharge summary dated 11th February it is again suggested that this possibly a glancing wound with tearing of the skin and superficial tissues.

Photograph P6/761 shows a wound with sharply demarcated margins. The carbon soiling of the edges cannot be confirmed in this photograph.

Comment

The nature of the projectile(s) cannot be determined and in the absence of any further evidence no meaningful conclusions can be made about the "black edges" of the wound. There is no evidence that would allow any conclusions to be drawn about the position of Patrick McDaid at the time he received this injury.

³ AM172.4 paragraph 14

⁴ Day 092/115/18 – 116/05 ; AM 172.4 paragraph 15

⁵ E 10.007-8

FS7-1612

70-8 In their Further Report dated August 2001 Dr Shepherd and Mr O'Callaghan reviewed photograph P761 of Mr McDaid's wound.⁶ The wound was

...an essentially, semi-circular wound with little apparent bleeding. The wound seems shallow, as if the tissues have been sliced. The top edge of the wound appears to be composed of a flap of skin pushed or folded upward exposing the underlying tissue. There is a relatively straight margin at the right side and a rather more curved margin at the left.

70-9 They concluded that a fresh interpretation of the wound remained difficult, however the appearance of the injury suggested that it may have been caused by a thin disc or sliver of material moving rapidly, which sliced through the skin of the back from a generally right to left direction leaving a flap of tissue at the upper margin. It does not have, they concluded, the appearance of a typical bullet wound. There are no obvious features visible in the photographs to help explain or identify the "black particles" described by Mr Malhotra."

70-10 Dr Shepherd and Mr O'Callghan reported further in August 2002.⁷ They commented that they were "of the opinion that Patrick McDaid was not struck by a bullet." In answer to Mr Roxborough, Dr Shepherd confirmed this:⁸

Q. Taking into account all the information that you have seen and recognising also its limitations, can you help the Tribunal as to the degree of confidence with which you say that the wound to Mr McDaid was not caused by a lead bullet?

A. I think it would be fair to say that we are confident that it was not caused by a lead bullet.

70-11 Dr Shepherd and Mr O'Callghan, in their further Report of 2001 considered that objects that could cause such a slicing wound⁹ included "a penny of old coinage, other metal discs, the top or bottom plates of a "U2" type battery etc and we understand that these items were attached to or fired in place of baton rounds in

⁶ E18.6.1

⁷ E20.1

⁸ Day 229/062/03-09

FS 7. 1613

Northern Ireland in the period of time around Bloody Sunday.” They concluded that there were “no specific features that would allow us to make to a positive interpretation and we cannot distinguish between the possibilities noted above and we accept that other possibilities may exist”.¹⁰

70-12 Dr Shepherd said of carbon particles in oral evidence that:¹¹

...carbon particles around the wound are commonly associated with a close discharge of a weapon. That would be of significance, but one would need to see them, in this case also on the overlaying clothing and on other points adjacent to the wound for that conclusion to be drawn.

70-13 To the suggestion made by Barry MacDonald QC that the “most likely cause of this injury was a doctored rubber bullet”, Dr Shepherd explained, again, that¹² “any disc or sliver of material that could be propelled could potentially have caused this.” A ‘doctored bullet’ was a possibility, but so was a penny or a tin can lid.¹³

...other possibilities exist and we do not want to be in any way exclusive in suggesting the penny or the battery. They were two that were suggested. I have thought of another one today, which is the tin can bit, but I am sure others exist.

70-14 Overall, Dr Shepherd was very clear that Mr McDaid’s injury is “an extremely difficult one to interpret”, and that he was not able to say what particularly caused the wound, other than “in the broadest terms”, it being “a sliver or disc”.¹⁴

70-15 In summary, the Tribunal’s experts concluded that, beyond saying that it was unlikely that the wound was caused by a bullet and that it was likely to have been

⁹ E 18.6.1

¹⁰ E20.2

¹¹ Day 229/060/06-11

¹² Day 229/062/23-25

¹³ Day 229/076/22 - 77/01

¹⁴ Day 229/077/15-19

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caused by a disk like object, they were unable to determine what struck Mr McDaid or where it came from.

70-IV NAIL BOMBS IN TIN CANS

70-16 Mr Gurney, another of the Tribunal's experts, described two methods of constructing a nail bomb in his Report to the Tribunal. The first involves a can. The method involved using corrugated paper with nails in it, around explosive inserted into a can. This was described as "pattern one":¹⁵

To construct a nail bomb, the corrugated paper would first be cut into strips of a width to suit the length of the nails being used. The nails would then be inserted into the channels in the corrugated paper in 'nose to tail' fashion. Sufficient nail-loaded paper would next be wrapped around the explosive charge to make the charge -- including paper and nails -- a snug fit inside the food or drink can that was being used to contain the bomb. The nail/paper/charge assembly would then be inserted into the can. Prior to use, the detonator end of the initiator assembly would be pushed down into the explosive, leaving the exposed end of the safety fuse -- with the match heads attached -- sticking out of the top of the bomb.

70-17 Michael Clarke, PIRA Explosives Officer in Derry in 1972, acknowledged that, initially at least, nail bombs were first made in tins or cans, although he personally did not make them that way:¹⁶

When they [nail bombs] first started to be used it is possible that they were packed in this way [in a tin or a can], but the usual practice was to make them as light as possible using cardboard and tape .. I did not use cans or tins when I made them up.

70-18 He confirmed this in oral evidence:¹⁷

Q. Do you remember seeing nail bombs made by others which did use tin cans?

¹⁵ E 18.8.4

¹⁶ AC 157.8 paragraph 27

¹⁷ Day 402/26/06-14

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A. Probably away in 1971, back in 1971, but it is hard to say after 32-odd years, like, you know.

Q. Quite?

A. As I say, they would have been too heavy. We would have discovered they would have been too heavy to throw, too awkward to throw, so we dispensed with using that type of bomb.

70-19 When questioned by Anthony Jennings QC, Mr Clarke conceded that nail bombs were used in tin cans at the start, and that although he had not made any, he had seen them used.¹⁸

70-20 PIRA 24, the head of PIRA in Derry on Bloody Sunday, gave evidence about the characteristics of nail bombs in tin cans, their unreliability, and the fact that the bottom of the can would blow off but the nails would not go anywhere. He confirmed that PIRA made nail bombs in cans at an early stage, but said that "as time went on" the realisation that getting the top off the tin meant making the nail bombs up in advance, which was thought not to be advisable. He went on to say,¹⁹

Also, the explosives in the tins tended to sink to the bottom so that when the nail bombs went off, the bottom blew off, but the nails did not go anywhere. It was therefore not a great success so we stopped using the tins as time went on.

70-21 The claim that the use of tins had been abandoned by Bloody Sunday²⁰ is contradicted by Patrick Ward's evidence to the Tribunal:²¹

Q. How confident are you that all your nail bombs were always in cans?

A. Because we made them, it is all we ever used.

Q. Did other sections use nail bombs that were not in cans?

A. No, I have never seen it happen.

¹⁸ Day 402/58/06-60/05

¹⁹ APIRA 24.6 paragraph 25

²⁰ APIRA 24.6 paragraph 25

²¹ Day 385/126/05-127/02

FS 7. 1616

Q. Sorry?

A. I never seen it happen. These were standard.

Q. Can we have on the screen AD65.24. This is a portion of Gerard Doherty's statement to the Tribunal, where what he says is this at paragraph 52. "Paddy Ward says that nail bombs were always in cans. In my experience, the Provisional IRA did not ever use cans for the purpose of making nail bombs. Certainly, I never saw a nail bomb in a can." It seems to be the exact opposite of what you are saying?

A. Yes.

Q. You say that is simply wrong; do you?

A. Yes, it is.

Q. Is it possible that you are both right and both wrong, in the sense that sometimes cans were used and sometimes they were not?

A. In my experience it was always used -- a can.

70-22 Mr Ward was clear therefore that nail bombs in fact were always used in cans. Mr Ward had no reason to lie to assist the Army's account. Furthermore, it is plain on Mr Gurney's evidence that nail bombs in cans must still have been in use only one month into 1972. Mr Gurney reported to the Inquiry that:²²

I can give no dates for the introduction of the two main patterns of nail bomb, but both were in use at the same time in 1972, although the majority encountered in 1972 were of the pattern two variety. I do not know whether the first pattern bombs found in 1972 were due to the PIRA using old stock or whether some bomb-makers simply continued to use old construction methods.

70-23 Kathryn Johnston referred in her third BSI Statement²³ to an extract from a book by a freelance photographer called Willie Carson that contained a photograph of nail bombs apparently exhibited to the photographer at a house in Derry sometime between August 1971 and July 1972.²⁴ The nail bombs are made with beer cans.

²² E 18.8.5

²³ M111.93 paragraph 5

²⁴ Kathryn Johnston's exhibit KJ7 at M111.164

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She also exhibited an extract from the Derry Journal of Friday 3rd September 1971 that reported, "Two beer cans containing a quantity of explosives were found in the garden of a house in Clarendon St, Derry on Tuesday. They were wrapped in a cloth."²⁵ This suggests that nail bombs could be made up in tin cans in advance of their being used.the photographs

70-24 The Peres sequence of photographs²⁶ shows Patrick Walsh holding a man who appears to be Mr McDaid, although he did not initially think it was him. In oral evidence to the Tribunal he said that in fact he thought it was in fact him:²⁷ "I would say it might be, I believe it is me, you know."

70-25 Similarly, Patrick Walsh, who plainly is in the photograph, did not recall when he made his BSI Statement, examining a wounded man; he only recalled someone panicking (as indeed Mr McDaid said he was).²⁸ However, in 1972 the Sunday Times recorded him giving an account of running for the Gap between Blocks 2 and 3, seeing someone being shot, and seeing the injury that he described being as if someone had "taken a butterknife and scooped a big piece of flesh away."²⁹ His wife also recalled him talking about a "butter knife" wound.³⁰

EVIDENCE OF NAILBOMB ACTIVITY

70-26 It is abundantly clear from a number of civilian witnesses both at large in the Bogside that afternoon or observing events that people were sighted with nailbombs in their possession. There is no reason why geography should exclude such activity also being present, even to a limited extent, in Sector 2.

²⁵ M111.94; Kathryn Johnston's exhibit KJ9 at M111.169

²⁶ EP 25.7 - 12

²⁷ Day 092/117/10-11

²⁸ AW 5.2 paragraph 16

²⁹ AW 5. 15

³⁰ AW 5.24 paragraph 19

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70-27 Photograph P323 can only show a man who is in the act of throwing what was very probably a nail bomb at a time that is not precisely known but in an area not far from the Gap between Blocks 2 and 3.



70-28 Soldier 227, a Lieutenant in 22 LAD on observation duties at Charlie OP heard pistol shots coming from the Rossville Flats area, and he also heard after Support Company had deployed and as the arrest operation was under way “an explosion on the William Street side of the (Rossville) Flats that he sounded like a nail bomb”³¹, he assumed, although it could have been “any kind of explosive device”.³² He then heard three SLR shots. He also heard “the very distinctive”, unforgettable “horrible thump-thump-thump”³³ sound of two “distinct bursts of automatic fire” from, in his opinion, a Thompson. These came from what he thought was the area of Glenfada Park.³⁴

TIMING

70-29 Giles Peres took his sequence of photographs after he had photographed Father Daly on the ground with Jack Duddy, and after Father Daly had moved away with Jack Duddy’s body.³⁵ This would mean that, according to the evidence about the

³¹ B2188

³² B2204.004 paragraph 21

³³ B2204.003 paragraph 16

³⁴ B2188

³⁵ M65.1.1-2; Day 213/08/12-14/09

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shooting of Michael Bridge,³⁶ he had also been shot before Mr Peres took these photographs (as Michael Bridge ran from the group around Jack Duddy towards the soldiers and was then shot in the leg). The logical conclusion from this sequence, therefore, is that Patrick McDaid was wounded late in the sequence of injuries and shooting in the Rossville Flats' car park.

70-30 This is significant when considering the evidence of Soldier Q. Soldier Q was not amongst the first to fire in the Rossville Flats. His SA Statement and his oral evidence to the Widgery Tribunal give the impression that he fired after he had seen a soldier struck by acid thrown from the Rossville Flats, and after Soldier T had fired up into the Rossville Flats. He fired at a man throwing a nail bomb.³⁷ Soldier Q told the Widgery Tribunal that he thought that he had hit the nail bomber, and described him falling and being dragged behind some buildings.³⁸ He described the man as being of medium height, wearing a black windcheater, and having brown hair.³⁹

SUPPORTING EVIDENCE - MISSING CASUALTIES

Pius McCarron?

70-31 Of the known dead and injured in Sector 2, the only casualties that were in the location of the low wall in front of Block 2, and the area around the Gap between Blocks 2 and 3 are Michael Bradley and Patrick McDaid. There is, however, civilian evidence as to the existence of another casualty in, or in close proximity to, the Gap between Blocks 2 and 3 who is not accounted for amongst the known dead and injured and this is Pius McCarron, who was knocked unconscious, by something.

³⁶ See Chapter 7M: Michael Bridge

³⁷ See Chapter 7H: Soldier Q.

³⁸ B645 letter C-D

³⁹ B645 letter B

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70-32 Patrick Clarke came across Pius McCarron lying unconscious in the Gap, he initially said, between Blocks 1 and 2 although he agreed in oral evidence, as is consistent with other evidence, that this might easily as well be the Gap between Blocks 2 and 3.⁴⁰ A knight of Malta was attending to him.⁴¹ Patrick Clarke initially thought that Pius McCarron was dead.⁴², so he clearly appeared seriously injured. Mr Clarke helped Mr McCarron to Joseph Place where Mr McCarron said he had been hit on the head by a piece of masonry from a ricochet.⁴³

70-33 Patrick Clarke's account⁴⁴ of this incident is inherently implausible.. Further Pius McCarron has never made a complaint about his injuries that he would have been expected to have done if they were indeed caused by a ricochet, nor has he ever made a statement about these events.

70-34 In the light of the evidence of Soldier Q, and the injury sustained by Patrick McDaid it is possible that Pius McCarron was knocked unconscious by a blast from a bomb of some description and if it were a nail bomb that may also account for the gash to the head or that injury could have been sustained when he collapsed as he clearly did. This is a far more likely explanation than Mr McCarron being knocked unconscious by masonry dislodged by a bullet. That explanation is solely based upon Mr McCarron allegedly telling Mr Clarke at the time that that was what happened. (It is, of course, unusual for people who are knocked unconscious to be able to recall the cause.)

⁴⁰ Day 074/100

⁴¹ AC 64.1

⁴² Day 074/101

⁴³ AC64.1

⁴⁴Patrick Clarke said in his BSI Statement that he saw a piece of masonry next to Mr. McCarron. This is a fact that he did not mention in 1972; indeed, in his NICRA Statement Patrick Clarke said that it was Mr McCarron who told him that he had been hit by masonry, and that when he had been in the alleyway with the unconscious McCarron, Patrick Clarke and the attending Knight of Malta "were unable to determine there and then what was wrong with him."AC64.1

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70-35 Pius McCarron did not go to Altnagelvin Hospital. He has never made a statement in any form as to his experience of Bloody Sunday and how he came to be injured.

70-V CONCLUSION

70-36 Patrick McDaid was not injured by a 7.62 mm round fired by a soldier. There is circumstantial evidence from a number of different sources that suggest that the most likely cause of his injury was by being hit by part of a malfunctioning nail bomb.

70-37 While it was denied by almost all civilians that any nail bombs were to be seen on Bloody Sunday, a significant number of observations have been made at various times.

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CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 6

CHAPTER 8

SECTOR 3

FS 7.1623

CHAPTER 8

SECTOR 3

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CHAPTER 8A

MORTAR PLATOON IN SECTOR 3

8A-1 INTRODUCTION

DEBUSSING IN ROSSVILLE STREET

8A-1 The ABC footage shows at least four members of Mortar Platoon debussing from the Pig.¹ They are indicated on the following stills from that footage as "1" to "4".

8A-2 In the still frame below, the first soldier (marked as "1") starts to exit the vehicle and move right, in a Westerly direction. This is Corporal P or Private 017. 017's evidence to the Tribunal was that he recalled being in Pig 2² and that:

I have seen a video and it shows, I think it is me, getting out of the back of the Pig before the, um, before they turned off on to the --

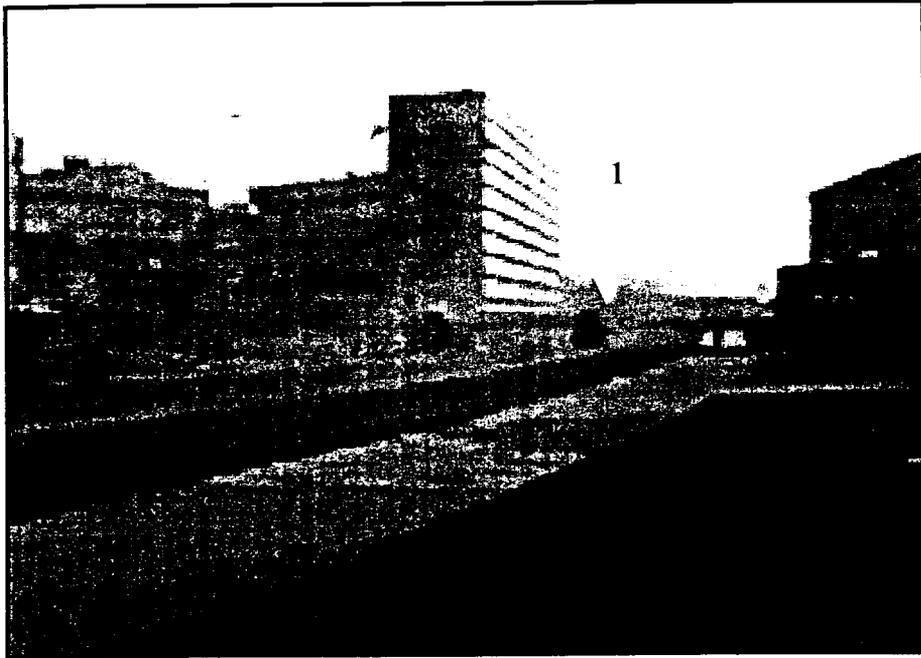
MR TOOHEY: You mean in Rossville Street itself?

A. Yes, yes.³

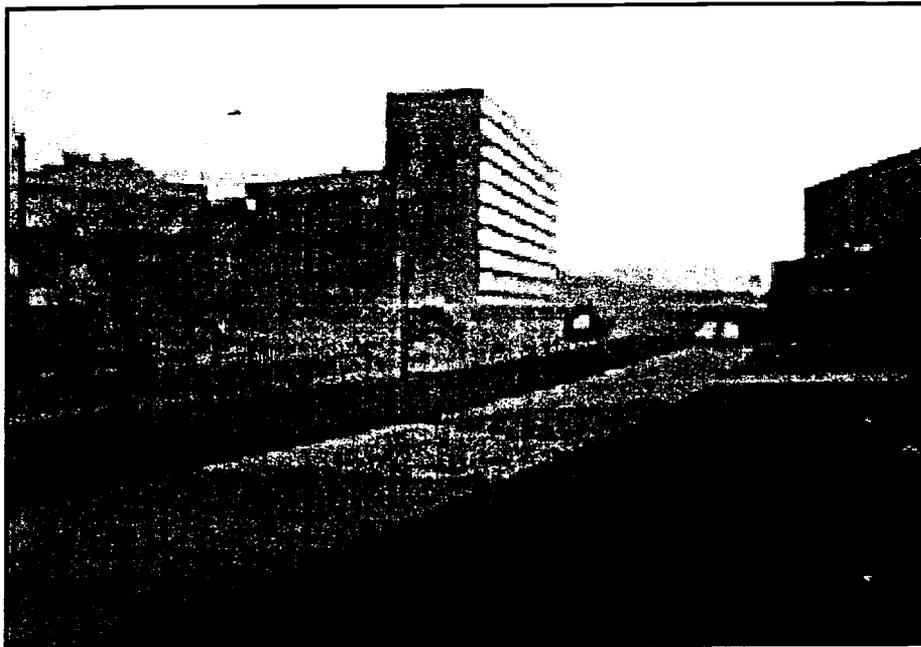
¹ V48/12.26 to 12.37; segment 59

² Day 358/039/19

³ Day 358/044/15

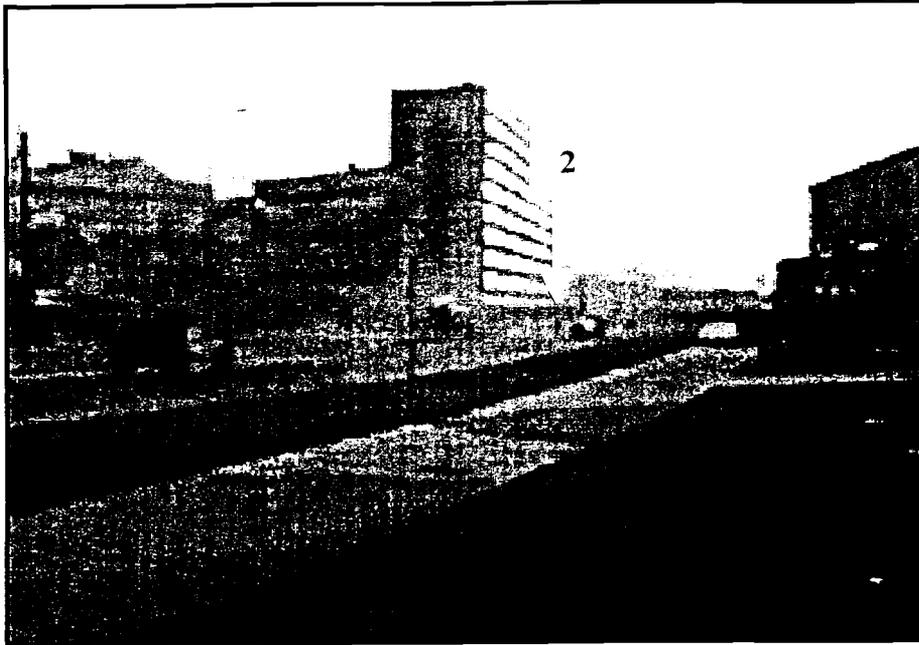


8A-3 Smoke from a baton round is visible at the rear of the Pig as the first soldier emerges further from the vehicle, below. The Tribunal may find, therefore, that 017 was in fact the first to deploy from the Pig and that he fired a baton round as he did so.



8A-4 The second soldier (marked "2") is visible in the next still, moving left towards the waste ground.

PS 7. 1629

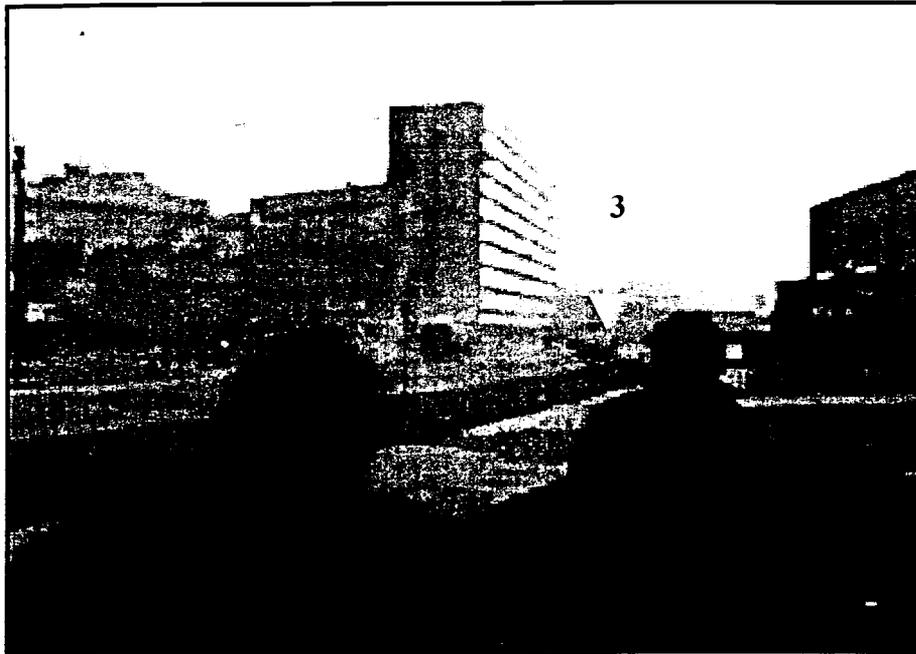


8A-5 The third soldier (marked "3") exits the Pig in the still below. He moves right, in the same direction as the first soldier. This is the second of either P or 017. Soldier P had told Lord Widgery:

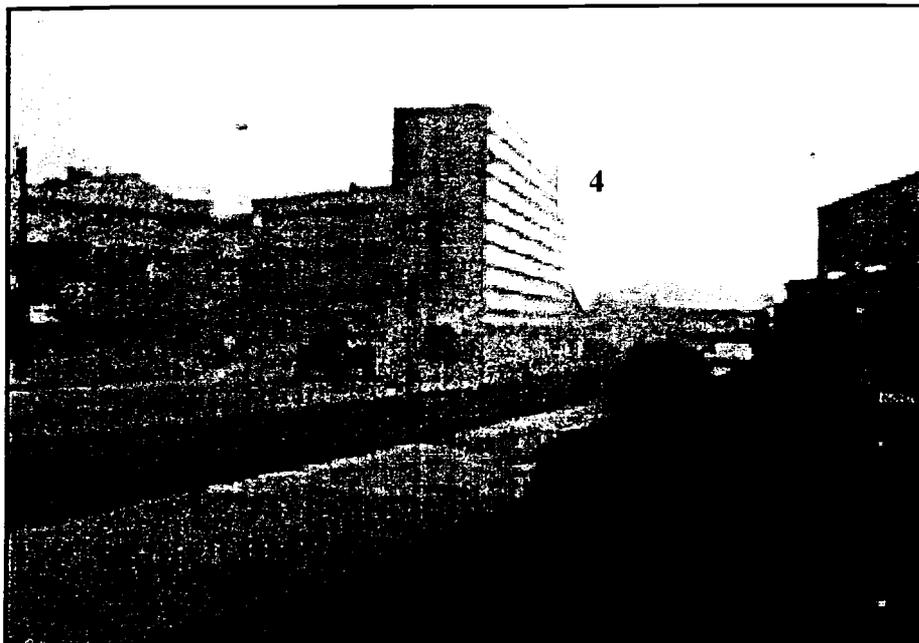
The vehicle stopped momentarily at the north end of block 1 and myself and the soldier I was to act as guard to debussed along with one or two others: the rest of the section stayed in the vehicle, which pulled onto the car park.⁴

⁴ B623.015

FS 7. 1630



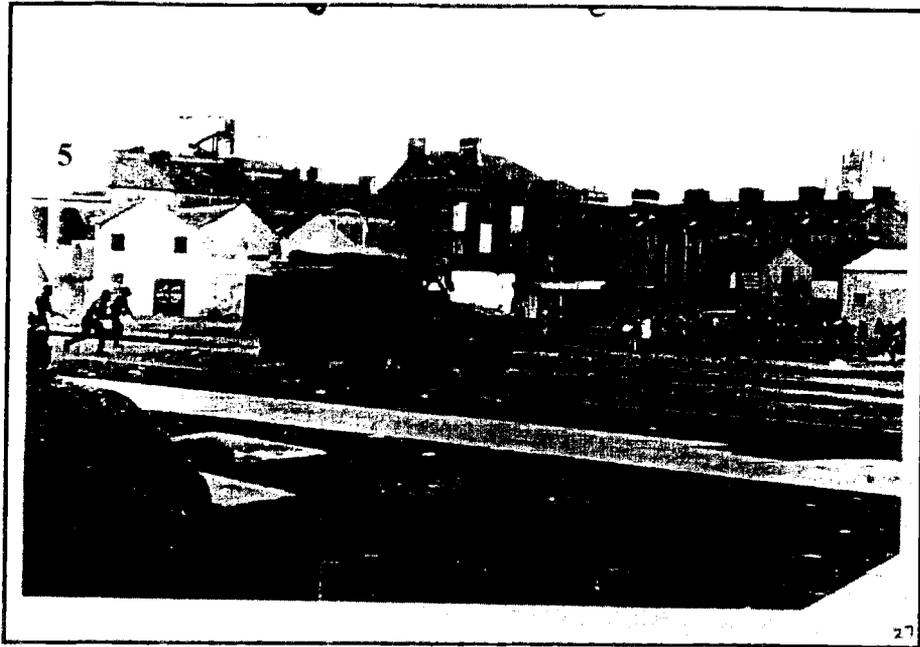
8A-6 By the time of the next still, a fourth soldier (marked "4") has debussed and moved left, towards the waste ground behind the second soldier.



8A-7 It is unfortunately at this point that this part of the footage comes to an end.

8A-8 The soldiers' subsequent movements can be followed in the photographs of Robert White, who was positioned in the gap between Glenfada Park North and Columbcille Court. P593, below, shows Fig 2, rear doors open, shortly after the men had debussed. The vehicle is recognisable by the bars on its front.

PS 7. 1631



8A-9 Three soldiers can be seen in this photograph behind Fig 2, moving in a south easterly direction towards the waste ground. The Guildhall clock, in the top right hand corner, shows the time as 4.10 p.m. At this stage, the soldiers can only have come from Fig 2. The photograph therefore suggests that a fifth soldier (marked "5") debussed in Rossville Street and followed the second and fourth soldiers east. The fifth soldier was Private U, who wore a helmet and carried an SLR. A clear copy of the photograph suggests that the soldier to his right is not wearing a helmet and that the soldier furthest to the right may carry a baton gun.

8A-10 In 1972, Private U confirmed to the RMP that he had debussed in Rossville Street.⁵ He was asked in evidence to Lord Widgery:

Q. Did you jump out of the vehicle?

A. Yes

Q. Just before it stopped?

A. Yes, that is correct.

⁵ B787.012

FS 7.1632

Q. And were you giving protection to a soldier who had a baton gun?

A. That is correct, sir.

Q. Were you wearing your gas mask?

A. No, sir.

Q. When you got out and went off with the man who you were protecting, which direction did you go off in?

A. Towards the flats, sir.

Q. What was this to do?

A. To arrest the rioters.

Q. What were the rioters doing? Were there rioters, or people you thought were rioters, there?

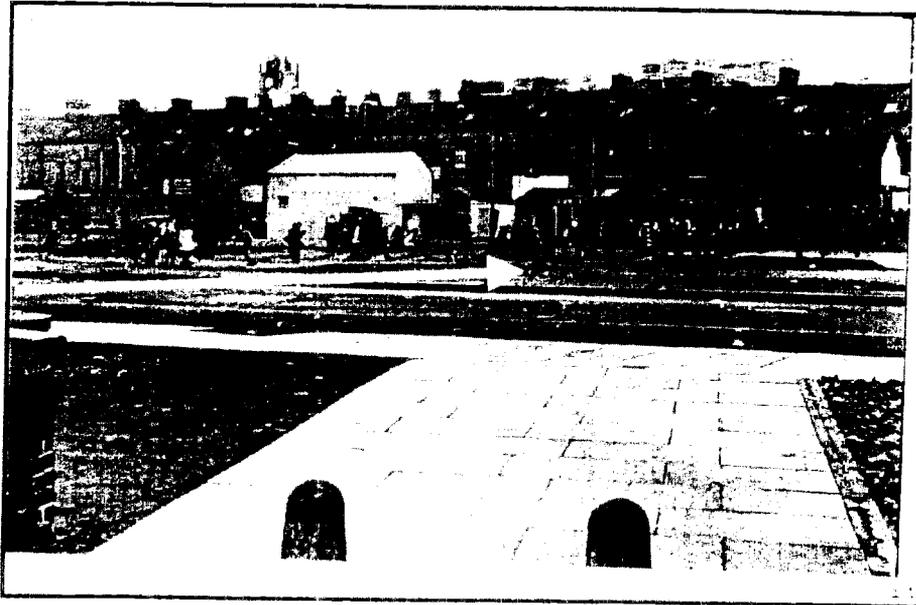
A. Yes, sir.⁶

SOLDIER U COMES UNDER ATTACK

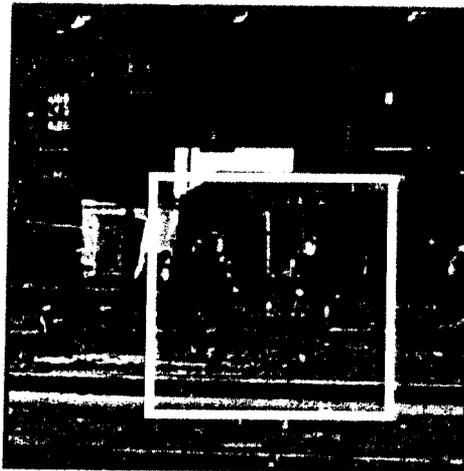
8A-11 The hostile reception generally of Mortar Platoon soldiers in the area of the Rossville Flats waste ground is considered in detail in chapter 7, above. This present section deals specifically with the attack made upon Soldier U.

8A-12 Mr. White's photograph, **P595** below, follows the movement of Soldier U (the only soldier of the three in **P593** with helmet *and* SLR) onto the waste ground.

⁶ **B787.022 paragraph G**



8A-13 Immediately upon his arrival there he was confronted by a man, seen in the expanded portion of the photograph below, moving *towards* him.



8A-14 Private U's account to Eversheds continued:

I was being hit by stones and bottles from all around. I focused on a man in front of me to my left (south east) as I faced south. He had thrown something at me (I cannot remember what it was or whether it had hit me). I went for him and he ran. He had a small start on me and I did not expect to catch him up immediately but he

FS 7. 1634

slipped and fell on some ice, so I was able to grab him and arrest him.⁷

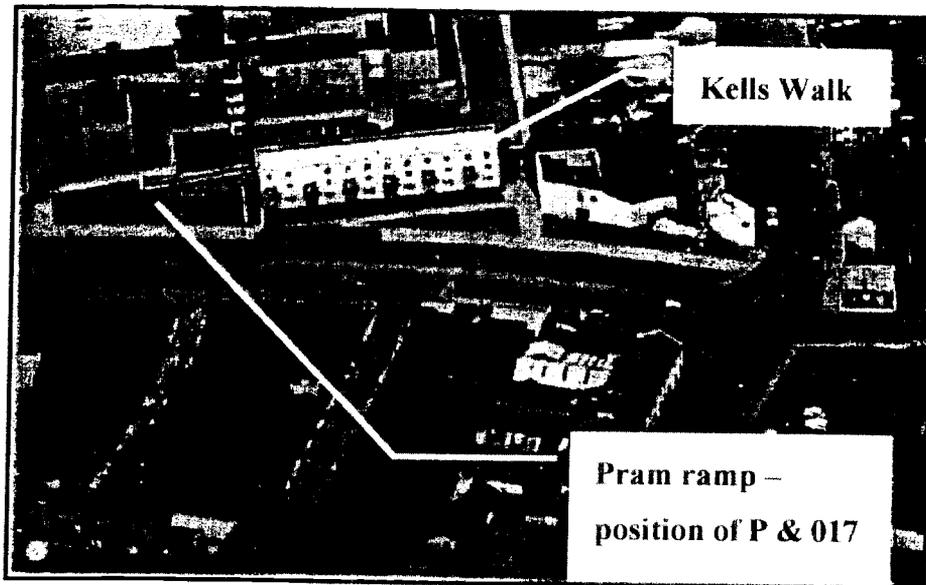
8A-15 **P595** may therefore capture the moment when U was first confronted by the man he proceeded to arrest, Charles Canning.⁸

8A-II SOLDIERS P AND 017 AT THE KELLS WALK RAMP

8A-16 Soldiers P and 017, who had both deployed to the west of Pig 2, took up positions to the side of the Kells Walk pram ramp. Within a very short time of their arrival there, they became aware of incoming gunfire and were targeted by stone throwers. Shortly thereafter, Soldier P engaged a nail bomber and then a gunman.

EXPOSED POSITION

8A-17 The portion of **P202** reproduced below illustrates the position to which P and 017 initially deployed.



⁷ **787.004 paragraph 22**

⁸ When called to give evidence on Day 417 (28.01.04), Mr. Canning refused to co-operate with the Inquiry. He further claimed that his BSI statement of 20.08.99 contained errors, but did not identify what they were, **Day 417/159/14 to Day 417/165/06**.

FS 7.1635

8A-18 The area was open and exposed. The soldiers would have been acutely aware of areas of potential danger on three sides:

(1)Block 1, Rossville Flats to the east;

(2)the buildings and alleyways to the west of Rossville Street; and

(3)the rubble barricade across the street itself.

8A-III INCOMING ROUNDS

8A-19 Shortly after taking up position, both P and 017 heard two shots, coming from south of their location and therefore hostile. Soldier P described the shots in this way to Lord Widgery:

When we reached the wall there were no people there. Shortly after that we came under fire. I would not say it was myself they were aiming at but from the direction of the rubble barricade.

Q. It was not you they were aiming at, you think?

A. No.

Q. But what did you hear or see?

A. I heard a couple of shots which seemed to pass overhead. I heard the crack of them going over.

Q. From which direction?

A. From the direction of the barricade.⁹

8A-20 Soldier 017 was less sure of the origin of the shots in his SA statement, but believed they may have come from the area of the Rossville Flats.¹⁰

⁹ B623.016 paragraph E

¹⁰ B1484.013 paragraph 3

FS 7.1636

8A-IV SOLDIERS P AND 017 TARGETED BY RIOTERS

8A-21 Very soon after hearing the hostile gunfire, Corporal P and Private 017 came under attack from a number of rioters. This cannot be in doubt: it is confirmed by the photographs, by civilians observing the rioting and by those actually participating in it

THE RIOTERS WAITED TO CONFRONT THE SOLDIERS FROM THE RUBBLE BARRICADE

8A-22 Robert Bamford described the mindset of the "habitual rioter", who waited at the barricade for the soldiers to arrive.

Q. Was it the sight of the Saracens that made you pick up stones?

A. Yeah.

Q. Could you see other people picking up stones at the same time?

A. Yes, there seemed to be everybody done it in unison.

Q. A short while ago you used the words "defend the area"; was there anyone shouting to the people at the rubble barricade that you had to defend the area?

A. No, it was an instinct. At that time it would have been the instinctive thing to do.¹¹

8A-23 He was asked:

Q. How many of you were around when you decided, and others with you, to stand your ground?

A. There were about 50, 60, perhaps.

Q. 50 or 60?

A. Yeah.

Q. So there did come a stage when about 50 or 60 people were standing behind the barricade facing towards the soldiers determined to stop them coming in, if possible?

¹¹ Day 177/112/11

A. Yes ¹²

8A-24 The decision to “stand your ground” must have been articulated by those at the barricade. Frederick Cunningham’s evidence was that as he arrived at the barricade:

somebody said “stand your ground.” I therefore turned around and looked back along Rossville Street up towards William Street. ¹³

8A-25 James Quinn may have heard the same person shouting. He recorded that, as the soldiers began to move down Rossville Street on foot, “Someone said that we had to stop them from coming further into the Bogside”.¹⁴ A group of people, therefore, made their way to the rubble barricade, from where they threw stones at the soldiers.

8A-26 Others had retreated south of the barricade but regrouped and returned to it to confront the soldiers. Father O’Gara saw a group of “young lads” on the rubble barricade “screaming for the mass of the people at Free Derry Corner to come back.”

8A-27 Their entreaties were successful. Ciaran Donnelly explained that he saw:

... a number of youths come down toward the barricade from the Free Derry Corner area. It was my impression that they were coming back down to the barricade to stop the Army from coming up Rossville Street any further. I would estimate that there were around 50 to 60 people at or near to the barricade at this point. ¹⁵

8A-28 Mr Donnelly took EP27/6,¹⁶ below, from the Glenfada Park South pram ramp as soon as he realised the Army had moved into Rossville Street and before any shots had been fired in Sector 3.¹⁷ The photograph shows the 50 to 60 people,

¹² Day 177/128/20

¹³ AC128.002

¹⁴ AQ10.005 paragraph 24

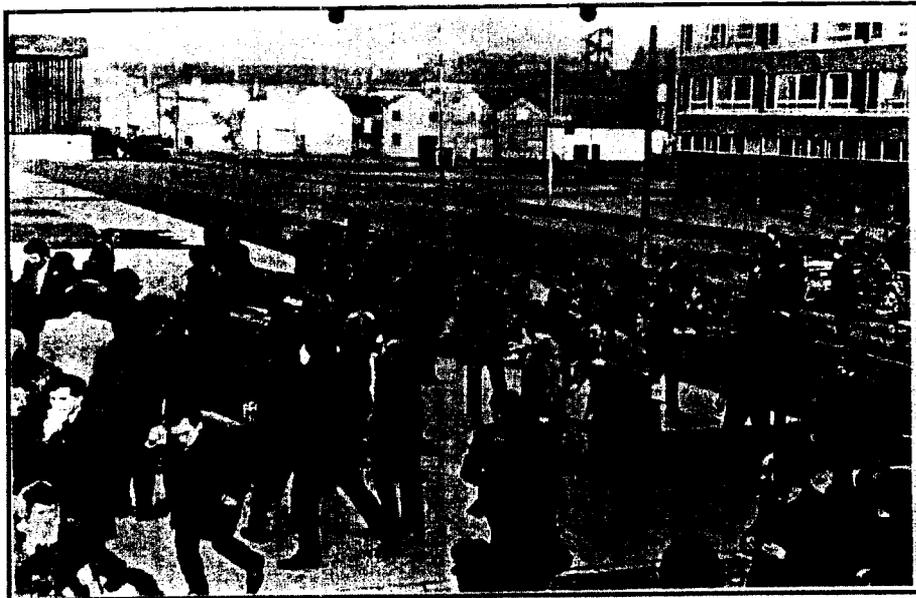
¹⁵ M22.20 paragraph 5

¹⁶ enhanced at E5.010; a similar scene is captured in EP27/7

¹⁷ M22.21 paragraph 6; Day 071/030-031

FS 7.1638

standing both north and south of the barricade facing the soldiers, many with missiles in their hands.



8A-29 This, therefore, was the situation that greeted P and 017 as they arrived at the Kells Walk ramp.

“GET THEM”

8A-30 Thomas Heaney described moving south of the rubble barricade as the soldiers entered Rossville Street.

...When the army broke through Barrier 12 a crowd had run towards Free Derry Corner from William Street. At the time I emerged from Glenfada Park North the crowd had slowed down and was beginning to regroup.¹⁸

8A-31 Mr Heaney then ran up to the barricade.

I did this because I heard people around me saying “Let’s get them” (being the British Army). I ran to the barricade and there was a small crowd of a few dozen people there.¹⁹

¹⁸ AH56.003 paragraph 13

¹⁹ AH56.003 paragraph 15

FS 7.1639

8A-32 In oral evidence Mr Heaney explained that those were not necessarily the exact words used and that it was “more of a roar than a direct quote.”²⁰ However, Vincent McCauley heard people using exactly that phrase. He saw youths south of the barricade, close to the junction of Fahan Street West and Rossville Street:

*They looked as if they were trying to push the army out of the Bogside. A few of them had bricks in their hands and were facing the soldiers. They were saying things like, “come on boys, let’s get them!” and they were trying to encourage others to join them.*²¹

8A-33 These accounts correspond closely with 017’s evidence that:

*A group mainly of youths aged 20-25 broke away and from the crowd behind the rubble barricade and made four or five half hearted approaches towards me. They were trying to urge the rest of the crowd to join them. They were shouting “Get him.” They would have ripped me to pieces if they had got me... I felt very vulnerable on my own.*²²

8A-34 The rioters at the barricade were emboldened by the fact that the soldiers approaching them did not wear riot gear. Liam Mailey’s evidence was that:

*They were obviously going to throw stones at the soldiers who were coming in. I think they were largely encouraged at this stage by the fact that the soldiers did not have riot gear. I heard one of the youths mention this fact.*²³

8A-35 Similarly, Charlie Lamberton observed:

*a group of possibly up to 40 people standing south of the Rubble Barricade. Some of these were my mates and others were people I knew who were part of the rioting crowd in Derry at the time. The people standing at the barricade had stones in their hands and were waiting for the soldiers to take them on.*²⁴

8A-36 He also stated that:

²⁰ Day 140/024/18

²¹ AM99.008 paragraph 13

²² B1484.004 paragraph 23; see also Day 358/055/21

²³ M50.026 paragraph C

²⁴ AL3.005 paragraph 29

FS 7.1640

The mood was quite confrontational, we thought that as the soldiers were out of their Saracens and out from behind their riot shields, we would really be able to give them a good hammering.²⁵

P AND 017 ATTACKED

8A-37 017 stated succinctly in 1972 that:

There was a rioting crowd at the barricade and they were stoning troops who deployed around the flats. I fired a number of baton rounds at the crowd. They stoned me.²⁶

8A-38 The attack took place almost immediately. Ciaran Donnelly's account in 1972 was that:

...I went down to a block of flats opposite to the Rossville Flats shortly after this the parachute troops came into Rossville Street in vehicles. A crowd then gathered behind an old barrier used in previous riots and threw stones at the soldiers.²⁷

8A-39 It was Ronald Wood's evidence that:

As the soldiers took up their positions I saw some youths in and around the area of the Rubble Barricade between the Rossville Flats and Glenfada Park North... The Rubble Barricade was made up of various bits of rubble and brick. The youths picked up pieces of rubble and brick and hurled them towards the soldiers on the north side of the Rubble Barricade. They were also shouting obscenities.²⁸

8A-40 Mr Wood might, therefore, be surprised to read the evidence of Hugh O'Boyle, who suggested that the rioting at the rubble barricade was "very low key"²⁹ and was also of the view that "the stones we threw at soldiers when we were rioting did not really hurt them."³⁰ This last view is rendered all the more extraordinary

²⁵ AL3.005 paragraph 32

²⁶ B1484.011

²⁷ "SR" Statement M22.1

²⁸ AW24.002 paragraph 9

²⁹ AO1.003 paragraph 19

³⁰ AO1.009 paragraph 53

by Mr O'Boyle's oral evidence that on a different occasion he had himself been hit by a stone:

I was struck on the head on one occasion and had approximately four stitches in my head.³¹

8A-41 The attack was photographed by Liam Mailey. He was south of the barricade at ground level when he took EP23/4,³² below:



8A-42 Mr Mailey was asked about the photograph at the Widgery Tribunal:

Q. How long had the Saracens been there when you took [EP23/4]?

A. The Saracens had just stopped at that stage.

Q. The people shown in [EP23/4], or some of them appear to be moving towards the armoured vehicles and soldiers?

A. Yes.

³¹ Day 132/073/15

³² also at P1115; enhanced at E15.006

PC 7.1642

Q. Did you see them do that?

A. Yes

Q. Can you say what they were purporting to do and why?

A. They were obviously going to throw stones at the soldiers who were coming in.³³

SURGE FORWARD FROM RUBBLE BARRICADE

8A-43 There is a compelling body of evidence of one particular surge forward from the rubble barricade. Some suggest it was in response to an early arrest that was taking place on the waste ground, which may or may not have been that of William John Dillon. Examples of the evidence are summarised below because such a movement would have been of particular concern to P and 017 in their exposed position on the West side of Rossville Street.

- (1) Gavan Duffy saw a youth running on the waste ground, who was struck by a soldier with his rifle butt. A lot of people at the rubble barricade surged forward trying to help the youth, some throwing stones.³⁴
- (2) George Downey saw the arrest taking place on the waste ground, followed by the movement north of a group of stone throwing youths from the rubble barricade, intent on securing his release.³⁵
- (3) Noel McCartney saw a youth run out from behind the Rossville Flats and throw stones at an APC; he was then arrested by a soldier. About 20 people came from the barricade and made for the youth to help him.³⁶

³³ M50.26 paragraph C

³⁴ AD155 paragraphs 10 to 11

³⁵ Day 123/015-016

³⁶ M55.008

FS 7. 1643

- (4) Paul McGready saw a lad running across the waste ground. A soldier came round the corner of Block 1 of the Rossville Flats and knocked him down with his rifle. A group crossed the barricade in the direction of the soldier.³⁷
- (5) Finally, Hugh O'Donnell told this Tribunal of a surge forward involving 30 to 50 rioters. He was taken to his written evidence:

... [I]n paragraph 32, at the end, you say:

"We were so angry, we picked up stones and ran at the soldiers throwing them."

Should we understand from that that you were part of a group of people who ran forward to throw stones at the soldiers?

A. Yes.

Q. What sort of number of people was there in this group?

A. An approximation, 30 to 50, but I cannot be certain.

Q. Thirty to 50 actually throwing stones?

A. Thirty to 50 running forward.

Q. And of those, can you give any idea of how many were actually throwing stones?

A. No.

Q. Did you run forward towards a particular group of soldiers?

A. The soldiers at the corner of Rossville Street.

Q. How close did you get to them?

A. I am not too sure.

Q. You said a moment ago the soldiers at the corner of Rossville Street. Did you mean the corner of the Rossville Flats?

A. The corner of the Rossville Flats, yes.

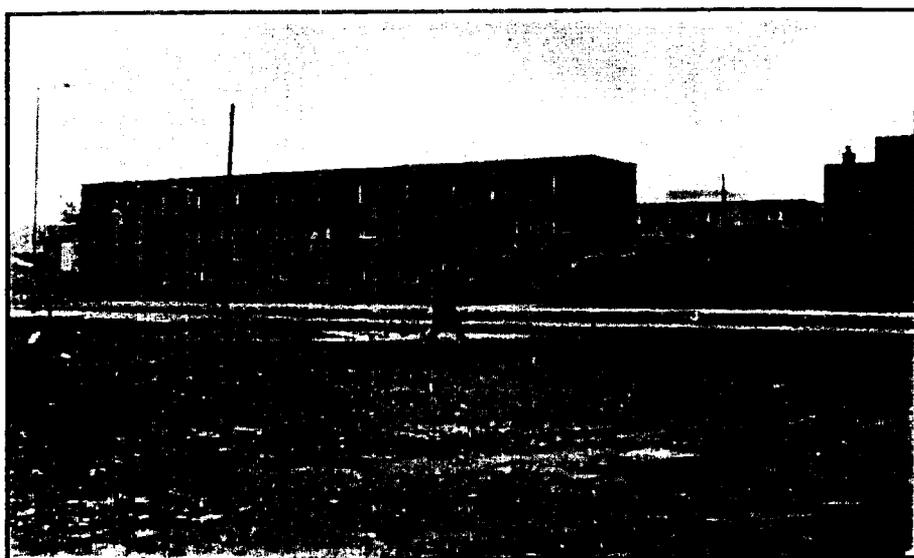
³⁷ Day 137/127 to 128

Q. Did you just run forward once to throw stones or was there a process where you ran forward, threw your stone and then came back to get another one?

*A. My memory is one surge forward.*³⁸

8A-44 Colman Doyle took photographs on the Rossville Flats waste ground of the arrest of William John Dillon. The photographs are of relevance to P and 017 for what they show taking place in the background, on the west side of Rossville Street. They provide further confirmation of the accounts of the two soldiers.

8A-45 P486, below, shows the early stages of the arrest.³⁹



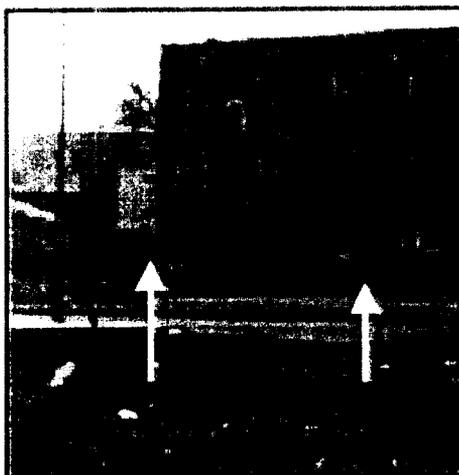
8A-46 An enhanced version of the photograph, P486.002, also shows what was taking place at the western end of the rubble barricade at this time.⁴⁰ It captures the movement of two people, indicated below with arrows, running north in the direction of P and 017.

³⁸ Day 405/013/20

³⁹ The index to Bundle P5, Volume 2 attributes the photograph to Jeffrey Morris in. This is probably an error; P486 corresponds more closely with Colman Doyle's contact print P233.10/6-6A.

⁴⁰ The reproduction of P486.002 will inevitably be poor; it is suggested that the Tribunal should inspect the original enhancement or a good copy of it.

FS 7.1645



8A-47 The next photograph, EP33/7, shows P and 017 at the southern end of the ramp (circled). Private 017 stands to the left and the presence of smoke to his left indicates that he has just discharged a baton round.



RIOTERS TARGET SOLDIER P AND 017 FROM COLUMBCILLE COURT ALLEYWAY

8A-48 Both P and 017 gave evidence of a group of people who came out from the Columbcille Court alleyway south of their position and joined those at the rubble

PS 7. 1646

barricade. 017 "fired a steady trickle of rubber bullets to contain them."⁴¹ Corporal P put it in this way to Lord Widgery:

Around this time I noticed a group of people coming out from the Columbcille Court alleyway and they started stoning us and bottling us. The other person I was with fired some baton rounds to disperse them, which he did.⁴²

8A-49 This account is corroborated by Brendan Carlin, whose attention was attracted by two soldiers on the west side of Rossville Street.

The crowd had come out of the alleyway eastwards from the north of Glenfada Park North... and had turned to confront the soldiers. They were taking on the two soldiers and were giving them a right stoning. One of the soldiers had a rubber bullet gun and the other had a rifle. The one with the rubber bullet gun was loading his gun as fast as he possibly could and was firing out at the youths who were coming back and forth from the alley but he was going to lose out and he knew it.⁴³

8A-V THE NAIL BOMBER

8A-50 P and 017 were next targeted by a man with a nail bomb, who appeared from behind the crowd. The sighting of a nail bomber amidst the rioting in this area should come as no surprise; it was common at that time for nail bombs to be thrown at soldiers. The presence of a nail bomber is further consistent with evidence both that:

- (1) at least one nail bomber was spotted by others and possibly photographed in the area of the rubble barricade on Bloody Sunday; and
- (2) nail bombs were being carried on that day to the west of Rossville Street, in and around Glenfada Park.

⁴¹ B1484.004 paragraph 25; see also Day 358/060 to 061

⁴² B623.017 paragraph C

⁴³ AC30.003 paragraph 12

FS 7.1647

THE EVIDENCE OF SOLDIERS P AND 017

8A-51 Corporal P stated in 1972 that the crowd split up on being hit with baton rounds:

I noticed a man (he appeared to be aged about 25 and was wearing a light coloured jacket) who was taking cover behind the crowd light an object which I would describe as an explosive missile and which seemed to me to be a nail bomb which began to fizz. I told the other soldier I was with to watch out and I took aim at the man and fired two shots. The man fell dropping the object which did not explode.⁴⁴

8A-52 Similarly, Private 017 recorded in 1972 that:

P then told me to look out as he had seen a man come from behind the crowd. This man was about 25 wearing a light blue jacket and carrying in his hand an object which I could see had a smoking fuse which I took to be a nail bomb. He was about 30 metres from me and was raising his arm to throw the object. P fired at him and he fell. As this happened the crowd surrounded the man and I am not sure where he was hit. The object did not explode. I did not see the man again or what had happened to him.⁴⁵

8A-53 017's current recollection is generally consistent; it is of hearing P shout "Look out, bomber!" and of seeing a man holding "an object with smoke around it."⁴⁶

8A-54 The location of the nail bomber, north of the rubble barricade, is shown on the trajectory photograph on which were indicated the shots fired by P:⁴⁷

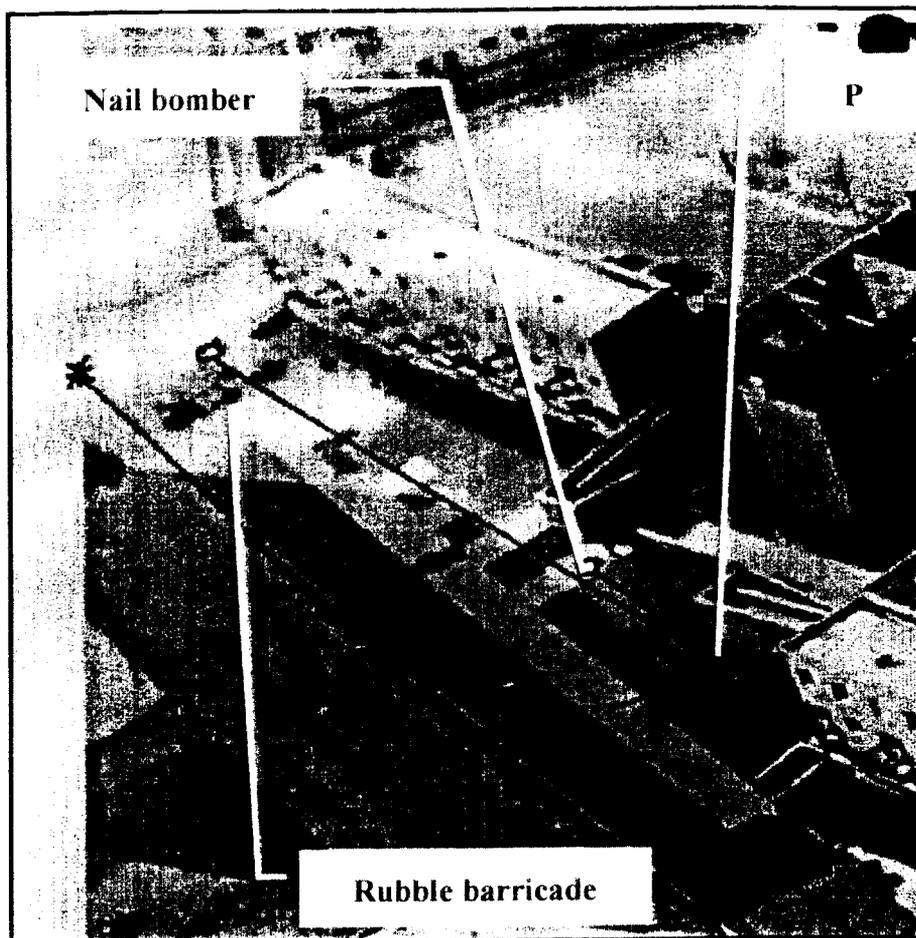
⁴⁴ B623.012

⁴⁵ B1484.015 paragraph 3

⁴⁶ B1484.004 paragraph 27; B1484.008 paragraph 50.2

⁴⁷ B623

FS 7.1648



THE PREVALENCE OF NAIL BOMBS IN LONDONDERRY

8A-55 It cannot be doubted that nail bombs were often thrown at soldiers in Londonderry at that time. Father Daly's evidence to Lord Widgery was that it was "a very frequent occurrence."⁴⁸ Frank McCarron, who knew a great deal about rioting in Londonderry, confirmed to the Tribunal that Father Daly was correct. He was asked:

Q. This Inquiry has heard evidence from Father Daly and others that in the weeks and months preceding Bloody Sunday, it was a very frequent occurrence in Derry for nail bombs to be thrown; that was your experience as well?

A. Yes, you would have heard them.

⁴⁸ H5.041 paragraph A; confirmed at Day 075/061/05

FS 7. 1649

Q. How often would you hear nail bombs going off in Derry at about the time of Bloody Sunday?

A. I would not be too sure. Probably you could say regularly.

Q. Regularly?

A. Yes.⁴⁹

8A-56 On the very last day of the oral hearings, PIRA 24 was questioned about a nail bombing incident on the 29th January and was asked if he knew about a nail bomb being thrown. He said:

A. I would not have had to know about it. Nail bombs were thrown at, at the Army on a regular basis, so I did not have to account for each one on that occasion.⁵⁰

8A-57 Many of the civilians who remained in and around the rubble barricade when Pand 017 had deployed to the Kells Walk ramp did so with the express intention of confronting the Army. Indeed, what had started as a civil rights march had largely degenerated into rioting in that area. The appearance of nail bombs in such circumstances might therefore be expected.

MILITARY CORROBORATION

8A-58 Sergeant 025, 53 Battery, 22 Light Air Defence Regiment, was positioned at the Charlie Observation Post on the City Walls. He may actually have seen the person subsequently targeted by P, albeit in a slightly different position. His RMP statement records:

From this OP I could observe the corner of Rossville St and part of Rossville Flats...

About 1615 hours I was still observing the area when I saw a male civilian being handed what seemed to me to be a nail bomb, or

⁴⁹ Day 389/182/11

⁵⁰ Day 427/15/9

FS 7. 1650

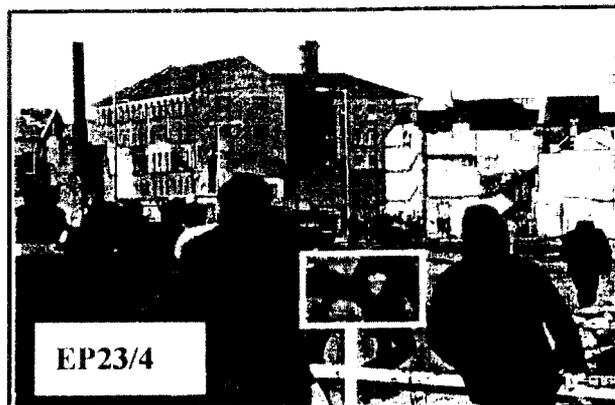
another type of bomb. This bomb had been handed to him by a member of a group of about eight to nine men standing by the barrier in Rossville Street

I observed this person through my binoculars, his distance from my position being about two hundred and fifty metres, and saw him do something to the object in his hands.⁵¹

8A-59 025's platoon commander, Staff Sergeant 139, was present at the Charlie OP with 025 and heard him shout that he had spotted the nail bomber.⁵²

PHOTOGRAPHIC EVIDENCE

8A-60 There may be photographic evidence of the presence of a nail bomb in the vicinity of the rubble barricade. Generally, the photographs of those rioting at that location are not of sufficient clarity to enable positive identification of the type of missiles they were using. There is one photograph, however, in which a rioter holds an object which has the appearance of a nail bomb. The relevant portion of Mr Mailey's EP23/4 has been enlarged, enhanced and reissued as E15.007, below. The rioter in the centre of EP23/4 holds an object which appears to be *cylindrical* and lighter in colour than the stones or rubble available in the area.



⁵¹ B1535; 025, whose current recollection as to the location of the barricade in question and of the events generally is somewhat different, confirmed to the Tribunal that he would have tried to tell the RMP all that he could recall of the incident: Day 361/24/07.

⁵² B1860, confirmed at B1862.006 paragraph 26.5

FS 7.1651



8A-61 This may not be the person at whom P was to fire. However, the presence of a person in the vicinity of the barricade, behind a group of rioters and in the process of throwing an object which has the appearance of a nail bomb, and throwing it in the manner illustrated by the photograph, at the very least provides an insight into the situation which P and 017 had to face. In an exposed position and targeted by young men throwing objects, they had a short period of time to identify any nail bomber and then decide how to deal with the threat.

8A-62 A number of important photographs taken of the events in Sector 3 are now missing. We address this issue below. It may be of relevance to the absence of further photographs showing nail bombs in use in this part of the Bogside.

NAIL BOMBS IN THE GLENFADA PARK AREA

8A-63 There is, moreover, strong evidence of the presence of nail bombs on Bloody Sunday near the rubble barricade, in the Glenfada Park/Abbey Park area. It would have been a matter of seconds to transport them to or from Rossville Street.

FS 7. 1652

- (1) Ben Keaveney saw two people, aged between 19 and 20 years old, carrying a large box containing between two and four nail bombs in the Abbey Parade area running between Glenfada Park South and Abbey Park.⁵³ In oral evidence to this Tribunal, Keaveney added that he knew one of the two by sight, who “would have been associated with people who, at previous riots, had both nail bombs and rifles.”⁵⁴
- (2) John Goddard of PRAXIS Films spoke to Michael Kivelehan. According to Mr. Goddard’s note, Mr Kivelehan went to his grandmother’s flat in Glenfada Park North. Two boys, who were dragged into the flat, dumped nail bombs in the street outside before they entered.⁵⁵
- (3) Charles McGill gave information about nail bombs to Eversheds solicitors on condition that it was not to be used in his BSI statement. He saw three young men “who were panicking wanting to get rid of nail bombs.” He thought they were Official IRA. They had a tray in which there were about ten nail bombs.⁵⁶ He later told the Tribunal that the sighting was made in the Abbey Park area.⁵⁷
- (4) Danny Craig saw a child with a tray of nail bombs in Glenfada Park North or Abbey Park.⁵⁸
- (5) Michael Quinn apparently told the Sunday Times “under guarantee of total anonymity” that he saw two youths carrying nail bombs in Glenfada Park. One wore a blue, denim jacket and had long fair hair. The other wore a fawn jacket and had black hair. The Sunday Times note records: “he says that he heard from a close source that a senior Official IRA man arrived on the scene and told the nail bombers to take them away as there was too much danger to other

⁵³ AK2.12 paragraph 54

⁵⁴ Day 160/047/03

⁵⁵ AK45.001

⁵⁶ AM230.11

⁵⁷ Day 069/115 to 117

⁵⁸ AC111.003 paragraph 15; Day 135/071 to 072

FS 7.1653

civilians.”⁵⁹ The evidence of the Sunday Times’ Peter Pringle was that the note represented unprompted information received from Mr Quinn.⁶⁰ Mr Quinn, himself, now suggests he recalls seeing two youths in the north east corner of Glenfada Park North, looking into Rossville Street, and that one of them had with him an object which might have been a nail bomb.⁶¹

(6) The issue of nail bombs in and around Glenfada Park North is also considered in chapter 9.

THE “YELLOW CARD”

8A-64 Corporal P’s firing of two aimed rounds at the nail bomber was the appropriate and responsible response to a difficult situation.

8A-65 The applicable rules of engagement for the military in Northern Ireland, the “Yellow Card,” allowed a soldier to fire without warning where any delay could lead to death or serious injury to himself or to people he was under a duty to protect. The soldier was permitted to fire at a person *using* a firearm against members of the Security Forces, or against a person *carrying* a firearm where the soldier reasonably believed it was about to be used for offensive purposes. “Firearm” was expressly defined to include a nail bomb.⁶²

8A-66 P and 017 both observed a man with a nail bomb in his hand, which he was about to throw. The soldiers were in an open position, close to the bomber and would consequently have been exposed to the full effects of the blast. P’s engagement in these circumstances came within the terms of the Yellow Card.

⁵⁹ AQ11.012

⁶⁰ Day 190/064/09

⁶¹ e.g. AQ11.022 paragraph 19; see also Day 169/123 to 124

⁶² ED71.002 paragraph 13, the November 1971 version of *Instructions by the Director of Operations for Opening Fire in Northern Ireland*.

FS 7. 1654

REMOVAL OF NAIL BOMBER

8A-67 Corporal P stated in 1972 that after shooting the nail bomber, he turned away from the rubble barricade:

At that time my attention was directed down Rossville Street but when I redirected my attention to where I had shot the man, the body had been removed and I could not see any object on the ground.⁶³

8A-68 Private 017's BSI statement explains that the nail bomber's body was quickly removed:

Within seconds he was engulfed by the crowd and that was the last I saw of him. When the crowd went back he had gone.⁶⁴

8A-69 P and 017 saw the nail bomber fall after P had fired at him. The absence of a body means that it is not possible to determine conclusively whether P's shots hit the nail bomber and, if either or both of them did, whether he was killed or simply wounded. What can be said is that the location of the bomber, North of the barricade, does not correspond with that in which any of the known Sector 3 deceased or wounded was shot. He is, therefore, an unidentified, missing casualty.

8A-VI SOLDIER P'S MOVEMENTS FOLLOWING HIS ENGAGEMENT WITH THE NAIL BOMBER

8A-70 After Corporal P engaged the nail bomber:

A person came out from the alleyway at Kells Walk and I turned around to see what he was going to do.⁶⁵

8A-71 This is confirmed by the photographs. EP33/7 shows P with 017 at the Southern end of the Kells Walk ramp *before* P turned around. It also shows that a civilian was present at this time in the Kells Walk alleyway, as P described. E15.004.

⁶³ B623.012

⁶⁴ B1484.004 paragraph 27

⁶⁵ B623.018 paragraph E

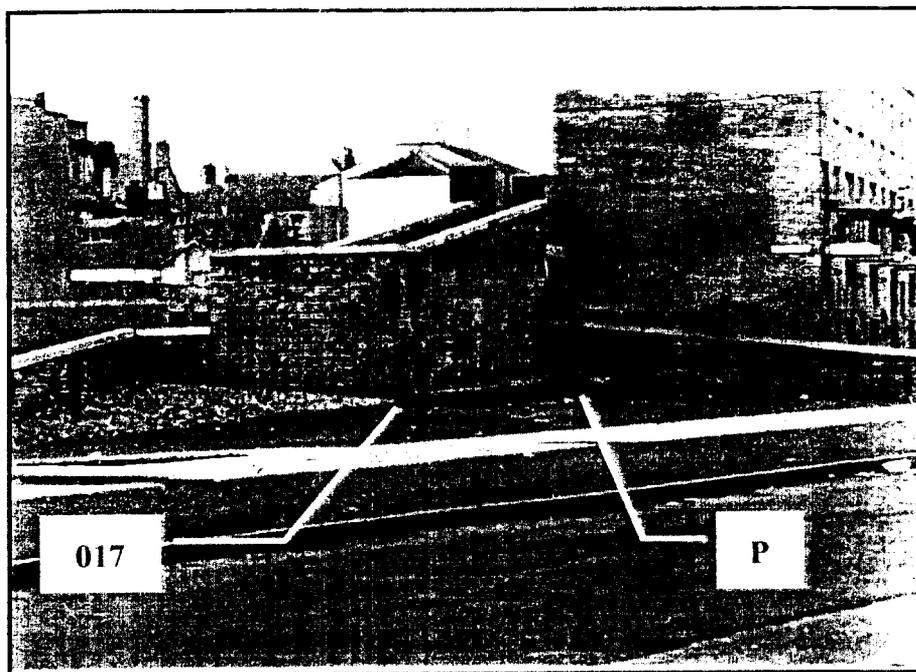
FS 7.1655

below, represents the expanded and enhanced portion of EP33/7 in which the civilian appears clearly. It is not known what the intentions of the civilian were. His presence in this position at this stage in the proceedings is certainly suspicious, if only in that he appears not have come forward to make a statement at any stage but, if he was doing nothing himself, he was in a prime position from which to observe what others were doing, notable the gunman with a pistol who was observed nearby by witnesses such as Father O'Gara. That evidence is addressed below.



FS 7. 1656

8A-72 EP23/7, below, captures the moment *after* P had turned to see what the civilian was going to do.⁶⁶



8A-VII GUNMEN

INTRODUCTION

8A-73 Private 017 next came face to face with a civilian with a handgun, who appeared in the alleyway between Columbcille Court and Glenfada Park North. He fired a baton round at him and then sought to get out of his line of fire. Corporal P also engaged a gunman but in a location a little further to the south, at the rubble barricade. This man fired in the direction of P, who returned four rounds.

8A-74 The accounts of P and 017 must be considered in the context of the considerable body of evidence relating to the presence in that area of civilians armed with handguns. The military and civilian accounts read together provide a compelling narrative of this crucial stage in the events of Bloody Sunday. That evidence is set

⁶⁶ B623.027

FS 7.1657

out below in relation to gunmen sighted from Kells Walk to the entrance to Block 1 of the Rossville Flats.

8A-75 The Tribunal knows of six people who were killed in Sector 3 and of at least one who was wounded.⁶⁷ There is also, crucially, evidence which demonstrates that other, as yet unidentified, individuals were wounded here. The existence of unidentified, missing casualties is relevant when attempting to determine whom P shot and is also considered below.

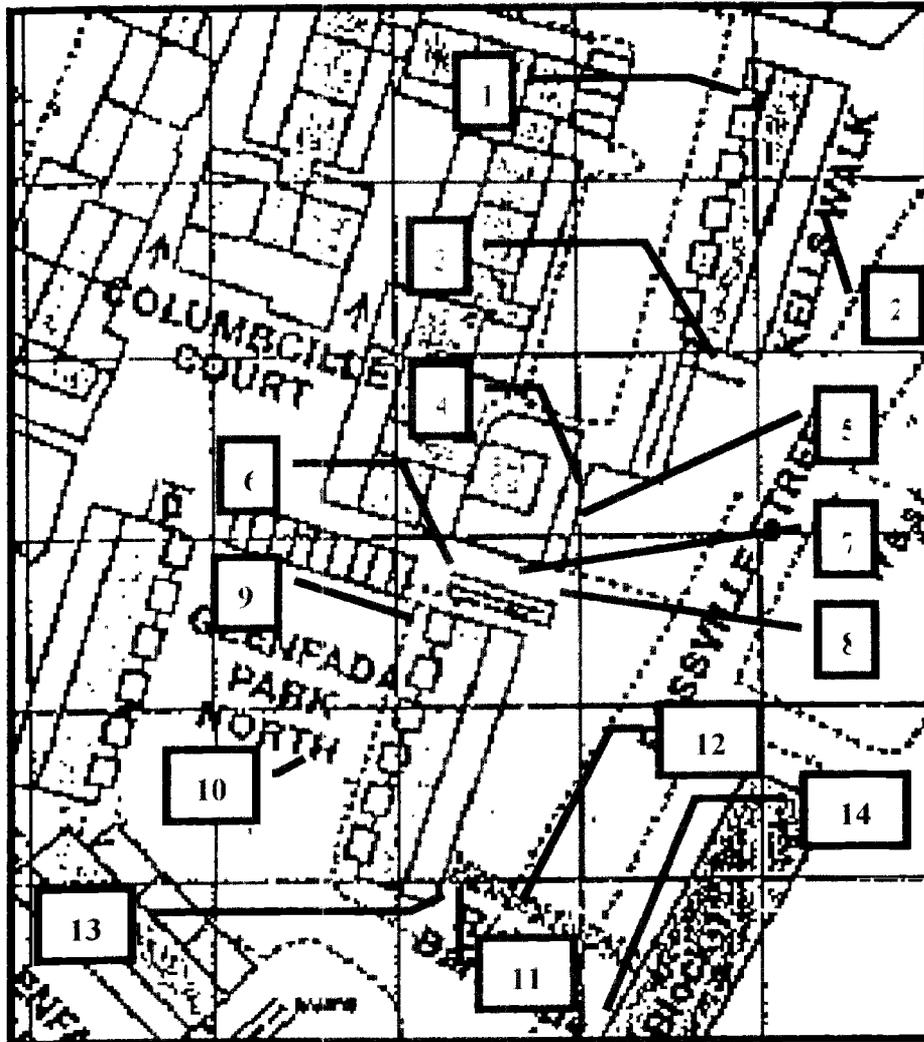
8A-76 Inquiry bundles P and EP contain various photographs taken in Sector 3. Some of the most striking photographic evidence relates to activities in the area of the rubble barricade. It would, however, be a mistake to assume that all of the relevant incidents in Sector 3 have been captured on film. It is now, moreover, clear that important photographs are missing. The issue of those missing photographs is also addressed in this section of our submissions.

⁶⁷ Michael Kelly, William Nash, John Young, Michael McDaid, Hugh Gilmore and Kevin McElhinney were killed and Alexander Nash was wounded.

FS 7. 1658

DIAGRAM: EVIDENCE OF CIVILIANS WITH HANDGUNS IN OR AROUND SECTOR 3 ON 30TH

JANUARY 1972



[1]	Theresa Bradley position of gunman.
[2]	Brendan & Kieran O'Connor area in which line of fire being cleared
[3]	John Long location of person, pushing to get out to Rossville Street, who had seen a man with a handgun.
[4]	Father Thomas O'Gara : probable location of wall at end of Kells Walk over which gunman fired.
[5]	Marian McMenamin position of gunman
[6]	Private 017 : position from which gunman appeared
[7]	Michael Lynch : position of gunman
[8]	Margo Harkin : position of gunman.

FS 7-1659

[9]	Michael Kivelehan: approximate position of flat in which man with short arm disarmed.
[10]	Ivan Cooper/John Barry: gunman with revolver present in Glenfada Park North.
[11]	Corporal P: position of gunman.
[12]	Gunners 012 & 101: gunman at rubble barricade.
[13]	Lieutenant 119: gunman firing around South East corner of Glenfada Park North.
[14]	Kieran Gill/Private U: location of gunman.

EVIDENCE

Kells Walk

- 8A-77 Shortly after the shooting of Damien Donaghy and John Johnston, Theresa Bradley saw a gunman with a pistol on the first floor balcony of the Kells Walk flats. He fired several times in a northerly direction. His position was marked on a Virtual Reality still at AB70.014. It, and the other relevant positions in which gunmen were reported are marked on the diagram above.
- 8A-78 John Long provided evidence that was potentially corroborative of Theresa Bradley's evidence. He was in the alleyway immediately to the south of the Kells Walk building on his way to Columbeille Court, when he encountered quite a few people pushing to get out in the opposite direction. He did not see a gunman himself but heard someone in the alleyway mention that "a man with a handgun had been seen and they all wanted to get away."⁶⁸
- 8A-79 Likewise, a note taken by a Sunday Times journalist in 1972 of a conversation purportedly with Brendan and Kieran O'Connor may further explain what was taking place in the area of Kells Walk at this time. The note reports that the interviewees met Joe Carlin at the "alley from R St up into C Court," where they

AS 7.1660

were heading on receipt of information that a young fellow had been shot. The note continues:

Said it was one young man, in a white coat, clearing the line of fire around the front of Kells Walk in Rossville Street.⁶⁹

8A-80 The picture, then, is of armed activity at an early stage in the area of the Kells Walk building: of a gunman shooting from the balcony; of civilians fleeing; and of a line of fire being cleared into Rossville Street. That sets the scene for what was to happen at various locations down Rossville Street and in the area of the rubble barricade.

Low Wall South of Kells Walk Ramp

8A-81 The next area in which there is strong evidence of the activity of gunmen is at the wall south of the Kells Walk pram ramp, this is indicated with an arrow in photograph P259 below



8A-82 Father Thomas O’Gara and Marian McMenamain both observed a man with a handgun in this area. Father O’Gara stated in 1972:

I took up position about 15 yards beyond the barricade on Rossville Street at the corner of the flats. My attention was drawn for some time by some soldiers in battle dress who were positioned beside a wall at the Free Derry Corner end of Kells Walk. One fired rubber bullets and the other got down on one knee several times pretending to fire.

⁶⁸ AL20.002 paragraph 7; confirmed Day 068/096 to Day 068/097

⁶⁹ AO75.001

H 7.1661

8A-83 Father O’Gara then described stones being thrown from the barricade. The priest would not have seen the nail bomber at whom Corporal P fired first, positioned on the other side of the barricade and on the opposite side of the street from his location.

8A-84 He continued:

The third incident which I can clearly recall happened about thirty seconds after the soldier discharged his shot. A young man appeared from the cathedral side of Kells Walk unknown and unseen by soldiers, drew a pistol from his pocket, leaned over a wall at the end of Kells Walk and fired three shots quickly. The soldiers didn’t even recognise his presence and he disappeared. This was the only weapon I saw throughout that day. The man wore a longish coat...⁷⁰

8A-85 The Cathedral referred to must be St Eugene’s to the northwest of Kells Walk. The gunman would therefore have been approaching the wall from the west. The wall over which the gunman leant is likely to have been the low one running south from the Kells Walk ramp (indicated in the photograph above).

8A-86 Marian McMenamin ran down Rossville Street as the military vehicles entered the road:

As we were running away, I saw a civilian with a gun. I have never told anybody about this before, not even my husband and we have been married for over 25 years. I feel disloyal to the innocent men who died on Bloody Sunday, but I did see him and I feel that the truth must now be told. The gunman was in an alleyway, near the pram ramp at the south gable end wall of Kells Walk. ... The man was at ground level in the area around the pram ramps, but not actually on the pram ramp. To the best of my recollection, he had his back to the gable end wall of Kells Walk. He was young, probably in his mid to late 20s, about 5’8’’ tall, average build, dark hair and wearing dark clothing (3/4 black coat). He did not have his face covered with a mask or balaclava. He was on his own – there was no-one around him; he was just a single gunman. He had a quite big, squarish, hand gun in his right hand. He was holding the hand gun out in front of him, but not aiming it. I did not see him

⁷⁰ H19.005

FS 7.1662

*fire it. He appeared from behind the wall, walked east towards Rossville Street, looked south towards the Rossville flats' shops and then withdrew again. I do not know where he went after that.*⁷¹

8A-87 In oral evidence, Mrs McMenamain marked the gunman's position on a still from the Virtual Reality model a little further to the south.⁷² This represents the approximate position of the gunman when she first saw him: at the low wall running south from the Kells Walk ramp. (Mrs McMenamain agreed with Lord Saville that the gunman may in fact have been further south still, in the area of the alleyway between Glenfada Park North and Columbcille Court.⁷³) He held the gun in his right hand and out in front of him in full view; others would have seen him as well.⁷⁴

8A-88 A third witness may also have seen a gunman in the area of the low wall. Brigadier INQ 1383 was Assistant Provost Marshall at the time of Bloody Sunday and responsible for the provision of Royal Military Police support for the Army. He was in Londonderry on Bloody Sunday and followed the Pigs into Rossville Street on foot. From his position at the northern end of Rossville Street, he saw a gunman in a position similar to that of Mrs McMenamain and at a similar time:

*... a man with what I thought was a pistol emerge from behind a wall then immediately withdraw. I cannot remember hearing a shot fired at that time so cannot say whether he fired the pistol. I have no other recollection of this incident and cannot recall accurately geographically where it occurred. I have been shown a map... which has persuaded me that the wall in question was somewhere further up and to the right in Rossville Street.*⁷⁵

8A-89 These three sightings were, therefore, of gunmen operating just around the corner from the positions taken up by P and 017 and a matter of a few metres from the next location considered, the alleyway in which 017 encountered his gunman.

⁷¹ AM363.002 paragraph 7

⁷² AM363.010

⁷³ Day 194/211/20

⁷⁴ Day 194/206/24 to Day 194/215/22

⁷⁵ C1383.005 paragraph 14; confirmed at Day 304/130/19

FS 7. 1663

Alley between Glenfada Park North and Columbcille Court

8A-90 Private 017 recorded in 1972 that after the incident with the nail bomber:

... the crowd ... went behind the barricade and continued to throw stones and bottles in our direction. Also bricks and stones and bottles were also being thrown at us by people who were running in and out of the alleyway leading to Columbcille Court. I noticed one man in particular who was throwing bricks from this position and I realized that I could arrest him. I therefore decided to run towards the alleyway. As I did so I saw a man walk around the corner towards me. From where I was he was about 15-20 metres away from me. He was aged about 20 and was wearing a blue shirt and a dark jacket. In his hand he had either a pistol or a revolver. I raised my baton gun and fired a round at him. I do not know if I hit him because my main concern was to get out of his line of fire so I turned and ran off back to where I had come from. As I did so I heard two small calibre weapon shots behind me as if the man had fired twice at me or other troops in my area.⁷⁶

8A-91 017's current recollection is that:

... the youths doubled back and ran away and I saw a man with a pistol come around the corner, from the north east corner of Glenfada Park North, into the alleyway towards me. The gunman was about 20 – 30 yards from me.⁷⁷

8A-92 He confirmed in his oral evidence to the Tribunal that he saw the gunman in the alleyway between Columbcille Court and Glenfada Park North.⁷⁸ **B1484.0035** is a still saved from the Virtual Reality model on which is marked with a red arrow the position from which he saw the gunman appear.⁷⁹ It is transposed on to the diagram above.

8A-93 Michael Lynch lived in Block 1 of the Rossville Flats and was making observations from that location on Bloody Sunday. At a stage *before* he became aware of any dead lying in the area of the rubble barricade, he saw a gunman in

⁷⁶ **B1484.015 paragraph 4**

⁷⁷ **B1484.5 paragraph 29**

⁷⁸ **Day 358/075**

⁷⁹ **Day 358/075 to Day 358/079**

FS 7.1664

the alleyway between Glenfada Park North and Columbcille Court fire two shots at soldiers in Rossville Street:

I remember seeing a man with a handgun come out quickly from the north east side of Glenfada Park North at approximately the point marked B on the attached map... and fire 2 shots towards the soldiers in RS. I think the pistol was in his right hand. I do not think he had time to aim at anyone. He was wearing a Parka jacket and he had the hood up covering his head. From the way he moved I formed the impression that he was a young man. I cannot recall any further details about the man. As soon as he fired the shots, he ran away in the same direction from which he had come. I do not know what happened to the gunman after this.⁸⁰

8A-94 Margo Harkin, who was looking out of the west side of Block 1 of the Rossville Flats, saw a gunman in the same alleyway. She was able to see two “very young men” running from the direction of the Little Diamond to a position which corresponds precisely with that given by 017 for the gunman he saw. Mrs Harkin’s BSI statement describes how:

40. They halted near the corner of the eastern wall of Glenfada Park – facing into Rossville Street with one behind the other – approx at point K on the map. They were very agitated and the one sheltering behind the other wanted to turn away almost immediately – I saw him pulling the other’s jacket.

41. The young man in the foreground was very angry and resisted. He then took a gun from the other man, which was delivered from inside this young man’s jacket. The man armed with the handgun went to the edge of the gable, ducked his head around the gable end to his right – and fired. I believe that he fired one shot randomly – I do not recall that he fired more than one but I can’t be sure – it all happened so fast.

42. Immediately after this the gun was thrust back at the other young man and they both ran away very fast the way they had come. They split off in two different directions and disappeared.⁸¹

⁸⁰ AL38.002 paragraph 10; confirmed at Day 148/185/09 to Day 146/190/24

⁸¹ AH23.016

A 7.1665

8A-95 In oral evidence, she described a soldier on the west side of Rossville Street moving towards the rubble barricade, keeping close to a wall as he did so. The gunman fired in his direction, then turned and fled:

... I have to say we thought that he was firing at the soldier that we saw going along the wall, but I mean it was a, it was a really wild shot, you know. It seemed like that to me anyway, it was all very quick, it was just like you know shot -- there may have been more, I do not know, but it was just very quick and they were away. What I remember of this, is helpful, what I remember of this is that the soldier who I saw inching along the wall reacted and he was already turning back and these guys were gone, they were gone, like and I thought -- it was slow motion in my mind at the time.⁸²

8A-96 It is Mrs Harkin's current recollection that the soldier in question was south of the alley between Glenfada Park North and Columbcille Court and that the gunman fired in that direction (and so towards the rubble barricade). The Tribunal will need to decide whether she was correct in this element of her evidence or whether the soldier may have been in a position further north. Whatever conclusion it reaches, Mrs Harkin's account of a gunman firing a pistol in a cavalier fashion around a corner is in keeping with evidence of the way gunmen were operating in different parts of the Bogside on Bloody Sunday, from Father Daly's gunman's shots at the gable end of Chamberlain Street, to Kieran Gill's gunman in the doorway to Block 1 of the Rossville Flats. These gunmen fired, from practically concealed positions, without taking the time or the trouble actually to aim at their intended targets. This should be borne in mind when the Tribunal considers how significant it is that members of 1 PARA were not themselves hit by such fire on Bloody Sunday whereas innocent civilians such as Mr Alex Nash, and possibly even Mrs Deery, may have been.

8A-97 Liam Mailey may have heard the shots fired by one of the gunmen spotted in the alleyway between Glenfada Park North and Columbcille Court. He heard non-military, low calibre rounds being fired. He reported in 1972 that from his position just south of the rubble barricade he saw the Pigs come in and stop:

H 7.1666

After this there were rifle shots from the soldiers who had got out of their vehicle and I saw at least two people injured in the advancing crowd. The others got down. I moved across Rossville Street towards the flats and just behind the barricade. While I was crossing I heard three single shots which appeared to be of lower calibre than the rifle shots. They appeared to be fired from the area of Glenfada Park or Kells Walk. I cannot give the direction.⁸³

8A-98 In his BSI statement he repeated that he had heard low calibre shots (three or four of them):

which sounded to me like an air rifle being fired. I am certain that they were not high velocity rounds and I did not see any soldiers in the vicinity when I heard them... I think it was after the march had started because I remember thinking to myself that it was a particularly stupid time to be firing shots and that we don't need this in the middle of a Parade... I think the shots came from the area of either Glenfada Park North or, perhaps, the southern end of Columbcille Court. I am not sure, but I think the latter is more likely.⁸⁴

8A-99 The location would correspond very closely to that in which Private 017, Michael Lynch and Margo Harkin all saw gunmen with handguns.

8A-100 Ciaran Donnelly may also have heard rounds fired by one of these gunmen. He heard two shots at an early stage, from his position on the Glenfada Park South pram ramp overlooking the rubble barricade. This was before any soldier had fired at the rubble barricade. Mr Donnelly was asked at the Widgery Tribunal:

Q. Do you remember hearing any shots fired whilst you were there taking photographs?

A. Yes, there were a couple of bangs, a couple of shots; no-one fell at this time.

Q. Did you see who fired them?

⁸² Day 416/027/05FF

⁸³ M50.057

⁸⁴ M50.002 paragraph 6; see now also Day 163/095-096

FS 7.1667

A. No, but they were fired from nearby, that is, for anyone in the crowd immediately below the pram ramp, at the barricade.⁸⁵

8A-101 Mr Donnelly did not believe the gunfire came from an SLR or from a baton gun.⁸⁶ He further suggested that the shots came from a position north of the rubble barricade. However, it was Mr Donnelly's impression that they came from a soldier situated in the area of the "two APCs and one Ferret" which had drawn up in Rossville Street. That clearly was not the case; no soldier fired from that position and Mr Donnelly did not claim actually to have seen anyone fire from that location. Furthermore, shots which came neither from an SLR nor from a baton gun were *not* fired by a soldier.

8A-102 Therefore, two civilians, Mr Lynch and Ms Harkin, with close connections to the Bogside,⁸⁷ speak of gunmen in precisely the position described by Soldier 017. Two further civilian witnesses may have heard shots fired by the gunmen. Whether or not Mr Lynch and Ms Harkin witnessed the same gunman as 017, it is now clear beyond any real doubt that this was an alley in use by armed civilians on Bloody Sunday.

8A-103 It was, incidentally, through this alleyway that OIRA7 passed, on his way from Glenfada Park North as the military vehicles arrived in Rossville Street. OIRA7's movements are considered in chapter 9.

Glenfada Park North

8A-104 The potential significance of Glenfada Park North in relation to events concerning P and 017 should not be underestimated. This location provided an area of cover, shielded both from Rossville Street and the City Walls, in which gunmen could operate with more freedom than in most other Bogside locations. The alleyway in which Private 017 encountered his gunman fed into the north east corner of

⁸⁵ M22.006 paragraph A

⁸⁶ M22.009 paragraph E; Day 071/089/17

⁸⁷ Mr Lynch lived in the Bogside; Mrs Harkin's grandmother lived in the Rossville Flats.

FS 7.1668

Glenfada Park North. The rubble barricade, where Corporal P engaged his gunman, was just a few metres away from the “gable end” (southern end) of its eastern block. In other words, it was a matter of a few seconds to move from Glenfada Park North to either of the positions in which P and 017 sighted gunmen.

8A-105 Michael Kivelehan was in his grandmother’s flat in the “top right corner of top quadrangle” of Glenfada Park, i.e. the north east corner of Glenfada Park North (indicated as “9” on the Inquiry map, above). This was the part of Glenfada Park nearest to the alleyway in which 017, Michael Lynch and Margo Harkin all spotted men with handguns. It is, therefore, of some consequence that Mr Kivelehan was present when a man brought a handgun into the flat. He told John Goddard of PRAXIS, off the record, that a man with a shortarm in the flat had been disarmed and the weapon disposed of. Mr Goddard made a note of that conversation, which the Tribunal has at AK45.1.

8A-106 Mr Kivelehan claims no longer to be able to recall this incident.⁸⁸ However, he does not deny speaking to Mr Goddard in the terms recorded in the PRAXIS note of their conversation.⁸⁹ He suggests, rather, that he may have been drunk when they spoke.⁹⁰ It is, therefore, significant that, when Mr Kivelehan spoke to his brother-in-law, John McCourt, on a different occasion, he also mentioned that he had seen a gunman on Bloody Sunday.⁹¹ John Goddard has no difficulty recalling his conversation with Mr Kivelehan. It was tape recorded and some of the information he received at that time came also from Mr Kivelehan’s mother and sisters.⁹² The note he produced at AK45.1 was certainly an accurate representation of what he had been told.

⁸⁸ Day 406/084/19

⁸⁹ Day 406/084/25

⁹⁰ Day 406/081/18

⁹¹ Day 423/103/24

⁹² Day 233/198/10

FS 7.1669

8A-107 John Barry confirmed that he was the journalist who conducted a lengthy, tape recorded interview with Ivan Cooper.⁹³ Mr. Barry was asked:

Q..... Again, so far as this document is concerned, if we can go back to it, KC12.65, are you able to tell whether this would have been notes made from a tape-recording?

A. Yes, certainly a tape.

Q. Is that because of the length of it?

A. It is the length and the detail, and also there are various parts in it which are clearly verbatim and I would only have used verbatim material if it came from a tape.⁹⁴

8A-108 During the interview, Mr Cooper purportedly referred to a gunman who was active in Glenfada Park on Bloody Sunday. The gunman had been “running around mad all afternoon” with a revolver. That description would certainly fit the way in which the gunmen witnessed by P, 017 and others had been acting. The notes record that:

IC had seen the Officials in the march. But nowhere else. And IC only heard later that OIRA6 had fired a revolver in Glenfada Park. CIV2] told IC that OIRA6 had been running around mad with a pistol all afternoon. CIV2 says he fired very early.⁹⁵

8A-109 The notes themselves have caused a strong reaction in those concerned. Mr Cooper has described them as “poisonous and disturbing” and rejected them in their entirety.⁹⁶ CIV2 has described Mr Cooper as “a fantastic liar.”⁹⁷ Much will, therefore, turn on the Tribunal’s assessment of the witnesses.

8A-110 For his part, John Barry has stated “I am sure we made mistakes. But we did not invent things.”⁹⁸ Barry’s note, however, was *not* where mistakes were made; it did

⁹³ Day 193/120/24

⁹⁴ Day 193/122/02

⁹⁵ KC12.071

⁹⁶ KC12.030 paragraph 97; that remained his position in oral evidence, Day 419/076/17.

⁹⁷ AM208.005 paragraph 17

⁹⁸ M3.007 paragraph 30

not contain fabricated information. The fact that he was working from a tape recording of the interview makes it unlikely that he failed accurately to record in his note what Mr. Cooper had told him.

8A-111 There is further important evidence relating to the activity of gunmen in Glenfada Park North, which is considered in detail chapter 9. It relates to the presence of a car containing weapons in Glenfada Park North and the deployment of members of the Official IRA in that location. Crucially, at least one of these men may have been armed with a handgun.

Rubble Barricade

8A-112 There is also strong evidence of the presence at the rubble barricade of at least one person with a handgun. Corporal P, two Gunners situated on the City Walls and an Anti Tank Platoon Lieutenant all give evidence of this. What is more, two Sunday Times journalists found in 1972 that persuasive evidence existed of the presence of a gun at this location.

8A-113 It was Corporal P's evidence in 1972 that "several moments" after the incident with the nail bomber:

several shots came close to us from the direction of the barricade...I observed a man crouching behind the barricade. I cannot recall what he looked like or what he was wearing. He was holding something, which I took to be a pistol. He then stood up and pointed the region down Rossville Street and fired a number of shots although I could not say how many. I then knelt down and took aim and fired four shots at him, one of which hit the barricade. The man behind the barricade fell to the ground. At that time there were no other people in my line of fire.⁹⁹

8A-114 Corporal P was, therefore, faced with a situation in which he had to react to a gunman who was putting his colleagues in Rossville Street in danger. Soldier P was himself in danger, in his exposed position alongside the Kells Walk ramp

⁹⁹ B623.012

wall. In the circumstances, there was no choice but to take rapid and decisive action. Such action was anticipated and permitted by the "Yellow Card" rules of engagement, which have been considered in relation to the shots fired by P at the nail bomber, above.

8A-115 Corporal P described to Lord Widgery what happened after his engagement with the gunman:

When he fell I stopped firing and then a group of people came out from the Glenfada Park area and ran across the road towards Rossville Flats, and one or two of them came in the direction of the barricade. They picked up something, which I think was a pistol, but I could not be certain, and carried it over to the area of the Rossville Flats.¹⁰⁰

8A-116 Gunner 101 (22 Lt AD Regiment, Royal Artillery) was on duty at the base of the Walker Memorial on the City Walls. This soldier, with no connection to the Parachute Regiment, saw a gunman at the barricade who may have been the one engaged by P:

... I heard a pistol being fired and I observed a man at the barricade in Rossville Street shooting at a APC (pig) parked near Rossville Street. He fired about five shots and I then heard a 7.62 rifle being fired and the man at the barricade was hit.¹⁰¹

8A-117 Lieutenant 119 also recalled seeing a gunman fire at soldiers from the area of the barricade. In 1972 he reported to the RMP how, from a position at the south end of Kells Walk:

I then heard a number of shots, from what sounded like a pistol, and also from an M1 rifle... From my observation of the origin of the shots I can state the following: The weapon which sounded like a pistol was located at ground level at the corner of Glenfada Park Flats, about 30 metres ahead and to my right at MR 43221684. I saw distinct muzzle flashes, but not the actual weapon or the person holding it. He was obviously aiming quickly around the corner of this building without exposing himself at all ... I noticed that it was

¹⁰⁰ B623.021 paragraph A

¹⁰¹ 1670

A 7. 1672

possible to get into Glenfada Park from an entrance directly to my right. I sent E and F together with a party of men around the right of Glenfada Park.....¹⁰²

8A-118 He confirmed his account to Lord Widgery:

A. In fact, our initial reason for taking up cover there [Kells Walk wall] was that we were fired on there. If I can show you on the model, it was from this corner of the building on Glenfada Park.

Q. The south- east corner

LORD WIDGERY: very near the barricade?

A. Yes sir, that is right ... this weapon here, I think, being a pistol of some kind, certainly a hand held weapon which was fired round the corner. The firer, of course, I was unable to see ...

...

A. It was a pistol, I think, sir. I could see the muzzle flashes. It was certainly a weapon that was easy to put round the corner without the firer being observed by me ...

Q. You could see the muzzle flashes from there?

A. Yes sir.

Q. How many shots were fired?

A. Three or four rounds of fire that I observed.

Q. In your direction?

A. Yes sir, the rounds passed overhead.

Q. The rounds passed overhead?

A. Yes sir.¹⁰³

8A-119 Gunner 012 (22 LAD RA) was positioned at the left hand side of the Charlie OP. His task was to observe with binoculars what was taking place below him. He stated in 1972 that:

¹⁰² **B1443**

¹⁰³ **B1456 paragraph B**; see now also **Day 363/130/19**

FS 7.1673

About 4.15 I saw a large crowd of youths running from Free Derry Corner towards the barricade in Rossville Street. When they reached the barricade I could [see] that one of the youths was holding a pistol. There is no doubt in my mind. Then I heard a burst of low velocity automatic fire which sounded to me like a Thompson coming from the direction of Columbcille Court or Glenfada Park. Immediately after this the youths who were at the barricade turned and ran back down Rossville Street towards Free Derry Corner but ran off up side streets in all directions. I did not see the youth with the pistol again.¹⁰⁴

8A-120 The finding of the Sunday Times Insight article of 23rd April, 1972, was that:

There is persuasive, though not conclusive, evidence that a pistol then appeared at the barricade and was used.¹⁰⁵

8A-121 Insight journalist Peter Pringle stood by that finding in oral evidence to this Tribunal and accepted that it would have been based on corroborated information, otherwise it would not have been included in the final article.¹⁰⁶

8A-122 The BSI statement of the Insight editor, John Barry, records that:

I also seem to recall there were indications that a pistol had been passed from hand to hand and most likely fired from the rubble barricade on Rossville Street or close behind it.¹⁰⁷

8A-123 In oral evidence he expressed the belief that the note would *not* have been based only on the evidence of soldiers. Frustratingly, he could not remember of what the non-military evidence consisted.¹⁰⁸

8A-124 It was, incidentally, OIRA1's evidence that he left Glenfada Park North and moved to the rubble barricade. His activities and movements are discussed in detail in chapter 9.

¹⁰⁴ **B1403**; see now **B1405.010 paragraph 37**

¹⁰⁵ **L213**

¹⁰⁶ **Day 191/031/02; Day 191/030/10**

¹⁰⁷ **M3.006 paragraph 21**

¹⁰⁸ **Day 193/108/16**

FS 7.1674

Entrance to Block 1, Rossville Flats

8A-125 The Tribunal also has strong evidence that a member of the Official IRA had been firing from block 1 with a pistol. A member of the Official IRA, with whom the journalist Kieran Gill spoke, confirmed that he had fired three or four shots with a revolver from the doorway of block 1 towards soldiers in Rossville Street.¹⁰⁹ This incident is considered in greater detail in our closing submissions relating to Private U, below. The presence of a civilian within a few metres of the rubble barricade, firing a handgun, is further evidence that this was an area of great danger for the soldiers in and to either side of Rossville Street.

GUNMEN CONCLUSION

8A-126 Sightings of gunmen armed with handguns were made in many locations, from Kells Walk to the area south of the rubble barricade. It is highly significant that much of the relevant evidence comes from civilians, who had no reason to invent or imagine such things and even less to give false accounts of them. The pressures on civilian witnesses to omit references to gunmen in their accounts of Bloody Sunday is an issue that is addressed in Chapter 2.

8A-127 Marian McMenamin articulated her crisis of conscience in deciding whether to come forward with such information:

As we were running away I saw a civilian with a gun. I hate myself for saying this; I have never told anybody about this before, not even my husband and we have been married for over 25 years. I feel disloyal to the innocent men who died on Bloody Sunday, but I did see him and I feel the truth must now be told.¹¹⁰

8A-128 Her experience was probably not unique. That being the case, it is particularly significant that so many civilian witnesses have spoken of gunmen in areas close

¹⁰⁹ M105.013 paragraph 59

¹¹⁰ AM363.002 paragraph 7

FS 7.1675

to where P and 017 deployed and themselves observed gunmen. Other important evidence comes from soldiers in units with no connections to the 1 PARA.

8A-129 In several instances, witnesses observed gunmen fire in the direction of the military. This was the situation into which P and 017 were placed and the background against which their accounts must be considered.

8A-VIII UNIDENTIFIED CASUALTIES

8A-130 Civilian evidence suggests that more people were wounded or killed in the area of the rubble barricade than those identified to date. The existence of unidentified, "missing" casualties may provide an explanation for what happened to the gunman and, possibly, the nail bomber, shot by P. Evidence that bodies of casualties, *other than* the known Sector 3 deceased and wounded, were removed from the relevant area was considered as early as May 2000 by Christopher Clarke QC in his *Summary of Civilian Evidence in relation to the Barricade Deaths*.¹¹¹ That evidence is considered in detail, below.

8A-131 For the purposes of these submissions it is enough to refer, by way of example, to Robert Wallace's description of what he observed shortly after Michael Kelly's body was carried from the rubble barricade into Glenfada Park North. His BSI statement contains this account:

*A few seconds later, a second young man was carried around the gable end from the barricade. I have no idea who he was. He was about 17 or 18 and was a bit smaller than Michael Kelly, but I cannot recall any other details about him. Although he was not moving at all, I saw no wound or blood on him. I was still so shocked by the sight of Michael Kelly that I did not pay much attention to this second man.*¹¹²

8A-132 The only casualty to be carried from the barricade into Glenfada Park North, whose identity is known, was Michael Kelly. The identity of the second person

¹¹¹ TempD16.007 paragraph 2(6)

¹¹² AW3.002 paragraph 8

FS 7.1676

Mr. Wallace observed is, therefore, unknown. Nor can we say what he was doing before he was carried away from the barricade. Mr. Wallace was asked for further details about this person during the course of his oral evidence:

Q. What makes you think he was a teenager or 17 or 18?

A. He seemed to have longish hair, it was black hair.

Q. Black hair?

A. Yeah.

Q. You say you did not see his face; was he being carried face up or face down?

A. His face was down, facing down, yeah.

Q. How many people were carrying him?

A. There was 2.

Q. Did you know either of those people?

A. No, I did not.

Q. Can you describe either of them at all to us?

A. Not really.

Q. Are they young or old?

A. I would say they were in their twenties.

Q. Both men?

A. Yeah.

Q. Can you say whether they were dark or fair?

A. I think they were sorta darkish.

Q. Had you ever seen either of their faces anywhere around Derry before?

A. No, I did not.

Q. Have you ever seen either of them since?

FS 7.1677

*A. No, not really, no.*¹¹³

8A-IX MISSING PHOTOGRAPHS

8A-133 Significant photographs taken in Sector 3, and particularly of the rubble barricade, are missing.

8A-134 The issues of missing photographs is fully address in Chapter 2C-352 – 384. For the reasons there set out we submit, in conclusion that many Sector 3 photographs are now missing, particularly those taken of events in the area of the rubble barricade. There is now strong evidence that photographers were approached shortly after Bloody Sunday by members of the Provisional IRA and that photographs may have been suppressed at this stage. Other photographs have, apparently, suffered a variety of fates. Some were lent to a journalist but never returned, others were destroyed in a flood. There is also now compelling evidence that two further photographers were active in Sector 3. They have yet to be identified and only one of their photographs has reached the Tribunal. The fate of the rest of their work is unknown. It is clear that Tribunal cannot assume that the photographs which remain tell the whole story of what took place in this part of the Bogside. The Tribunal has been deprived of evidence and the fact that there has been suppression must lead to the conclusion that some at least of that evidence would have been very material to an understanding of events within Sector 3.

8A-X SOLDIERS P AND 017 MOVEMENT EAST

8A-135 Corporal P ordered Private 017 to move back across Rossville Street to the cover of their Pig. In 1972 he described his own movements:

I followed on behind him. When I was halfway across a group of people came out from Glenfada Park area and started coming down the road towards the barricade. Most of them were again throwing missiles at myself, the soldier who had been with me and

¹¹³ Day 154/138/21

FS 7.1678

at the vehicle. I thought the crowd was coming too close for comfort so I knelt down in the street and fired three shots over the heads of the crowd in an attempt to disperse them. There would have been no-one in my line of fire. I then reached the cover of the vehicle.¹¹⁴

8A-136 Private 017 confirmed in his BSI statement that:

Having seen the gunman, I decided to go back to the pig ... to get my rifle. As I was going back, I saw soldiers along the north end of Block 1 of the Rossville Flats, looking down the west and east sides of that block. There were still people at the rubble barricade but not as many. By then I had heard shots but I do not know where they came from or at whom they were fired. I did not hear any explosions.¹¹⁵

8A-137 P's shots into the air were fired while he was withdrawing from an exposed position. He was faced with a resurgence of activity in the area of the rubble barricade and had no more than seconds in which to decide how to respond. The only weapon available to him was his SLR. He chose to take action that would cause those advancing to stop, whilst firing in a way that would not actually put them in danger. His actions were justified in the circumstances.

8A-XI SOLDIER P: VEHICLE ESCORT TO ALTNAGELVIN

8A-138 Corporal P was later ordered to act as escort to Lieutenant N's Pig as it took the bodies of William Nash, John Young and Michael McDaid to Altnagelvin Hospital.¹¹⁶

8A-XII SOLDIER P'S STATE OF RECOLLECTION

8A-139 This Inquiry is being held long after the event, in circumstances where the majority of the soldiers in question has long since left the Army and pursued different lives as civilians. P explains:

¹¹⁴ B623.013

¹¹⁵ B1484.005 paragraph 33

¹¹⁶ B623.013; B623.002 paragraph 14

FS 7.1679

After I left the army, I put my years of service to the back of my mind and forgot about them. I don't see anyone from the army and I don't go to reunions; I have just got on with my life and work.¹¹⁷

8A-140 Some of the soldiers, particularly those serving in 1 PARA, served for a long time in the Army and lived through a number of different experiences. These included, in the case of Corporal P, three tours of duty to Northern Ireland during a service of fourteen years.¹¹⁸ He would have been involved in numerous incidents, both in Northern Ireland and elsewhere.

8A-141 P signed his BSI statement on 25th July 2000, twenty-eight and a half years after Bloody Sunday. There was then a further delay of approximately three years before he was called to give oral evidence, on 30th June 2003.

8A-142 None of this is Soldier P's fault. It has, however, made it very difficult for him to recall what took place on Bloody Sunday. The Tribunal has the benefit of the accounts given by him in 1972. He invites the Tribunal to consider his evidence to Lord Widgery in particular:

The matters contained in the transcript are the matters that I wish to rely on as my evidence to the Tribunal. The reason for this is that although I cannot recall giving the evidence or saying these words, I understand that someone took down what I said word for word. If this is the case, then I am happiest with the contents of this as I can be certain that it accurately records what I said.¹¹⁹

8A-143 More generally, the difficulties experienced by witnesses who have been required to recall, approximately three decades after the event, what took place on Bloody Sunday are considered in chapter 2, above.

¹¹⁷ 623.001 paragraph 1

¹¹⁸ 623.001 paragraph 2

¹¹⁹ B623.004 paragraph 28

FS 7. 1680

8A-XIII SOLDIER U'S ENGAGEMENT

8A-144 We return now to events concerning Soldier U who, having handed over his arrestee, took up a position at the north-west corner of Block 1 of the Rossville Flats.¹²⁰

8A-145 U described in the statement he gave for the purposes of the Widgery Tribunal that he had been at the corner for about two minutes:

... when I saw five or six men walking across from Glenfada Park towards Rossville Flats behind the barricade. I saw one of these men had a pistol. He had a light blue jacket on. The other men moved away from him as though they were surprised he had a pistol. He fired two shots in quick succession in the direction of the opposite side of Rossville Street from where I was standing where there were soldiers.¹²¹

8A-146 U described the same incident in similar terms in his BSI statement:

A group of men came out from the Glenfada Park area and headed east across Rossville Street towards Block 1 of the Rossville Flats... They were on the South side of the Rubble Barricade. They were walking, but quickly. Quite suddenly, a guy in the middle of the group stopped, turned quickly to face the Rubble Barricade, pulled out a pistol, raised the pistol in both hands as if trying to get a sight and fired two quick shots. He was not shooting at me. I can only assume that he thought he was shielded because of the lie of the ground. He certainly didn't see me. He appeared to be shooting towards Kells Walk where there were some other paras. As he did so, others in the group he was with seemed to scatter very quickly, as if they did not want anything to do with him. I would say the gunman was in his early thirties or possibly his late twenties...¹²²

¹²⁰ B787.5 paragraph 27

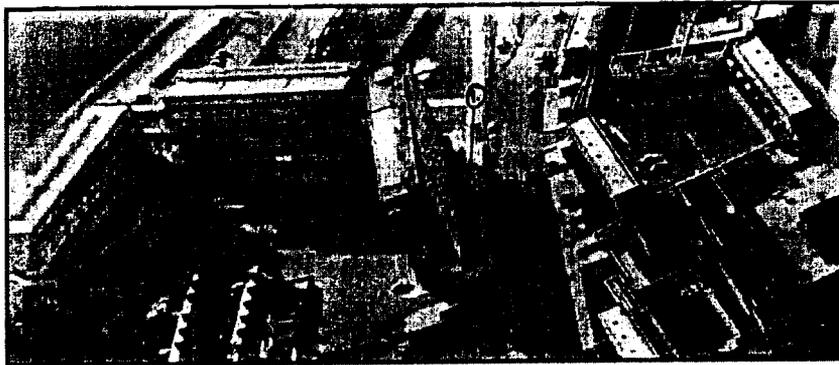
¹²¹ B787.20

¹²² B787.5 paragraph 30

FS 7.1681

LOCATION OF GUNMAN

8A-147 The location of the gunman, south of Block 1, was indicated on Private U's trajectory photograph.¹²³



8A-148 That location was confirmed by him during his evidence to Lord Widgery.¹²⁴ The marking on the trajectory photograph also corresponds with that on his "RMP map."¹²⁵

8A-149 In oral evidence to this Tribunal, U agreed that the 1972 accounts as to the location of the gunman were likely to be correct.¹²⁶ He indicated the approximate position of the gunman and the direction in which the gunman was facing on a photograph.¹²⁷ We have reproduced his marking on **P203**, below:

¹²³ **B787**

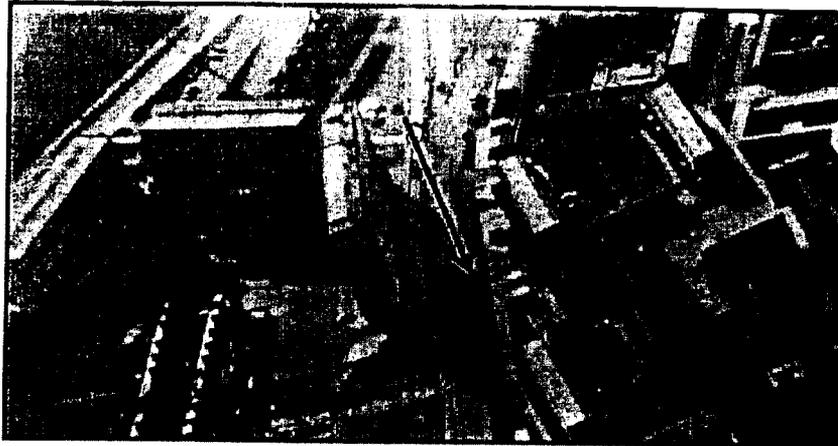
¹²⁴ **B787.31 paragraphs B to C**

¹²⁵ **B787.15**

¹²⁶ **Day 369/082/17**

¹²⁷ **B787.39**, blue arrow.

FS 7.1682



8A-150 The gunman was facing down the road and firing at soldiers situated on the other side of Rossville Street from U.¹²⁸

SOLDIER U'S SHOT

8A-151 Soldier U's statement to the Widgery Inquiry describes how he responded.

Then I was in a standing aiming position, I took off my safety catch and aimed for the centre of his body. I fired one round. He fell backwards and the man behind him clutched his [own] head.¹²⁹

8A-152 He described his response in a similar way in his BSI statement:

I cannot remember if my weapon was already cocked, but I think it already was. I took the safety catch off and I fired one single aimed shot at the gunman. I aimed at the centre of his body and I hit him centrally somewhere. He went down immediately. I still have a horrible mental picture of him falling ...¹³⁰

8A-153 He had a brief period of time in which to decide how to respond to the threat posed to his colleagues on the west side of Rossville Street and he reacted appropriately in all of the circumstances by firing a single round from the only weapon he had available, his SLR. He explained concisely to the Tribunal that:

¹²⁸ Day 369/085/01

¹²⁹ B787.20; the word in square brackets has been added to the statement in manuscript.

¹³⁰ B787.6 paragraph 31

FS 7.1683

I had a clear, well-aimed shot and I took the decision there and then.¹³¹

8A-154 Soldier U accepted from the first that his single round may have hit two people. However, there is no known corresponding second casualty, nor did he observe a wound on the man who had clutched his head.¹³²

8A-155 The gunman at whom Private U fired wore a light blue jacket, was in his late twenties or early thirties and was shot to the south of the Rossville Flats. He relates to none of the identified Sector 3 deceased or wounded.

8A-156 Two other soldiers gave information in 1972 that support the account given by Soldier U. Captain 028 was the 22 LAD RA Press Officer. The description he gave in 1972 of a gunman to the south of Block 1 of the Rossville Flats has particular similarities with that given by U. The "SA" statement 028 gave for the purposes of the Widgery Inquiry described how:

... I saw a man come out from behind the far end of Block 1 of Rossville Flats with a pistol in his hand but he must have been shot as I saw him fall. Two civilians who had been standing nearby walked over to this man and appeared to be shielding him. One of them fell at virtually the same moment as the gunman and the second picked up his pistol and ran off behind Rossville Flats.¹³³

8A-157 Private 032 of Guinness Force saw a gunman with a pistol in the same area as the gunman U engaged, though clearly not at the same time. In 1972 he stated that from his position at the wall at the south end of the Kells Walk building:

... I ... saw a man with a pistol run in front of a crowd which had assembled on Rossville Street about ten metres south of the South West corner of Block 1. The man ran in a westerly direction and vanished into the flats in Glenfada Park.¹³⁴

¹³¹ Day 369/088/09

¹³² Day 369/087/14; Day 369/088/13

¹³³ B1582.12

¹³⁴ B1614

FS 7.1684

8A-158 We have already referred to the many sightings made along Rossville Street of gunmen carrying pistols and to the existence in this part of the Bogside of unidentified, "missing" casualties. The submissions we have made above are relevant also to the issue of the gunman engaged by Soldier U.

8A-XIV HUGH GILMORE

8A-159 Arthur Harvey QC questioned Soldier U on the basis that, on a fair interpretation of his evidence, he must have shot Hugh Gilmore.¹³⁵ That is not the case. There are significant differences between the circumstances in which Hugh Gilmore was shot and those in which U fired at a gunman south of Block 1. Indeed, the differences are such as to preclude the possibility that Soldier U was responsible for Hugh Gilmore's death. The uncertainty in the evidence generally, however, makes it impossible to determine which soldier (or soldiers) did shoot Hugh Gilmore.

MEDICAL AND EXPERT EVIDENCE

8A-160 There is disagreement even as to the number of rounds that hit Mr Gilmore, the expert evidence being divided as to whether he was shot once or twice.

8A-161 The injuries sustained by Hugh Gilmore are set out in the autopsy report prepared by Dr Derek Carson¹³⁶ and described in the report prepared for the Tribunal by Dr Shepherd and Mr O'Callaghan.¹³⁷ The easiest way to understand the location of the injuries is to refer to the photographs.

¹³⁵ Day 369/162/07

¹³⁶ D180

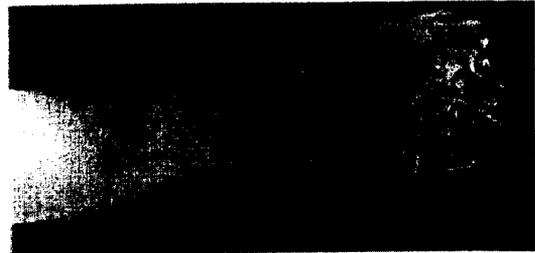
¹³⁷ *Report on the Pathology and Ballistic Evidence following the Bloody Sunday Shootings*, E2.58 paragraph 7.13

FS 7.1685

Left Forearm

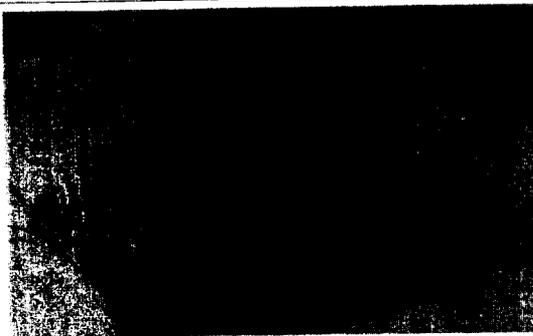


Entry wound¹³⁸



Exit wound¹³⁹

Trunk



Right side¹⁴⁰



Left side¹⁴¹

8A-162 There is no dispute that the injury on the ulna (little finger) side of the left forearm is an entry wound and that the other injury marks the exit of the bullet from the arm.¹⁴²

8A-163 Dr Carson suggests that the bullet which exited the arm then entered the trunk. He therefore, contends that the injury to the left side of the trunk is an entrance wound and that to the right side marks the exit of the bullet from the trunk. On

¹³⁸ **P100**

¹³⁹ **P101**

¹⁴⁰ **P99**

¹⁴¹ **P100**

¹⁴² **D180; E2.58 paragraph 7.13.1**

PS 7.1686

this hypothesis, Mr Gilmore was struck by a single round passing from left to right. The autopsy report explained:

*All four wounds could be brought into line when the left forearm was semi-flexed at the elbow with the upper arm almost alongside the body and the palm facing the lower abdomen. The track through the body then passed horizontally from left to right with a slight inclination backwards.*¹⁴³

8A-164 Dr Shepherd and Mr O'Callaghan disagree. They suggest that the injury on the right side of the trunk is an entry wound and that on the left side an exit wound. On this hypothesis Hugh Gilmore was struck by two bullets, one of which hit the left forearm, the other entering the right side of the chest.¹⁴⁴ They add:

*The forearm is an extremely mobile part of the body and it is not possible to give any indication of its position when struck. The mobility is so great that the shot that struck the forearm could have come from almost any position around the body. Clearly the shot to the chest, if we are correct in the orientation of this shot, has come from a point to the right of the chest at the moment of discharge.*¹⁴⁵

8A-165 The Tribunal is, therefore, faced with conflicting theories. *Neither* will assist it in determining the location of the soldier (or soldiers) who shot Hugh Gilmore without compelling evidence as to his location and orientation at the time he was shot. It is thus necessary to turn to the civilian evidence in this regard.

CIVILIAN EVIDENCE

8A-166 Christopher Clarke QC's *Summary of Evidence in Relation to the Death of Hugh Gilmore and Kevin McElhinney*¹⁴⁶ is "an attempt at some form of synthesis of the civilian evidence" seen by the Inquiry as at the date of its drafting. It observes that:

¹⁴³ D180 to D181; Dr Carson's evidence to the Bloody Sunday Inquiry was consistent with that he gave in 1972: D535 paragraph 13, D537.1, Day 229/012/04

¹⁴⁴ E2.61

¹⁴⁵ E2.61; this conclusion remained unaltered by Dr Shepherd's oral evidence to the Tribunal: Day 299/013-015

¹⁴⁶ Temporary Document 18, dated 01.06.00.

FS 7.1687

*there is considerable disagreement between the various accounts of the shooting of Hugh Gilmore...*¹⁴⁷

8A-167 The document was prepared at an early stage in the proceedings, but accurately summarises the current position in relation to the civilian evidence. That body of evidence has remained contradictory and confused.

8A-168 For the purposes of these submissions, we consider the civilian evidence relating to Mr Gilmore's location and orientation at the time he was shot.

Location

At Rubble Barricade facing North

8A-169 Sean MacDermott's evidence in 1972 suggested that Hugh Gilmore was on the barricade looking north at the time he received the shot to his chest. His statement includes this description:

*...Hugh Gilmore emerged from the main door of the High Flats on Rossville St. He moved past towards the mound of rubble which formed a barricade across Rossville St. He got on top of the barricade and someone shouted "They're shooting live ammunition." When I heard this I crouched and looked round and Hugh Gilmore jumped up clutching the bottom of his stomach shouting "I'm hit, I'm hit." I thought he had been hit by a rubber bullet so a friend of mine Francis Mellon and myself got hold of him and assisted him around the corner of the Flats on the side nearest Free Derry Corner. As we got round the corner he collapsed.*¹⁴⁸

8A-170 Note that Mr MacDermott's current recollection is a little different. It is of first seeing Hugh Gilmore at approximately the time he cried out that he was hit, when he was just south of the barricade and making his way south.¹⁴⁹

¹⁴⁷ TmpD18.1

¹⁴⁸ AM4.11

¹⁴⁹ AM4.3 paragraph 17; Day 144/060/01

8A-171 Conversely, James Donal Deeney initially suggested that he had seen Hugh Gilmore only after he had been shot.¹⁵⁰ That changed with his BSI statement, in which he claimed that Mr Gilmore was at the barricade, facing north when he was shot:

12. I saw Gillie around the entrance of Block 2 of the Rossville Flats ... He started gesticulating and shouting at me, and to others, shouting such things as "Stand your ground" and urging people to follow him towards the Rubble Barricade ... As we came out of Block 1, people were fleeing away from the army and were clambering southwards over the Rubble Barricade. There was a disorganized multitude of people. I followed Gillie towards the Barricade. He was waving his arms and gesticulating as he went. There were still quite a number of people at the Barricade ready to face the army down. There were always about 10-20 rioters ready to coax the army into action...

13. ...I remember Gillie getting right up to the Barricade and he may have clambered on it, a step or two. He then turned around to me and said he had been shot. Just before he had been shot he was still remonstrating and waving his arms around, but I do not have a recollection of him throwing any stones...¹⁵¹

8A-172 This version of events, therefore, describes Hugh Gilmore turning to Mr Deeney after he had been shot.

8A-173 James Greene is another witness suggesting that Hugh Gilmore was at the barricade facing north when he was shot. His BSI statement includes this description of events:

11. I thought perhaps it might be safer to move away from the Rubble Barricade. Before doing so, I remember bending down to pick up another stone. As I stood up, the young boy beside me (who I didn't know at the time but who I now know to be Hugh Gilmore) said "Jesus, I've been hit" ... He and I then turned, with our backs to the soldiers, and ran south down Rossville Street towards the entrance to Block 1 of the Rossville Flats... I started running level

¹⁵⁰ AD26.5 paragraph 21

¹⁵¹ AD26.11 paragraphs 12 to 13:: Deeney confirmed this was an accurate summary at Day 086/146/15.

FS 7.1689

with the boy but I must have overtaken him because I got to the entrance before he did. As I turned around, I could see him running towards me. He was slowing down as he ran...

12. As Hugh Gilmore reached the entrance to Block 1, I and three or four other people helped him by lifting his legs clear of the ground and carrying him down the Rossville Street side of Block 1 and round to the gable end of that block...¹⁵²

8A-174 The account given by Eamon Melaugh in 1972 makes it clear that Hugh Gilmore was at the barricade, facing north when he was shot:

I found myself standing at the barricade outside the Rossville Street Flats...I was er – facing the Army and watching the members of the Security Forces fire their self-loading rifles. Most of the shots that I seen fired were being fired from waist level and weren't deliberately aimed. Two shots rang out, the lad standing beside me... who I now know to be Hugh Gilmore lurched forward from the waist. He said "I've been hit Eamon, I'm hit"; meaning that he was shot. I looked at him, there was an expression of amazement, total amazement on his face. He turned round and ran up the street away from the barricade and from the soldiers. I ran after him...¹⁵³

8A-175 Mr Melaugh's current recollection is, however, that Hugh Gilmore was walking south when he was shot, a version of events we refer to below,¹⁵⁴ although he also accepts that the 1972 account might be the more accurate one.¹⁵⁵

8A-176 According to PIRA 14's BSI statement, he, his brother and Colm Keenan were all at the rubble barricade at the same time as Hugh Gilmore.¹⁵⁶ PIRA 14, his brother and Mr Keenan were all members of the Provisional IRA.¹⁵⁷

8A-177 PIRA 14's attention was drawn to a soldier on the west side of Rossville Street in front of a ramp near Kells Walk, who opened fire in the direction of Free Derry Corner.¹⁵⁸

¹⁵² AG54.3 paragraphs 11 to 12; see also Day 149/014/20 to Day 149/016/02.

¹⁵³ AM397.70; he gave a similar account to the Sunday Times, AM397.24.

¹⁵⁴ AM397.4 paragraphs 38 to 41

¹⁵⁵ Day 143/039/07

¹⁵⁶ APIRA14.3 paragraph 18

FS 7.1690

The same soldier then turned his rifle in an arc, so it was pointing in my general direction. I then saw the gun recoil so I am sure that he fired the weapon. I think he fired two shots. As he did so, a young man standing in front of me, just to my right, clutched his stomach in a spasm. I later learned that this was Hugh Gilmore. I have been asked whether I can recall what he was doing just before he was shot. I think he was shouting at the soldiers who had made their way to the end of Block 1 of the Flats. He may also have been throwing a stone at them, but I cannot be absolutely sure about this. As soon as he had been hit, he turned and ran alongside the Flats in the direction of Free Derry Corner...¹⁵⁹

8A-178 PIRA 14 added that "Hugh Gilmore was either on the barricade itself, or just on the William Street side of the barricade standing on some rubble when he was shot."¹⁶⁰ His evidence is, therefore, clear that Mr Gilmore was facing north at the time he was shot. It further suggests that the shot that hit him at this stage penetrated his chest.¹⁶¹

8A-179 PIRA 14 was asked by Edwin Glasgow QC:

Q. So that is three members of the IRA standing in the immediate proximity of Mr Gilmore when he is shot?

A. Yes.

Q. That is right. Is your evidence still that none of them was armed?

A. Yes.¹⁶²

¹⁵⁷ Day 421/082/18

¹⁵⁸ APIRA14.3 paragraph 19

¹⁵⁹ APIRA14.4 paragraph 21; confirmed at Day 421/43/25

¹⁶⁰ APIRA14.4 paragraph 23

¹⁶¹ This aspect of the statement was confirmed in oral evidence at Day 421/048/25.

¹⁶² Day 421/083/04

FS 7.1691

Moving and Facing South

1. North of Rubble Barricade

- 8A-180 There is then a body of evidence suggesting that Hugh Gilmore was not facing north when he was shot. On the contrary, it suggests he was facing south and moving in the direction of Free Derry Corner. These witnesses are divided as to whether Hugh Gilmore was north or south of the rubble barricade when shot.
- 8A-181 Geraldine McBride (née Richmond) gave an account in 1972 of the shooting of Hugh Gilmore north of the rubble barricade, as he moved south. The account suggests that the bullet which hit him entered his chest:

We were standing around there in the waste ground for a short time when a man came down Rossville Street with a loud hailer announcing that there was a meeting at Free Derry Corner... The crowd started to move from the waste ground towards Free Derry Corner. I then heard shouting "they're in – they're in", and the crowd started to run... The people were in a panic; some kept running, some stopped and were looking back, nobody could believe that the soldiers were shooting real bullets. I started to run again towards Free Derry Corner and there was a group of people around me. There was a boy on my left and he shouted "I'm hit – I'm hit". I later learned this boy was Hugh Gilmour (sic). He was holding his stomach and still running. I grabbed hold of him by the right arm and shouted to "keep running". At this time we were running past the front of the High Flats. Hugh Gilmour was now stumbling along. I remember seeing a photographer – a man standing in... the main entrance to the Rossville Flats with a camera hanging around his neck. As we were passing the main entrance Hugh Gilmour again shouted out "I'm hit"... When Hugh Gilmore shouted to the photographer I called to him "it's alright I am getting him round the corner to safety"... I got Hugh Gilmore round the corner of the High Flats, I wasn't able to hold him up and he collapsed. I opened the front of his shirt to see if maybe I could stop the... blood coming out of the wound. I saw the wound on each side of his stomach...¹⁶³

¹⁶³ AM45.30

FS 7.1692

8A-182 There have been variations in the evidence given by Mrs McBride. Another account she gave in 1972 suggested that, in fact, she became separated from Hugh Gilmore after they had got through the barricade.¹⁶⁴ Her current recollection is still that Mr Gilmore was shot as he moved and faced south, but that he was south of the barricade at the time he was hit. We refer to this evidence below.

8A-183 Eamon Melaugh's present recollection is that Mr Gilmore was shot north of the barricade as he walked with a small group of people in the direction of Free Derry Corner. His BSI statement contains the following description of events:

39. One of the group was a young man (whom I later found out was Hugh Gilmore) who quite suddenly bent over slightly at the waist and clutched his right elbow to his side...

...

40. Mr Gilmore looked into my eyes and said "I'm hit. I'm hit"...when I read the expression on his face I realised he'd actually been shot so I ran after him as he continued towards Free Derry Corner.¹⁶⁵

8A-184 Mr Melaugh gave a similar account in oral evidence to the Tribunal.¹⁶⁶ However, he had suggested something very different in 1972, namely, that Hugh Gilmore was at the barricade facing north when he was shot. We have already referred to that version of events above.¹⁶⁷

2. South of the Rubble Barricade

8A-185 Frankie Mellon saw Hugh Gilmore run over the barricade towards William Street, throw a stone and turn and ran back in the direction of Free Derry Corner.¹⁶⁸ Mr. Mellon was also running south:

¹⁶⁴ **WT Day 6, page 49 paragraph E to page 50 paragraph A**

¹⁶⁵ **AM397.4**

¹⁶⁶ **Day 143/036/06 to Day 143/037/07**

¹⁶⁷ **AM397.70**

¹⁶⁸ **AM399.3 paragraphs 13 to 14**

FI 7.1693

16. *Just as I reached the Rubble Barricade I heard two high velocity shots...I think they were probably from the same weapon. I would say they were close, from behind me and slightly to my right...*

17. *When I heard the two shots Hugh Gilmore was running fast, directly in front of me looking straight ahead. He was about three feet or so in front of me and had just got over the Rubble Barricade. The second shot hit him and as it did so he jumped up with the force, grasped his right side and said "I've been hit". He kept on running: it was the momentum that kept him going... After he had been shot he took a few steps an then started to stumble forward. I caught up with him at the entrance to Block 1 of the Rossville Flats. I was on his right hand side so that he was between me and Block 1... I took his coat and pulled him round the corner of Block 1...¹⁶⁹*

8A-186 Mr Mellon's account is, therefore, is of Hugh Gilmore running south and, at a position just south of the barricade, being hit by a round which seems to have struck his right side.¹⁷⁰

8A-187 Mrs McBride's 1972 accounts have been referred to above. Her recollection is now that Hugh Gilmore was shot south of the rubble barricade, rather than north, but she maintains that he was moving south when he was shot:

14. *...As we were running past Block 1 of the Rossville Flats, Hugh was running close to the wall and I was running to his right, slightly behind him. As we were running, he was cursing and said "The bastards are killing us".*

15. *...Hugh and I stumbled over the barricade as best we could... Hugh was still to my left and in front as he was faster than me and got over first. As we were crossing the shooting was fierce...*

16. *When we got over the Rubble Barricade we continued running towards Free Derry Corner. Hugh was running on the pavement close to the wall of Block 1 of the Rossville Flats. I was still to his right and slightly behind him, about six feet away from the wall of*

¹⁶⁹ AM399.4

¹⁷⁰ Hugh Gilmore's position when struck was described by Mellon in oral evidence to the Tribunal as being just south of the rubble barricade or "slightly over it", Day 151/142/07.

Block 1...I do not know whether Hugh was still holding one of the stones he had picked up...

17. When I was at approximately the point marked E on the attached plan [south of the barricade and close to the western side of Block 1] I heard two shots which came from my right. I felt the bullets rush past in front of me. I heard Hugh gasp. He said he had been hit...I ran on. He continued a few paces after he had been shot. He was crouched over slightly...¹⁷¹

8A-188 In an important paragraph of her statement she makes it clear that Hugh Gilmore was facing south when he was shot; he did not turn:

18. As we were running down Rossville Street towards Free Derry Corner everyone was turning and looking around. In that situation you concentrate on what is happening in front of you. You are not really aware of what is going on around you. I was looking around in case I needed to duck or lie down. Although I was turning as I ran, my eyes were on Hugh when he was hit. He was running straight towards Free Derry Corner and was not turning. I didn't see the soldier who shot him but I believe the shot came from my right, from the Glenfada Park area to the west of Rossville Street...¹⁷²

8A-189 According to his BSI statement, Michael McCusker was running south from the rubble barricade when he saw a group of people ahead of him making for the Block 1 doorway:

One of them was a small youth aged about 17... who I did not know. He was about three people ahead of me. I saw him put his right hand to his back, stagger and fall forward... This must have been when he was shot and I thought that the shot must have come from further north in Rossville Street, but I did not see who fired it because I was running in the opposite direction. The youth got to the doorway where he was grabbed by four or five men and dragged round the corner by the southern end of Block 1...¹⁷³

8A-190 It is important to consider this evidence in the light of the account given by Mr McCusker in 1972, in which there is no description of the shooting of Hugh

¹⁷¹ AM45.3

¹⁷² AM45.4

¹⁷³ AM160.5 paragraph 11

FS 7.1695

Gilmore at all. Rather, Mr McCusker described seeing Hugh Gilmore for the first time at the southern end of Block 1, after he had been shot.¹⁷⁴ Mr McCusker did not account for the differences between the two accounts when he gave oral evidence to the Tribunal.¹⁷⁵

8A-191 Margaret Patterson was running south from the rubble barricade when she became aware of a person she later confirms was Hugh Gilmore.¹⁷⁶

I noticed that a young man was running near me. I think he was also coming south, from the direction of the Rubble Barricade but it is possible that he might have been running west to east across Rossville Street. He was level with the south west corner of Block 1 of the Rossville Flats, just slightly past the door. He was to my right and was a bit further out into Rossville Street than I was. I got the impression that he had caught us up and was just about to overtake us. I then saw him spin round and start to fall to the ground but I did not see him actually hit the ground. I think he fell forwards. As he spun round I saw green matter coming out of him which I thought was his insides. I knew that he had been shot by the way he fell, but I did not see anything actually hit him.¹⁷⁷

8A-192 The account, therefore, suggests that Hugh Gilmore was shot near to the southern end of Block 1 as he ran south and, further, that the impact of the round which hit him caused him to spin round. Matters became less clear when, during her oral evidence to the Tribunal, Mrs Patterson accepted it was possible that Hugh Gilmore had been shot at some stage before she first saw him.¹⁷⁸

8A-193 It is convenient at this stage to consider the evidence of one soldier. Bombardier 015 was in 11 Battery, 22 LAD RA and positioned in the Peter England Shirt Factory. In the "SA" statement produced for the purposes of the Widgery Tribunal, 015 described how:

¹⁷⁴ AM160.14

¹⁷⁵ Day 148/063/21

¹⁷⁶ AP2.4 paragraph 20

¹⁷⁷ AP2.3 paragraph 19

¹⁷⁸ Day 185/079/07

FS 7.1696

I noticed a soldier observing two men behind a rubble barricade... The soldier was at the near corner of block no. 1. The men were continually throwing missiles in his direction... The two men suddenly jumped up and started running towards an open door... towards the far end of block 1... The rear man stopped suddenly and turned to look at the soldier, [his right arm came up] as the soldier brought his SLR into the aim position. I could see that the man was not holding any weapon as large as a rifle. He was too distant for me to see even through binoculars whether he was holding anything as small as a pistol. The man turned and started running faster towards the open door. I saw the soldier fire one round in the direction of the fleeing man. The man dropped to the ground in the doorway. I saw hands come out and drag the body in.¹⁷⁹

8A-194 The statement suggests that the soldier shot the “fleeing man” in the back as he ran south. 015’s first statement to the RMP had been in similar terms; it too suggested that the soldier fired at a “fleeing man”. It did not, however, mention the fact that the man had turned to face the soldier before he continued to run south.¹⁸⁰ 015’s BSI statement suggested something different again. It suggested that the man was not shot as he ran south but when he had partially turned, presenting his left side to the soldier. The man:

... ran, then stopped and turned anti-clockwise, back towards the soldier at the corner, so that his left side was facing the soldier. As he turned he lifted his right arm up, so that it was bent and at shoulder height across his chest, with his hand pointing in the direction of the soldier.¹⁸¹

8A-195 Soldier 015 has not been able to account for the differences between the various statements he has given.¹⁸² It should also be noted that his evidence is at odds with that given by Gunner 023, who was present with him at the Peter England Shirt Factory and whose attention 023 apparently drew to the incident he was

¹⁷⁹ **B1425**; the words in square brackets have been added to the statement in manuscript.

¹⁸⁰ **B1414**

¹⁸¹ **B1434.4 paragraph 26**

¹⁸² **Day 360/189/08**

FS 7. 1697

witnessing.¹⁸³ 023's evidence has been considered in relation to the shot fired by Soldier U, above.

Location of Soldier who shot Hugh Gilmore

8A-196 Finally, in relation to the civilian evidence, we refer to some of the inconsistent accounts of the location of the soldier (or one of the soldiers) who shot Hugh Gilmore. For example:

(1) Geraldine McBride and Kathleen Brown have suggested he was shot by a soldier located in the area of Glenfada Park;¹⁸⁴

(2) Robert White did not see the soldier who shot Hugh Gilmore but assumed it was the same soldier he saw at the northern end of Block 1 of the Rossville Flats;¹⁸⁵ and

(3)PIRA 14 suggested that he was shot by a soldier located in the area of the Kells Walk pram ramp.¹⁸⁶

CHRONOLOGY

8A-197 It is further unclear exactly when Hugh Gilmore was shot. For example, it is unclear whether he was shot before or after William Nash, John Young and Michael McDaid. We refer in this regard to our submissions below relating to those three individuals.

CONCLUSION

8A-198 The evidence regarding the shooting of Hugh Gilmore can be summarised in this way:

¹⁸³ B1422

¹⁸⁴ AM45.4; AB94.7 paragraphs 10 to 12

¹⁸⁵ AW11.4 paragraph 22 to 24

¹⁸⁶ APIRA14.3 paragraph 19

FS 7-1698

- (1) One expert (Dr Carson) believes Hugh Gilmore was struck by a single bullet, which passed from left to right;
- (2) Another expert (Dr Shepherd) believes he was struck by two bullets, one hitting his left arm, the other entering the right side of his chest and passing through his body from right to left;
- (3) One group of civilian witnesses suggest that he was shot at the rubble barricade as he faced north;
- (4) Another group of civilians suggest that he was shot as he moved and faced south. This group gives different accounts of Mr Gilmore's location at the time he was shot;
- (5) Those civilians who claim to know the location of the soldier (or one of the soldiers) who shot Mr Gilmore give highly inconsistent accounts; and
- (6) It is unclear when in the sequence of events Hugh Gilmore was shot.

8A-199 One matter that is clear is that Soldier U did not shoot Hugh Gilmore. The gunman shot by U:

- (1) Wore a light blue jacket – Hugh Gilmore did not;
- (2) Was in his late twenties or early thirties – Hugh Gilmore was substantially younger;
- (3) Carried a pistol – Hugh Gilmore did not;
- (4) Was positioned south of Block 1 of the Rossville Flats when he was shot – most of the civilian evidence suggests that Hugh Gilmore was shot further to the north;
- (5) Was shot by a single bullet to the front – if Mr Gilmore was shot by only one round, it passed through him from left to right (but the Tribunal's own experts suggest he was shot by two rounds);

FS 7.1699

(6) Fell where he was shot – most of the civilian evidence suggests that Hugh Gilmore travelled some distance between being shot and falling to the ground.

8A-200 It is simply impossible to reach any other important conclusions about the circumstances in which Hugh Gilmore was shot or as to the identity or location of the soldier who shot him.

8A-XVALEXANDER NASH

SOLDIER U'S ACCOUNT

8A-201 Soldier U made a second RMP statement dealing exclusively with the shooting of a man we now know to be Alexander Nash by a civilian gunman situated in the doorway of the Rossville Flats:

I saw 2 bodies lying down behind the barricade, a man about 45 years came across to give assistance to one of the bodies, he had come out of the flats. I saw this man sit one of the bodies up behind the barricade and wave for assistance. I could now see that the body he had propped up was a youth of about 16-17 yrs, this youth had a wound to his stomach. I was approximately 50 meters from the barricade. The main doors at the bottom of the flats facing Rossville St were open and I saw an arm holding a pistol extended from behind the door. I saw the pistol jerk, observed the strike of the bullet. It hit about 5 metres short on the other side of the barricade, ricocheted and hit the man who had gone over to the youth, in the right arm. Immediately after this shot, another was fired by the gunman at the doors. I saw the youths head jerk and he slumped into the man's arms. Previous to this the youth had been looking round. The man had been shouting, "Come and help me, he's dying". He also said, "He's been shot." After the youth was hit in the head, the man said "He's dead" and got up onto his feet and wandered away from the barricade, apparently in a daze.¹⁸⁷

8A-202 In his BSI statement, U added:

I took it at the time that this gunman was shooting blind, possibly towards the soldiers at the wall. However, one of his shots... hit the

¹⁸⁷ B761-762

FS 7.1700

ground south of the rubble barricade and ricocheted up to hit the old man in the arm. It simply hit the ground and bounced back up to continue travelling in the same direction... As the other shot rang out... the young lad's head jerked backwards. The impression I had at the time was that the shot had hit him. At that moment, the old man turned the young boy round, laid him down, and shouted something like "he's dead". He then wandered away, looking like he was in a daze.¹⁸⁸

THE GUNMAN'S MODUS OPERANDI

8A-203 This was not the only gunman to fire "blind" on Bloody Sunday. Bernard Gilmore is one of many civilians to give an account of a man with a pistol firing from the Chamberlain Street wall:

I also noticed a civilian gunman in the market. He was near Chamberlain Street. I saw him after Jack Duddy had been shot. I know who he was...He was standing with his back to the wall near Chamberlain Street... He was holding a hand gun in his hand and was standing against the wall of the houses on Chamberlain Street. He put his hand around the wall and fired some shots along Chamberlain Street. He could not see who he was aiming at because he was facing Block 2 of the Rossville Flats, but with his hand pointing up Chamberlain Street.¹⁸⁹

8A-204 Michael Lynch, whose evidence we have referred to above, saw a gunman with a pistol in the alleyway between Glenfada Park North and Columbcille Court. That gunman fired two shots at soldiers in Rossville Street and, Mr Lynch said, "I do not think he had time to aim at anyone."

8A-205 Margo Harkin's gunman was in a similar location to that seen by Mr Lynch. He fired one shot "randomly".

8A-206 This cavalier method of firing shots is designed to afford the shooter maximum protection but puts any civilians in the area in very great danger. It is no surprise,

¹⁸⁸ B787.6 paragraph 36

¹⁸⁹ AG 38.5 paragraph 24

FS 7.1701

when a gunman is shooting "blind," that a civilian situated between the gunman and his intended target in fact gets hit.

INJURIES SUSTAINED BY ALEXANDER NASH

8A-207 Alexander Nash's surgeon, H. M. Bennett, described the injuries received by Alexander Nash in a letter to the RUC:

This patient had a gun shot wound to the left arm and a graze (?? from a rubber bullet) on the left side of his chest.

The wound on his arm was through and through passing from right to left. As there is relatively little muscle destruction this was probably a low rather than a high velocity missile...

This patient too has relatively minor wounds and should make a good recovery.¹⁹⁰

8A-208 It is apparent that it was Alexander Nash's left arm that was hit by the gunman's bullet, not his right as U had believed. Significantly, the surgeon who treated Alexander Nash concluded that the round which passed through the arm was probably low velocity, precluding the possibility that it was fired by a soldier. The surgeon, therefore, provides the strongest of support for Soldier U's account.

8A-209 Alexander Nash's second injury, to the left side of his chest, was indeed caused by a baton round. He accepted shortly after the event that he had been hit by a rubber bullet. While still in hospital, he told the Evening News:

I got a bullet in my left arm. A rubber bullet hit me in the chest.¹⁹¹

8A-210 Captain 021, observing from Echo OP, may have observed the rubber bullet hit Alexander Nash. He saw an old man behind the rubble barricade struck by a rubber bullet, which caused him to fall behind the barricade.¹⁹²

¹⁹⁰ **ED33.5**; letter dated 07.02.72.

¹⁹¹ **L94**, 01.02.72.

¹⁹² **B1504**

FS 7.1702

ALEXANDER NASH'S ACCOUNTS

8A-211 Alexander Nash has given different accounts of how he came to be injured. In a statement given a week after the events of Bloody Sunday, he suggested that he was shot in the arm and hit in the ribs as he stood behind the barricade with his left arm in the air:

I ran across to help him... I put my left hand in the air to signal that the shooting should stop. I was shot in that arm and was hit in the ribs also. When I was hit I was fired at four or five times more. I dropped down beside Willie and the other 2 men... The Saracen tank came up, two big soldiers came out... one of them said "3 more dead bodies."¹⁹³

8A-212 However, the statement he gave for the purposes of the Widgery Inquiry suggested that he only became aware of his injury some time *after* he had dropped to the ground. Mr Nash did not record how he had been shot or from where:

I went on over... more shots were striking around me – I could hear the bullets hitting the stones and I deliberately dropped down flat on my face – this way I had the barricade of stones between me and the shooting soldiers. As I lay there a Saracen came up RS and stopped at the barricade. I then sat with my back to the barricade. I saw two soldiers get out of the Saracen. I heard one of them shouting "three more dead bodies... it was when I was sitting on the ground that I realised that I had been hit by a bullet or bullets..."¹⁹⁴

8A-213 Mr Nash gave another account to his daughter, Linda Roddy. He apparently told her that he had been shot by an officer with a pistol, standing to the north of the rubble barricade.¹⁹⁵ John Nash, Alexander Nash's son, recounts what his father told him:

... he says that the soldier who shot him approached him. fired, and came forward again and had the gun raised and he, he says I, I looked in his eyes and I swore blind he going to fucking finish me

¹⁹³ AN1.14, dated 07.02.72.

¹⁹⁴ AN1.10

¹⁹⁵ AR21

FS 7. 1703

*off. But for some reason he didn't and he put the gun down. Now that is what he has been telling me for twenty-six years.*¹⁹⁶

8A-214 The apparent acceptance to his daughter that he was shot by a pistol may be of significance but that account should be compared with Mr Nash's PRAXIS interview. He did speak there of being approached by an officer with a pistol, but only *after* he had been shot and when the bodies of William Nash, John Young and Michael McDaid were being collected from the rubble barricade.¹⁹⁷

8A-215 There is, thus, significant inconsistency between the various versions of events given by Alexander Nash. We suggest that they do not assist the Tribunal in discovering the circumstances in which he actually came to be shot. Other accounts, however, provide support for the account given by Soldier U.

CIVILIAN CORROBORATION FOR SOLDIER U'S ACCOUNT

8A-216 Kieran Gill worked for the Derry Journal at the time of Bloody Sunday and also became involved in assisting the Sunday Times Insight Team in their investigations. Gill's first statement to the Inquiry included the startling information that he had spoken to a gunman who admitted acting in a very similar manner to that described by Soldier U.

I received information from PIRA that a member of the Official IRA on Bloody Sunday had a revolver and had fired it. I was told his name and we found his address. Peter Pringle and I went to his home and knocked on his door and he answered it. He recognised both of us. We told him that the Provos had said that he had fired a revolver on Bloody Sunday. I said something like "So you shot Mr Nash!". The man looked horrified. He admitted that he had fired a revolver around a door of the Rossville Street flats. He said that he had fired the revolver after the army had fired between 100-150 rounds and there was a lull in the shooting. There were people lying outside in front of the flats dead and there was a feeling in the flats that the soldiers were coming towards there and that people were frightened that they were going to come into the flats and

¹⁹⁶ AN6.21, interview with James McGovern.

¹⁹⁷ O11.3

FS 7.1704

continue to shoot... The man said that he had put his hand around the door and fired the revolver up Rossville Street to make them stay away. He said that he fired 3-4 shots. We said to him that he might have shot Mr Nash in the arm.¹⁹⁸

8A-217 Mr. Gill confirmed this account both in oral evidence to the Tribunal and in a further statement, which he gave after contacting the OIRA gunman. The gunman refused to come forward and now denied any involvement in the shooting:

I showed my source... paragraph 59 of my statement. My source's reaction was to say that he had no recollection of the conversation. He also denied having shot a revolver at the door of the Rossville Street flats. Despite these comments I still believe that the account which I gave in my statement is correct¹⁹⁹

8A-218 The Sunday Times archive contains a note potentially corroborating Mr Gill's account:

... there is persuasive, though not conclusive evidence that a pistol then appeared at the barricade and was used... The pistol was then probably taken into the doorway of the flats and may have been used once more – accidentally wounding an old man at the barricade.²⁰⁰

8A-219 The Insight article produced as a result of the Sunday Times investigation concluded that Private U's account of the shooting of Alexander Nash was essentially correct.²⁰¹

8A-220 It is clear that the Insight journalists were personally convinced by the information they had received. (John) Barry Liddy spoke to one such journalist, whose name he could not recall, in 1972. Mr Liddy informed Paul Mahon:

Barry Liddy: ...I had said... that I'd seen a body at the entrance into the Flats with a camera, you know, I'd seen the lens of the camera poking out of the door.

¹⁹⁸ M105.13 paragraph 59

¹⁹⁹ M105.29 paragraph 14

²⁰⁰ S303

²⁰¹ L213-214

FS 7.1705

[The Insight journalist] said: "Barry that wasn't a boy with a camera, that was a boy with a gun.

Paul Mahon: He said that?

Barry Liddy: Yeah. Eh Mickey, there's a lot of things about Bloody Sunday that people know nothing at all about.

Paul Mahon: Was he convinced about that?

Barry Liddy: Oh he was certain sure, he was certain sure, certain sure.

He says: "Did you actually see the camera?" and I says "No, but I seen this thing poking out the door." ... And I says, "I thought that boy was taking photographs". "No, Barry that was a boy with a handgun"²⁰².

8A-221 Alexander Nash's own son, John Nash, told Jimmy McGovern about a man who was apparently resident in Dublin and who had admitted shooting his father:

... my father has been telling me for the last twenty seven years that he was shot by a soldier ... but then you have ... some other fucking eejit and I actually went down to the Republic of Ireland. I went into a Sinn Fein office and apparently this is only a few years back way this guy says that he is the person responsible for shooting me Da...

... The argument is that he, he is just ... well the argument is that he just stuck he's hand out the door and he fired you know what I mean well ... this is ... a soldiers statement ... you know what I mean and I do not believe that statement ... you know what I mean because I you know there is nobody dis ... because if the points his hand out the door and there is quite a number of people at that door as you can see ... you know what I mean like ... and I know some of the people that are ... the likes of Jimmy Green ... people like that there ... who are there standing at the door ... and he said now they never seen no gunman at that point.²⁰³

8A-222 This information was not given in John Nash's initial BSI statement. A further statement was, therefore, taken from him and he was recalled to give oral

²⁰² AL13.131

²⁰³ AN6.21

FS 7.1706

evidence. He was asked about the McGovern transcript by Bilal Rawat for the Tribunal:

Q. Reading it alone by itself, what you appeared to have told Mr McGovern was that you went to confront someone who claimed to have shot your father, a civilian who claimed to have shot your father and so whose name was known to you; do you follow?

A. Yes.

Q. But your evidence is that that is not the position at all?

A. That is absolutely not the case. You know, had I have ever known of any -- the name of any individual who would have made such a statement as that, the first people to know that name would be the Inquiry. I have done absolutely nothing over the last six years but do my best and my utmost best to assist this Inquiry. If I have given the impression that I actually knew the name of this gunman, then I have given, in this particular interview, I have given a wrong impression and I apologise for that.

Q. Because it seems to be the impression that Mr McGovern had because he then asks you, he says:

"It is strange for a Sinn Fein man to say 'It was I who shot him' because he must have been an idiot" and you do not appear to have corrected him at that point.

Were you surprised when you saw this transcript again and saw what Mr McGovern's impression had been?

A. I have a -- I have never actually seen this particular part of the transcript.

Q. This particular page?

A. Uh-huh.

Q. It is attached to your supplementary statement?

A. Yes, I did not read it.

Q. Was there any reason why you chose not to read it?

FS 7.1707

*A. No, not really.*²⁰⁴

- 8A-223 It may be seen that John Nash therefore sought to downplay the significance of the information he had imparted to Jimmy McGovern. However, the information contained in the McGovern transcript must surely be directly relevant to and corroborative of the account given by Soldier U of how Alexander Nash was shot.
- 8A-224 We refer above to the many sightings by civilians of gunmen with pistols in the Rossville Street area. There is, furthermore, strong evidence of the presence *inside* Block 1 of at least one gunman with a pistol. We have referred to this body of evidence in our submissions relating to Guinness Force, below. It is, therefore, clear that gunmen were operating in this part of the Bogside and it should come as no surprise that one used the vantage point of the Block 1 doorway from which to fire.
- 8A-225 Finally, in relation to the non-military evidence, we note that three members of the Provisional IRA were close to the side entrance of Block 1 at about this time. PIRA 14, whose evidence we have referred to in relation to Hugh Gilmore, claims, however, that not one of them carried a weapon.²⁰⁵

MILITARY CORROBORATION FOR SOLDIER U'S ACCOUNT

- 8A-226 Soldier 033 was a member of 1 PARA's Signals Platoon. He gave evidence about the circumstances in which Alexander Nash was shot. His BSI statement includes the following account of what he could see take place at and south of the rubble barricade:

44. I could see a male lying on the barricade... Another man was near to him. He was waving one hand... I assumed from what I saw, that the man lying near him had been shot. I thought he was indicating that he wanted help.

...

²⁰⁴ Day 424/088/04

²⁰⁵ APIRA14.3 paragraph 18; Day 421/082/18

FS 7.1708

46. I then saw part of an arm and a handgun emerge from Block 1 of the Rossville Flats, at ground level... My memory of the incident is that the gun emerged out of a window but, looking at the photographs of the Block 1 of the Rossville Flats, I believe it would have been from the doorway... I just focused on the arm and the handgun. Seeing the gun was a surprise. It was very unusual to actually be able to see a gunman shooting a weapon, because they were usually concealed. I did not shoot because the arm and weapon did not provide enough of a target to shoot at from that range.

...

48. The shots seemed to be aimed at the troops in what I know now... to be the area of Rossville Street, by Glenfada Park North. I do not know how many shots the terrorist fired. He then appeared to be engaged by troops on my right... "

49. I then looked back south towards the barricade and then I saw one or two strikes of bullets that I assume came from the handgun on the barricade, close to the man who was waving, like small explosions of dust upwards. These strikes came from bullets fired behind the man on the barricade. The way the bullets struck the barricade, they could not have come from the soldiers. I found this very confusing. It looked to me as if the gunman was shooting at one of his own people. It did not make any sense, but that is what I saw and I have absolutely no doubt about that²⁰⁶.

8A-227 A consistent account was given in oral evidence, during which a photograph was marked with the gunman's position. It placed him at the Block 1 doorway.²⁰⁷ Seamus Mallon questioned 033 on behalf of the Nash family. 033's responses underlined his independence as a witness:

Q. And you would accept that, in the body of that statement, you tend to provide some... level of corroboration for what was alleged by... Soldier U.

Were you aware that he indicated in his second RMP statement that he had observed an outstretched arm emerge from the doorway of Block 1 of Rossville Flats?

²⁰⁶ B1621.006

²⁰⁷ Day 324/070-071; B1621.19

FS 7.1709

A: I have no idea who Soldier U is, sir, I do not know what you are talking about, I am sorry.

Q: Could Soldier U's name be provided to the witness?

A: I do not remember this person from the Army at all, sir, I am sorry.²⁰⁸

CONCLUSION

8A-228 Soldier U suggested in 1972 that the man we now know to be Alexander Nash was shot by a civilian gunman situated in the western doorway to Block 1 of the Rossville Flats. The gunman intended to fire at soldiers north of the rubble barricade. However, he fired without aiming and one of the bullets hit Mr Nash. The surgeon who treated Mr Nash found that the bullet which struck him was probably low velocity. No low velocity weapon was fired by the Army on Bloody Sunday. The surgeon's finding, therefore, corroborated U's account. Journalists working for the Sunday Times Insight Team in 1972 had also concluded that U's account was probably correct.

8A-229 The journalist, Kieran Gill, actually spoke to the gunman in question, who confirmed that he had fired in the way described by Soldier U. If further corroboration were needed that U's account is indeed correct, Mr Nash's own son, John Nash, also received information which must have suggested that his father had been shot by a civilian and not by the Army. There is also important evidence from other soldiers present in the Bogside which confirms what Soldier U has said.

8A-230 In the circumstances, the Tribunal can be confident that Private U's account of the shooting of Alexander Nash is the correct one.

²⁰⁸ Day 324/111-112

FJ 7.1710

8A-XVI RETRIEVAL OF BODIES FROM THE RUBBLE BARRICADE

8A-231 Soldier U described how the bodies of William Nash, John Young and Michael McDaid were retrieved from the rubble barricade. He answered the following questions at the Widgery Tribunal:

Q. Did you see a vehicle go into that direction?

A. Yes

Q. Were you still in your position when the vehicle went down there by the barricade?

A. Yes.

Q. Did you go with it?

A. No.

Q. Were you still in your position when the vehicle went down there by the barricade?

A. Yes

Q. Did you see what was done about the bodies?

A. There were three bodies, there was one I could not see at the time which was further behind the barricade. There were three of them and they lifted them on to the vehicle.

Q. Could you see that from your position?

A. Yes.²⁰⁹

8A-232 He confirmed in oral evidence to this Inquiry that he made his observations from the northern end of Block 1 of the Rossville Flats.²¹⁰

8A-XVII ARRIVAL OF GUNMEN IN CARS

8A-233 Soldier U described in his BSI statement:

²⁰⁹ B787.28 paragraphs C to E

²¹⁰ Day 369/101/18

FS 7. 1711

I remember looking towards Free Derry Corner, hearing some gun shots and seeing everyone in that area running off. Two cars then came in from opposite directions and stopped at the points marked G and H on the map [north of Free Derry Corner²¹¹]. They stopped facing each other. Some guys got out and started to run to what looked to me like pre-planned positions. There were about five or six of them from one car and about four or five from the other and they were carrying what I thought were small arms such as pistols and rifles...I did not actually hear them shoot and I do not remember what happened to the cars. I could not fire at them because there were people in between me and them.²¹²

8A-234 This ties in with a large body of civilian evidence of the arrival of IRA cars a little further to the south, in the area of the Bogside Inn and Westland Street. This issue is addressed in our submissions relating to Guinness Force, below.

8A-235 Thereafter, Soldier U withdrew from the area of the Bogside with other members of his unit.

8A-XVIII SUMMARY OF CONCLUSIONS

8A-236 Corporal P and Privates 017 and U had experience of riots, and of the dangers that riots posed, prior to their deployment to Londonderry. As 017 has stated: "Sometimes riots would end up in shootings."²¹³

8A-237 The men of Mortar Platoon deployed to Londonderry as part of an arrest operation. Their briefings nevertheless made them alert to the likelihood that gunmen would be operating in the Bogside.

8A-238 P, 017 and U were shot at before they even moved into Rossville Street, when they were in the area of the Presbyterian Church in Great James Street. Corporal P and Private U were both in elevated positions and the incoming round must have passed particularly close to them.

²¹¹ See B787.38.

²¹² B787.8 paragraph 42; confirmed at Day 369/103.

²¹³ B1484.001 paragraph 2

FS 7.1712

- 8A-239 All three soldiers subsequently moved into Rossville Street in Sergeant O's Pig. Many civilians reacted with hostility to the arrival of the Army. The Pig was targeted by rioters, who threw missiles at it.
- 8A-240 P, 017 and U were amongst soldiers to debus from the Pig in Rossville Street. Soldiers P and 017 moved west, taking up position alongside the Kells Walk pram ramp. This was an open and exposed area. There were areas of potential danger on three sides, from Block 1 of the Rossville Flats to the east; the buildings and alleyways to the west of Rossville Street; and the rubble barricade across the street itself.
- 8A-241 Private U moved in the opposite direction, towards the Rossville Flats waste ground. Immediately upon his arrival there, he was confronted by a rioter, as P595 demonstrates. The photograph may therefore capture the moment when U came into contact with the man he proceeded to arrest, Charles Canning.
- 8A-242 Meanwhile, Soldiers P and 017 came under attack from rioters based at the rubble barricade and then from a group of people who came out of the Columbcille Court alleyway south of their position. 017 discharged baton rounds in an attempt to contain them.
- 8A-243 The two soldiers were targeted by a nail bomber, positioned North of the rubble barricade, at whom Corporal P fired two SLR rounds. The man fell, dropping the bomb, which fortunately did not explode. P's firing of these aimed rounds was the appropriate and responsible response to a difficult situation; it was in accordance with the applicable rules of engagement for the military in Northern Ireland, the "Yellow Card." The bomber's position does not correspond with that in which any of the known Sector 3 deceased or wounded was shot. He is, therefore, an unidentified, missing casualty.
- 8A-244 The sighting of a nail bomber amidst the rioting in this area should come as no surprise; it was common at that time for nail bombs to be thrown at soldiers. The presence of a nail bomber is further consistent with evidence that at least one nail bomber was spotted by others and possibly photographed in the area of the rubble

FS 7.1713

barricade on Bloody Sunday; and that nail bombs were being carried on that day to the west of Rossville Street, in and around Glenfada Park.

- 8A-245 Private 017 next came face to face with a civilian with a handgun, who appeared in the alleyway between Columbcille Court and Glenfada Park North. The Private fired a baton round at him and then sought to get out of his line of fire. Corporal P also engaged a gunman but in a location a little further to the south, at the rubble barricade. This man fired in the direction of P, who returned four rounds.
- 8A-246 The accounts of P and 017 must be considered in the context of the considerable body of evidence relating to the presence in the area of civilians armed with handguns. The military and civilian accounts read together provide a compelling narrative of this crucial stage in the events of Bloody Sunday. That evidence is summarised in the diagram following 8A-76, above. The diagram demonstrates that many sightings were made, from Theresa Bradley's gunman on the balcony of the Kells Walk building to Kieran Gill's gunman in the entrance of Block 1 of the Rossville Flats. In several instances, the gunmen were seen to be firing their weapons in the direction of the military. This was the situation into which P and 017 were placed. This is the background against which their accounts must be considered.
- 8A-247 Corporal P was faced with a situation in which he had to react to a gunman who was putting his colleagues in Rossville Street in danger. P was himself in danger, in his exposed position alongside the Kells Walk ramp wall. In the circumstances, there was no choice but to take rapid and decisive action. Such action was anticipated and condoned by the "Yellow Card."
- 8A-248 Civilian evidence suggests that more people were wounded or killed in the area of the rubble barricade than have been identified to date. The existence of unidentified, "missing" casualties may provide an explanation for what happened to the gunman and, possibly, the nail bomber, shot by Corporal P.
- 8A-249 Many Sector 3 photographs are missing, particularly those taken of events in the area of the rubble barricade. There is strong evidence that photographers were approached shortly after Bloody Sunday by members of the Provisional IRA and

FS 7. 1714

that photographs may have been suppressed at this stage. Other photographs have, apparently, suffered a variety of fates. Some were lent to a journalist but never returned, others were destroyed in a flood. There is also now compelling evidence that two further photographers were active in Sector 3. They have yet to be identified and only one of their photographs has reached the Tribunal. The fate of the rest of their work is unknown. It is clear that the Tribunal cannot assume that the photographs which remain tell the whole story of what took place in this part of the Bogside.

- 8A-250 Corporal P and Private 017 moved across Rossville Street to the cover of their Pig. When P was halfway across the street, there was a resurgence of activity in the area of the rubble barricade. P, fearful for his safety, fired three rounds over the heads of the rioting crowd in an attempt to disperse them. P had seconds in which to decide how to respond. The only weapon available to him was his SLR. He chose to take action that would cause those advancing to stop, whilst firing in a way that would not actually put any of them in danger. His actions were appropriate and proportionate in the circumstances.
- 8A-251 Corporal P was later ordered to act as escort to Lieutenant N's Pig as it took the bodies of William Nash, John Young and Michael McDaid to Altnagelvin Hospital.
- 8A-252 Having handed over his arrestee, Private U took up a position at the northwest corner of Block 1 of the Rossville Flats. From there he observed a gunman located on the eastern edge of Rossville Street and a little to the south of Block 1. The gunman fired two rounds at soldiers on the western side of Rossville Street. U returned a single round, which struck the gunman. He had a brief period of time in which to decide how to respond to the threat posed to his colleagues on the west side of Rossville Street. He reacted appropriately in all of the circumstances by firing one round from his SLR.

FS 7. 1715

8A-253 Arthur Harvey QC questioned Soldier U on the basis that, on a fair interpretation of his evidence, he must have shot Hugh Gilmore.²¹⁴ That is not the case. There are significant differences between the circumstances in which Hugh Gilmore was shot and those in which U fired at a gunman south of Block 1. Indeed, the differences are such as to preclude the possibility that Soldier U was responsible for Hugh Gilmore's death.

8A-254 The evidence regarding the shooting of Hugh Gilmore can be summarised in this way:

- (1) One expert (Dr Carson) believes Hugh Gilmore was struck by a single bullet, which passed from left to right;
- (2) Another expert (Dr Shepherd) believes he was struck by two bullets, one hitting his left arm, the other entering the right side of his chest and passing through his body from right to left;
- (3) One group of civilian witnesses suggest that he was shot at the rubble barricade as he faced north;
- (4) Another group of civilians suggest that he was shot as he moved and faced south. This group gives different accounts of Hugh Gilmore's location at the time he was shot;
- (5) Those civilians who claim to know the location of the soldier (or one of the soldiers) who shot Hugh Gilmore give highly inconsistent accounts; and
- (6) It is unclear when in the sequence of events Hugh Gilmore was shot.

8A-255 The uncertainty in the evidence generally makes it impossible to reach any important conclusions about the circumstances in which Hugh Gilmore was shot or to determine which soldier (or soldiers) shot Hugh Gilmore.

²¹⁴ Day 369/162/07

FS 7.1716

8A-256 Soldier U suggested in 1972 that the man we now know to be Alexander Nash was shot by a civilian gunman situated in the western doorway to Block 1 of the Rossville Flats. The gunman intended to fire at soldiers north of the rubble barricade. However, he fired without aiming and one of the bullets hit Mr Nash. The surgeon who treated Mr Nash found that the bullet which struck him was probably low velocity. No low velocity weapon was fired by the Army on Bloody Sunday. The surgeon's finding, therefore, corroborated U's account. Journalists working for the Sunday Times Insight Team in 1972 had also concluded that U's account was probably correct.

8A-257 The journalist, Kieran Gill, actually spoke to the gunman in question, who confirmed that he had fired in the way described by U. If further corroboration were needed that U's account is indeed correct, Mr Nash's own son, John Nash, also received information suggesting that his father had been shot by a civilian and not by the Army. There is also important evidence from other soldiers present in the Bogside which confirms what U has said. In the circumstances, the Tribunal can be confident that U's account of the shooting of Alexander Nash is the correct one.

FS 7.1717

CHAPTER 8B

GUINNESS FORCE IN SECTOR 3

INTRODUCTION

8B-1 CALL SIGNS 71 AND 71 ALPHA

8B-1 Guinness Force was comprised of a body of men drawn from a variety of “administrative” jobs within 1 PARA, who were formed into a temporary rifle platoon. The platoon constituted an additional unit that could be deployed in support of the standing battalion platoons when circumstances required it.

8B-2 Captain 200 described it in this way:

When the whole battalion is employed in an operation the Administrative Company provides an operational force in the form of a composite platoon usually known as Guinness Force. This operates under the command of the officer commanding Administrative Company and for the operations of 30 January was commanded by me. In those operations Guinness Force was used to strengthen Support Company.¹

8B-3 The soldiers who turned out for Guinness Force on 30th January 1972 were an experienced group of men with a relatively high average age.² Indeed, the platoon was “over ranked”, in that it contained a much higher than normal proportion of Non-Commissioned Officers. So, for example, Guinness Force sections were generally led by sergeants rather than corporals.³

8B-4 This was a large platoon, of thirty-five men and one officer.⁴ It travelled to Londonderry in two 4-tonne lorries. The occupants of the first vehicle were under

¹ B2022.024

² B2022.001 paragraph 4

³ B1628.001 paragraph 4

⁴ B2022.063

FS 7.1718

the command of Captain 200 and Colour Sergeant INQ 0147 and used the radio call sign "71". Those in the second vehicle were under the command of Colour Sergeant 002 (A.K.A. "L1") and used the call sign "71 Alpha".

8B-5 Captain 200's document entitled *Guinness Force att to Sp Coy 30 Jan 72⁵* was compiled no earlier than 29th January 1972⁶ and provides a list of Guinness Force personnel. Below are listed the men of Guinness Force in order of rank and according to their call sign.

71	71 ALPHA
Capt 200	CSgt 002
CSMI INQ 1710	Sgt 014
CSgt INQ 0147	Sgt 035
Sgt 106	Sgt K
Sgt INQ 1318	Cpl 039
Cpl INQ 0468	Cpl INQ 0025
Cpl INQ 0739	Cpl 0812
Cpl INQ 0993	LCpl D
LCpl 229	LCpl 010
LCpl INQ 0391	LCpl INQ 0816
LCpl INQ 0704	Pte L
LCpl INQ 1077	Pte M
LCpl INQ 1175	Pte 032
LCpl INQ 1854	Pte INQ 0127
LCpl INQ 2047	Pte INQ 0405
Pte C	Pte INQ 0449
Pte 024	Pte INQ 0748
Pte 203	
Pte INQ 0024	

⁵ B2022.063

⁶ Day 367/049/20

FS 7. 1719

8B-II CALL SIGN 71

- 8B-6 There were nineteen men in call sign 71. INQ 0391 was the driver of the half platoon's vehicle.⁷ INQ 1710 was a Warrant Officer APTC (Army Physical Training Corps) and acted as 200's body guard.⁸
- 8B-7 The call sign was split into sections. Sergeant 106, for example, headed a section of four or five men.⁹
- 8B-8 There is some evidence to suggest that Private INQ 0024 was part of call sign 71 Alpha. His name is included under that call sign in other documents, very probably in error.¹⁰ The fact that 0024 recalls both being attached to an officer on the day,¹¹ when 200 was the only Guinness Force officer, and deploying to the Rossville Flats waste ground,¹² the direction in which 71 - not 71 Alpha - went, strongly suggests that he was part of call sign 71.

8B-III CALL SIGN 71 ALPHA

- 8B-9 Call sign 71A was under the command of Colour Sergeant 002. 002's radio operator was Pte INQ 0127, against whose name "sig", for signaller, appears in one of Captain 200's lists.¹³ 002's vehicle was driven by Private INQ 0405.¹⁴
- 8B-10 This half platoon was also split into sections. Sergeant 035 commanded a section totalling five members,¹⁵ which included Private M.¹⁶ It follows that it also

⁷ C391.001 paragraph 7

⁸ B2001 paragraph A; Day 367/028/14

⁹ B1713.001 paragraph 4

¹⁰ B2022.064, "G" Force att Sp Coy; B1353

¹¹ C24.001 paragraph 1

¹² C24.002 paragraph 8

¹³ B2022.064 (unredacted version); Day 360/130/12

¹⁴ C405.001 paragraph 4

¹⁵ B1625

¹⁶ Day 361/059/12

FI 7. 1720

included M's "buddy" on the day, Corporal 039, who was armed with a baton gun.¹⁷

8B-11 Sergeant 014 commanded a section of eight men,¹⁸ which included Pte 032¹⁹ and Private L.²⁰

8B-12 Because the Platoon was seriously over-ranked, Sergeant K, the third of the sergeants in the half platoon, had no position of command on the day.²¹

8B-IV ORDERS

8B-13 Guinness Force travelled to Londonderry and moved into the Bogside in pursuance of an arrest operation. The members of the Platoon were aware in advance of their deployment of the risks they would face during the mission.

8B-14 Captain 200 attended two briefings (Orders Groups) on 29th January 1972; one from his Commanding Officer, Lieutenant Colonel Wilford, and the other from the Officer Commanding Support Company, Major Loden. Extracts from the note he prepared at the C.O' briefing records the following:²²

¹⁷ B364 paragraph D

¹⁸ B1409

¹⁹ B1613

²⁰ Day 372/067/12

²¹ Day 364/131/21

²² B2022.056; Day 367/036 to Day 367/038

FS 7.1721

(1)

2. Ground

1. En

- a. NICRA March
- b. 3,000 - 8,000 (5,000) peaceful, hard core.
- c. Hooligan element
- d. Rossville Flats
- e. Frederick St
- f. Delbrink element + IRA + riots + sniping + bombing etc.

(2)

Memo To arrest the maximum no of rioters

8B-15 Their full meaning becomes clear by reference to the statement drafted by Soldier 200 in February 1972:

I was fully aware of the situation and tasks involving the Battalion. The NICRA march would consist of a maximum of 8,000 and it was expected that a large hooligan element would be included in the crowd. We were also to expect IRA presence in the form of sniping and bombing. This sniping was most likely to come from the Frederick Street and Rossville Flats areas.

The task given to all Companies was quite simple - To arrest as many rioters as possible.²³

8B-16 He gave his orders to Guinness Force accordingly at 2200 hrs on 29th January 1972.²⁴

FS 7.1722

8B-17 The men well understood what they had been told and what their individual roles would be within the context of the arrest operation. For example, Sergeant K records:

We were told that if Sp Coy had to carry out arrests then we would assist them, in particular to take prisoners to designated areas so they could be processed.²⁵

8B-18 Private M stated:

We were told that there was a possibility of a riot situation developing as a result of the Civil Rights march in Londonderry that afternoon and my duty would be to give protection to soldier 039 who was to carry the anti-riot gun.²⁶

8B-19 Corporal 039's evidence was:

Our general orders were that if we were called forward we were to mount a snatch operation and pick up any hooligans or rioters. My own orders were that I was to act as escort to the snatch parties and for this purpose I was issued with a riot gun and baton rounds.²⁷

8B-20 The evidence, therefore, demonstrates that Guinness Force soldiers were professionally and appropriately briefed prior to their deployment to Londonderry. The evidence is wholly inconsistent with any suggestion to the contrary.

8B-V THE PRESBYTERIAN CHURCH SHOT

8B-21 A shot was fired at the Presbyterian Church in Great James Street by a civilian gunman at a time when the soldiers of Guinness Force were gathered in the grounds of, or close to, the building. Therefore, shortly before they deployed into

²³ B1978

²⁴ B1978; B2022.003 paragraph 14

²⁵ 311.004 paragraph 3

²⁶ B359

²⁷ B1649

FS 7.1723

the Bogside the members of Guinness Force, among others, became aware that a sniper, very probably positioned in the Bogside, was targeting soldiers.

8B-22 The Platoon arrived in the area of the church at about 1500 hrs.²⁸ Captain 200 recorded that:

I helped members of the Mortar Platoon cut the wire on the east side of the church. I was warned by my lookout that there was a lot of movement in the top storey stairway at the north end of Rossville Flats. Not long after this warning, 1 HV round passed over our heads and struck the church wall, passing through a vertical drainpipe...²⁹

8B-23 The shot must have narrowly missed those who were engaged in removing barbed wire from the top of the small wall to the east of the Church and parts of the drainpipe struck by the bullet fell close to the soldiers below. Private INQ 0024 records that:

Whoever fired must have seen the two guys up on the wall cutting the wire and aimed at them, but he was a bad shot and hit the drainpipe. I heard the drainpipe crack and shatter and bits of the drainpipe landed at my feet.³⁰

8B-24 Sergeant 106 had a similar experience:

The pipe was hit roughly 15 feet above me...The pipe completely shattered when it was hit and parts of it fell into my mug of tea.³¹

8B-25 As did Corporal 039:

The first event of note that took place was a shot being fired at our position. There was a metal drainpipe at the side of what I presume was the church. I heard a crack and thump noise. It was totally unexpected...almost immediately after I heard the crack and

²⁸ B2022.024

²⁹ B1979

³⁰ C24.001 paragraph 5

³¹ B1713.003 paragraph 11

FS 7.1724

*thump, part of the drainpipe fell away from the wall and crashed to the ground.*³²

8B-26 That shot was fired with the intention of killing a soldier. It is purely fortuitous that no soldier was killed or wounded by it. The issue of the Presbyterian Church shot is considered in detail at in chapter 6, above.

8B-27 Not surprisingly, the shot had an effect on some of the soldiers in the vicinity of the church, even the experienced sergeants. Sergeant K's evidence was that:

*... I was standing east of the Presbyterian Church ... All of a sudden, there was a shot which hit the drainpipe, six feet in front of me. The shot hit the drainpipe quite high up it and ricocheted off. My instant reaction was to hit the deck... Hearing the shot made the adrenalin start running. There was also a certain amount of fear as someone was firing at us and I could not see who or from where.*³³

8B-28 Similarly, Sergeant 035 has stated:

12. ... I was within 20 yards of the wall when the bullet hit the drainpipe which was right in front of me. It hit a point at least two times higher than me above my head. The drainpipe shattered where it was hit. The first thing you do in that kind of situation is to look down and make sure you are alright.

*13. Another clear recollection which I have of this scene is that a big vein started throbbing in my left knee as the bullet hit the drainpipe. I had never experienced this before and I realised that my adrenalin was pumping.*³⁴

8B-29 The shot may have caused their adrenalin to flow, but the professional outlook of the members of Guinness Force remained unchanged. The situation was summed up by Colour Sergeant 002:

I made a sharp turn to the rear and jumped off the ramp. The fact that this shot had taken place did not change the mood that we were in. We had had this in Belfast. The IRA were clever and they would suck us in and try to draw fire. We would not return fire

³² B1651.002 paragraph 9

³³ B311.005 paragraph 8

³⁴ B1628.003 paragraph 12; Day 361/060 to Day 361/061

*unless we had a clear target. As far as we were concerned this was still an arrest operation.*³⁵

8B-VI DEPLOYMENT INTO THE BOGSIDE

BY VEHICLE TO THE NORTH EAST CORNER OF ROSSVILLE STREET

8B-30 Guinness Force mounted its vehicles and deployed through barrier 12, pulling up alongside numbers 1-3 Rossville Street, at the north east corner of the road. The platoon did not go further south in its soft skinned lorries because the vehicles did not provide sufficient protection from gunmen, a threat the members of the Platoon took seriously following their briefings and the shot directed at them at the Presbyterian Church.³⁶

8B-31 The order of deployment was described by Captain 200 in the following terms:

*We passed through the barrier in the order two vehicles of the Mortar platoon (pigs), the company commander's command vehicle and ferret, two empty pigs belonging to the machine-gun platoon which had stayed back at the church, and my two four-tonners. The anti-tank platoon in two pigs followed behind me.*³⁷

8B-32 Captain 200 explained to Eversheds:

The pigs [from Support Company] were fully armoured vehicles, unlike our soft skinned four ton lorries. Obviously our transport afforded much less protection from gun fire. As soon as we crossed the junction of Rossville Street and William Street I could see that there was a large open area immediately in front of us. on the left hand side of Rossville Street there was a waste ground and at the bottom of Rossville Street were the Rossville Flats. This whole area was quite exposed, particularly to any gunmen that there might be in the Rossville Flats, and I immediately decided that it would not be safe for our soft skinned lorries to be parked in that exposed area. I therefore decided that our two lorries should park up at the

³⁵ B1363.002 paragraph 11; and see Sgt K Day 364/137/23

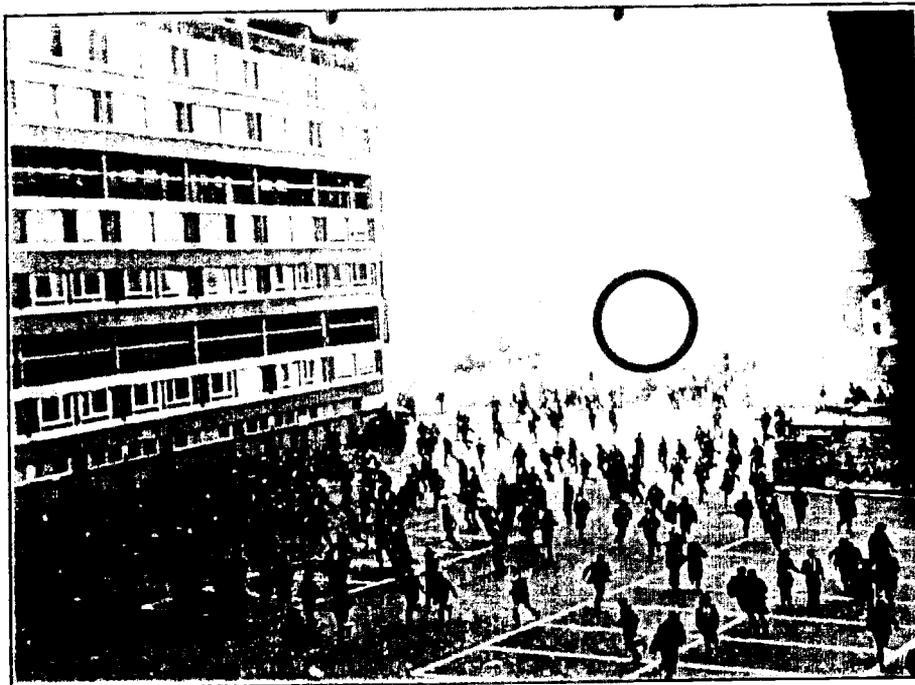
³⁶ B1349

³⁷ B1985; Day 367/073/13

FS 7.1726

north end of Rossville Street, just in the lee of some buildings on the east side of Rossville Street.³⁸

8B-33 The lorry containing call sign 71 can be seen just as it arrived in a photograph taken from the Rossville Flats by Derrick Tucker, P516.

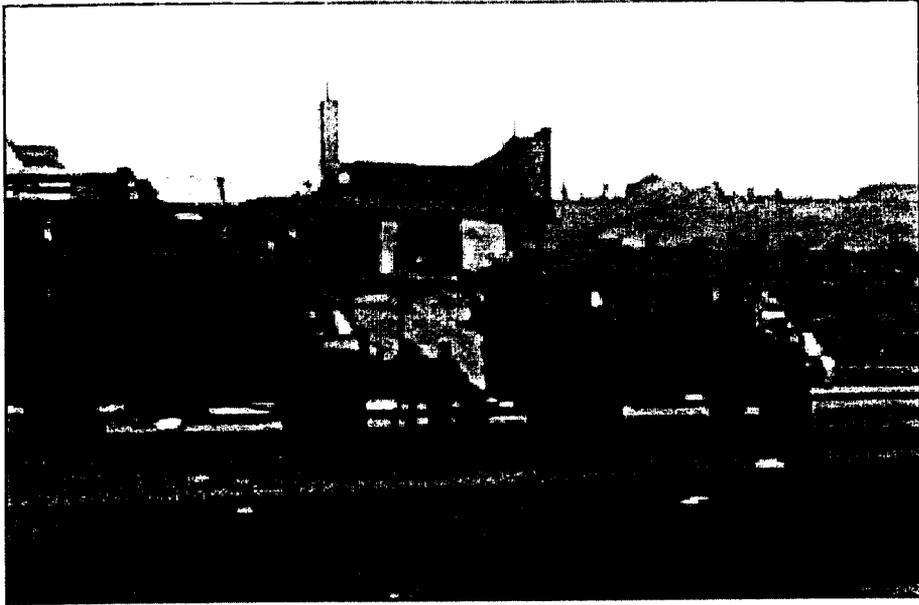


8B-34 Footage taken by an ABC film crew, on Inquiry Video 48, shows the two Guinness Force vehicles very shortly after they arrived in Rossville Street.³⁹ In the first still, below, the men of call sign 71 can be seen debussing from the front 4-tonner.

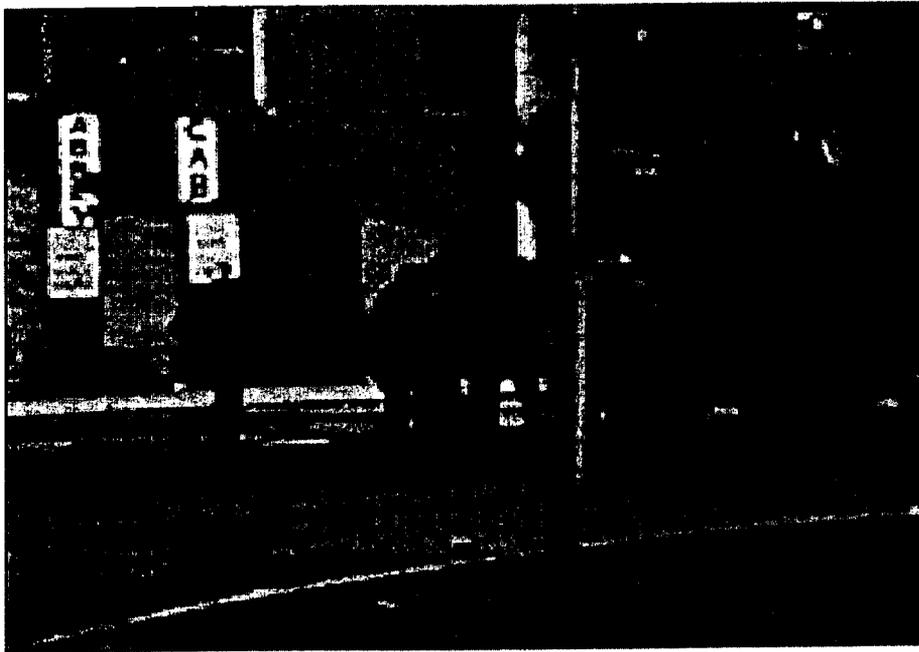
³⁸ **B2022.005 paragraph 34**

³⁹ **V48/12.43** (Segments 62 & 63)

FS 7.1727



8B-35 In the second still, below, the men of call sign 71 Alpha debus from the rear 4-tonner.



8B-36 The video demonstrates that the men mainly remained in the cover of the rear of the vehicles immediately after debussing and that those who deployed across Rossville Street did so in a manner consistent with the belief that they were in immediate danger.

8B-37 The drivers of the two vehicles (Lance Corporal INQ 0391 and Private INQ 0405) remained in the general area of the vehicles and did not deploy with the rest of the

FS 7.1728

VIII 101

force.⁴⁰ Similarly, Corporal INQ 0812 stayed behind and guarded the tailgate of the rear lorry.⁴¹

ON FOOT INTO THE BOGSIDE

8B-38 Captain 200 described events developing as follows:

I decided to split my force with 71 moving to the left to give support to the Mor Pl and 71A to move right flanking along the eastern side of Columbcille Court. At this stage I heard the burst of automatic fire and one or two single shots in our general direction my first concern was for my troops to get deployed from our debussing point as soon as possible. My orders to L1 [Colour Sergeant 002] in command of 71A were to move up the right flank of Rossville Street and to act on his own initiative if we got separated. I went left with 71. On moving off I noticed the Anti Tank Platoon overtaking 71A in their APCs and moving quickly through Columbcille Court and the long block east of the Court. I stopped and shouted quick orders to L1 to move up in support of the Anti Tank Pl.⁴²

8B-39 Having debussed from their vehicles, Guinness Force soldiers were immediately aware of the hostile reception that they faced in the Bogside.

Rioting

8B-40 The soldiers, looking to the south, could see rioting civilians positioned to the east of Rossville Street and in the area of the Rossville Street rubble barricade attacking soldiers of the Mortar and Anti Tank Platoons. For example, Sergeant K was asked before this Tribunal:

Q. What is your recollection of the scene at or around that barricade at the time when you got out of your lorry?

⁴⁰ C391.002 paragraph 9; C405.003 paragraph 15

⁴¹ C812.002 paragraph 10

⁴² B1980

FS 7.1729

A. That there was a lot of people milling around, a lot of noise and some people throwing stones.⁴³

8B-41 His evidence is borne out by the photographs. Liam Mailey and Ciaran Donnelly were both to the south of the rubble barricade at this stage in the proceedings. Their photographs show the military vehicles stationary at the northern end of Rossville Street. Mr Mailey's EP23/4 is a good example. The canopies of the Guinness Force lorries are indicated by the arrow.



8B-42 Mr Mailey was asked about the photograph during his oral evidence at the Widgery Tribunal:

Q. How long had the Saracens been there when you took [EP23/4]?

A. The Saracens had just stopped at that stage.

Q. The people shown in [EP23/4], or some of them appear to be moving towards the armoured vehicles and soldiers?

⁴³ Day 364/141/17

FS 7.1730

A. Yes.

Q. Did you see them do that?

A. Yes

Q. Can you say what they were purporting to do and why?

A. They were obviously going to throw stones at the soldiers who were coming in. I think they were largely encouraged at this stage by the fact that the soldiers did not have riot gear. I heard one of the youths mention this fact.

...

Q. The man in the foreground with his back to the camera, is he actually throwing something, or does his arm just happen to be in that position?

A. I would imagine he is about to throw something, a stone probably.⁴⁴

8B-43 Mr Donnelly's 1972 description of events confirms that youths at the barricade attacked the soldiers:

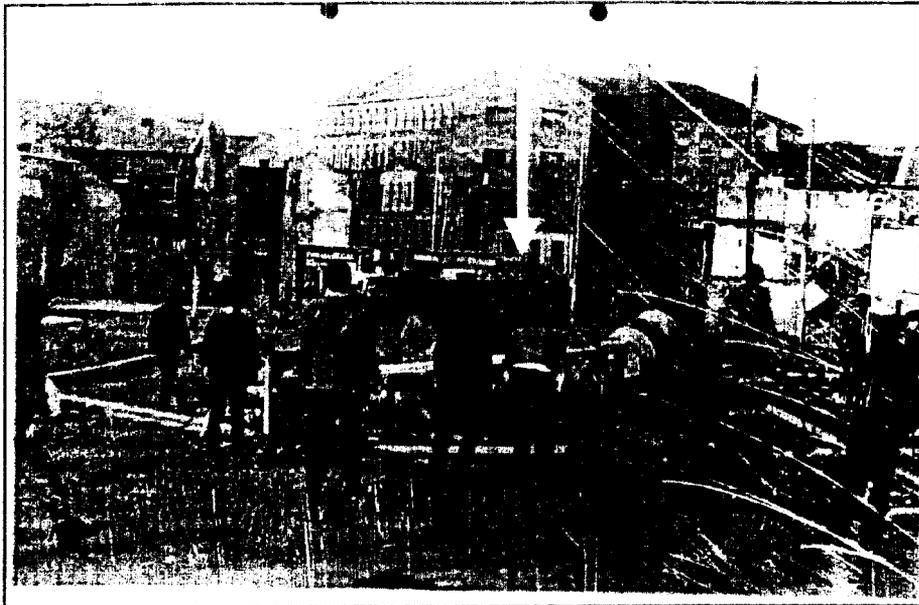
...I went down to a block of flats opposite to the Rossville Flats shortly after this the parachute troops came into Rossville Street in vehicles. A crowd then gathered behind an old barrier used in previous riots and threw stones at the soldiers.⁴⁵

8B-44 His photographs EP27/8 and EP27/9 provide further corroboration. Again, the Guinness Force vehicles are indicated with an arrow.

⁴⁴ M50.026C

⁴⁵ M22.001

FS 7. 1731



8B-45 Sergeant 014 stated in 1972:

I could see that rioting had broken out and members of the leading vehicles, who had debussed, were being stoned and bottled by a

FS 7.1732

large mixed crowd on the East side of Rossville Street. The troops were firing baton rounds to disperse the crowd.⁴⁶

8B-46 The issue of the rioting in the area of the rubble barricade is addressed in detail in Chapter 7.

8B-47 The reception of the Mortar Platoon soldiers in the area of the Rossville Flats car park and waste ground is discussed in detail in the context of Sector 2 (chapter 7, above). It seems clear that there were two phases of rioting in this area. An initial phase took place as the Mortar Platoon vehicles arrived and the soldiers of that platoon debussed and were attacked by civilians. Shortly afterwards, a second phase of rioters arrived from the area of barrier 14 and also attacked the soldiers.

INCOMING FIRE

8B-48 The advance of Guinness Force, after leaving their vehicles, was conducted in the knowledge that there was gunfire ahead. Members of the platoon were able to discern the nature of the rounds being fired and the direction from which they were being fired.

8B-49 Captain 200 recorded in 1972 that he heard a burst of automatic fire and one or two single shots fired in the general direction of his platoon, very shortly after the men had debussed at the north east corner of Rossville Street. The shots prompted him to get his men moved on as soon as possible.⁴⁷

8B-50 Colour Sergeant 002 was also aware of incoming fire at this time. He told the RMP:

When we debussed there was CS gas in that area and I heard shots from the area of the Rossville Flats, well to the front of Support Company. I saw members of Support Company take cover behind a

⁴⁶ B1409; B1412.004 paragraph 19

⁴⁷ B1980

FS 7.1733

*wall adjacent to a block of two storey flats between Kells Walk and Rossville Street. I do not remember how many shots were fired.*⁴⁸

8B-51 Corporal 039 deployed south with Private M more quickly than most other soldiers in Guinness Force. His evidence was that:

*Almost as soon as we started to move forward we came under fire, I identified low velocity weapons and I believe a couple of high velocity rounds. It came from the direction of the Rossville Flats.*⁴⁹

8B-52 M explained in 1972 that, as he deployed with 039, he saw:

*... three or four or possibly more shots of what I thought to be automatic fire came from one of the upper storeys of the centre block of Rossville Flats and hit the road (Rossville Street) about 10 or 12 yds in front of the Command vehicle where soldiers were running forward but no-one was hit. One of the soldiers in this position engaged the gunman in fire and ran off to Rossville Flats...*⁵⁰

8B-53 M's evidence of incoming fire is entirely consistent with civilian evidence of an automatic weapon being fired down from the Rossville Flats at the soldiers below. The Sunday Times Insight article of April 1972 reported that:

*... one civilian, whose name we agreed to withhold, told us that he did see someone with a carbine firing at the soldiers from the 5th floor of the flats. The man fired 7 shots and 3 were returned at him. This gunman corresponds exactly with the man at whom Soldier O said he fired 3 shots and hit. The timing of this incident is clearly important: O had already been firing at another target before that. This gunman cannot have been the first to open fire in the car park.*⁵¹

8B-54 The issue of shots fired from the Rossville Flats is considered in detail in Chapter 2, above.

⁴⁸ B1349

⁴⁹ B1651.019

⁵⁰ B360

⁵¹ L212

FS 7.1734

8B-VII CALL SIGN 71 ALPHA ON THE WEST SIDE OF ROSSVILLE STREET

MOVING IN SUPPORT OF ANTI TANK PLATOON

8B-55 The two Anti Tank Platoon armoured personnel carriers (APCs) pulled up behind the Guinness Force lorries at the northern end of Rossville Street. Members of Anti Tank Platoon debussed and crossed over to the west side of the road, overtaking Guinness Force as they did so. Captain 200 had split his platoon, with call sign 71 moving left with him to the Rossville Flats waste ground and call sign 71A moving right, under Colour Sergeant 002, in support of Anti Tank Platoon.⁵²

8B-56 Liam Mailey's photograph EP23/5 captures this stage in the proceedings. It shows the Guinness Force 4-tonners at the northern end of Rossville Street with the two Anti Tank Platoon APCs behind them. On the other side of the road, the men of Anti Tank Platoon can be seen as, probably, can men of Guinness Force, behind them.

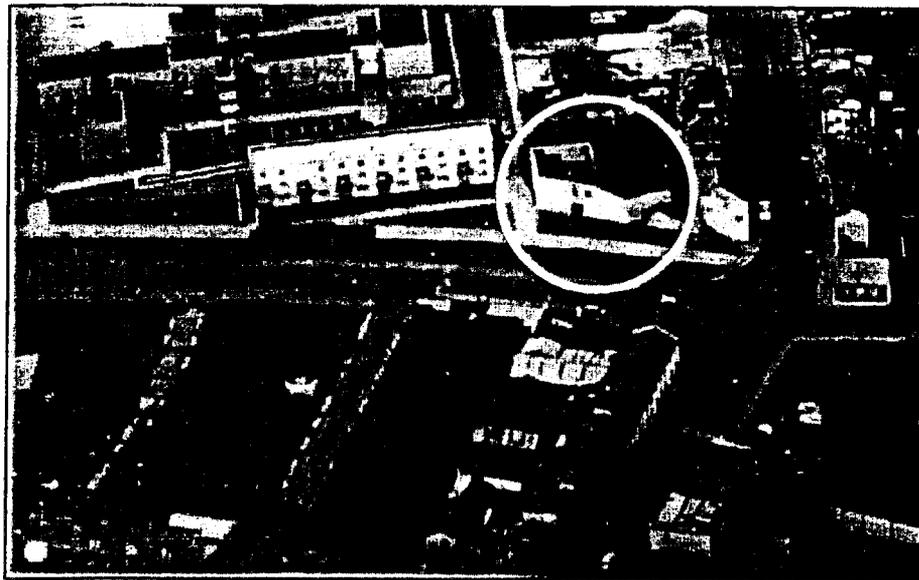


⁵² B1980

FS 7.1735

8B-57 The men are in cover, at the Northern end of Rossville Street. It is significant that *all* soldiers in this photograph are in cover; either close to walls or between stationary vehicles. Other soldiers, around the vehicles in the road, have also taken cover at this time

8B-58 The distinctively shaped building on the left of the photograph (with the large door under two windows) can be located on P202.1, below.



8B-59 Sergeant K described how he moved along to the front of the Kells Walk building with members of his half platoon.⁵³

8B-60 Private M and Corporal 039 took a different route south than most of call sign 71A. Rather than crossing Rossville Street at its Northern end, they moved south to the area of the Command vehicle (visible with its clear turret in EP23/5, above) and crossed from there.⁵⁴

⁵³ B311.039 paragraph A

⁵⁴ B360

FS 7.1736

8B-61 Mr Mailey's photograph EP23/9 shows the situation shortly afterwards and captures Anti Tank Platoon soldiers close to the wall at the southern end of the Kells Walk building, followed by those from call sign 71A.



ELEMENTS OF CALL SIGN 71 ALPHA DO NOT DEPLOY TO THE KELLS WALK WALL

8B-62 Not all members of call sign 71A deployed to the Kells Walk wall. EP23/9 also demonstrates that some men remained at the northern end of Rossville Street. For example, Corporal INQ 0025's evidence is that:

I got out of the four ton lorry and went to my right near to the small blocks of flats. There was something there which was rather like a shelter area... We were out of the way... There were about six of us there, plus a couple of other soldiers with SLRs for our protection... We stood there waiting for the prisoners to be fed back to us from the arresting troops.⁵⁵

8B-63 In oral evidence to this Inquiry, 0025 was asked:

Q. But do you recall at any time moving further south down Rossville Street?

A. I do not, no, sir.

⁵⁵ C25.002 paragraph 20

FS 7.1737

Q. Was the job of you and your colleagues simply to collect arrestees from the arresting troops who had advanced to further forward positions?

A. That is correct, sir.⁵⁶

8B-64 Others did move south, but not to the Kells Walk wall. Private INQ 0748, for instance, secured the area between Columbcille Court and Kells Walk and was still there when members of Anti Tank Platoon brought through the people they had arrested in Glenfada Park North.⁵⁷

REPLACING ANTI TANK PLATOON AT THE KELLS WALK WALL

8B-65 Members of Guinness Force observed the activities of the Anti Tank Platoon at the Kells Walk wall. Captain 200 had deployed onto the Rossville Flats waste ground but kept an eye on call sign 71A. He said in 1972:

It was at this stage that I saw at least three men from the anti tank platoon kneeling behind the wall on the right hand side of Rossville Street by the building firing their SLRs... My feeling was that the crowd had dispersed rapidly and that gunmen would be likely to appear. I told my men in the vicinity of the long building to spread out – they were too bunched, an obvious target.⁵⁸

8B-66 Captain 200 then saw the Anti Tank men move off from the wall. He shouted at Colour Sergeant 002 to move up and take over their positions.⁵⁹

8B-67 002 records that this is exactly what he did,⁶⁰ as does Sergeant K, who also saw the men of the Anti Tank Platoon depart from the Kells Walk wall and “move off down Rossville Street and then to the right” and confirms that members of call sign 71A took up their positions.⁶¹

⁵⁶ Day 300/083/22

⁵⁷ C748.003 paragraph 14

⁵⁸ B2022.026

⁵⁹ B2005 paragraph C

⁶⁰ B1354

⁶¹ B311.019; B311.007 paragraph 14

FS 7. 1738

8B-68 The men of call sign 71 Alpha, therefore, deployed in accordance with their Captain's orders. At the time they were taking up position at the Kells Walk wall, members of Anti Tank Platoon were entering Glenfada Park North. At the time that Guinness Force soldiers were engaging targets south of the Rossville Street rubble barricade, some members of Anti Tank Platoon was engaging targets in Glenfada Park North.

GUINNESS FORCE AT THE KELLS WALK WALL

8B-VIII SEQUENCE OF EVENTS

8B-69 Members of call sign 71 Alpha, at different positions along the Kells Walk wall independently concluded that two men were using a military style crawl to move away from the Rossville Street rubble barricade. The soldiers could see that at least one of the crawling men carried a weapon. They were both heading for the cover of the entrance to Block 1, of the Rossville Flats from where they would pose a significant threat to the soldiers. Soldiers K, L and M opened fire in these circumstances.

8B-70 It is possible to work out the general order in which events took place at the Kells Walk wall when the crawling men were spotted:

- (1) Sergeant K fired first and did so at the rear crawling man;
- (2) Colour Sergeant 002 and Corporal 039 then ordered Privates M and L to fire;
- (3) M fired at both crawling men, first at the front crawling man and then at the rear man;
- (4) L, too, fired at both crawling men. His first shot was fired at the same time as M discharged his rounds. The last of the call sign 71A shots was fired by L; Lieutenant Colonel Wilford arrived in the area of the Kells Walk wall in time to see this final shot being discharged.

FS 7. 1739

8B-71 Sergeant K was amongst the first of the Guinness Force soldiers to arrive at the wall and he was the first to fire from that position. He told Lord Widgery:

From behind the rubble barricade two men were crawling towards the doors in the base of the Rossville St flats. The rear man was carrying a rifle. On seeing this weapon in his hand I cocked my weapon and fired one aimed shot.⁶²

8B-72 The men were doing "the leopard crawl, keeping very low to the ground."⁶³ Part of the rear man's rifle was hidden by his body. Sufficient remained in sight to enable K to be certain that it was a rifle.⁶⁴ It is important in this respect to note that it is likely to be accepted that Sergeant K was a soldier with considerable experience of firearms.⁶⁵

8B-73 Colour Sergeant 002 arrived at the wall as K fired.

I was just moving up behind soldier K as he fired one round at the barricade and when I joined him he told me there were two men crawling from the barricade towards the far corner of Rossville Flats. When I looked in the direction of his fire I could see a man dressed in what I think was a dark jacket doing what I would call a leopard crawl towards a doorway near the far corner of the flats. I could see he had a rifle in his arms... I ordered soldiers M and L to fire at this man. They both fired two rounds and as he slumped I could see he had been hit.⁶⁶

8B-74 Corporal 039 was also able to see the two crawling men. He recalled in 1972 that both had weapons:

As I looked towards the flats I saw two men appear from behind the barricade. They were on the far side of the barricade and if they had stayed behind it I would not have seen them. They crawled over to the wall of Block 1 and then began to crawl down the side of the building towards the door at its far end. One of the men who had dark hair and was wearing a dark suit (or dark jacket and trousers)

⁶² B311.039 paragraph G

⁶³ B311.041 paragraph A

⁶⁴ Day 364/161/16; B311.041 paragraph B

⁶⁵ Day 364/175/02 for example.

⁶⁶ B1361

FS 7.1740

was doing a leopard crawl and had a weapon cradled in his arms which I identified to myself as a Thompson SMG. The man crawling behind him had long fair hair and was wearing a light coloured coat and trousers. As he crawled he seemed to trail a weapon... I thought it was a short low calibre rifle, but I could not identify the type.

"L" was on my left and "M" on my right. I pointed out the gunmen and ordered these two men to fire at them. They each fired two rounds.⁶⁷

8B-75 M gave a generally consistent but not identical account. He recorded in 1972 how:

It was then that soldier 039 pointed out to me two men who were behind the barricade crawling along the base of the wall of the block of Rossville Flats nearest to us. I observed that both men were crawling along in what I assumed to be a leopard crawl position. To me both men appeared to be cradling something in their arms and from their shape and length and from their black colour my opinion was that they were rifles. There is no real doubt in my mind that these objects were anything but rifles. I then had a shouted conversation with soldier 039 amidst all the noise which was going on. He had pointed out the men to me previously and now shouted to me "They're carrying something". He added "They look like rifles" and I shouted "They are rifles".⁶⁸

8B-76 It would have been very noisy indeed. The Anti Tank Platoon soldiers who had left the Kells Walk wall had deployed into Glenfada Park North, where live rounds were being fired at this time. This, and the fact that firing was probably also continuing in and around the Rossville Flats waste ground to the east, probably explains why 039 and M needed to shout to make themselves heard, even though they were next to one another.

8B-77 M noted the order in which shots were fired from the Kells Walk wall:

I had by then cocked my weapon and I then took an aimed shot at the first man who was by then almost at the door of the flats... By this time another soldier nearby had already taken an aimed shot at the second man crawling behind who was still crawling. I then took

⁶⁷ **B1650**

⁶⁸ **B360**

Fh 7-1741

*an aimed shot at this man...Another soldier took another aimed shot at the man but he still kept crawling.*⁶⁹

8B-78 This reflects a sequence of shots as follows:

- (1) K at the second/rear crawling man;
- (2) M at the first and then at the second crawling man;
- (3) L at the second crawling man.

8B-79 Sergeant 035, M's section commander, observed M fire his two shots at the crawling men.⁷⁰

8B-80 Other soldiers heard part of the shouted conversation between Corporal 039 and Private M. Private INQ 0127, who was primarily concerned with the operation of his radio, recalls how "someone next to me said "Thompson Machine Gun" and I think the soldier next to me fired a shot".⁷¹

8B-81 Colour Sergeant 002's statement to Eversheds includes his recollection that:

*While I was there one of my men who was nearby (I cannot remember who) shouted out something like "There's a gun there" or "There's a guy with a rifle". I looked and saw a man crawling south down the pavement towards the entrance to the Rossville Flats.*⁷²

8B-82 002 cannot now recall who was shouting but it is clear it was either M or L, because the shout came from one of the two soldiers whom he ordered to fire.⁷³

8B-83 Private L's shots from the wall were witnessed by Sergeant 014, who recalled in 1972 that:

⁶⁹ B360

⁷⁰ B1626

⁷¹ C0127.005 paragraph 5

⁷² B1363.004 paragraph 26

⁷³ B1363.004 paragraph 29

FJ 7. 1742

*I saw two men, one dressed in a dark brown suit the other dressed in dark clothing, crawling from a barricade and moving South along the West wall of Block 1 Rossville Flats. The rear man in the brown suit was trailing what looked like a rifle behind him.*⁷⁴

"L" ... fired two shots at the men...

8B-84 Private 032 gave a similar account in 1972.⁷⁵

8B-85 Private 010 had been ordered to check call sign 71A's western flank as soon as he arrived at the wall. He, therefore, missed the earliest part of the action there. He recorded in 1972:

*As I got back I saw L fire two aimed rounds towards a barricade in Rossville Street. I did not actually see his target but when I looked towards the barricade I saw a male person apparently dragging the body of a second male towards the flats.*⁷⁶

8B-86 It was at this stage that Sergeant 014 became aware of the presence of Lieutenant Colonel Wilford at their position.⁷⁷ The Commanding Officer arrived in the area of the Kells Walk wall to see L fire his last round. His oral evidence to Lord Widgery's Inquiry was that:

*There were several of my paratroopers there who I know to be members of a certain platoon. Just as I arrived behind them I went aground some ten yards behind them and then made my way forward. At that moment one of the soldiers fired. I asked him why he had fired and he told me there was a gunman behind the rubble at the side of Rossville Flats. I then had a quiet word with them. I told them to spread themselves out a little bit as because they were a little bunched...I told them to look out for themselves and then I asked them where the Company Commander was. They pointed across and they said, "He is across there, across the open ground near the Rossville Flats".*⁷⁸

⁷⁴ B1410

⁷⁵ B1614

⁷⁶ B1395.015; Day 355/123/13

⁷⁷ B1410

⁷⁸ B984 paragraph E; B1110.034 paragraph 97; Day 313/058/22

FS 7.1743

8B-87 Corporal 039 still recalls the presence of his Commanding Officer at the wall. He told Eversheds:

At some point during the afternoon, Colonel Wilford and his radio operator were also behind this wall. I am sure of this because I can remember him saying something to the effect of "Watch out for yourselves lads".⁷⁹

8B-88 The Colonel stayed at the wall for "a little while" yet heard no further gunfire from his soldiers there.⁸⁰

8B-89 The photographer Jeffrey Morris of the Daily Mail took photograph **P261** of the Kells Walk wall at the time that Colonel Wilford was there.⁸¹



8B-90 The Colonel was asked about **P261** at the Widgery Tribunal:

Mr Gibbens. We have seen a photograph earlier in these proceedings of paratroopers with an officer crouched near the end wall, taking cover near the end wall of Kells Walk flats. Was that about where they were?

⁷⁹ **B1651.004 paragraph 19**

⁸⁰ **B1019 paragraph G**

⁸¹ Alternative reference **EP2/008**

FS 7.1744

A. If the officer had a beret on that was me, since I was the only one wearing a beret that day.

Lord Widgery. I think it was Mr. Morris' photograph.

A. That is me. (Looking at the photograph)

...

Mr. Gibbens. And the officer with the beret on?

A. Is me. It is also identifiable from the white patch on the back of my smock. I am the only one who wears that white patch.

Q. There is a paratrooper behind with a load of wireless equipment?

A. Yes. He is my radio operator.

...

Q. You see the soldier standing there on the left?

A. Yes, that is right.

Q. Apparently without a hat?

A. Yes.

Q. And with the rifle in the aim position?

A. Yes.

Q. Was he the soldier who fired?

A. Yes he was.

Q. And he was firing towards the barricade?

A. Yes, that is right.⁸²

8B-91 Private L confirmed in 1972 that he was the soldier standing to the left of the photograph.⁸³ He had taken off his helmet at an earlier stage.⁸⁴

⁸² B984 paragraph G

⁸³ B327 paragraph E

⁸⁴ B336 paragraph E

FJ 7.1745

8B-92 **P261** was taken *after* Colonel Wilford had told his men to spread out and after Sergeant K and others had moved off from the wall, explaining the relatively low number of soldiers pictured there.

8B-IX THE SIGNIFICANCE OF LEOPARD CRAWLING

8B-93 A factor in attracting the attention of the soldiers to the two men behind the rubble barricade was the manner in which they were moving. It is clear that, in 1972, the men of call sign 71A believed this to be a military style "leopard crawl", that is to say, *not* the type of movement one would expect from an untrained civilian.

8B-94 Sergeant K told Lord Widgery that the men he saw were doing:

the leopard crawl, keeping very low to the ground... it is... lying on your stomach, using your elbows and knees and toes to move along.⁸⁵

8B-95 In leopard crawling, the forward part of the body will be higher than the rear, which is the opposite of what one would expect from an untrained civilian. Sergeant K was also asked about this at the Widgery Tribunal:

Mr Hill. What part of the man was obstructed by the barricade between you and him?

A. From the backside downwards.

Q. Was he higher at the front than he was on the back side?

A. When doing the leopard crawl you tend to have the forward part of your body uppermost.⁸⁶

8B-96 Colour Sergeant 002 has described what he could see in this way:

I can remember that he was... leopard crawling along with a rifle in the crook of his arm. I can remember thinking that it was a good

⁸⁵ **B311.041 paragraph A**

⁸⁶ **B311.045 paragraph C**

FS 7. 1746

leopard crawl and that I would have given him a B grading if I had been assessing him as a soldier.⁸⁷

8B-X GUNMEN BEHIND THE RUBBLE BARRICADE

THE SIGHTING OF WEAPONS

8B-97 A number of Guinness Force soldiers spotted weapons behind the rubble barricade. They did so independently of one another and from different positions along the Kells Walk wall. Soldiers then verified with each other what they could see. Further, some soldiers still were able to observe the shots fired by their colleagues and to confirm that they were targeted at gunmen.

8B-98 To recapitulate:

- (1) Sergeant K arrived at the wall to see a man with a rifle;
- (2) Colour Sergeant 002 moved up behind K and saw a man with a rifle;
- (3) Corporal 039 saw the crawling men and could discern they had with them a Thompson SMG and a rifle;
- (4) Private M was also able to see that both men were carrying weapons;
- (5) 039 and M verified with each other what they could see before M and L fired;
- (6) Sergeant 035 observed M's shots and confirms that they were fired at two men with weapons; and
- (7) Sergeant 014 and Private 032 observed L's shots. They too had seen a man crawling with a weapon.

⁸⁷ B1363.004 paragraph 27

FS 7.1747

8B-99 In the circumstances, the Tribunal can and should be confident that members of Guinness Force fired at legitimate, armed targets.

THE REAR CRAWLING MAN

8B-100 There is very strong evidence from 1972 that the rear crawling man, who was nearer to the soldiers, had a rifle and wore a brownish jacket.

8B-101 With this omission of Soldier L, no fewer than six soldiers present at the Kells Walk saw that he had a rifle:

- (1) K - rifle (possibly a .303);⁸⁸
- (2) M - rifle;⁸⁹
- (3) 014 - rifle;⁹⁰
- (4) 032 - rifle;⁹¹
- (5) 035 - rifle;⁹²
- (6) 039 - rifle (possibly a short, low calibre rifle).⁹³

8B-102 The same soldiers gave generally consistent descriptions of the man's clothing:

- (1) K - dark suit;⁹⁴

⁸⁸ **B311.019; B311.041 paragraph C**

⁸⁹ **B360**

⁹⁰ **B1410**

⁹¹ **B1614**

⁹² **B1626**

⁹³ **B1650**

⁹⁴ **B311.019**

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- (2) M – brownish jacket;⁹⁵
- (3) 014 – brown suit;⁹⁶
- (4) 032 – dark brown suit;⁹⁷
- (5) 035 – brown suit / dark clothing;⁹⁸
- (6) 039 – light, possibly fawn coloured coat.⁹⁹

THE FRONT CRAWLING MAN

8B-103 There are inconsistencies in the soldiers' accounts as to whether the front crawling man also had a weapon. Those inconsistencies demonstrate the absence of any basis for the suggestion that the soldiers put their heads together shortly after the event to concoct a self-serving and consistent account of what had occurred.

8B-104 The evidence suggests that *both* of the men sighted behind the Rossville Street barricade had weapons. Private M, Colour Sergeant 002, Sergeant 035 and Corporal 039 could all see that the front crawling man had with him a weapon. In 1972, the first three described it as a rifle and 039 as a Thompson SMG.¹⁰⁰ The failure of other soldiers to see that the front crawler also carried a weapon is explicable by their individual positions at the Kells Walk wall.

8B-105 The "Kells Walk wall" in fact encompasses the *two* walls confining the ramp from Rossville Street to the car park between Kells Walk and Columbcille Court. The relevant area is indicated on the map below:

⁹⁵ B361

⁹⁶ B1410

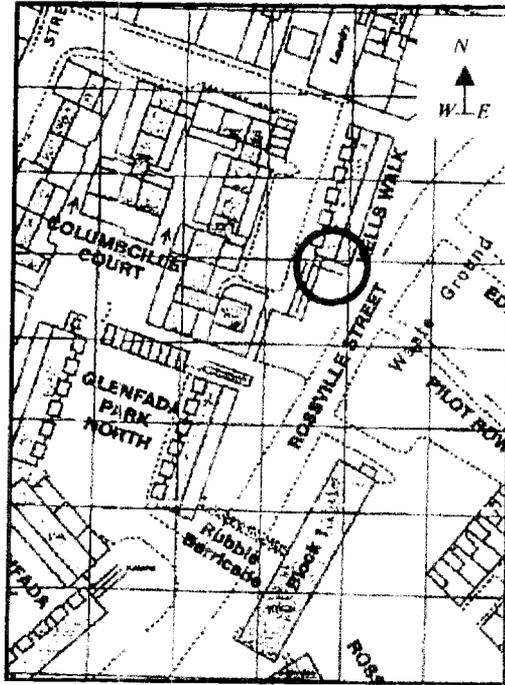
⁹⁷ B1614

⁹⁸ B1626

⁹⁹ B1642

¹⁰⁰ B360 [M]; B1362 [002]; B1626 [035]; B1650 [039].

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8B-106 The ramp rises considerably in the direction of Columbcille Court. This is shown in a still of the ramp from Inquiry Video 1.¹⁰¹



¹⁰¹ VI/05.34

FS 7.1750

8B-107 The soldiers' individual positions at the two walls determined to a material degree what they could see behind the rubble barricade.

- (1) Those on the ramp between the two walls had the advantage of an elevated position. The further west they were, the higher their position;
- (2) Those furthest west had the best angle of vision for activities taking place on the east side of Rossville Street and in the area of the entrance to Block 1 of the Rossville Flats;
- (3) The rear crawler would have obscured the front crawler to a certain extent. This would have had a more pronounced effect on those viewing from the east side of the wall;
- (4) Some soldiers were further forward than others. Soldiers in front would have obscured to a certain extent the vision of those behind;
- (5) The uneven nature of the rubble barricade added a further, unpredictable dimension to the situation.

8B-108 The soldiers who could not see that the front crawling man had a weapon were generally to the east of and lower down than their colleagues.

8B-109 Sergeant K located himself just to the left, or east, of the gap between the two walls. He was therefore at ground level. The other members of his call sign were to his right.¹⁰² K volunteered the point that those to his right would have had a different angle of vision and may have been able to see a weapon where he could not.¹⁰³

¹⁰² B311.007 paragraph 15

¹⁰³ B311.008 paragraph 20

FS 7.1751

8B-110 Sergeant 014 recalls that he, too, was at ground level¹⁰⁴ and that some of his men were to his right and higher up:

...The soldiers to my right had a better view of the Rubble Barricade and the entrance to Block 1 of the Rossville Flats because of their elevated position...¹⁰⁵

8B-111 Private L is another soldier who may not have seen a weapon on the front crawling man, although his 1972 evidence is not consistent on this point. There is evidence from different sources that allow his position at the wall to be determined, should the Tribunal find the issue of relevance. L was certainly at the eastern corner of the wall when he fired. He was seen there by Private 032 and by Lieutenant Colonel Wilford and captured there in P261.¹⁰⁶ His position was not static, however. Another photograph demonstrates that he was positioned elsewhere at a slightly different time. RUC Sergeant Brown's P262 shows L, the only call sign 71A soldier without a helmet,¹⁰⁷ further west. This was at a time when Colonel Wilford was at the Kells Walk wall.

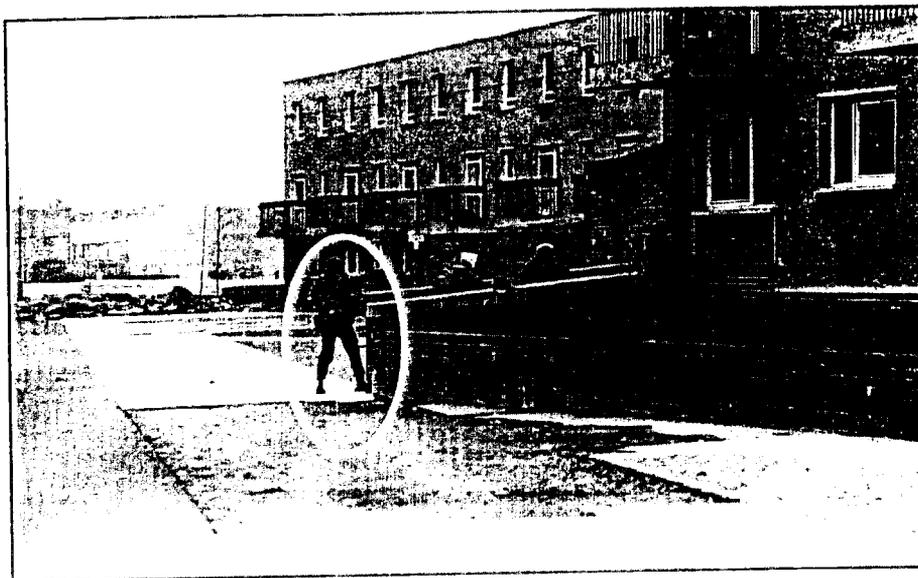
¹⁰⁴ B1412.005 paragraph 23

¹⁰⁵ B1412.005 paragraph 25; Day 372/027/16

¹⁰⁶ B1614; B984 paragraph G

¹⁰⁷ B336 paragraph E

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8B-XI RESPONSE TO AN IMMINENT THREAT

8B-112 The men of call sign 71A were justified in the action that they took.

THE SOLDIERS' ASSESSMENT

8B-113 Sergeant 014 expressed his view of what he faced in the following terms:

... the man was carrying the weapon. If he had got into the flats, he could have turned round and used that weapon. If he was not

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*going to use weapon, he should have left it at the barricade, should he not?*¹⁰⁸

8B-114 002 had expressed similar views:

We did not fire indiscriminately. I directed my men to fire... We were in a dangerous situation and I was going to ensure that they were not put at further risk...

*As far as I was concerned there was a very clear risk. The man had a rifle and we thought he was going to use it and in fact he probably had used it. We were going to take his power away... We were frightened and we were the guys being attacked. Having identified the man with a weapon we fired at them with controlled shots. I took an instinctive decision... The man I saw posed a threat with his weapon and may already have used it.*¹⁰⁹

8B-115 M put it this way:

*As it was clear that we had already been under fire, I knew that if the two men could reach the sanctuary of this doorway, they would have then found a good sniping position from which they would fire at me or my colleagues. I made the instant decision that I was entitled, under the yellow card rules to fire an aimed shot at each of these 2 men.*¹¹⁰

8B-116 Similarly, 039 told Eversheds:

*There was no doubt in my mind that he was a hostile gunman and that he would fire his weapon at me or another soldier if he was given the opportunity to do so. He was definitely a threat to us. There was and is no doubt in my mind that the yellow card rules governing fire orders authorised us to shoot this man.*¹¹¹

8B-117 Sergeant K made very much the same point during his oral evidence to this Tribunal, as did Sergeant 035.¹¹²

¹⁰⁸ Day 372/036/09

¹⁰⁹ B1363.004 paragraph 31

¹¹⁰ B372.005 paragraph 24

¹¹¹ B1651.004 paragraph 23; see also Day 362/078/10

¹¹² Day 364/156/15; Day 361/071 to Day 361/072

FS 7.1754

8B-118 The passages extracted above provide a consistent and compelling explanation by experienced soldiers of the situation they faced.

OTHER RELEVANT CONSIDERATIONS

8B-119 The soldiers' perception of the threat they faced was reasonably and legitimately affected by:

- (1) The briefing they had received the night before to expect gunmen in the Bogside;
- (2) The round that had actually been fired at the Presbyterian Church while they were there; and
- (3) The gunfire they heard as they deployed south on foot.

8B-120 The soldiers made their decision to fire in the following circumstances:

- (1) The men were in position at the Kells Walk wall because the orders given to them required them to be there. They did not have the option of leaving the area.
- (2) The soldiers' SLRs were the only realistic means of putting an end to the threat posed by the crawling men. A shot from such a weapon is certain to cause serious injury, if not death.
- (3) The soldiers had only a matter of seconds in which to decide whether or not to shoot.

8B-121 Their actions were both lawful and wholly reasonable given the circumstances in which they found themselves.

8B-XII RESTRAINT

8B-122 Guinness Force soldiers reacted with restraint to the threat they honestly and reasonably perceived to exist behind the rubble barricade.

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8B-123 Sergeant K and Private M were, in our submission, conspicuously disciplined soldiers, who would only fire their weapons when the circumstances absolutely required it. Bloody Sunday was the only time that K fired a live round at a human target during his three tours of Northern Ireland.¹¹³ Private M's two rounds on the day were the only shots he fired "in anger" during the twenty-five years of his military service.¹¹⁴

8B-124 The majority of the soldiers at the wall did not fire at all. Section commanders held back so that they could properly carry out their supervisory roles. There was no need for them to fire in circumstances where three other soldiers were engaging the targets. Sergeant 035 was asked by Brian McCartney when giving evidence to this Tribunal:

Q. If these shots were justified, why did you not fire your SLR?

A. I have thought about that. My job on that day was section commander, but when you fire a rifle, for me anyway, it is a difficult job. You have to control your breathing, you have to get the aim right, you have to concentrate and all you can see is what you can see down the end of the rifle; a very, very limited, small part -- view of the world. If you are in that position and firing, you cannot carry out your job as section commander.

Q. Are you really saying that you would not discharge your weapon in any circumstances?

A. I did not say that. I said in this particular instance I did not feel it was appropriate or necessary. Other people were firing; they were hitting the target. I was more interested in carrying out my job as a commander, which is to command.¹¹⁵

8B-125 Likewise, other soldiers held back because there was no need for them to fire. Private 032 was also questioned by Mr McCartney. He explained that:

¹¹³ Day 365/035/01

¹¹⁴ Day 365/138/20

¹¹⁵ Day 361/102/16

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... any reasons I would have had for not firing a shot would be because there were other people who had sighted the target and were controlling the target.

Q. So I want to be clear about this: even though at the time one of them was trailing what appeared to be a weapon rather than what you assert to have been a weapon, you still saw that as justification for the others to open fire; is that what you are saying?

A. Um, yes.¹¹⁶

8B-126 A little later, Mr. McCartney asked 032:

Q. Why then did you not fire?

A. Probably for the same reason that most of the other people there that day did not fire: discipline.¹¹⁷

The answer is very telling.

MOVEMENT FROM THE KELLS WALK WALL

8B-XIII TO THE COLUMBCILLE COURT CAR PARK

8B-127 Lieutenant Colonel Wilford was concerned that his men at the Kells Walks wall were too bunched and, after L's final shot, he told them to spread out.¹¹⁸ Colour Sergeant 002 carried out Colonel Wilford's orders by redeploying some of his soldiers from the wall.¹¹⁹ By the time 002 got to the car park himself, his men were already guarding prisoners there.¹²⁰

8B-128 The men moved up the ramp and into the car park between the Kells Walk building and Columbcille Court. Sergeant K's evidence was that:

¹¹⁶ Day 362/044/17

¹¹⁷ Day 362/045/18

¹¹⁸ B984 paragraph E

¹¹⁹ B1355

¹²⁰ B1362

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After this time the firing from our position had stopped completely and I went underneath the flats into an alleyway and came out into a car park facing Columbcille Court. On the opposite side of the car park in front of the flats between 20-25 people, including a woman and a priest, had been arrested and from this position they were taken away to the battalion arrest area... on the corner of William St and the E side of Rossville St.¹²¹

8B-129 Private M stated that:

I then went through the alleyway with a sergeant and then climbed up onto a ramp in front of these flats ... I watched the roof tops and windows of the flats for about 2 minutes. I then went down again and rejoined soldier 039 and we crossed over to the front of Columbcille Court where 10 to 15 people were being held, these I believe having been arrested in the area of Glenfada Park.¹²²

8B-130 Sergeant 035 helped to guard the arrestees.¹²³

8B-131 Guinness Force soldiers can be seen with the arrestees in a photograph taken by William Rukeyser, P491:

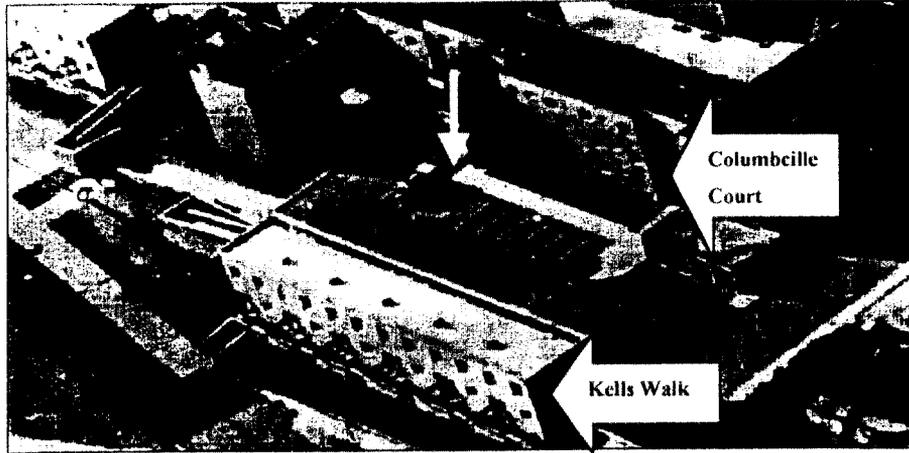


8B-132 Their location is marked on the aerial photograph below.

¹²¹ B311.019

¹²² B361

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8B-133 We have already suggested that P261, the photograph of Colonel Wilford and soldiers at the Kells Walk wall, was taken following this partial deployment from the wall.

8B-XIV THOSE REMAINING IN THE AREA OF ROSSVILLE STREET

8B-134 Some members of call sign 71A did not move into the car park at this time.

8B-135 In 1972, Sergeant 014 recorded that he moved to a position *south* of the Kells Walk wall:

I moved to the South West wall of Number 2 Columbille Court and observed towards the flats. Whilst at this position I saw an old man kneeling behind a barricade which crossed Rossville Street... The man was waving and trying to attract our attention. I beckoned him forward but he would not move.¹²³

8B-136 Sergeant 014 no longer recalls deploying south of the wall himself, although he still remembers that two of his men went forward.¹²⁵

8B-137 Private L was evidently one of those men. His recollection in 1972 was that after Sergeant K left the Kells Walk wall, he moved south as far as the entrance to

¹²³ B1626

¹²⁴ B1410

¹²⁵ B1412.006 paragraph 30; Day 372/053/06

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Glenfada Park North. From there he too saw a man at the rubble barricade. L discovered that the man was kneeling over a body.¹²⁶

8B-138 In 1972, L suggested that he next saw a gunman fire rounds from the doorway to Block 1.¹²⁷ Lance Corporal 039 saw muzzle flashes coming from the same doorway. He cannot now recall whether this was before or after the incident with the crawling men.¹²⁸

8B-139 The Guinness Force men then rejoined their colleagues in the area of the Columbcille Court car park.

8B-XV TAKING THE ARRESTEES NORTH

8B-140 Colour Sergeant 002 ordered some of his men to walk the arrestees up from the car park to Little James Street.¹²⁹

8B-141 Lance Corporal 039 and Private M were among them.¹³⁰ M stated in 1972 that:

We waited there for about 5 minutes and then [an] officer shouted to us to take the people who had been arrested to Little James Street for questioning. This we did and we left these people with other soldiers by a wire mesh fence in front of a car park on the west side of Little James Street.¹³¹

8B-142 Their movement north was captured in many photographs and in footage taken by the ITN camera crew.¹³²

8B-143 Below are three of the relevant photographs. **P493** shows the group shortly after they moved off:

¹²⁶ **B321**

¹²⁷ **B330 paragraph B**

¹²⁸ **B1651.004 paragraph 21; Day 362/073/18**

¹²⁹ **B1362**

¹³⁰ **B1642; B1651.005 paragraph 30**

¹³¹ **B361**

¹³² **V3/08.39**

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8B-144 P495 captures them as they headed towards Little James Street:



8B-145 Finally, P497 shows the group against the wire fence at the GPO car park in Little James Street.

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8B-146 The Guinness Force soldiers acted as responsible escorts. Not one of the numerous photographs of the group of arrestees during their movement from Columbcille Court to Little James Street captures any assault or incident of inappropriate force being used against an arrestee. Similarly, video footage of the same movement discloses no inappropriate treatment. If there has been serious assaults, or sustained or repeated acts of ill-treatment, it is reasonable to assume that those who were present with the object and intention of observing and photographing what was going on would have observed and/or photographed them.

8B-XVI AMMUNITION CHECK

8B-147 Captain 200 later consolidated his men at the northern end of Rossville Street and in the derelict houses bordering William Street. The two Guinness Force call signs rejoined at this stage.¹³³ Sergeant K and Private M confirm that they remained in this area for approximately half an hour.¹³⁴

¹³³ B2017 paragraph E

¹³⁴ B311.019; B361

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8B-148 An ammunition check was conducted during their time there.¹³⁵ It may not have been the first to take place. M recorded in 1972 that there were two, the first

*had taken place shortly after I had shot the two men I described and also another check had taken place in the derelict building.*¹³⁶

8B-149 M was asked at this Tribunal what an ammunition check would normally have entailed:

A. Check the rounds that you had and check what you had left...

Q. Does that mean that the person conducting the check would actually have examined your magazine to see how many rounds were left?

*A. Yes, sir.*¹³⁷

8B-XVII CAPTAIN 200 SPEAKS TO THE SOLDIERS WHO FIRED

8B-150 Guinness Force rejoined their vehicles in William Street and pulled back to the area of the Presbyterian Church and then to Clarence Avenue.¹³⁸ Captain 200 explained in 1972:

*At Clarence Avenue I asked my two Colour Sergeants in charge of the half platoons what rounds had been fired. Having been given a list of the soldiers who'd fired I then spoke to each soldier individually so that I was clear in my mind as to what they had fired and what targets they had engaged.*¹³⁹

8B-151 In oral evidence to this Tribunal, 200 also explained:

... I wanted to know who had fired, from where they fired, at what and anything about hits at that time, but it was a very brief

¹³⁵ B1362

¹³⁶ B361

¹³⁷ Day 365/109/01

¹³⁸ B2022.022; B2022.027 ; B1362; B361

¹³⁹ B2022.027; see also B2022.009 paragraph 53

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*summary at that time because it was dark and we were soon to be on the move again.*¹⁴⁰

8B-152 He noted down in a broadly accurate form the information he received from each of the soldiers that had fired live rounds. He reproduced that information in his statement of February 1972.¹⁴¹

KEVIN MCELHINNEY

8B-153 It is not possible to determine who shot Kevin McElhinney. There is certainly no clear evidence to link either Sergeant K or Private M, whom we represent to his death.

8B-XVIII FORENSIC AND PATHOLOGICAL EVIDENCE

8B-154 There is no forensic evidence to demonstrate from which individual soldier's weapon the single bullet which killed Mr McElhinney came.

8B-155 Nor will the Tribunal be assisted by the evidence of the pathologists in determining which soldier shot Mr McElhinney. The information they provide is of assistance in determining Mr McElhinney's position when shot (bending over or on all fours¹⁴²) and the approximate direction from which the round was fired (behind¹⁴³ or behind and to the right¹⁴⁴) but it goes no further.

8B-XIX CIVILIAN EVIDENCE

8B-156 Much of the civilian evidence relating to the circumstances in which Kevin McElhinney was shot is surprisingly confused, contradictory and unhelpful. It

¹⁴⁰ Day 367/146/02

¹⁴¹ B1983

¹⁴² D0218 (Professor Marshall); E2.0055 (Dr Shepherd and Kevin O'Callaghan)

¹⁴³ D0218 (Marshall)

¹⁴⁴ E2.0054 (Shepherd and O'Callaghan)

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does not assist in determining who fired on him or the circumstances in which he was shot.

8B-157 Many civilians describe the shooting of an individual (other than Hugh Gilmore) as he approached the entrance to Block 1, of the Rossville Flats. Some name him as Kevin McElhinney, others do not.

RUNNING NOT CRAWLING

8B-158 The members of call sign 71A sighted two men who were *crawling* on their fronts towards the entrance to Block 1 of the Rossville Flats. The soldiers' evidence is entirely consistent on this point – and it was not seriously suggested that this part of their evidence was incorrect.

8B-159 Conversely, several of the civilians who describe the shooting of Mr McElhinney suggest that he was *running* at the time he was shot. We set out below examples of this body of evidence, confined to witnesses who specifically identify the person they were observing as Kevin McElhinney.

(1) In 1972, Alex Morrison described how he and Mr McElhinney ran for the doorway together, “We were crouched and running at the same time...Kevin was beside me for the few moments before he was shot.”¹⁴⁵ Kevin McElhinney was his friend¹⁴⁶ and it is difficult to see how Mr Morrison could have been mistaken about that account.

(2) Sean O'Neill saw Mr McElhinney, whom he knew, albeit not as well as he knew Hugh Gilmore,¹⁴⁷ “crouching down and running” south of the rubble barricade, at the western side of block 1.¹⁴⁸ Mr McElhinney was lying on the

¹⁴⁵ AM429.001; see also AM429.002 and now Day 143/150/24

¹⁴⁶ AM429.004 paragraph 2

¹⁴⁷ AO65.009 paragraphs 44 to 45

¹⁴⁸ AO65.009 paragraph 44

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floor by the time Mr O'Neill arrived in the flats.¹⁴⁹ There can, accordingly, be no doubt here either as to the identity of the person whom he had seen running.

(3) Liam Mailey's impression was that Mr McElhinney had been running to get away from the firing.¹⁵⁰ He told Lord Widgery that he "didn't crawl into the doorway, he fell into the doorway from a crouching position."¹⁵¹ He was possibly the fifth or sixth person to come through at this time.¹⁵²

(4) James Norris vividly recalls how Kevin McElhinney entered block 1:

*"Suddenly the doors were flung open and a fella crashed though as though he was in full flight...He was like a drunk who had lost all co-ordination. I moved forward to catch him and I can see it today as if it happened a minute ago. I lowered him to the ground..."*¹⁵³

8B-160 If these civilian witnesses are correct, the persons on whom the call sign 71A soldiers fired did *not* include McElhinney.

CRAWLING ON BACK

8B-161 Some further witnesses give descriptions of a person they saw shot whilst crawling towards the entrance to block 1 *on his back*. For instance:

(1) Christopher Doherty observed a person he believed had already been shot, who "was trying to crawl on his back towards Block 1... He was pushing himself with his feet and was making a lot of effort to move himself while all the time being shot at."¹⁵⁴

¹⁴⁹ AO65.009 paragraph 45

¹⁵⁰ M50.005 paragraph 28

¹⁵¹ M50.045 paragraph A

¹⁵² M50.031 paragraph D

¹⁵³ AN20.003 paragraph 13

¹⁵⁴ AD58.012 paragraph 22

- (2) Professor O'Keefe described a man he saw dragging himself along the pavement towards the doorway. "There was no-one around him. He was in a curious position, half on his back, half on his side, pushing himself with one arm." Professor O'Keefe had the impression that the man had already been shot and believes he was shot for a second time at the doorway.¹⁵⁵
- (3) Eugene Bradley saw a man crawling south along the western side of Block 1 *backwards*. "He was moving almost in a sitting down position and was looking north along Rossville Street to see what was happening there." He was then shot.¹⁵⁶

8B-162 It is impossible to reconcile these accounts either with those of other civilian witnesses or with those of the Guinness Force soldiers. They serve to demonstrate the significant confusion in the civilian evidence of what was taking place in the area to the north of the doorway to Block 1 of the Rossville Flats.

8B-163 Generally speaking, the civilian witnesses are unsure whether the person they saw shot:

- (1) was upright or crawling;
- (2) if he was crawling, whether he was:
 - (a) on his front or on his back
 - (b) moving forwards or backwards; or
- (3) was alone or with others.

8B-164 They also disagree about how many times he was shot.

¹⁵⁵ H21.047 paragraph 17

¹⁵⁶ AB113.002 paragraph 12; and see Day 169/165/05

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8B-XX UNIDENTIFIED, MISSING CASUALTIES

8B-165 The presence of even one unidentified, "missing" casualty in Block 1 of the Rossville Flats would provide some explanation for the otherwise surprising and wholly inexplicable inconsistencies in the civilian and military evidence of the circumstances in which the Guinness Force soldiers fired and Kevin McElhinney came to be shot.

8B-166 As Alan Harkens descended the stairs in Block 1, he saw the body of Kevin McElhinney. He then saw another body nearby:

14. I reached the stairwell at the southern end of Block 1 ... Once I had got into the cover of the stairwell I stood up and walked down the stairs. As I did so I saw two bodies, the first of which was on the first half-landing as I went down the stairs, and the second was on the full-landing on the ground floor.

...

16. I went down to the full-landing, on the ground floor. I looked at the second body which seemed to be propped up against the inside wall of the stairwell. I cannot recall whether there was a coat or a sheet over this body. All I can recall is that the body was again of a young man and he had a pair of boots, which had been taken off and placed beside his feet. I cannot recall whether I looked specifically at his face but I could tell from his shoes and clothes that he was a young fella...¹⁵⁷

8B-167 The identity of the second person is unknown. Mr Harkens is adamant that he has not confused the second body with that of Hugh Gilmore, whose body was outside the southern end of Block 1. The proposition was put to him by Kevin Finnegan QC:

Q. What I want to suggest to you is that the body you seem to recall seeing inside the stairwell on the ground floor, are you with me?

A. Yes.

¹⁵⁷ AH8.004

Q. May well have been the body of Gilmore?

A. Yes.

Q. Which would have been outside and you would have seen, before your attention was then directed to Barney McGuigan; could that have been the position.

A. That may have been the position.

LORD SAVILLE: I am not entirely sure I followed that question, Mr Finnegan, forgive me. The suggestion is, Mr Harkens, that the body you say you saw in the foyer might in fact not have been in the foyer when you saw it, but outside?

A. No.

LORD SAVILLE: That was what you were suggesting.

MR FINNEGAN: Yes.

LORD SAVILLE: I was not sure Mr Harkens entirely followed your question.

MR FINNEGAN: I am obliged to you, sir.

LORD SAVILLE: You can put it again if you like but, as I understand it, you have a clear memory of seeing the body that you have described in the foyer, not outside?

A. Not outside, no.

MR FINNEGAN: How clear are you on that?

A. I did not come out at the front of the Rossville Flats at all.¹⁵⁸

8B-168 Liam Mailey believes that he was brought downstairs to the entrance to Block 1 by news that someone *had been* shot. His presence in the area of the doorway *at the time* that Kevin McElhinney was shot has caused him to question whether the information he first received related to a different, unidentified casualty.

8B-169 He told Eversheds that:

¹⁵⁸ Day 096/024/21

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I know that I went downstairs to the entrance to Block 1 of the Rossville Flats because I had heard that someone had been shot or injured (I cannot recall exactly what was said) and I wanted to see if I could help. However, I believe that I did not see someone who had already been shot or injured but someone who was in the course of being shot. I have wondered therefore whether the person who I had been told was injured and who I went to help, had actually moved or been moved by the time I turned the corner on the small landing on my way down the stairs. In other words it is possible that another person was injured at about the same time as Kevin McElhinney, but I never saw that person.¹⁵⁹

8B-170 It has again been suggested that the information he received first may have related to Hugh Gilmore.¹⁶⁰ There is a real difficulty with that proposition. Photograph **P598** demonstrates that Mr Mailey was already downstairs when Mr Gilmore ran by the doorway. In fact, Mr Gilmore would have been amongst people he saw pass the doorway:

Q. ... Do you think that you actually saw Hugh Gilmore on the day?

A. I certainly saw people running by the door, I remember that, whether or not it was --

Q. You saw somebody running past the door?

A. Exactly, yes, and as that photograph positions me there, then the people who were running by -- Hugh must have been one of them.¹⁶¹

8B-171 Liam Mailey's account therefore provides some further evidence of a missing casualty in the relevant area.

8B-XXI ROUNDS WHICH MISSED

8B-172 Kevin McElhinney was hit by a single round. Three call sign 71A soldiers fired a total of five rounds at two different targets. It would be impossible to determine

¹⁵⁹ M50.005 paragraph 32

¹⁶⁰ Day 163/125/02

¹⁶¹ Day 163/118/07

FS 7.1770

which if any of these five bullets struck Mr McElhinney, even if it were assumed (which it should not be) that he was one of the targets.

8B-173 Civilian evidence confirms that a number of bullets were fired which could not have hit a person; they either struck the road or the door to Block 1. For example:

- (1) Christopher Doherty and Eamon McAteer both saw bullets bounce off the ground around a young man as he crawled south.¹⁶²
- (2) Charlie Downey saw bullets strike the door at the entrance to Block 1, of the Rossville Flats.¹⁶³

8B-174 It was suggested by Mr. McCartney that Kevin McElhinney was the rear crawling man described by the soldiers of call sign 71 A. The rear crawling man sighted by the soldiers had a weapon. If (which is not submitted) Kevin McElhinney was the rear crawling man, it would follow that he was armed.

8B-XXII PHOTOGRAPHIC EVIDENCE

8B-175 The issue of Sector 3 "missing photographs" is addressed in detail in the submissions relating to the Mortar Platoon in Sector 3 (chapter 8A, above). For present purposes, we draw attention, by way of example, to the evidence of Ciaran Donnelly. Several of his photographs of the rubble barricade are missing¹⁶⁴ and the negatives of the only two of (part of) the eastern portion of the barricade that survive have been deliberately damaged. The area on EP27/8 that is partially obscured by scratches includes, according to Arthur Harvey QC, Kevin McElhinney standing on the rubble barricade.¹⁶⁵

¹⁶² AD58.012 paragraph 22; AM41.004 paragraph 26

¹⁶³ AD133.005 paragraph 25

¹⁶⁴ see, for example, Day 071/003/14

¹⁶⁵ Day 047/060/24

FI 7. 1771

PRIVATE L

8B-176 The evidence given by Private L to Eversheds and orally to this Tribunal should be disregarded in its entirety. It is submitted that he is a totally unreliable witness, a man who has evidently had an exceptionally tough life since he left the Army and one which may well have taken its toll on his mental health.

8B-177 The difficulties have arisen since Bloody Sunday and it is not, therefore, suggested that L's 1972 accounts should also be disregarded. That body of evidence will need to be judged on its own merits and in the light of material from other sources, including Captain 200's note of the information he received from L shortly after the event.¹⁶⁶

8B-XXIII SOLDIER L'S STATE OF MIND

8B-178 L told Eversheds:

*I have nightmares and wake up sweating about the horrors I have witnessed during my lifetime for which no counselling or post traumatic stress therapy was ever provided by the army. It may be therefore that certain incidents have been confused...*¹⁶⁷

8B-179 In oral evidence he was asked by Arthur Harvey QC:

Q. Could it be that the nightmares have become more real to you than what happened on the day?

*A. Oh, yes, definitely, yes, I agree with you there.*¹⁶⁸

and further:

Q. And the nightmares that you have, are those recurrent nightmares?

A. Yes, yes.

¹⁶⁶ B1983

¹⁶⁷ B346.009 paragraph 80

¹⁶⁸ Day 381/140/7

FS 7.1772

Q. Do they distort reality for you?

A. I do not think they distort it, they bring it out more visibly, details I missed before, you know, sometimes seem more vivid.

Q. In other words do you have a lot of recovered memories, things that did not seem to be so at the time, but when you have your nightmares, they fall into place for you?

A. Yes.¹⁶⁹

8B-180 The concept that Private L's nightmares have become his current reality is profoundly concerning. It does, however, explain why he described in 2003 incidents he claimed to have witnessed on Bloody Sunday but which he had not referred to in 1972. His accounts of a soldier shooting repeatedly into a body on the ground, of that body later breaking in two as it was lifted up; of recovering pounds of plastic explosive from the rubble barricade; and of watching his colleague INQ 1671 kill a gunman who had just called him a "British Pig", are no doubt the products of a seriously confused and troubled mind.

8B-XXIV THE ACTIVITIES OF SOLDIER H

8B-181 Soldier L suggested to Eversheds that he saw Soldier H firing into a body at the junction of Eden Place and Rossville Street. The incident described did not happen; the account is of interest only because it demonstrates the extent to which he is confused.

8B-182 L explained that he now felt able to discuss it for the surprising reasons that:

"... now I am older and got more control of myself as such, I am in touch with my feminine side of my feelings..."¹⁷⁰

8B-183 He, therefore, described how H approached the body,

"walking up to him and it was like a methodical trance-like marching towards his enemy ...".¹⁷¹

¹⁶⁹ Day 381/148/05

¹⁷⁰ Day 381/057/03

FS 7.1773

before "blasting off rounds from his SLR."¹⁷² L claimed later to have been involved in placing the man's body into a Red Cross Pig:

*I can also remember the fact that we actually put him into a body bag. He fell into two parts as we lifted him and that is not the sort of thing that you forget.*¹⁷³

8B-184 There is, of course, absolutely no evidence to support any of L's contentions relating to this body.

8B-XXV EXPLOSIVES AT RUBBLE BARRICADE

8B-185 L's claim that he retrieved about three pounds of explosives from the Rossville Street rubble barricade provides a further example of his confused mind at work. He gave a detailed account of the supposed incident to Eversheds:

46. It was as I was still running, that I heard Colour Sergeant Soldier 002 behind me shout out, "Hold up Soldier L, the barricade". The sergeant was referring to the risk of explosives within the barricade. I was running at the time in a straight line towards Free Derry Corner; it could have been Colonel Wilford who shouted this order. Whichever one it was, it was a direct order and I therefore had to give up the idea I had of trying to go after Martin McGuinness or finding the house in the area of Free Derry Corner. I dived down where I was, close to the barricade and Colour Sergeant Soldier 002 and Corporal INQ 1671 and another soldier, whose identity I can't recall, came up towards me...and together we began to crawl towards the barricade.

...

48. In the barricade, I found about three pounds of plastic explosives and a detonator cord leading away. I have been made aware, by Eversheds, that others do not recall or recount this, but nevertheless, I remember this incident very clearly, and it did

¹⁷¹ Day 381/056/12

¹⁷² B346.001 paragraph 33

¹⁷³ B346.006 paragraph 53

FS 7. 1774

happen on Bloody Sunday... There was a good 60 feet of cord there¹⁷⁴.

8B-186 The evidence is at odds with everything else the Tribunal has heard, yet L persists in his suggestion that it actually happened.¹⁷⁵

8B-XXVI INQ 1671'S GUNMAN

8B-187 A final example of evidence demonstrating a troubled and confused mind comes with Soldier L's account of INQ 1671 shooting a terrorist in the Rossville Street area. He told Eversheds how he and INQ 1671 spotted the gunman and warned him to stop or they would fire:

He responded to the shout with an obscenity such as, "You British Pig! You bastard!" and he was still attempting to release his pistol from his belt.

8B-188 Consequently, INQ 1671 shot him:

As he released it, Corporal INQ 1671 then fired a shot at him with his rifle from a distance of about 100 to 150 feet. It was the clearest and most precise taking out of the enemy that I ever saw. He fell to the ground, shot in the solar plexus and I believe that he was killed instantly. INQ 1671 had him banged to rights.¹⁷⁶

8B-189 In oral evidence, L maintained that he witnessed this incident and that it occurred on Bloody Sunday.¹⁷⁷ However, the Tribunal will be aware that INQ 1671 was not present in Londonderry as part of 1 PARA on 30th January 1972. There is no statement from him, no other soldier refers to him and he does not appear in the schedule of Support Company (including Guinness Force), according to the

¹⁷⁴ B346.004

¹⁷⁵ Day 381/109/01

¹⁷⁶ B346 paragraph 30

¹⁷⁷ Day 381/047/16

FS 7.1775

Nominal Roll.¹⁷⁸ There is no shred of evidence, other than from Soldier L, to suggest he was there, and contemporaneous documentary evidence that he wasn't.

8B-190 The impression given during his oral evidence was that L, no doubt for complex psychological reasons, had actually come to believe the fantastic stories he told Eversheds.

PARTICULAR ALLEGATIONS

8B-XXVII BRIAN MCCARTNEY

8B-191 Many allegations were ventilated for the first time, and without notice, during the course of the oral evidence. If any of these allegations is maintained by way of final submission, they will, if appropriate, be addressed by way of reply. There are, however, a number of fundamental allegations which can appropriately be addressed at this stage.

8B-192 It was maintained by Mr McCartney on behalf of those he represents both that the inconsistencies in the various military accounts are evidence of untruthfulness and that soldiers conspired after the event to produce consistent accounts of their actions.¹⁷⁹ Those very serious allegations are themselves inconsistent.

8B-193 So, for example, when Mr McCartney questioned Private 032, he focused first on the inconsistencies in the military accounts:

Q. ... Can you give any explanation as to why a group of trained observers, occupying the same location as you, witnessing the same events over the same distance as you, over the same period of time, give such conflicting accounts; can you assist this Inquiry with any explanation as to why that would be?

¹⁷⁸ GEN 8.001

¹⁷⁹ As Mr McCartney put it to Sergeant 014: "There had to be a general and hurried justification given for the event. Let us just say they were armed." Day 372/068/08

FS 7.1776

A. No, I can only say what I saw or what I believe I saw.¹⁸⁰

8B-194 Yet, he next turned to the allegation that 032 had been “unduly pressured” to provide an account that corroborated those of his colleagues:

Q. I am going to suggest to you, 032, that really your evidence then, as it is today, has been influenced by an attempt to justify what was a bad decision by a number of soldiers to open fire on those men; do you understand?

A. I understand, yes.

Q. And I am going to suggest to you that your loyalty, the buddy-buddy system, your loyalty to the Parachute Regiment, your concern for your colleagues, has been a major factor in your interpretation of events that day; do you understand?

A. I understand.

Q. And that you have been unduly influenced to provide an account which misrepresents the reality of what occurred; do you follow me?¹⁸¹

8B-195 This caused 032, not unreasonably, to comment on the conflicting allegations being put to him:

A. ... you say I have been led on by other soldiers and then you say I am the only one with one account, everybody else has a different account.

Mr McCartney: I have no further questions.¹⁸²

8B-196 The main difficulty with Mr McCartney’s thesis is that the very presence of inconsistencies in the military evidence undermines his suggestion that soldiers’ accounts have been tailored to corroborate one another. It is inconceivable that soldiers conspiring together to produce a consistent version of events would produce one with the number of inconsistencies, even as to the fundamental issues, that Mr McCartney suggests are contained in the military accounts.

¹⁸⁰ Day 362/046/08

¹⁸¹ Day 362/047/11

¹⁸² Day 362/048/11

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8B-197 It would have been difficult for the members of Guinness Force to discuss their evidence after the event. Guinness Force was also known as the Composite Platoon because it was made up of a collection of men from many different jobs within the battalion. It ceased to function as a discrete platoon upon the men's return to barracks. Its constituent elements went back to their normal, diverse jobs.

8B-198 The regimental magazine *Pegasus* described how the platoon consisted of:

*Quartermaster's staff, Orderly Room Clerks, Pay Clerks, Bandsmen, off duty Dog Handlers, spare Drummers and not infrequently volunteer drivers and signallers from Command Company...*¹⁸³

8B-199 Members of Guinness Force have explained to this Inquiry:

*The fact is that we were a composite force and, when I got back to barracks, I went with my own section and doing my own job. Some of these people I might not see in barracks again.*¹⁸⁴

and:

*I went back to my normal job that week and I was separated from the rest of the battalion.*¹⁸⁵

8B-200 The differences in the military accounts of what was taking place behind the Rossville Street rubble barricade are explained by the different positions of the soldiers at the Kells Walk walls. Soldiers with a better vantage point could obviously describe more of what was taking place, as has been explained above.

8B-201 Those who maintain that discrepancies in the Guinness Force evidence are significant should also consider the analogous civilian accounts of the shooting of a person some name as Kevin McElhinney as he approached the entrance to Block 1 of the Rossville Flats. As demonstrated above, the witnesses concerned

¹⁸³ R024; Vol 27, No. 1, Jan 1972

¹⁸⁴ Day 299/098/21 (Sergeant 106, Pioneer Platoon)

¹⁸⁵ Day 362/042/11 (Private 032, Motor Transport Platoon)

FS 7.1778

contradicted one another as to whether he was upright or crawling (and, if he was crawling, whether this was on his front or on his back), or whether he was alone or with others at the time. There were also conflicting accounts as to how many times he was shot.

8B-XXVIII RMP STATEMENTS

8B-202 A further ground of criticism which Mr McCartney made of a number of Guinness Force soldiers, was that, having made tentative identification of weapons in accounts which they gave to RMPs, they consciously and dishonestly "firmed up" those accounts in subsequent statements

"APPEARED TO BE" / "LOOKED LIKE"

8B-203 Sergeant 014's RMP statement recorded that:

I saw two men, one dressed in a dark brown suit the other in dark clothing, crawling from a barricade and moving South along the West wall of Block 1 Rossville Flats. The rear man in the brown suit was trailing what looked like a rifle behind him.¹⁸⁶

8B-204 Mr McCartney asked 014 about the terminology employed in his and other RMP statements:

Q. You see, I want to suggest to you that not one of you at the material time had the guts to go so far as to say "he was definitely carrying a weapon"; all of you used expressions such as "appeared as", "looked like".¹⁸⁷

8B-205 The suggestion that it would have taken "guts" to have made a more specific allegation is not understood. The allegation can, in any event, now be seen to have been based on a misconception as to the way in which most RMPs wrote down what they were told.

¹⁸⁶ B1410

¹⁸⁷ Day 372/068/13

FS 7.1779

8B-206 Mr McCartney took a different approach with Private 032:

Q. "What looked like a rifle", in other words, it could have been, for example, a walking stick?

A. No.

Q. It could have been a crutch, it could have been a bit of timber, a bit of metal, but it looked to you like a rifle?

A. Uh-huh.¹⁸⁸

"LONG BLACK STICK SHAPED OBJECTS"

8B-207 In a similar vein, it was suggested by various questioners that the phrase "long black stick shaped objects" used in Private M's RMP statement demonstrated that he had appreciated at the time that he was unable positively to identify the objects being carried behind the rubble barricade as weapons.¹⁸⁹

8B-208 In this instance, the questions were posed even though the same statement went on to refer to the fact that:

the door location [the crawling men] were heading for was a good sniper location where they could have shot a number of troops advancing towards the barricade.¹⁹⁰

8B-209 They were certainly not going to do so with a couple of sticks. Private M told Eversheds he would not have used such language:

I would have been quite firm in that interview that the two men were carrying what I was sure to be weapons.¹⁹¹

8B-210 He said in oral evidence:

I can only assume that that is the way that the RMP, who took the statement, described it.¹⁹²

¹⁸⁸ Day 362/040/23; this allegation has been considered above in relation to Kevin McElhinney.

¹⁸⁹ B348

¹⁹⁰ B348

¹⁹¹ B372.007 paragraph 42

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EVIDENCE OF RMP/SIB INVESTIGATORS

8B-211 M was right. Corporal Brobson, who took M's RMP statement, agreed that the phrase might indeed have come from him.¹⁹³

8B-212 The issue was put beyond doubt by the evidence of WOI Wood, the senior Special Investigation Branch NCO. He explained that it was RMP policy when taking statements to remove soldiers' specific references to weapons. He gave the reason for this:

The soldier would say it was a rifle. He was quite clear it was a rifle from the outset. We had had situations put to us that the man may well have been carrying a walking stick in an unorthodox manner, or whatever. If we had said in the statement that the man was carrying a rifle when he was first seen at some 100 yards or whatever, someone would say what sort of rifle was it, bolt or piston-operated, did it have a long or short magazine, straight or curved magazine -- if the soldier said it was this or that or the other, then the accusation would be that he had the eyes of an eagle and that was totally impossible. If he said he could not remember it had a long or straight magazine, the question would come back that he was obviously mistaken and therefore it must have been a walking stick.

...

So we adopted the position that what was seen was a long straight object, if it was talking about a rifle. If it was a hand gun, then obviously we had a different terminology for that. If it was a blast bomb, we had different terminology for that...¹⁹⁴

8B-213 The Guinness Force soldiers therefore should not be criticised for the use of language in their RMP statements that fell short of the positive identification of a weapon.

¹⁹² Day 365/096/10

¹⁹³ Day 275/124/12

¹⁹⁴ Day 383/150/44

FS 7. 1781

8B-214 See further in this regard the general submissions relating to the RMP statement taking process in chapter 2B above.

PRIVATE C AND LANCE CORPORAL D

8B-XXIX INTRODUCTION

8B-215 The rounds fired by C and D cannot have hit any of the known Bloody Sunday deceased or wounded.

8B-216 Private C from call sign 71 A and Lance Corporal D from call sign 71 both deployed to the balcony of the Kells Walk building at a late stage in the proceedings; it was certainly after all of the known deceased and wounded had been shot.

8B-217 Once there, C targeted a gunman to the southern end of Block 1 of the Rossville Flats. The presence of this gunman in this area at this time corresponds with civilian evidence of armed men arriving in the area of the Bogside Inn and moving north in the direction of the soldiers.

8B-218 C and D both then engaged a gunman with a pistol in Block 1 of the flats. There is strong civilian evidence that at least one pistolman had already been active in that block.

8B-XXX MOVEMENTS OF SOLDIERS C AND D PRIOR TO TAKING UP POSITIONS AT KELLS WALK

SUMMARY

8B-219 The Guinness Force lorries entered the Bogside towards the end of the line of 1 PARA vehicles and halted at the northern end of Rossville Street.

8B-220 As part of call sign 71A, Soldier C deployed initially to the *east* side of the Rossville Flats waste ground and covered a considerable distance on foot. He moved South down the back of the Chamberlain Street houses, crossed the mouth

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of the Rossville Flats car park to the north end of Block 1 and then went to the north east corner of Columbcille Court.

8B-221 C was then ordered to escort to Little James Street those arrested by the Anti Tank Platoon in Glenfada Park North.

8B-222 As part of call sign 71, Soldier D started to deploy west but was quickly handed an arrestee to take North to the holding area in Little James Street. As he did so, he joined up with C and others taking the prisoners arrested by the Anti Tank Platoon to the same destination.

8B-223 Only at this stage did C and D rejoin their platoon and deploy to the balcony at Kells Walk.

PRIVATE C

8B-224 As part of call sign 71 Soldier C was deployed to the east side of Rossville Street. The lengthy route he then followed is set out in a statement he made in 1972:

The officer in charge of our force ordered us to work our way round the walls on the edge of the open ground and to assemble at the near end of block 1 of the Rossville buildings...

... By the time we reached the end of the Chamberlain Street wall the civilians had run past the barricade on the other side of block 1, and most of them had left the car park off the Rossville Building though I could still see some moving on its far side ... When I got to the car park end of the wall I remember seeing one of our men (I do not remember who) standing by the pig in the car park fire a shot at the far corner between blocks 2 and 3. As he did this I was running across to the end of block 1.

There one of the sergeants sent the whole force to the William Street end of the front of Columbcille court. From there half a dozen of us took a party of about 20 prisoners back to a collection point.¹⁹⁵

¹⁹⁵ B68.016

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8B-225 It is possible to trace Private C's movements in footage taken by various camera crews on the day and it would appear that the detailed account which he gave was wholly accurate.

8B-226 An ITN crew captured C and his colleagues as they crossed from the North end of Block 1 of the Rossville Flats to the west side of Rossville Street. The video still extracted below shows a group of soldiers, some of whom are wearing helmets with visors, crossing the road at a time when the Ferret and Support Company Command vehicle had moved to the north end of Block 1.¹⁹⁶ The only members of 1 PARA to deploy to this part of the Bogside with visors on 30th January 1972 were members of Guinness Force.¹⁹⁷



8B-227 A camera crew from the BBC very probably captured the same soldiers moments later, as they moved north up Rossville Street, past the Kells Walk walls. The still reproduced below demonstrates that at this stage:

- (1) no soldiers remained in the area of the Kells Walk walls, and

¹⁹⁶ V3/04.27

¹⁹⁷ B2022.054

FS 7.1784

(2) the arrestees from Glenfada Park North had already been brought through to the Columbcille Court car park. They can be seen through the archway.¹⁹⁸



8B-228 The same soldiers were filmed by an ABC crew as they moved up Rossville Street, as the still below demonstrates.¹⁹⁹

¹⁹⁸ V1/05.33

¹⁹⁹ V48/11.29

FS 7.1785



8B-229 Private C went to the northern end of Columbcille Court where he was ordered to help escort a party of about twenty prisoners, those arrested by Anti Tank Platoon, to the collection point in Little James Street.²⁰⁰

8B-230 The group of arrestees is captured in P493 as it was taken north from Columbcille Court.



²⁰⁰ B68.016 paragraph 8. B68.021 paragraph D

FS 7.1786

8B-231 C remained with the prisoners until their arrival at the collection point.²⁰¹

8B-232 By the time these prisoners had been arrested, all the known dead and injured had already been shot. As Arthur Harvey QC put it when questioning C:

*... by the time those persons had actually been arrested, everyone who had been shot and killed on Bloody Sunday had already been shot and killed. The bodies of people who had been shot at the barricade had already been collected. Those prisoners were eventually arrested by the persons or the group of persons who fired the last shots, including F.*²⁰²

LANCE CORPORAL D

8B-233 On debussing, Soldier D went to the right hand side of Rossville Street.²⁰³ Shortly thereafter, he was handed an arrestee, whom he took to the holding point. In 1972, he gave a detailed account of the time he was engaged with the detainee:

*It was not my task to act as prisoner escort but as I had one I escorted him over to the buildings on the opposite side of Rossville Street. I was then told to take him round the corner just into William Street and we waited there for a short time. There were another 3 prisoners there with 2 troops as escorts. After about 5 minutes there a larger party of about 15 prisoners brought up and taken past our building over the crossroads and up Little James Street. We were told to take our prisoners with them and I escorted mine up Little James Street where I handed him over to our Regimental Police escort.*²⁰⁴

8B-234 D told the RMP that it was approximately ten minutes after receiving his prisoner that he handed him over to the battalion Provo staff; ²⁰⁵ Arthur Harvey QC commented:

Q. That part of your statement is undoubtedly true although you cannot be seen in the photograph; is it not?

²⁰¹ B68.016 paragraph 8

²⁰² Day 354/111/10

²⁰³ B85.002 paragraph 12

²⁰⁴ B85.023 paragraph 5

²⁰⁵ B85.020

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A. Yes.

Q. That it was after a period when all of the persons who had been arrested at the gable end of Glenfada Park North had been brought to the junction of William Street / Rossville Street, taken from there to Little James Street. You then went over, handed over your prisoner and made your way back; is that not correct?

A. That is correct.²⁰⁶

8B-235 D, like C, did not, therefore, return to Rossville Street and take up a position at Kells Walk until after all the known deceased and injured had been shot.

8B-XXXI DEPLOYMENT TO KELLS WALK

TAKING UP POSITION ON KELLS WALK BALCONY

8B-236 Having handed over their prisoners at the collection point, Private C and Lance Corporal D rejoined their sections in the area of Kells Walk.²⁰⁷ They were ordered to take up positions of cover on the Kells Walk balcony.²⁰⁸ They reached the balcony by means of the stairs at the north end of the block.²⁰⁹

8B-237 Photograph P269 shows the balcony, taken from the pram ramp to its south.

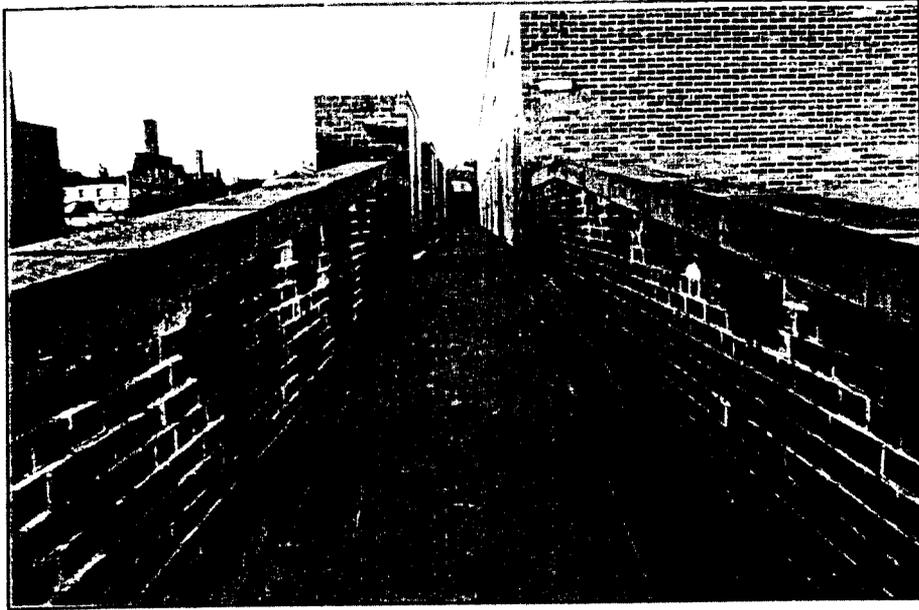
²⁰⁶ Day 355/045/24

²⁰⁷ B68.022 paragraph A; B85.023 paragraph 5

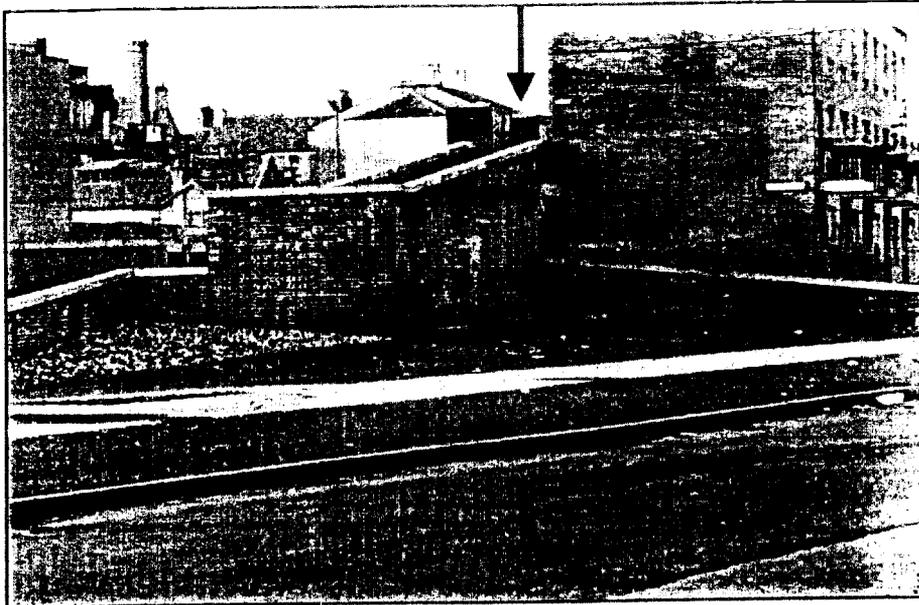
²⁰⁸ B68.022 paragraph B; B85.023 paragraphs 5 to 6 and Day 355/014/22

²⁰⁹ B68.28 paragraph B; B85.004 paragraph 18

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8B-238 The arrow in photograph EP23/7, below, shows the position at the southern end of the balcony ultimately taken up by C and D. The photograph was taken before their arrival there.



8B-239 C and D arrived at the balcony at approximately the same time. D initially remained half way along, checking doorways and keeping an eye on the buildings

7. 1789

in the surrounding area.²¹⁰ C got to its southern end first, having passed D on his way down.²¹¹ C's evidence is that he engaged his first target and had already begun to engage his second target by the time that D joined him at the end of the balcony.²¹² This corresponds with D's account, which was that he heard low velocity gunfire and heard C return fire before joining him.²¹³

Private C

8B-240 Much has been made of C's evidence to Lord Widgery that he was lying down when he fired from the balcony (by Mr Hill at the Widgery Tribunal and by Arthur Harvey Q.C. at the present Tribunal).²¹⁴ It has been suggested that photographs taken by the Derry Journal's Larry Doherty demonstrate that C could not have fired at his targets (including one to the south of Block 1 of the Rossville Flats) from a *lying* position because the wall surrounding the balcony would have obscured his vision and line of fire.²¹⁵

8B-241 It is not clear how far such points actually take those who make them. It is neither disputed that C deployed to the south end of the balcony, nor that he fired from that location. Indeed, Mr Harvey specifically suggested to C that he fired from there at a target south of Block 1.

8B-242 There is, of course, a danger in relying on photographs such as those taken by Mr Doherty to judge exactly what C would have been able to see whilst lying down. Discussing Mr Doherty's **P71** in opening, Christopher Clarke Q.C. correctly suggested that much would depend on whether the photographer's position when taking the photograph correlated precisely with that of C at the relevant time. Mr Clarke stated:

²¹⁰ **B85.004 paragraph 18; B85.024 paragraph 6;**

²¹¹ **B85.024 paragraph 6**

²¹² **B68.013; Day 354/125/07**

²¹³ **B85.024 paragraph 6**

²¹⁴ **B68.028 paragraph E**

²¹⁵ **B68.025 paragraph E; Day 354/132/13**

FS 7.1790

... it is not clear, at least to the untutored eye, to what extent a minor alteration in his position further south or west or further above the ground would make a crucial difference.²¹⁶

8B-243 C made similar observations about the photograph when asked about his line of vision for his first target, at the southern end of Block 1:

I do not think we are getting the full, true picture out of that photo.²¹⁷

8B-244 He did, however, agree that it was unlikely he could have seen his second target, who was actually in Block 1, from a lying position.²¹⁸ His account to Eversheds was that:

I cannot recall now whether I was kneeling or lying down at the time. I probably crouched down to take cover when I was in danger and then stood up to fire towards the window.²¹⁹

8B-245 Dealing with his evidence to Lord Widgery, C said:

At that time I probably did not explain myself very well. I probably lay down during the sound of incoming fire and then rose to a standing position when I was ready to shoot back. To get from a lying to a standing position I had to kneel.²²⁰

8B-246 Private 024 was sent up to the balcony by Sergeant 014 and was present when Soldier C fired at his second target. 024 confirms that:

... C moved round and took aim at a man who was hanging out of the window of a 3rd floor flat in Rossville Flats.²²¹

8B-247 Soldier D confirms that Soldier C was not lying down when he fired at this target.²²²

²¹⁶ Day 023/045/10

²¹⁷ Day 354/048/12

²¹⁸ Day 354/051/01

²¹⁹ B68.004 paragraph 16

²²⁰ B68.006 paragraph 43

²²¹ B1527; B1529

FS-7-1791

8B-248 It cannot sensibly be suggested that the precise position in which Soldier C was at the time he fired is relevant to any material issue which the Tribunal has to decide. He has always admitted being present in that location and firing live rounds from there. Even if he was wrong in the account which he gave of his precise stance or position, it is not an issue that might reasonably be said to go even to credibility.

8B-XXXII GUNMAN AT SOUTH END OF BLOCK 1 OF THE ROSSVILLE FLATS

8B-249 The first gunman Private C engaged was located at the southern end of Block 1 of the Rossville Flats.²²³ His account in the statement he gave to Widgery Tribunal lawyers was as follows:

As I watched the Rossville building I saw a man. What caught my attention was the sound of a shot. The man was at the far end of block 1 and I think he had come out of an opening at the end of the building or round the corner. He was in the aim position and I could see what looked like a weapon in his hands. I could distinguish the shape of the magazine and think it was a klenicov (sic) or a weapon of that kind. My weapon was already cocked and I came into the aim. Before I could get a shot at him he went back. Then he came out a second time. I took aim at him but did not immediately fire. Then he fired 2 shots, and I fired two rounds at him. The man jerked backwards and his weapon went into the air as he did so. I saw him closely at that moment. The position of this gunman is marked 2 on my photograph, but the marking is not perfectly exact because I am not sure whether he came into sight round the corner or out of the doorway.²²⁴

8B-250 Soldier C has subsequently told Eversheds that:

It is very difficult to say whether you have hit someone after you have fired at them; it's difficult to tell when looking through a sight from the distance and angle I was firing at. I would still have been guarding myself from other possible gunfire.²²⁵

8B-251 He was able to give this Tribunal an additional detail during his oral evidence:

²²² B85.004 paragraph 19

²²³ B68.012; B68.016 paragraph 9; P004; B68.022; B68.003 paragraph 11

²²⁴ B68.016

FS 7.1792

*... I can still remember the image of the man coming round with the coat, like the Crombie coat on, and the weapon coming out of the coat as if it was being hid under the coat.*²²⁶

CIVILIAN CORROBORATION

8B-252 C's evidence about his first target is supported by the many civilians who have spoken of IRA gunmen arriving in cars in the Bogside Inn / Westland Street area shortly after the main episode of military firing. They were seen making their way north on foot towards the troops in Rossville Street. These gunmen did not simply disappear into a vacuum. The timing of their arrival corresponds with the timing of C's engagement.

The Arrival of Gunmen in the Area of the Bogside Inn

8B-253 Michael Harkin referred to IRA men armed with a variety of weapons arriving in cars a short time after the main shooting, who then moved off in the direction of the soldiers:

*... The man with the revolver went in the direction of the British tps. Within a few minutes the car arrived back with another car. There were about 6 or 7 men in the cars and they were all armed – Thompsons – Revs. and a Rifle. One of the men said "We will give covering fire to the people in order to let them out". They went off in the direction of the Brit tps.*²²⁷

8B-254 Bernard Heaney saw six to eight men get out of cars which stopped close to the Bogside Inn:

*The men ran in a north easterly direction, through the houses up towards Free Derry Corner and Rossville Street.*²²⁸

8B-255 Tony Quigley told Eversheds he had seen a man carrying a rifle near the Bogside Inn. The gunman said that he was going to take on the British Army.²²⁹

²²⁵ B68.005 paragraph 35

²²⁶ Day 354/034/24

H 7. 1793

8B-256 Whilst in Westland Street, Noriyuki Kunioka saw a man with a rifle coming from behind a block of flats and heading towards Rossville Street.²³⁰

8B-257 Michael Havord gave evidence of seeing a car arriving in Westland Street thirty minutes after the first shots had been fired:

*Four boys jumped out. They were wearing balaclavas and carrying guns which I think were Enfield .303s. I got the impression they had just rushed down from the Creggan... The crowd of people cheered them and called out to go and get them.*²³¹

8B-258 The gunmen headed towards Free Derry Corner. Havord did not personally witness any of them fire but said he would be very surprised if they had not.²³²

Hiding Weapon under Coat

8B-259 Private C's recollection that the gunman produced the weapon from under his coat finds further support in the civilian evidence.

8B-260 James Donal Deeney saw a group of two or three 'stickies' coming out of a house in the area of Meenan Square.

*One guy looked particularly tense and said that he was going to take up a position in the Bogside. I only recall seeing one rifle, which the man had been hiding under his coat.*²³³

8B-261 Similarly, Kevin Clifford recalls that he was with his uncle Leo when they both saw a gunman:

...I remember seeing a guy with a gun, but I think I saw him near the Bogside Inn, south of Free Derry Corner and around the

²²⁷ AH25.003

²²⁸ AH52.004 paragraph 21

²²⁹ AQ7.004 paragraph 18

²³⁰ M48.002

²³¹ AH46.012 paragraph 21

²³² X4.013.042

²³³ AD26.007 paragraph 30; Day 086/065 to Day 086/066

FS 7.1794

junction of Westland St and Lecky Rd. He was coming up (northwards) from between Free Derry Corner and the Bogside Inn. The man was hiding the gun on his right hand side under his coat or jacket as if he was trying to disguise it. I don't know what sort of gun it was, but it was not big enough to be a rifle... The man was walking on his own amongst all these people and only stood out because you could see the gun he was trying to hide and people were saying he was a stickie. I couldn't describe the man, he was young enough, but I had never seen him before that day and I've never seen him since.²³⁴

Firing at Troops in Rossville Street

- 8B-262 The gunmen who arrived in the Bogside Inn area with their weapons would appear, therefore, to have been intent on engaging the British Army. They did just that, as the evidence the Tribunal has received in relation to Reg Tester, an OIRA Command Staff member, indicated.
- 8B-263 Mr Tester admitted to the Sunday Times in 1972 that he had fired a round from an M1 carbine at a soldier in Rossville Street. The journalist's note records that the soldier was standing next to the Pig which had been sent to collect the three bodies from the Rossville Street barricade.²³⁵ We do not suggest that Mr Tester is the man engaged by C, but this evidence demonstrates that members of the IRA were targeting soldiers in the area of Rossville Street after the close of the main episode of firing.
- 8B-264 Leslie Bedell gives further evidence of rounds being fired up Rossville Street by gunmen who had arrived by car.²³⁶
- 8B-265 The Sunday Times Insight material also includes the note of an interview with "Brendan O'Connor". Mr. O'Connor disputes that he gave such an interview but

²³⁴ AC67.002 paragraph 12

²³⁵ S035-036; S041; Day 190/098

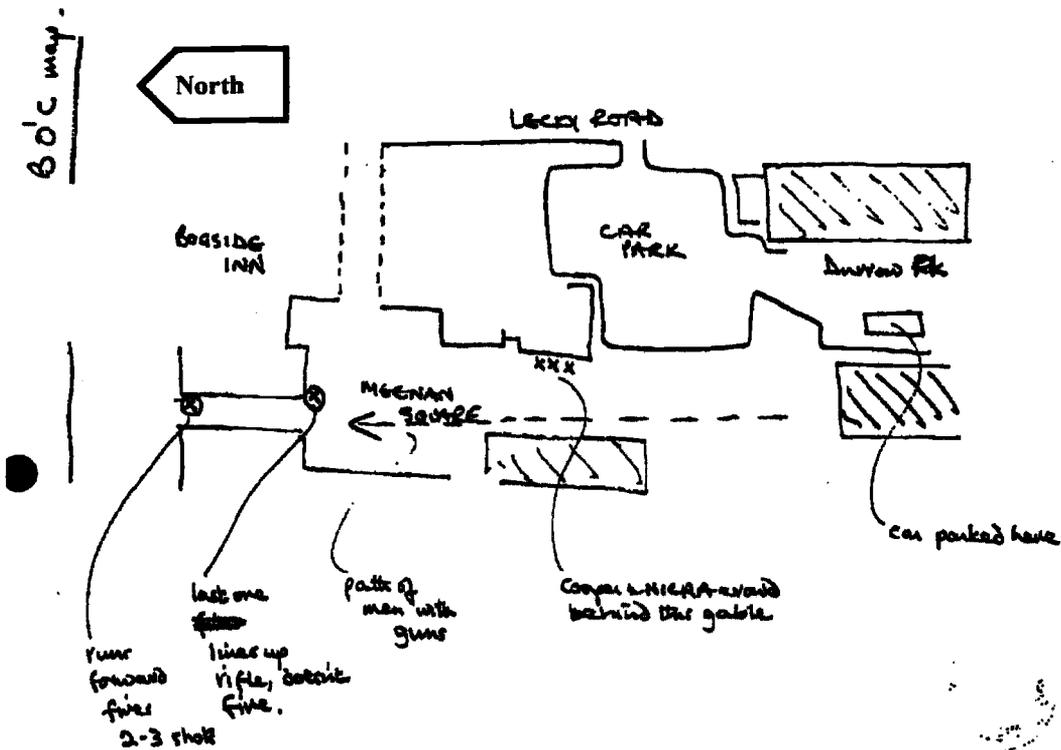
²³⁶ AB28.12 paragraph E

FS 7.1795

adds that his twin brother Ciaran matches other descriptions of the interviewee contained in the note.²³⁷

BOC saw three-four runs past with carbines... Says they all vanished across Westland Street (Fahan St?) except the last, who stood with his rifle aimed at the corner of Meenan Sq behind the Inn, pointing northwards, for a bit - then ran up to the corner on the street, fired 2-3 shots, then made it across the road towards the flats at the bottom of W[estland] St where his fellow had gone. BOC heard perhaps 5-6 shots after that ...²³⁸

8B-266 A map attached to the note demonstrates the gunmen's movement north in the direction of the Rossville Flats.²³⁹



²³⁷ AO10.010 paragraph 76

²³⁸ AO10.011

²³⁹ AO10.013

FS 7. 1796

MILITARY CORROBORATION

8B-267 Private 023, of 22 LAD RA, may have witnessed C's first engagement.

8B-268 He was stationed in the Peter England Shirt Factory in Little James Street. In his statement to the Widgery Tribunal he described seeing a man appear from the southern end of Rossville Flats Block 1 of the Rossville Flats with a rifle, which he aimed towards soldiers in Rossville Street:

I heard the sound of a shot as he fired. The man went back behind the wall and reappeared a couple of minutes later...I heard the sound of a shot from his rifle. Before I could shoot I heard the sound of a high velocity shot and the man jumped back in the air and fell. A crowd gathered round this man and carried him away.²⁴⁰

8B-XXXIII GUNMAN IN BLOCK 1 OF THE ROSSVILLE FLATS

8B-269 Soldiers C and D both sighted, and fired rounds at, a gunman with a pistol in block 1.

PRIVATE C

8B-270 Within a minute of engaging his first target, C saw a second gunman in the Rossville Flats.²⁴¹

8B-271 C gave a very detailed account of what he saw to the lawyers of the Widgery Tribunal.

- (1) The gunman appeared at a window on the third storey on the west side of Block 1:

As I continued observation I saw the flash of a window being opened in block 1 in the position shown approximately on the photograph marked 3. The window was pivoted upwards as it opened. I saw a man holding the window open with his right hand.

²⁴⁰ B1522; see also B1525.001 paragraph 26; B1525.002 paragraph 31

²⁴¹ B68.023 paragraph C and see Day 354/059/23

FS 7. 1797

*He placed his left forearm across his right arm and appeared to me to be aiming a pistol held in his left hand. I heard a shot being fired and corresponding with that shot I saw his hand kick as if he had just fired.*²⁴²

- (2) C was sure that the man held a pistol and not a camera:

*I could not at that range distinguish the weapon very clearly, and I did not see a muzzle flash. I am however quite certain that he was not holding a camera, not even the kind of camera that has a pistol grip.*²⁴³

- (3) C fired a single shot but it missed the window altogether:

*I fired one round at the man with the pistol. This shot hit the wall just above the top right hand corner of the window, I remember seeing a puff of dust from the masonry. After I had fired the gunman vanished from sight and I think the window closed some way but not completely.*²⁴⁴

- (4) It was at this stage that he was joined by Lance Corporal D:

*... I told him what I had been firing at. He watched the window with me. I saw the window move again. I'm sure it was the same window. The window opened and I saw the gunman again.*²⁴⁵

- (5) C fired two further shots:

*I immediately aimed and fired at him and as I did so he fired 2 quick shots himself. My first round went through the window missing the gunman I fired again and this time I think I hit him in the chest or arm. The gunman was standing partly behind the half open pivot window, and his left side was behind the glass. I saw a hole in the glass in the area behind which his left arm or chest would have been and I think my bullet went through the glass and hit him in this area.*²⁴⁶

²⁴² B68.017 paragraph 10

²⁴³ B68.017 paragraph 10

²⁴⁴ B68.017 paragraph 10

²⁴⁵ B68.017 paragraph 11

²⁴⁶ B68.017 paragraph 11

FS 7. 1798

(6) D fired at the same time.²⁴⁷

8B-272 C accepts it is impossible to say whether in fact he hit his target:

...I could not tell whether I had hit him or not...I did not see nobody fall to the floor but they might have jerked back in the way, to get out of the way of the bullet or have been hit.²⁴⁸

LANCE CORPORAL D

8B-273 D heard the beginning of this exchange. As he stood half way along the Kells Walk balcony observing Columbcille Court, he heard low velocity gunfire, followed by C's round. He joined C at the end of the balcony.²⁴⁹

8B-274 D also gave a detailed account of what then took place, to the Widgery Tribunal lawyers.

(1) He spotted and engaged the gunman, his first round missing the window:

C pointed out a window in block 1 indicated on my photograph at X. I was positioned at the other end of the line marked 2. As I watched I saw the window open a little from the bottom and a hand with a pistol came out. I saw the kick of the pistol firing and heard the sound but could not distinguish a muzzle flash. It was not aimed at us, but was aimed at the ground below. I cocked my weapon and fired one round which struck the framework or wall near the pistol to one side of the window.²⁵⁰

(2) It was D's recollection that the arm withdrew, to return shortly afterwards to the same window before firing again. C and D both fired at him again.²⁵¹

(3) D, like C, was confident that he engaged a gunman and not a photographer:

²⁴⁷ B68.017 paragraph 13

²⁴⁸ Day 354/054/08

²⁴⁹ B85.024 paragraph 6

²⁵⁰ B85.024 paragraph 7

²⁵¹ B85.024 paragraph 8

FS 7.1799

The gunman had fairly long hair and a dark jumper. I am quite sure this man was holding a pistol and not a camera.²⁵²

DETERMINING THE GUNMAN'S LOCATION

8B-275 Private C told the RMP that his second target was located on the third storey of Block 1 at the fourth window from the right.

8B-276 The Tribunal is able to refer to a plan of Block 1, below.²⁵³

LONDONDERRY "ROSSVILLE" SECTRA FLATS - LAYOUT.
BLOCK I

FLOOR		23 X	22	18	17	12	11	7	6	1 X	DONAGH									
JEREMY	9th	ACCESS LEVEL	24 X	21	16	13	10	5	2 X	PLACE	WIL									
	8th	BAY	23	20	19	15	14	9	8	4		3 X								
STREET	6th	ACCESS LEVEL	24	21	18	17	12	11	7	6	1 X	MURA								
	5th	ACCESS LEVEL	25	22	17	16	13	10	5	2	PLACE	STR								
END	4th	ACCESS LEVEL	26	23	20	15	14	9	8	4	3 X		EN							
	3rd	ACCESS LEVEL	17	16	13	12	9	8	5	4	1 X	GARVAN								
		2nd	ACCESS LEVEL	18	15	14	11	10	7	6	3	2	PLACE							
		1st	ACCESS LEVEL	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	ROSSVILLE
		0th	ACCESS LEVEL	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	GARVAN

8B-277 C's RMP description would put the gunman in the area of 12 Garvan Place. It is important to note that the north end of Block 1 is on the right hand side of the plan (see the partially obscured "William Street end"). The fourth window from the right as it appeared to C therefore equates to the fourth window from the left on the plan.

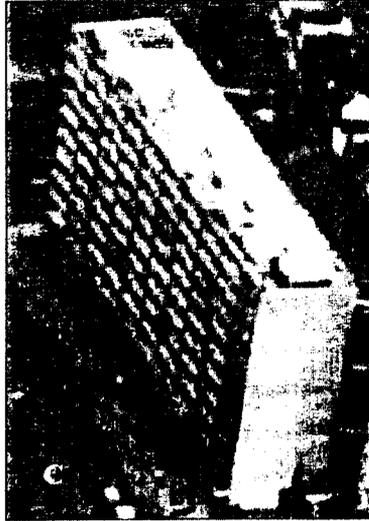
8B-278 The locations of the gunman targeted by C and D were marked on the photographs submitted to the Widgery Tribunal.²⁵⁴

²⁵² B85.024 paragraph 9

²⁵³ GEN 3.012

²⁵⁴ P004; P005

FS 7.1800



8B-279 Referring once again to the plan, it is possible to determine that the photographs put the gunman in the area of 8 Garvan Place. The description of a location and the marking of a photograph are not exact sciences, especially when one is dealing with a tall block of flats, after the events concerned. In consequence, it is not possible to say with certainty at which window C and D fired. The best that can reasonably be concluded from their 1972 evidence is that they engaged a gunman somewhere in the region of 8 to 12 Garvan Place.

12 GARVAN PLACE

8B-280 The evidence of C and D is that they fired at a gunman, not at a photographer. Their evidence should be viewed in the light of compelling evidence from civilian witnesses that at least one gunman with a pistol was indeed active in Block 1 of the Rossville Flats.

8B-281 Fulvio Grimaldi claims that shots were fired at a window in a maisonette on the western side of Block 1, from which he had been taking photographs. The Tribunal has evidence showing that the maisonette in question was 12 Garvan

PS 7.1801

Place.²⁵⁵ In those circumstances, it must be possible that C and D targeted Mr Grimaldi, honestly mistaking his camera for a pistol.

8B-282 Indeed, Grimaldi was asked at the Widgery Tribunal:

Q. Has it ever occurred to you that by pointing that camera out of the window at the side of the window you were in fact pointing something that looked like the muzzle or could be the muzzle of a weapon?

*A. Yes.*²⁵⁶

8B-283 We make the following submissions in relation to the shooting at 12 Garvan Place:

(1) It is possible to reach an accurate conclusion as to its timing. The shots were fired shortly before 16:44 hours and therefore certainly long after all of the known deceased and wounded had been shot.

(a) Fulvio Grimaldi and Susan North entered 12 Garvan Place after having already seen the bodies of Paddy Doherty, Barney McGuigan, Hugh Gilmore and Kevin McElhinney.²⁵⁷ Mr Grimaldi proceeded to take photographs from the window looking out over Rossville Street. Susan North had with her an audio tape recorder, which she activated as soon as gunfire was directed at the maisonette. The tape, and a transcript made from it, are in the possession of the Tribunal.²⁵⁸

(b) The television was turned on in the maisonette and can be heard on the North tape in the background. Miss North, therefore, recorded an Army recruiting advertisement shortly after the last

²⁵⁵ AM152.001 paragraph 1

²⁵⁶ M34.049 paragraph F

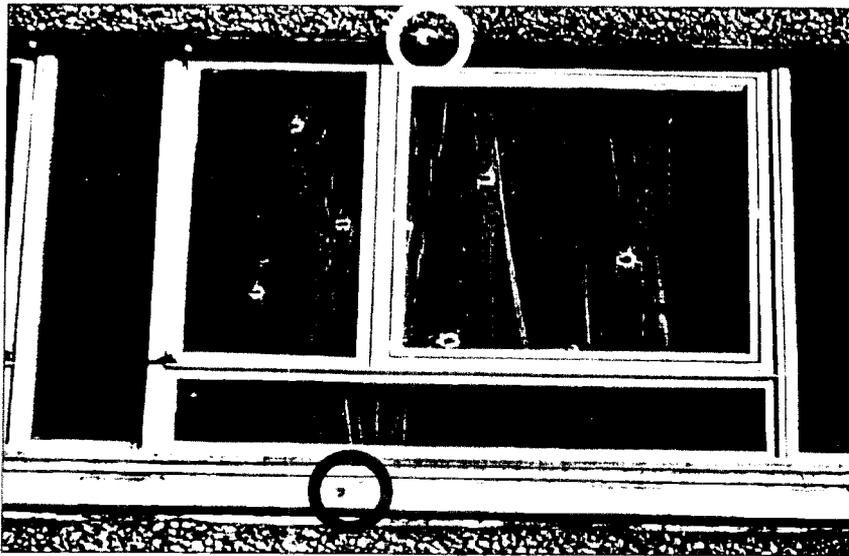
²⁵⁷ M34.062 paragraphs 62 to 75

²⁵⁸ A9; E3.030

FJ 7.1802

of the shots at the maisonette had been fired. The Sunday Times discovered that the commercial was aired at 16:44 hours.²⁵⁹

- (2) Larry Doherty's photograph EP35/1, below, shows six bullet holes in the window of 12 Garvan Place. The photograph suggests that two further rounds may have missed the window pane, one hitting the ledge below the glass and the other hitting masonry above (circled). The six to eight bullet holes exceed the number of rounds fired at their target by Soldiers C and D (five).



- (3) If the Tribunal nevertheless finds that C and D fired at 12 Garvan Place, the number of bullet holes is explicable by the fact that a soldier or soldiers in another position also targeted the window (F and G were amongst the soldiers who also fired into the west side of Block 1). If this is the explanation of the additional bullet marks, it is significant that soldiers in different positions independently, if mistakenly, believed that there was a gunman at the window.

²⁵⁹ PIN 0307

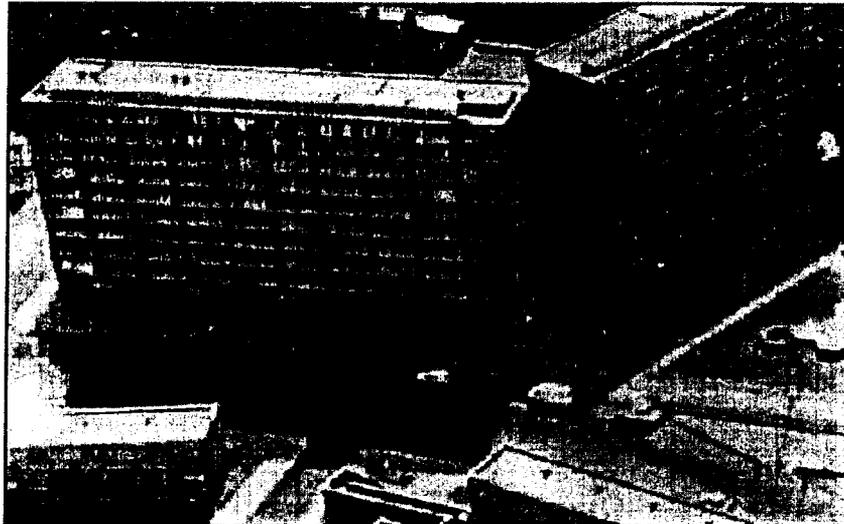
FS 7.1803

ROUNDS DIRECTED AT OTHER BLOCK 1 WINDOWS

8B-284 It is not possible to say at which window C and D fired.

8B-285 It would be wrong to conclude, simply because there is no *photographic* evidence of other windows containing bullet holes on the west side of Block 1, that they must have targeted 12 Garvan Place

- (1) Bullet holes in other windows would not necessarily have been obvious or indeed visible to people in the street below. The Rossville Flats comprised large buildings, as the part of P198 extracted below demonstrates in respect of Block 1 and 2.



- (2) Furthermore, the occupier of a flat or maisonette from which a gunman had actually been firing is unlikely to have volunteered any information about that, or about any rounds that had been returned by the Army.

8B-286 There is in fact evidence that bullets were fired through other windows on the west side of Block 1 on Bloody Sunday.

FS 7.1804

- (1) Kathleen Hutton (aka Carlin²⁶⁰), a visitor to 8 Garvan Place, says that as she opened a window onto Rossville Street and shouted to a priest, soldiers below fired three or four shots up into the flats. She assumed the shots had been fired at her, but accepted they may have been fired at a target above her head.²⁶¹ She had the impression that the shots hit a window of a flat above, rather than to the side, of her location.²⁶² It is plain from the plan of Block 1 that this could not have been 12 Garvan Place.²⁶³
- (2) A bullet also came through the window of Kathleen Cunningham's maisonette. It has been suggested this was in 3 Garvan Place,²⁶⁴ which is in Block 1.²⁶⁵ Other information received by the Tribunal calls that address into question and places the maisonette in Block 2. Nonetheless, the Fianna's Gerry O'hEara's evidence strongly suggests he was looking out of the western side of block 1 of the Flats – he was looking into Rossville Street – when a shot came through the window and injured Patsy Brolly who was next to him at the time.²⁶⁶ O'hEara's suggestion that this was a rubber bullet is in contrast with that of both Mr Brolly and his wife, Celine.²⁶⁷

CIVILIAN CORROBORATION

8B-287 There is compelling civilian evidence that a gunman or gunmen were active in Block 1 of the Rossville Flats.

8B-288 Monica Barr saw a gunman fire from Block 1 with a pistol. She was witnessing events from Chamberlain Street. She gave an account to Eversheds that has much in common with accounts given by Soldiers C and D of their pistolman:

²⁶⁰ X4.005.001.

²⁶¹ Day 189/063

²⁶² Day 89/065/04

²⁶³ GEN 3.012, *infra*

²⁶⁴ AC156.001 paragraph 4

²⁶⁵ GEN3.012, *infra*

²⁶⁶ AO79.005 paragraph 24; confirmed Day 406/161/9

FS 7.1805

I recall looking over to the Rossville Flats. I have a recollection of seeing a hand stick out of an open window on the 8th floor of Block 1 Rossville Flats. I think the flat was approximately in the middle of Block 1 ... The window... was tilted inwards at the top and outwards at the bottom. The hand which was holding a pistol appeared from over the top of the window pane and pointed downwards. I remember one shot being fired from the pistol. The shot had a "pop" sound and was certainly different from the other shots I had heard earlier. Almost immediately I heard a "crack" and saw the wood at the top of the window frame splinter where I presume a bullet fired by a soldier below the flats had hit. At around the same time the hand disappeared.²⁶⁸

8B-289 Mrs Barr has given consistent accounts of this incident since 1972. For example, her statement of 1st February 1972 contains the following description of events:

Then there were more shots and I saw a soldier on the far side of the personnel carrier towards the back of it and he looked up towards the flats and fired 3 shots. There was no one up at the windows. Then I heard a couple of more shots and we heard people screaming. Up on the eighth floor of the flats I saw a man at the window with a handgun and he fired one shot towards the troops. He had his hand on the window and when he went to lift his head one of the troops fired a shot which landed above his head at the top of the window.²⁶⁹

8B-290 She remains adamant about what she witnessed. She was questioned by Barry MacDonald Q.C. on the basis that she was mistaken. Her response was forthright:

No, it is not possible. I saw a man on the top floor with a gun and I heard the pop when he fired.²⁷⁰

8B-291 This gunman was operating from a different location within Block 1 and at a different time from the man engaged by Soldiers C and D. It is impossible to determine whether or not he simply moved from the eighth floor to the maisonette where Guinness Force soldiers saw him, or whether C and D engaged a different person altogether. At the very least, Mrs Barr's evidence demonstrates that a

²⁶⁷ AB90.002 paragraph 10; AB88.007 paragraph 15

²⁶⁸ AB16.003 paragraph 12

²⁶⁹ AB16.010

²⁷⁰ Day 148/033/08

FS-7.1806

pistolman was firing from Block 1, acting in a very similar way to that described by C and D.

8B-292 The Tribunal also has strong evidence that a member of the Official IRA had been firing from Block 1 with a pistol. Again, we cannot say whether this was the man whom C and D were to engage. The evidence certainly demonstrates that the Officials used Block 1 as a firing point on Bloody Sunday. A member of the Official IRA, with whom the journalist Kieran Gill spoke, confirmed that he had fired three or four shots with a revolver from the doorway of block 1 towards soldiers in Rossville Street.²⁷¹ This incident is considered in greater detail in our closing submissions relating to Private U (chapter 8A, above).

MILITARY CORROBORATION

8B-293 Private 024 was present on the Kells Walk balcony, witnessed Private C firing and observed his target. He told the RMP:

014 then told me to go up on to the veranda of the flats which I did, where I found 'C' and another member of my Unit stationed at the South end of the veranda. They were observing the Rossville Flats area... C moved round and took aim at a man who was hanging out of the window of a third floor flat in Rossville Flats. He was firing a pistol north along Rossville Street where part of Guinness Force were located. C fired two rounds 7.62 from his SLR and I saw the window shatter and the man with the pistol was thrown back into the house.²⁷²

8B-294 Captain 200 provides some further corroboration. He heard two or three shots and then saw two soldiers at the top of the Kells Walk ramp, one of whom he assumed had just fired the rounds. He further assumed that the firing had been directed towards the Rossville Flats, where he had seen an arm extending out of a window, holding an object.²⁷³

²⁷¹ **M105.013 paragraph 59**

²⁷² **B1527**

²⁷³ **B2007 paragraph D; B2018 paragraph B; B2022.007 paragraph 41**

8B-295 One soldier whose evidence cannot be relied on is Private INQ 0449. He had told Eversheds that he was also on the Kells Walk balcony, from where he observed a gunman in *Columbcille Court*. He further suggested that he and the soldier next to him, UNK0541, returned fire.²⁷⁴ INQ 0449 has now told the Tribunal in oral evidence that his recollection is “very, very foggy and faint...” and that he spent twenty-five years in the Armed Forces during which he was involved in other conflicts. He agreed his account may, therefore, have become confused with events that occurred on other occasions.²⁷⁵

CONCLUSION

8B-296 Guinness Force was comprised of a body of men drawn from a variety of “administrative” jobs within 1 PARA, who were formed into a temporary, composite rifle platoon. The platoon constituted an additional unit that could be deployed in support of the existing battalion rifle platoons when circumstances required it. The soldiers who turned out for Guinness Force on 30th January 1972 were an experienced group of men with a relatively high average age.

8B-297 The Platoon travelled to Londonderry and moved into the Bogside in support of an arrest operation. The members of the force were aware in advance of their deployment of the risks they would face during the mission.

8B-298 A shot was fired by a civilian gunman at the Presbyterian Church in Great James Street at a time when the soldiers of Guinness Force were gathered in the grounds of the building. Therefore, shortly before they deployed into the Bogside the members of the platoon became aware that at least one sniper, very probably positioned in the Bogside, was targeting soldiers.

8B-299 Guinness Force mounted its vehicles and deployed through barrier 12, pulling up alongside numbers 1-3 Rossville Street, at the north east corner of the road. The

²⁷⁴ C449.005 paragraph 22

²⁷⁵ Day 357/063; 357/066

platoon did not go further south in its soft skinned lorries because the vehicles did not provide sufficient protection from gunmen, a threat the members of the force took seriously following their briefings and the shot directed at them at the Presbyterian Church.

8B-300 Captain 200 decided to split his force with call sign 71 moving to the left to give support to the Mortar Platoon and 71A to the right in support of the Anti Tank Platoon.

8B-301 Having debussed from their vehicles, Guinness Force soldiers were immediately aware that they faced a hostile reception in the Bogside. Looking to the South, they could see rioting civilians positioned to the east of Rossville Street and in the area of the Rossville Street rubble barricade attacking soldiers of the Mortar and Anti Tank Platoons. The advance of Guinness Force was conducted in the knowledge that there was gunfire ahead. Members of the platoon were able to discern the nature of the rounds being fired and the direction from which they were being fired.

8B-302 Not all members of call sign 71A deployed to the Kells Walk wall. Some men remained at the Northern end of Rossville Street. Others secured the area between Columbcille Court and Kells Walk.

8B-303 Members of call sign 71A were ordered to replace the Anti Tank Platoon at the Kells Walk wall. At the time they were taking up position at the wall, some members of Anti Tank Platoon were entering Glenfada Park North. At the time that Guinness Force soldiers were engaging targets south of the Rossville Street rubble barricade it is probable that members of Anti Tank Platoon were engaging targets in Glenfada Park North.

8B-304 Call sign 71A soldiers at different positions along the Kells Walk wall independently concluded that two men were crawling away from the Rossville Street rubble barricade. The soldiers could see that at least one of the crawling men carried a weapon. They were both heading for the cover of the entrance to Block 1 of the Rossville Flats from where they would pose a significant threat to soldiers. Soldiers K, L and M opened fire in these circumstances.

PS 7.1809

- 8B-305 A factor in attracting the attention of the soldiers to the two men behind the rubble barricade was the manner in which they were moving. Certainly in 1972, the men of call sign 71A believed this to be a military style "leopard crawl", that is to say *not* the type of movement one would expect from an untrained civilian.
- 8B-306 A number of call sign 71A soldiers spotted weapons behind the rubble barricade. They did so independently of one another and from different positions along the Kells Walk wall. Soldiers then verified with each other what they could see. Further soldiers still were able to observe the shots fired by their colleagues and to confirm that they were targeted at gunmen.
- 8B-307 There is very strong military evidence from 1972 that the rear crawling man, who was nearer to the soldiers, had a rifle and wore a brownish jacket.
- 8B-308 There are inconsistencies in the soldiers' accounts as to whether the front crawling man also had a weapon. Those very inconsistencies serve to demonstrate the weakness of suggestions that the soldiers conspired together shortly after the event to concoct a self-serving and consistent account of what had occurred.
- 8B-309 The failure of some of these soldiers to see that the front crawler also carried a weapon is explicable by their individual positions at the Kells Walk wall, which determined to a significant extent what they could see behind the rubble barricade. The soldiers who could not see that the front crawling man had a weapon were generally to the east of and lower down than their colleagues.
- 8B-310 The men of call sign 71A were justified in the action that they took. They fired in response to what they perceived to be an imminent threat.
- 8B-311 The soldiers reacted with restraint to the threat they perceived behind the rubble barricade. The majority of the soldiers at the wall did not fire at all. Section commanders held back so that they could properly carry out their supervisory roles.
- 8B-312 Lieutenant Colonel Wilford was concerned that his men at the wall were too bunched and, after Soldier L's final shot, he told them to spread out. Colour Sergeant 002 put Colonel Wilford's orders into action by redeploing some of his

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soldiers from the wall to area of the Columbcille Court car park. By the time 002 got to the car park himself, his men were already guarding prisoners there.

8B-313 Some members of call sign 71A did not move into the car park at this time. Sergeant 014 and others made observations from Rossville Street before rejoining their colleagues.

8B-314 Colour Sergeant 002 ordered some of his men to walk the arrestees up from the car park to Little James Street.

8B-315 Captain 200 later consolidated his men at the northern end of Rossville Street and in the derelict houses bordering William Street. The two Guinness Force call signs rejoined at this stage. An ammunition check was conducted during their time there.

8B-316 The men of Guinness Force rejoined their vehicles in William Street and pulled back to the area of the Presbyterian Church and then to Clarence Avenue. Captain 200 asked his two Colour Sergeants what rounds had been fired. Having been given a list of the soldiers who had fired, he spoke to each soldier individually so that he was clear in his mind as to what they had fired and what targets they had engaged.

8B-317 It is not possible to determine who shot Kevin McElhinney. There is certainly no clear evidence to link either Sergeant K or Private M to his death.

8B-318 The evidence given by Private L to Eversheds and orally to this Tribunal should be disregarded in its entirety. He is a totally unreliable witness, a man who has evidently had a tough life since he left the Army and one which has taken its mental toll.

8B-319 It was maintained by Brian McCartney on behalf of those he represents both that the inconsistencies in the various military accounts are evidence of untruthfulness and that soldiers acted after the event to produce a false, coordinated account of their actions. Mr McCartney's case was itself inconsistent in that the very presence of inconsistencies of the kind which Mr McCartney himself relied upon in the military evidence undermines his suggestion that soldiers' accounts have

been tailored to corroborate one another. For example, if there had been tailored corroboration it is inconceivable that there would not have been agreement at least on the number of guns being carried.

- 8B-320 The cases of Private C and Lance Corporal D are considered separately from those of the rest of their platoon. The rounds they fired cannot have hit any of the known Bloody Sunday deceased or wounded.
- 8B-321 Private C from call sign 71 A and Lance Corporal D from call sign 71 both deployed to the balcony of the Kells Walk building at a late stage in the proceedings; it was certainly after all of the known deceased and wounded had been shot.
- 8B-322 Once there, C targeted a gunman to the southern end of Block 1 of the Rossville Flats. The presence of this gunman in this area at this time corresponds closely with civilian evidence of armed men arriving in the area of the Bogside Inn and moving North in the direction of the soldiers.
- 8B-323 C and D both then engaged a gunman with a pistol in Block 1 of the flats, a location in which there is strong civilian evidence that at least one pistolman had already been active.

FS 7. 1812

CHAPTER 8C

MICHAEL KELLY, WILLIAM NASH, JOHN YOUNG AND MICHAEL MCDAID

8C-1 INTRODUCTION

8C-1 It is of course clear that four civilians, Michael Kelly, William Nash, John Young and Michael McDaid were shot and killed at the rubble barricade in Rossville Street. Forensic evidence has shown that the round which killed Michael Kelly was fired from the rifle carried by Soldier F. It is not, however, possible to determine which soldier or soldiers shot William Nash, John Young and Michael McDaid. The circumstances surrounding their deaths are so unclear as to preclude any determination of this issue. That much is evidenced by the fact that it has been suggested by Counsel to the Inquiry and those acting for other interested parties that soldiers from no fewer than three different platoons in 1 PARA might be responsible. Others still have suggested that those responsible were not from the Parachute Regiment at all, but were situated on the City Walls.

8C-2 The Tribunals own experts, Dr Shepherd and Mr O'Callaghan, have suggested that the issue must be determined by reference to the witness testimony. It is not possible from the soldiers' evidence to determine which of them was responsible for the shooting of Mr Nash, Mr Young or Mr McDaid. The Tribunal is therefore left to consider the civilian evidence. A preliminary analysis of the civilian evidence conducted by Christopher Clarke QC, and referred to during the course of his Opening, highlighted the "substantial disagreement between the various witnesses." That situation has not been resolved as a result of the witnesses in question having been called and given oral evidence to the Tribunal.

8C-3 Even the most basic preliminary conclusions are now questionable. For example, Counsel for the Nash family drew attention to a photograph apparently showing William Nash alive and standing at the gable wall at the entrance to Glenfada Park North at the time that Michael Kelly's was being carried through Glenfada Park. The photograph has important ramifications for assumptions previously made about the timing of William Nash's death and the chronology of events generally.

FS-7. 1813

8C-II MICHAEL KELLY

8C-4 It is accepted that Michael Kelly was shot by Soldier F. It is not, however, accepted or at all clear on the evidence that Soldier F was aiming at Mr Kelly or that it was Mr Kelly whom he intended to shoot. Forensic evidence shows that the shot which Soldier F fired and which hit Mr Kelly struck or passed through something else, or someone else, before it reached him.

SOLDIER F'S EVIDENCE

8C-5 Soldier F has given the following evidence of his shot at the rubble barricade:

Statement to Lt Col Overbury on 19 February 1972.

I have now read my previous statements and looked at maps and photographs of the area, and realise that I have mistaken the sequence of events. After we first left our vehicles in the RF Flats area, I did not, as I said earlier, fire at a window in the RF. I fired these shots later"¹

I did however fire; I aimed round at a man I saw behind the barricade about 40 yards from me who was about to throw a bomb. It was a large object and I saw sparks coming from it."²

SA statement

I then observed a number of people behind the barricade. One of them was attempting to throw what looked like a bomb which was in his hand. It was fizzing. I have seen nail bombs before and am in no doubt that this was one. I fired one aimed shot and he fell. The bomb did not explode. I did not see what happened to it."³

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I was observing the barricade when I saw a person attempting to throw what looked like a nail bomb. It was fizzing in his hand. I took an aimed shot and then the man with the bomb fell to the

¹ B135

² B135

³ B137.4

FS 7-1814

ground...I have seen nail bombs before and am quite familiar with them" B141 at B

Q. Which hand had he got it in?

A. right hand.

Q. How was he throwing it when you fired?

A. At an angle, a side throw(his hand was) about level with his shoulder?⁴

Q. He was behind the barricade from you, was he, the other side?

A. Yes.

Soldier F confirmed in his evidence to the Widgery Tribunal that he fired one shot from the aim position which hit the man with a nail bomb.⁵ He said that the nail bomb fell to the ground and did not explode.⁶ He had seen smoke coming from the bomb.⁷ Soldier F said he could not describe the man at whom he fired.⁸

8C-6 Soldier F has confirmed in his BSI statement and in his oral evidence to this Tribunal that he no longer recalls this incident.

MICHAEL KELLY – CIVILIAN EVIDENCE

8C-7 It is of course known, as a result of tests carried out by Dr Martin, that the round which killed Michael Kelly was fired by Soldier F. There is no evidence before the Tribunal to suggest that Michael Kelly was attempting to throw a nail bomb when he was shot, although, despite some civilian claims to the contrary, he was, it appears, throwing stones. It is not, of course, suggested that throwing stones, if Mr Kelly did throw any, merited his being shot. The evidence examined below is relevant to the Tribunal's consideration of the whole question of what was in fact

⁴ **B141 at C-D**

⁵ **B141 at D-E**

⁶ **B141 at F**

⁷ **B156 at F**

⁸ **B141 at D**

FS 7. 1815

happening at the rubble barricade immediately before the soldiers fired and of the conclusions the Tribunal is able to form as to the scene which actually confronted the soldiers at the material time.

8C-8 While many witnesses talk of boys throwing stones from the rubble barricade, a number say that Michael Kelly was not part of this group. Hugh O'Boyle, for example, claimed that he neither heard nor saw Michael Kelly doing anything before he was shot.⁹ Ciaran Donnelly also told the Widgery Tribunal that, immediately prior to falling, Michael Kelly was doing nothing at all, merely standing although others around him were throwing stones.¹⁰

8C-9 Danny Craig, who was actually with Michael Kelly, however, stated in a handwritten statement that they were both throwing stones and that Michael Kelly had just raised himself up in position to throw when he was struck in the stomach.¹¹ Mr Craig confirmed in his BSI statement that Michael Kelly was throwing stones when he was shot.¹²

8C-10 Patrick Norris, AN24, also described Michael Kelly being shot as he was about to throw a stone. Mr Norris said in his BSI statement that he heard Michael Kelly say "Here they come." Almost immediately after Michael Kelly said those words, he reached down to pick up a stone from the ground at his side. As he stood up, he pulled his arm back and bent his body as if to throw the stone northwards up Rossville Street. It was then that he was shot. Mr Norris said that:

Michael Kelly did not throw the stone he picked up. He was shot before he had begun to throw it.¹³

⁹ Day 132/052

¹⁰ M22.7 at A

¹¹ AC111.11

¹² AC111.10

¹³ AN24.3 paragraphs10-11

PS 7.1816

8C-11 It is of course possible that Soldier F mistook Michael Kelly's actions as a stone-thrower for that of a nail bomber, although his belief that the object he saw was "smoking" or "fizzing" would tend to suggest that this was not the case.

8C-12 George Roberts was frank in admitting that:

A. I would say nearly everybody at the barricade was throwing stones.¹⁴

8C-13 What is apparent from both photographic and civilian evidence however is that there was an additional casualty at the rubble barricade about which neither the Widgery Tribunal nor this Tribunal have been told. That casualty was immediately in front of Michael Kelly. The lack of evidence as to the identity of this person and failure, even at this stage, to acknowledge him as a casualty of the day would tend to suggest that he was indeed armed when shot at the rubble barricade. The likelihood is that this man was the nail bomber at whom Soldier F aimed and fired and Michael Kelly, who was standing directly behind him, was the unfortunate victim of a "shoot through" round.

¹⁴ Day 151/113/01-02

FS 7. 1817

Photographic Evidence



596

FS 7.1818



8C-14 These photographs clearly show part of an additional body lying at the rubble barricade at the same time as Michael Kelly.

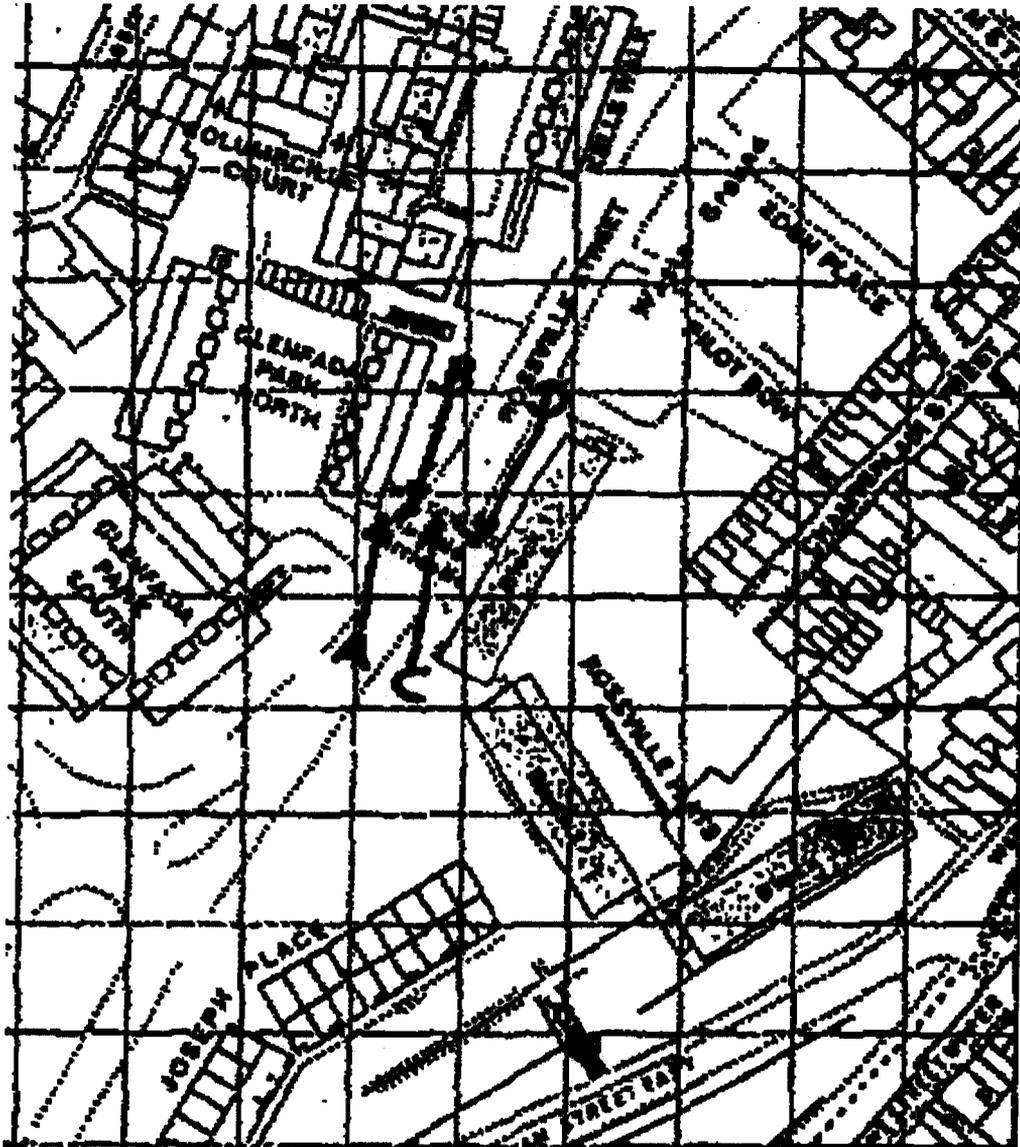
8C-15 Anthony Coll has given evidence in his BSI statement of going to assist someone whom, we submit, can only have been the additional casualty shown in this photograph.

I remember Michael Kelly falling to the ground.....I knew Michael very well, we were good friends ...I took his left arm and got hold of his neck and shoulder. Someone else took his right arm. I thought that we would lift him...Michael was dragged to the corner of Glenfada Park North, but I did not help carry him because I went to help someone else after someone had shouted, "This man is shot." He was about 5 yards away from where Michael fell at the point marked B on the map (grid reference J15). He was a wee small fella with black hair with a wave in it. I remember him in

FS 7. 1819

*front of us when I was standing behind the Rubble Barricade and two minutes later he was dead.*¹⁵

AC84.11



8C-16 Mr Coll confirms that the man shown lying in P596 is the man he assisted. Referring to that photograph he says that:

¹⁵ AC84.5 paragraph 12

FS-7.1820

Photograph 1 (P596): This shows two bodies on the Rubble Barricade. The one on the left was the one I went to help but who was dead.¹⁶

8C-17 George Roberts, a declared Republican and supporter of both wings of the IRA,¹⁷ has actually identified himself in Photograph P596, leaning over the body of this unidentified casualty.¹⁸

8C-18 He describes in his BSI statement how:

Shooting then started from the soldiers who were to the north of us....All of a sudden, a young fella who was standing next to me, just in front of me to my left, went down. He fell and was lying on his back with his head pointing up in the direction of William Street and his feet pointing in the direction of Free Derry Corner.....I remember that he was wearing a white Arran sweater and there was blood gushing like a fountain out of a hole just under his eye...¹⁹

8C-19 Mr Roberts explained that photograph P596 shows him leaning over the boy who had been shot just to his left²⁰ and marked his position on the photograph.

¹⁶ AC84.9 paragraph39

¹⁷ Day 151/079/19

¹⁸ AR13.2 paragraph8

¹⁹ AR13.1 paragraph7

²⁰ AR13.2 paragraph8

FS 7.1821

AR13.5



8C-20 Mr Roberts was asked in oral evidence if it was possible that he could simply have been kneeling on the left to take shelter and then turned back. His reply was unequivocal:

"A. No, no, there was a young fella shot dead before I went down behind the barricade. He was shot underneath the left...the right eye and there was a fountain of blood coming out. Out of his right eye. That is why I went down behind the barricade."²¹

²¹ Day 151/073/10-13

FS 7.1822

8C-21 While it was also put to Mr Roberts by Arthur Harvey QC that in fact the man he saw shot was John Young,²² the position of the body over which he is seen crouching would not match what is known of Mr Young, nor would the timing of the man's fall or indeed his dress of which Mr Roberts was quite certain when questioned by Edwin Glasgow QC:

Q. Is that the scene that you are quite certain of is you bending over the man in the Aran sweater?

A. That is what I recall, yes, the Aran sweater. There was a coat on, but it is the Aran sweater sort of sticks out in my mind and the blood coming out from underneath his eye.²³

8C-22 Mr Roberts could not have any conceivable reason to invent the account he gives of this casualty. His evidence is corroborated by the photographs, although no one suggests that his recollection of the events with which he was so closely involved at the time was prompted by being shown them. There is other civilian evidence, examined below, which also corroborates his account of a second casualty having been shot before Mr Nash, Mr Young and Mr McDaid were shot. Photograph P597.001 also shows the late Jim Begley looking on with concern at the person who has fallen in the left of the picture, rather than looking either in the direction in which he is walking or at Mr Kelly who is on the ground almost immediately in front of him.

²² Day 151/097/07-024

²³ Day 151/107/10-15

FS 7.1823



P596
(AM 118)

597C

Civilian Evidence that two Men were shot in early shooting at the Rubble Barricade

8C-23 Very little is known about the timing and circumstances in which William Nash, John Young and Michael McDaid were shot but it has been accepted that they fell close together in time. They all also fell to the eastern side of the barricade as can be seen from Alex Nash's position in Video 48. It is also known that there was an appreciable gap between the shooting of Michael Kelly and the other three casualties on the barricade as we see Michael McDaid still walking in P596/597/598 at a time when Michael Kelly is seen as having already fallen.

8C-24 There is, indeed, some suggestion that these three men were not shot until after Michael Kelly was brought into the gable end of Glenfada Park North as Michael

FS 7-1824

Mansfield QC has identified William Nash standing at the gable close to Michael Kelly's prone body in photograph EP27/11.²⁴

8C-25 There are, however, a number of civilian witnesses who refer to seeing two young men shot when soldiers first opened fire towards the rubble barricade. It is accepted that one of these must have been Michael Kelly but the other, falling some time before any of Young, McDaid or Nash were shot, must have been an unknown casualty.

8C-26 John J McLaughlin, AM334, reported in his NICRA statement that:

*The paras opened fire. As people ran towards Glenfada Park, two young men fell behind the barricade.*²⁵

8C-27 Hugh Duffy, AD157, said in his Keville / NICRA statement that:

*I was standing at the low barricade in Rossville Street when the shooting rang out and I dived to the ground beside the barricade. A young lad who had also dived lay beside me and he turned over on his back. I reached over with my hand but he didn't move and his eyes were closed. Another lad next to him was lying with the blood pumping out of his stomach. Three young fellows came out to lift him and they were shot at...*²⁶

8C-28 In his BSI statement Mr Duffy gives a somewhat different account but still suggests that there was a second body lying on the rubble barricade along with Michael Kelly. He said :

I then remember looking across to my right towards the Rossville Flats (east across the rubble barricade) and seeing a young chap lying still. He was about 8 feet away from me on the south side of the rubble barricade, lying on his back with his head on the rubble barricade, pointing towards William Street and his lower body and legs on the road, pointing towards Free Derry CornerI have marked the point where he was lying on the map with the number 1....

²⁴ Day 050/134

²⁵ AM334.1

²⁶ AD157.9

PS 7.1825

I then noticed that about 10 yards further across the rubble barricade to the east, closer to the Rossville Flats and further away from me, a second young man was lying in a similar position on the south side of the rubble barricade. He was lying on his back with his legs and lower body on the road, pointing towards Free Derry Corner and his head and upper body on the Rubble Barricade pointing towards William Street. The second young man had long black hair..... He appeared to have been shot in the stomach ...I have marked the point where he was lying on the map with a number 2.

The next moment three or four young lads ran out from the alleyway on my left which led into Glenfada Park North on the west side of the rubble barricade....they went up to the second young man I had seen, the one with the long black hair who had been shot in the stomach and I watched them try to lift him.²⁷

²⁷ AD157.5 paragraph10-AD157.6 paragraph13

FS. 7. 1826

there must have been a second casualty on the ground at the same time as Mr Kelly.

8C-30 Kieran Gill, M105 also spoke in oral evidence of being generally aware that a second person fell in the very first volley of shots.

Q. Yes, you say you are generally aware that a second person fell; did you understand that to be in the very first volley of shots?

A. Yes.

Q. You did?

A. Yes. I have a very indistinct impression of that, but I cannot offer anything on that.³⁰

8C-31 Pearse McCaul, AM93, spoke in his BSI statement of removing an unidentified body from the rubble barricade before Michael Kelly was moved.

I went to fetch one of the bodies lying near the rubble barricade with the help of one or two other people. I am not sure which body it was. We could not drag the man by his feet so we turned him over and dragged him away by holding him under his arms... I cannot remember where we left him... I have never discovered the man's identity... There was then a lull in the shooting. I went back to the Rubble Barricade and picked up another body with the help of another man. I found out recently that the body was that of Michael Kelly..... We each took hold of one of his legs and possibly a shoulder and carried him from the Rubble Barricade west towards and through the Glenfada Park North car park.³¹

8C-32 Charles McDaid, AM161, gave evidence in 1972 of carrying a casualty from the rubble barricade who was shot in the right side just above his leg. He said in his SC statement that this man was laid on the ground in the shelter of Glenfada Park.³² Mr McDaid confirmed when he gave evidence to the Widgery Tribunal

³⁰ Day 206/179/07-13

³¹ AM93.3 paragraphs 13-14

³² AM161.14-15

FS 7.1828

that the youth he helped carry was shot on "the right hand top of the leg," not in the stomach.³³

8C-33 Mr McDaid thus gave clear evidence of carrying a casualty from the rubble barricade into Glenfada Park North who could not have been Michael Kelly.

8C-34 Robert Anthony Wallace, AW3, also described in his BSI statement seeing a man other than Michael Kelly, whom he knew, carried to the gable end of Glenfada Park North from the barricade a few seconds after Michael Kelly.

A wounded man was carried around the corner from the Rubble Barricade. He was about 18 or 19, of slim build with long black hair. He was wearing a shirt and jeans. I recognised the young man as Michael Kelly... A few seconds later, a second young man was carried around the gable end from the barricade. I have no idea who he was. He was aged about 17 or 18 and was a bit smaller than Michael Kelly, but I cannot recall any other details about him.³⁴

8C-35 Mr Wallace confirmed this account in his oral evidence and said that the second man was laid down practically beside Michael Kelly.³⁵ Questioned as to why he did not mention the second boy in a 1972 tape-recorded interview, Mr Wallace could not explain the omission but remained adamant that he saw this second boy carried to the gable end.³⁶

8C-36 Seamus Fleming, AF22, also described in a NICRA statement seeing two men fall in the first burst of shooting at the rubble barricade. He said:

There were still about six left at the barricade and they fell for cover. I saw soldiers everywhere and three Saracens. During a lull in the shooting, the six lads at the barricade got up to run towards our entry. The minute their heads appeared, there was a burst of fire and I saw a lad with a blue half jerkin clutch his

³³ AM161.17 at D

³⁴ AW3.2 paragraphs 7-8

³⁵ Day 154/142

³⁶ Day 154/147/21

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*stomach with his hands and slump on top of the barricade. I saw also a lad with a brown coat slumping over, holding his left side.*³⁷

8C-37 Mr Fleming repeated this account in his BSI statement saying of the group at the barricade:

*They were heading in my direction, but the minute they got up two of them were hit by shots. They had got up from a crouching position very gingerly to have a look and then they were hit. They were both in their late teens.*³⁸

8C-38 Christopher Clarke QC acknowledged in his opening that Mr Fleming had identified an unknown casualty, shot at the same time as a man who appeared to be Michael Kelly.

*One of the two men he saw shot at the barricade may have been Michael Kelly, who was shot in the abdomen, so might well have clutched his stomach. But it is not easy to see who the other man might have been. Nobody was shot in the left shoulder and I am not aware of anybody being shot at the same time as Michael Kelly.*³⁹

8C-39 While Mr Fleming's description of the circumstances of Michael Kelly's shooting, if indeed it is he whom he describes, are not accepted and are indeed contradicted by witnesses such as Danny Craig and Patrick Norris who were with Mr Kelly. Mr Fleming nevertheless clearly speaks of two casualties at this early stage.

8C-40 Matthew Connolly, AC76, also saw an additional casualty at the rubble barricade who was carried away through Glenfada Park North. Mr Connolly, in his BSI statement said he saw three men shot and fall on the barricade including John

³⁷ AF22.11

³⁸ AF22.9 paragraph 25

³⁹ Day 024/049/20

FS - 7. 1830

Young.⁴⁰ In his NICRA statement however the third man he sees shot at the barricade does not fall there but

stumbled back towards the wall and taken on to a house (sic).⁴¹

8C-41 He gave a similar account to the Sunday Times team where Connolly says that the third boy

stepped out from the gable end and was shot in the left shoulder. He fell back and a group of about four people took him away through the alley into abbey park.⁴²

8C-42 Mr Connolly said when questioned by Mr Clarke that this may have been Michael McDaid and that Mr Connolly had confused him with Michael Kelly in believing he was carried away.⁴³ His earlier statements are quite clear however that this boy stumbled back behind the gable end which is clearly not what happened to Michael Kelly or Michael McDaid.

8C-43 Arthur Harvey QC also put to Mr Connolly that this might have been Patrick O'Donnell and that Mr Connolly was confused about his being carried away to a house.⁴⁴ As Mr Harvey, however, acknowledged in correcting himself, Patrick O'Donnell was shot in the right shoulder and was far from "stepping out" at the time, so Mr Connolly would have to have been very confused indeed for this to be the case.

8C-44 The Tribunal will recall that Michael Havord, in an interview with Paul Mahon, spoke of just such a casualty being taken to Letterkenny Hospital.

Q. Michael Havord continues: "Paddy Devlin then told me that he had come to [indecipherable] area. There was somebody wounded and Paddy Devlin gave the guy his car to get him to Letterkenny. I remember that because it was quite a brand new car. In them days,

⁴⁰ AC76.3-5

⁴¹ AC76.13

⁴² AC76.14

⁴³ Day 151/026/24

⁴⁴ Day 151/051/06

PS 7.1831

you know, we did not all have cars in those days. "Mahon: Right, and who was the wounded person, do you know? "Havord: I do not know his name. "Mahon: No, and how was he wounded, can you remember? "Havord: I think he was shot in the arm, I think. "Mahon: Right. "Havord: He went to Letterkenny anyway. "Mahon: He definitely went to Letterkenny? "Havord: Yes. "Mahon: Right. "Havord: Paddy Devlin lent him his car to get him across the border. "Mahon: And someone drove him? "Havord: Someone drove him, yes. "Mahon: To Letterkenny. Right." Did you ever find out -- please do not say the name at the moment -- who Michael Havord was referring to? Did you ever find out who that wounded person was?

A. No.

Q. Can we have AM19.328 on the screen, please. If we could have the bottom half, please. Mr Mahon, can you see the very bottom entry? This is part of one of the pages from one of the four notebooks you supplied, do you see the bottom entry which begins "Michael Havord"?

A. Yes.

Q. What it reads "Michael Havord talked of person [redacted name] wounded in shoulder and treated in Letterkenny Hospital." I am just going to send you that name?

A. Right.

Q. It is just a surname so it is [question-mark] surname, wounded in shoulder and treated at Letterkenny hospital; do you have that?

A. Yes. I have got no recollection of that at all.

Q. That does not help you to remember --

A. It does not, no.⁴⁵

⁴⁵ Day 411/059/06-060/24

FS - 7.1832

Civilian Evidence of an additional casualty being carried through Glenfada Park North

8C-45 A number of the witnesses who helped carry Michael Kelly's body across Glenfada Park North have said in evidence that soldiers entered Glenfada Park North and opened fire before the group had reached the exit to Abbey Park. There are, however, a number of witnesses who saw a body being carried in similar fashion to Michael Kelly's but who saw it carried out of Glenfada Park North before soldiers entered the area. While the evidence is far from clear, it would seem that there must have been more than one person carried away across Glenfada, although many witnesses have assumed the person they saw was in all cases Michael Kelly.

8C-46 Fergus McAteer, AM42, describes in his BSI statement seeing a group of people carrying a body "away to the western side of the courtyard."⁴⁶ He then describes edging around the gable wall and watching a man crawling along the opposite pavement in Rossville Street. Then :

over a period of a few minutes, I thought constantly of taking flight from the gable wall.⁴⁷

This was all before soldiers entered GPN and suggests the person Mr McAteer saw carried must have reached the alleyway by the time they did.

8C-47 Mr McAteer confirmed the timing of these events in oral evidence

Q. Can you help at all with how long the time interval was between your seeing the body being carried across Glenfada Park North and your seeing this man crawling towards the door of Block 1?(all of which Mr McAteer says took place before the soldiers enter Glenfada Park North)

A. Very difficult, there was an awful lot happening around me at the time. Possibly 10 minutes, because at that stage a number of

⁴⁶ AM42.8 paragraph20

⁴⁷ AM42.9 paragraph29

FS 7.1833

other things had happened; I had moved up the gable wall, back down again; I had sensed the intensification of activity and firing and so on around me and then fixed on this person struggling or moving on his stomach along the pavement."⁴⁸

8C-48 Michael Quinn, AQ11, also described in his SC a body being carried across Glenfada Park North and into a house in Glenfada Park.⁴⁹

*Someone shouted that there were people dying on the barricade at Rossville Street. The shooting then resumed and the people who were standing at the gable wall at Glenfada Park/Rossville Street rushed into the car park at Glenfada Park where I was standing.Just then a small crowd of people carrying the body of a man, who was wearing a blue anorak, crossed the car park and went into the back of one of the houses at Glenfada Park...*⁵⁰

Mr Quinn repeated this account word for word in a further, sworn statement dated 17 Feb 1972 and witnessed by a Londonderry solicitor.⁵¹

8C-49 Once again, in an interview with the Sunday Times conducted on 1st March 1972 by Peter Pringle and Philip Jacobsen, Michael Quinn repeats that:

*The shooting stopped for a bit and I moved between two of the wooden fences behind houses on the east side of glenfadda; from there I saw several men carrying a man's body on their shoulders into one of the houses*⁵² (map)⁵³

8C-50 Mr Quinn's evidence to Lord Widgery was that he saw the man carried not to the alleyway but to a house in Glenfada Park although he did not recall them quite reaching the house;

⁴⁸ Day 168/56:2

⁴⁹ AQ.11.7 penultimate line

⁵⁰ AQ11.7

⁵¹ AQ11.18

⁵² AQ11.11

⁵³ The house into which this body was carried is marked on a map created by the Sunday Times at AQ11.15.

FS 7.1834

Then I saw a crowd of people, a gang of people carrying a man above their heads, across the car park towards a house on the other side. I saw the man was injured. He had bullet wounds in his chest.....

Q. In which direction did they go?

A. They moved from the gable of Glenfada Park, which is partly out in Rossville Street, towards the other side of the car park.

Q. In that alleyway where this young man had been shot before?

A. Not the alleyway, but there are houses running down form that alleyway.

Q. What did you do?

A. They were very near the house they were taking him to and I decided to get out of Glenfada Park then....⁵⁴

8C-51 Mr Quinn now, in his BSI statement, states that

"The group carrying the body reached the centre of Glenfada Park North and I noticed that the man who had been carrying the civil rights banner earlier was amongst themAt this point the crowd ran into Glenfada Park and someone shouted that "the Army was coming in."⁵⁵

8C-52 Indeed when referred in oral evidence to notes accompanying the Sunday Times map Mr Quinn indicated that this was not his recollection.

Q. 2. Sees body. Kelly? Carried into house.

A. (Witness shaking head).

Q. No?

A. Not my recollection.⁵⁶

It is, however, quite clearly the account he gave in both his SC and his sworn statement in February 1972.

⁵⁴ AQ11.2 at D-G

⁵⁵ AQ11.23:22

⁵⁶ Day 169/127/:01-05

FS 7. 1835

8C-53 Daniel Gillespie, AG34, in his BSI statement gives an account of Michael Kelly's body being carried into Glenfada Park North and towards the Abbey Park exit. He is clear however that this body was carried right through the alleyway as Mr Gillespie followed:

I followed the crowd through this alleyway to see where they were taking Michael Kelly.

8C-54 It is clear that Mr Gillespie places this incident well before soldiers entered the square as he indeed confirmed in oral evidence to the Tribunal:

A. When I went into Glenfada Park my intention was to go home, but then I turned and as I turned to come out again there was about 5 or 6 people carrying in young Kelly and they took him through into 1 Abbey Park. I followed in to the steps at Abbey Park and come back out –

8C-55 Mr Gillespie also gives an entirely different account of a man being carried from the barricade, who was carried straight across Glenfada Park without being laid on the ground as was undeniably the case with Michael Kelly:

A. I seen them carrying him in from Rossville Street from the rubble barricade, about three-quarter ways in, but they had him up high, you know, shoulder-length -- shoulder-high. ...

Q. Did you see him being placed on the ground?

A. No.

Q... .. Is your recollection that he was brought in from the barricade and carried straightaway across towards the gap between Glenfada Park North and South?

A. Towards Abbey Park.

Q. Yes, towards Abbey Park?

A. Yes.

...A. Did I see him getting -- I seen him getting carried towards Abbey Park, but at no time did I see him, did I see anybody putting him down.

FS - 7. 1836

LORD SAVILLE: Mr Gillespie, it is the Chairman speaking to you, over here to your right. You said a few moments ago you saw a man being carried in shoulder-high?

A. Yes.

LORD SAVILLE: Where was he when you saw that?

A. Coming in from the rubble.

LORD SAVILLE: From the barricade in Rossville Street, yes. What happened then to that man in your recollection?

A. They took him into Abbey Park.⁵⁷

Indeed Mr Gillespie's evidence would suggest that he witnessed an entirely different incident to the carrying of Michael Kelly as, not only does he say that the man he saw was not placed on the ground and was carried through to Abbey Park without incident, but he also says that the photograph EP27/10 of the group carrying Kelly was not the group he saw.

Q. Could we have EP27.10: this is our best version of your appendix; what I said before was a mistake. This is another photograph in the same sequence. Here is somebody being carried, if not shoulder-high, at least what may have been an attempt at carrying him that high; you do not recollect that scene at all?

A. No, I do not even think that was the same people as was carrying Kelly.⁵⁸

And while it appeared that Mr Gillespie in fact recognised Michael Kelly,

LORD SAVILLE: They must have come past you?

A. Yes. I actually seen Kelly, I looked to see who it was.⁵⁹

it became clear later in his evidence that in fact this was not the case:

⁵⁷ Day 158/033-034

⁵⁸ Day 158/037-038

⁵⁹ Day 158/036

FS-7.1837

MR HOYT: Mr Gillespie, did you know Mr Kelly beforehand, or were you told that it was Mr Kelly?

A. No, I was told it was Mr Kelly.⁶⁰

8C-56 Eamon McAteer AM41 is a further witness who recalled in his NICRA statement that

the man was carried away into the adjoining park through a passageway.⁶¹

He does not recall the incident now.⁶²

8C-57 Ciaran McLochlainn, AM12, was also watching a group carrying a body and says in his BSI statement that they had passed through the Abbey Park alleyway before soldiers entered Glenfada Park.

"The last I saw of that group carrying the man was when they made it through the alleyway into AP and I lost sight of them.

At this stage he says he could not see any soldiers in the courtyard. It is only when, having lost sight of the group and decided to run across Glenfada Park, he reaches the halfway point between east and west that

I suddenly felt the Brits were behind me.⁶³

8C-58 Don Campbell, AC8, speaks of someone being carried at a time when he and William McKinney were standing in the middle of Glenfada Park North

A. As far as I remember there was somebody getting carried past on the far side, just basically grouped in the middle of the car park. I do not know what, who he was or what happened.⁶⁴

⁶⁰ Day 158/038

⁶¹ AM41.33

⁶² Day 135/014/06-13

⁶³ AM12.4 paragraph28

⁶⁴ Day 157/030/22-031/01

FF 7. 1838

8C-59 He explained that this was before he and William McKinney had reached the south east gable end where William McKinney is pictured, in P639, standing over the still immobile body of Michael Kelly.⁶⁵

8C-60 This would appear to be a casualty arriving from the north:

Q. You and Mr McKinney were somewhere in the middle of the car park where the blue arrow now is and you saw somebody being carried past. If you have control of the screen again, can you tell us, first of all, where that person was when you saw him or her?

A. Roughly this way here, he was getting carried towards this entrance.

Q. Being carried towards the entrance to Abbey Park?

A. Abbey Park, yes.

Q. Where was that person coming from?

A. From in behind these garages here, somewhere round there. I do not know exactly because I cannot remember. I just remember somebody being carried across.

Q. You say that person had come from the garages?

A. From behind the garages.

Q. From behind the garages. I think that means the person must have come in through either the northeast entrance -- either through the entrance at the bottom of the picture I am marking with the yellow arrow?

A. No, the other entrance; this one, yes.

Q. The northwest entrance, so you think that person coming in through the northwestern entrance was being carried through to Abbey Park?

A. Yes.

Q. Did you get a look at that person?

A. No, I still do not know who it was.

⁶⁵ Day 157/034/20

FS 7. 1839

Q. Sorry?

A. I still do not know who it was.⁶⁶

Indeed Mr Campbell makes quite clear when questioned by Lord Gifford that the body he saw carried was not Michael Kelly:

Q. I quite accept that you recall a different direction. In fairness to you, I think I should say that these pictures are almost certainly people carrying the body of Michael Kelly, which would have been at a later stage than the stage you are talking about?

A. No, it definitely was not Michael Kelly's body I seen, no.

Q. Thank you very much.⁶⁷

8C-61 There is, therefore, a considerable body of evidence to show that more than one casualty was carried through Glenfada Park North before soldiers entered the area.

Michael Kelly Forensic Evidence

8C-62 The report prepared by Dr Shepherd and Mr O'Callaghan reported that the bullet which struck Michael Kelly was unstable.⁶⁸ Dr Shepherd explained to the Tribunal that the most likely explanation for its instability was that it had struck some object or person before Michael Kelly.

Q. Can you offer any opinion as to the likely cause of the bullet's instability?

A. It is most likely that it had struck an object or a person prior to striking Michael Kelly.

Q. Can you say any more than that, or is that really –

A. That, I think, is as much as we can take. Clearly this bullet was not travelling nose-on, having struck him effectively side on, and the most likely reason for that is some prior contact.

⁶⁶ Day 157/034/09-035/17

⁶⁷ Day 157/085/09

⁶⁸ E.02.7.7.3

FS - 7. 1840

Q. Can you say, for example, whether it could have been a ricochet in which the bullet bounced off some hard surface or whether it must have travelled through some object?

A. I think it is not possible to say...⁶⁹

8C-63 Questioned further by Peter Clarke QC, Dr Shepherd said that:

A.. Can I deal with that first: I would not have expected this bullet to have passed through a hard object.

Q. It could not have, actually, could it?

A. I really do not believe that as a possibility. But it could have passed through a soft object, part of someone else's anatomy or something of that sort, without a problem. Whether it had struck a hard object I think is something once again for Mr O'Callaghan with his tests and his angles.⁷⁰

Q. Given that, with your gelatine tests which we still have on the screen, the bullet that hit Michael Kelly's abdomen could easily have been a shoot-through a mere 2 yards in front of him, could it not?

A. I would not even attempt to put a distance on. Yes, it could possibly be closer. It could be destabilised as a result of passing through another individual.⁷¹

8C-64 Mr O'Callaghan was also asked about the matter:

Q. "Michael Kelly was hit by only one bullet which struck his abdomen approximately 'side on', most probably with the nose of the bullet pointing upwards and to the right and the base downwards, indicating that the bullet was unstable." In your view, is this consistent with a bullet hitting someone or something before it struck Michael Kelly?

A. Yes, indeed.⁷²

⁶⁹ Day 229/006/23-007/11

⁷⁰ Day 229/078/15-24

⁷¹ Day 229/079/23-080/04

⁷² Day 230/018/13-21

FS 7.1841

WHY DID SOLDIER F NOT MENTION THIS INCIDENT BEFORE 19 FEBRUARY?

8C-65 It is accepted that Soldier F's RMP statements contain no reference to his firing at the rubble barricade prior to his that given to Lt Col Overbury on 19 February 1972.

8C-66 Soldier F's explanation for the changes between his first RMP and the statement he gave to Lt Col Overbury is given in the later statement as:

I have now read my previous statements and looked at maps and photographs of the area, and realise that I have mistaken the sequence of events. After we first left our vehicles in the Rossville Flats area, I did not, as I said earlier, fire at a window in the Rossville Flats. I fired these shots later. I did however fire; I aimed round at a man I saw behind the barricade about 40 yards from me who was about to throw a bomb. It was a large object and I saw sparks coming from it.⁷³

8C-67 Mr Gibbens returned to the subject in re-examination at the Widgery Tribunal when Soldier F repeated the explanation he had given to Lt Col Overbury that, while he was referring specifically to Sector 5, it was the sight of aerial photographs that clarified his recollections of his shooting on Bloody Sunday:

Question: You have been asked a number of times why you did not refer to the shooting of the man with the pistol behind Rossville Flats until 19th February [that is when you took the statement]. What brought it to your mind then? What was the change that led you to make the statement on the 19th?

Answer: At that time I was shown aerial photographs of the immediate area and I then realised I had shot a man there.

Question: Was that the first time you had been shown aerial photographs of the area?

Answer: Yes.

Question: Otherwise you had merely had a map?

Answer: Yes.

⁷³ **B135**

FS 7.1842

Question: And the photograph reminded you of the position, did it?

*Answer: Yes.*⁷⁴

8C-68 Indeed, Lt Col Overbury pointed, in a contemporaneous note, to the fact that additional evidence was gathered by showing soldiers aerial photographs of the area

*Between 11th and 19th February 1972, the team prepared volume IV of the statements of evidence, consisting of the final statements of senior officers and further statements from witnesses clarifying or expanding on previous statements. An analysis of the evidence was prepared and the shot plot was amended after witnesses had been shown aerial photographs of the area.*⁷⁵

8C-69 Lt Col Overbury has confirmed in oral evidence to BSI that

Q. Insofar as Soldier F says that when he made the statement on the 19th he was shown aerial photographs of the area, that is accurate as I understand it?

*A. Yes, sir.*⁷⁶

8C-70 It cannot, of course, be assumed that simply because arrangements were made to speak to Lt Col Overbury on 19 February, this was the first date on which Soldier F had first mentioned his firing. What is clear is that Soldier F did not tell Lt Col Overbury about his shot towards the rubble barricade because he had been told that ballistic evidence had shown him to have fired the shot which killed Michael Kelly. In fact, tests identifying the round which killed Michael Kelly as coming from Soldier F's rifle were not carried out until after his interview with Lt Col Overbury.

⁷⁴ B164 at A

⁷⁵ CO1.6

⁷⁶ Day 243/058/24

FS 7.1843

Kelly ballistics evidence – chronology

Undated	RUC report – (author's name illegible).	PM performed by Dr Marshall. Bullet removed by Dr Marshall and handed to Constable McCormac. Copper lined bullet bearing rifling marks and believed to be a 7.62 NATO bullet.	DO40
2.2.72	DIFS Form	Item 11. Bullet extracted from Kelly submitted to DIFS.	DO 36/37
	Statement of Const. McCormac	Delivered clothing, bullet and other items from Kelly body to DIFS on Wednesday 3 rd Feb 1972.	DO711
	Const McCormac's evidence to Widgery Tribunal	McCormac passed all items to DIFS where signed for by Inspector Hill.	DO738
7.2.72	DIFS Form	JLS/6 one 7.62 mm SLR, No 32515 submitted to DIFS from SIB Lisburn (officer's name illegible)	DO39
Note made on 14th February ⁷⁷	A note of attendance at the Forensic Investigation Department, Newtonbreda	Para 11. "Mr Martin then went on to discuss the bullets recovered from the deceased and the wounded. He said that two bullets on which forensic work could usefully be done had been recovered from the deceased, one from Kelly and one from Donaghy. They were both army rifle bullets and they will be compared with with test bullets from 31 Army rifles which the Forensic Science Department had been told by the Army were the rifles in question from which bullets had been fired. 22 of these rifles have been already handed into the Forensic Department by the Army and there were nine more to come. No attempts at matching had yet been made, even on the 22 which had been fired.	D550
17.2.72	Simpson report of visit to DIFS	"The two bullets recovered are of the same calibre – and can be related to a given weapon by laboratory test. No other weapon appears to have been involved"	D628
21.2.72	DIFS report	"The bullet (item 11) is a 7.62	D45

⁷⁷ According to Christopher Clarke QC Day 004/139/02.

FS 7. 1844

		NATO rifle bullet fired from a weapon rifled with 6 grooves right hand twist. This could have been a British Army Self Loading rifle".	
28.2.72	Manuscript note of Dr Martin (Typed version in DIFS form format dated 29.2.72 D47)	"I have compared the bullet from the deceased (Item 11) with test bullets from 29 self loading rifles. The rifles were received from Corporal Smith, Army SIB. As the result of microscopical agreement between the rifling marks on the bullet from the deceased and the test bullets, I am satisfied that the bullet (item 11) was fired in rifle No A 32515 referred to as JLS/6."	D56.
1.3.72	memo from Basil Hall to Lt Col Overbury	1. "Please identify the two soldiers who fired recorded bullets"	C01.274
Undated	Memo replying to above	"1. Today"*	C01-279

* Lt Col Overbury's evidence regarding this memorandum was that:

A. Mr Hall was asking to identify the soldier to whom the rifle, which had been identified by the forensic experts instructed by Mr Hall, to whom that rifle had been issued, and he was told.⁷⁸

8C-71 Although he has no direct recollection of taking the statement on 19 February,⁷⁹ Lt Col Overbury has also concluded from the documentation that he was not aware of the ballistic evidence linking Michael Kelly to Soldier F at the time he interviewed Soldier F on 19 February. Questioned by Christopher Clarke QC he said that:

Q. We know the forensic evidence was that a bullet from the rifle of this soldier was lodged in the body of Michael Kelly, who was shot at the barricade. Would it be right or fair to infer that by this stage you had learnt that this soldier must have shot a man at the barricade?

⁷⁸ Day 243/163/20

⁷⁹ Day 243/054/11

FS 7.1845

A. No, sir. I have actually been shown a statement by Counsel to suggest that that knowledge did not come into our hands until much later. So I do not think I could have known it then.

Q. When you say "a statement by Counsel", do you mean a statement at the Widgery Tribunal?

A. I was shown a statement, which was apparently signed by Professor Simpson on 28th February, indicating that he had then carried out an examination and had identified the rounds that killed Mr Kelly from a numbered rifle. Subsequently that numbered rifle, I suppose, was identified as being F's rifle. So I do not think I could have known then, sir.⁸⁰

Q. I am not quite sure what is the document to which you are referring, and it was not Professor Simpson who discovered it?

MR ELIAS: Sir, would it help if I referred my learned friend to D56.

MR CLARKE: Thank you. This is a document dated 28th February which confirms that the bullet from the deceased, Michael Kelly, is a bullet attributable to a particular rifle, which was the number of the rifle of Soldier F.

A. Yes, sir.

Q. Your point?

MR ELIAS: Sir, I think, with respect, the word "confirms" might be misleading because we believe the document says "I have compared", and it does seem that it is giving the result, in other words, apparently on that day.

MR CLARKE: Anyway, that is the document that you are referring to?

A. Yes, sir.

8C-72 Lt Col Overbury did not think, when questioned by Mr McDonald, that he could have received the information from any other source:

Q. Could it be the case that you received advice directly from Dr Martin or from some other source on or after 17th February and

⁸⁰ Day 243/054/15-055/08

FS 7. 1846

well before 28th February when this information was communicated to the RUC?

A. No, I do not think that is possible, because the only information that we would have got on that basis was when we would have been notified by the Treasury Solicitor and to my knowledge, we were not notified by the Treasury Solicitor, we did not know about this until later.⁸¹

8C-73 The point put by Mr Elias must also, in our submission, be correct; that Dr Martin's manuscript note of 28 February clearly indicates that the tests had been performed on that day.

CONCLUSION

8C-74 There is then considerable civilian evidence that more than one man fell at the time Michael Kelly was shot. While the evidence of these witnesses is not all consistent as to the position of this missing casualty, such inconsistencies as there are, are entirely in keeping with the general confusion surrounding the rubble barricade and indeed the position of Michael Kelly himself. What is clear is that there was an additional casualty who fell at the same time as Michael Kelly and who, for that reason, cannot have been William Nash, John Young or Michael McDaid. It is likely that this was the man, in addition to Michael Kelly, who was carried away through Glenfada Park North.

8C-75 Moreover, there is conclusive photographic proof of a person lying directly in front of Michael Kelly's fallen figure, and remaining in that position on the ground in two photographs while Mr Roberts approaches and bends closely over it; and Mr Begley looks on with concern. Such evidence dispels any doubt that Michael Kelly was standing behind this man when he was shot and it is highly likely that, consistent with the forensic evidence as to the round recovered from his body, Michael Kelly was the victim of a "shoot through".

⁸¹ Day 243/160/10

FS 7.1847

8C-76 The man who fell in front of Michael Kelly, and whose very existence appears to have been denied by many civilians ever since, seems highly likely to have been the target who Soldier F describes. The very denial of his existence is proof that he was engaged in violent, armed activity at the time he was shot, just as Soldier F describes.

8C-III WILLIAM NASH, JOHN YOUNG AND MICHAEL MCDAID.

8C-77 It is impossible to determine who was responsible for the deaths of William Nash, John Young and Michael McDaid. This is demonstrated by the fact that Inquiry Counsel and those representing the families have suggested that a host of different soldiers might be responsible for their deaths. It is not presently known which of the allegations is persisted in.

COUNSEL'S FIRST REPORT

8C-78 Soldiers P, J, U, C, K, L and M were members of *three* different platoons and were active in different locations. The soldiers in question were variously situated:

- (1) alongside the Kells Walk pram ramp (P);
- (2) at the "Kells Walk wall" (J, K, L, M);
- (3) at the North West corner of Block 1 of the Rossville Flats (U); and
- (4) at the southern end of the balcony running along the east side of the Kells Walk building (C).

The group of soldiers includes Soldier P, who was the first soldier to fire a live round in Sector 3, and Soldier C, who was one of the last.

8C-79 Christopher Clarke QC, in his *Report No. 1 from Counsel to the Inquiry*, suggested that any of these soldiers might have been responsible for the shots which killed

FS-7. 1848

William Nash, John Young and Michael McDaid.⁸² The report was drafted at an early stage⁸³ and set out the preliminary results of an analysis of some of the material before the Tribunal at that time.⁸⁴ Mr Clarke made it clear that the conclusions the report contained:

*are preliminary, subject to change, and will have to be revisited as further analysis is made of the material before Lord Widgery and before this Tribunal, and as the statements of the civilian and military witnesses come in.*⁸⁵

8C-80 Nevertheless, the report indicated that from the early stages of this Inquiry it was not at all clear who shot the three young men.

8C-81 Mr Clarke prepared another early document entitled *Summary of Civilian Evidence in relation to the Barricade Deaths*.⁸⁶ It was intended to do no more than provide a convenient overview of the evidence as it then stood in relation to the deaths at the Rossville Street barricade. Mr Clarke concluded in that document that there was a consensus in the civilian evidence that:

*Young, William Nash and McDaid fell a little after Kelly did, more or less at the same time as each other.*⁸⁷

8C-82 That chronology of events is, in fact, far from clear. However, a conclusion that the three were shot at about the *same* time makes it all the more extraordinary that soldiers who were active at *different* times should be singled out as potentially responsible for their deaths.

⁸² page 17 paragraph 15.4

⁸³ Day 004/012/98

⁸⁴ page 2 paragraph 1.1

⁸⁵ page 3 paragraph 3.3

⁸⁶ 31.05.00; the document was referred to in Mr Clarke's Opening at Day 026/043/15 to Day 026/53/05

⁸⁷ TmpD16. 2 paragraph 1(7)

FS 7.1849

QUESTIONS AND ALLEGATIONS PUT DURING ORAL EVIDENCE

8C-83 The documents referred to above were drafted at an early stage and were of a preliminary nature only. It is, therefore, relevant to consider what questions and allegations were actually put to the soldiers when they gave oral evidence to the Tribunal.

Mortar Platoon

8C-84 Christopher Clarke QC asked Soldier P of the Mortar Platoon whether he had killed Messrs Nash, Young, McDaid and Hugh Gilmore:

Q. Did you kill four people at or near the barricade?

A. No, sir, I did not.

Q. Do you know who did?

A. No, sir.⁸⁸

8C-85 Arthur Harvey QC also asked Soldier P whether he was responsible for the deaths of the three at the barricade:

Q. If it is Guinness Force that is behind you, what we do know -- it has already been put to you -- three people were killed in and about the vicinity of the centre of that barricade. You fired four shots, one of which you claimed missed.

There is no person behind that barricade that has three bullets in them. The three people that were killed behind that barricade, who were killed by persons whom we are not in a position to identify are: William Nash, John Young and Michael McDaid and each of them was killed by a single shot. Did you in fact kill three people behind that barricade and claim you had really only killed one but hit him three times?

A. No, not at all.⁸⁹

⁸⁸ Day 353/061/16

⁸⁹ Day 353/111/10

Anti Tank Platoon

8C-86 Mr Clarke later suggested that, in fact, a soldier of the Anti Tank Platoon must have been responsible and raised the possibility that other members of the platoon had entered into a conspiracy to keep silent about the incident. He said to Soldier H:

Q. ... there are three people who died at the barricade. They were almost certainly killed by soldiers. The explanation that has been given by what seems to be the relevant platoon, which is the Anti-Tank Platoon, does not account for their deaths, or begin to do so.

In those circumstances the Tribunal may conclude that the reason why no explanation is given is because the shootings at the barricade could not be justified and, therefore, everybody concerned has clammed up about them; do you follow what I am saying?

A. I follow what you are saying now, yes, sir.

Q. Is that the position?

A. I would not like to say what the position is on that, sir. I know I never fired at those people and that is all I know.⁹⁰

8C-87 Mr Clarke asked the same question of Soldier F:

Q. Can you offer any explanation as to how it comes about that on the accounts given by the Anti-Tank Platoon to Lord Widgery and, indeed, to this Tribunal there is no explanation for how these three died?

A. No, I cannot.

Q. Has there been some conspiracy of silence not to explain how this occurred?

A. Not at all.⁹¹

⁹⁰ Day 377/035/14

⁹¹ Day 375/085/11

FS-7.1851

8C-88 A similar suggestion appears to have been made to the Anti Tank Platoon Commander, Lieutenant 119, by Arthur Harvey QC:

Q. ... six people were killed at the barricade, five of whom were killed probably around the same time, with Michael Kelly being the first. Michael Kelly was shot by Soldier F; Soldier F was one of your platoon; is that not right?

A. He was, sir.

Q. If you were there at the wall at Kells Walk as the first soldier, as you claim in your current evidence contained in your statement to Eversheds to this Inquiry, and you remained there until such time as all of your platoon had either taken up other positions or gone into Glenfada Park, you must have been a witness to at least five of those deaths; is that not right?

A. I have already stated, sir, that I do not remember what happened at that wall.⁹²

8C-89 Mr Harvey put a question in similar terms to Soldier J.⁹³

8C-90 Mr Clarke developed the suggestion that the Anti Tank Platoon was responsible for the barricade deaths, by asking Soldier J whether he had shot and killed one or more of those who fell there:

Q. And the third conclusion that the Tribunal might be driven to conclude is that you yourself shot and killed one or more of the four civilians who died and fell at the rubble barricade. Is that the position?

A. I do not think so, sir.

Q. You do not think so. Are you saying that that may be so?

A. I am saying that I saw -- as you know full well, I saw the shot hit the barricade, but I do not think I hit him.

Q. The conclusion that the Tribunal might reach is that if you shot someone at the barricade, it was not someone who was, or who

⁹² Day 364/014/11

⁹³ Day 370/098/17

appeared to be, throwing a nail bomb or anything of the kind; what do you say to that?

A. If I opened fire, he was certainly either throwing something or firing something, in this case throwing something with lethal intent.⁹⁴

8C-91 Soldier H was also asked whether he might have been responsible for the death of one or more of those at the barricade, and whether he had subsequently made up a story to account for the rounds he fired there:

Q. I was suggesting to you before lunch that the account that you gave about firing 19 bullets at the same reappearing silhouette was untrue and never happened and I want to suggest to you what may be a reason why you should invent such an account, that is because you fired a large number of shots that you realised at the time you would not be able to justify and you, therefore, had to make up some account which would explain up to 19 of them and you came up with this one; is that the position?

A. No, I think if I was making up a story, sir, I think I would have made up a better one than that. I have only tried to be honest all the way through and say, even though it sounds silly, it is what actually happened.

Q. Let me tell you why am suggesting that that is the reason for an invented account: it is apparent from the evidence that was given to Lord Widgery and from the evidence that has so far been given to this Tribunal, that a number of things that call out for explanation have not been explained then or now. The first of those things is what I was asking you about before lunch, namely, the death of three people at the barricade in addition to Michael Kelly, for which no explanation, consistent with the soldiers' evidence, has been forthcoming...⁹⁵

8C-92 Mr Clarke continued:

Q. So if the Tribunal was satisfied that the people I am talking about, the known dead and wounded, were shot by soldiers, it might be driven to conclude that those who were shot and who cannot be linked to the evidence of other soldiers who fired, were shot by you; do you follow?

⁹⁴ Day 370/149/16

⁹⁵ Day 377/085/17

FS-7. 1853

A. I follow, sir, yes.

Q. Do you still say that you fired 19 shots, in the manner that you describe?

A. I do, sir.

Q. And that none of your shots killed or wounded somebody else?

A. That is correct, sir.⁹⁶

Guinness Force

8C-93 It was also suggested that a member of Guinness Force was responsible for the deaths of William Nash, John Young and Michael McDaid.

8C-94 Michael Mansfield QC, representing the Nash family, asked Soldier L whether he shot William Nash:

Q. ... Then I come to the crucial bit: how many shots did you fire at the barricade?

A. Two to the best of my knowledge.

Q. Or was it three?

A. (Pause). Two, I do not know, two.

Q. Well, I would like to know because I represent a family who have two people who were injured at the barricade, one mortally, and I want to know whether you in fact fired in such a way as originally described to 200 just at the barricade and you killed Willie Nash; do you follow?

A. I did not fire at just that, and I was given a direct order from my commanding officer to fire at the people with the weapons. Who they were, I do not know.⁹⁷

8C-95 Mr Harvey QC, who had previously asked Soldier P whether he shot the three men at the barricade, went further. He suggested that Soldier L had in fact shot “a

⁹⁶ Day 377/101/09

⁹⁷ Day 381/174/13

FS-7.1854

group” of people, referring, it is assumed, to William Nash, John Young and Michael McDaid:

Q. The person you killed or shot was not Kevin McElhinney, the boy who was crawling away, the person you shot or killed was one of a group who were behind the barricade and behind the barricade on the south western side of Rossville Street and that you chose to lie about that later. Why?

*A. You are saying that, not me.*⁹⁸

8C-96 The problem of identifying the soldier or soldiers responsible for shooting the three men at the rubble barricade, therefore, remains unresolved. Christopher Clarke QC and Arthur Harvey QC asked Mortar Platoon’s Soldier P whether he shot the three men. Mr Clarke then proceeded to question members of Anti Tank Platoon on the basis that one or more members of that platoon had fired the relevant shots. The situation became less clear with the suggestion by Mr Harvey and Mr Mansfield that Soldier L of Guinness Force was in fact responsible.

THE CITY WALLS THEORY

8C-97 Others have suggested that William Nash, John Young and Michael McDaid were not shot by members of 1 PARA at all, but by a sniper or snipers situated on the City Walls.

8C-98 Don Mullan compiled and edited *Bloody Sunday The Breglio Report* in 1997. A summary on the book’s back cover states:

Serious doubts are now raised concerning the shooting dead of Michael McDaid, William Nash and John Young. Who shot them and from where? The Breglio Report is the considered opinion of one of New York City’s most experienced ballistics experts. Supported by the expert medical opinion of Dr. Raymond McClean, both men lend weight to the growing belief that soldiers positioned

⁹⁸ Day 381/147/10

on the old Derry Walls were also shooting to kill or wound on Bloody Sunday.⁹⁹

8C-99 As Channel 4 News put it:

Michael McDaid, John Young and William Nash ... all of them teenagers and unarmed ... all shot dead within a few feet of each other... tonight we have post mortem evidence which proves none of these men could possibly have been shot by the Parachute Regiment on the streets.¹⁰⁰

8C-100 Robert J. Breglio

After examining the autopsy and medical reports of William Nash, John Young and Michael McDaid and noting the similarities and consistencies of the angle of the trajectories of the fatal wounds sustained by these three young men.

felt able to conclude that the rounds which struck them:

originated from an area up in the vicinity of Derry's Walls and were fired by a high powered weapon using telescopic sights.¹⁰¹

8C-101 Robert Breglio noted that his conclusion was supported by Dr. Hugh Thomas, a surgeon at Prince Charles' Hospital in Merthyr Tydfil, who in January 1997 told Alex Thomson of Channel 4 News that the three could not have been shot by soldiers at ground level. Dr Thomas said:

This shot could only have come from a higher level. It would be almost impossible for those three men in the few seconds available to them to bend to exactly the same angle and face exactly the same way and be shot in exactly the same fashion. It would be extraordinary and almost unheard of. So, I would say definitely not.

It's likely to be a marksman, an exceptionally good marksman, firing ... quite fast at the three suspects who were dumped in the

⁹⁹ T256

¹⁰⁰ X1.6.7; Alex Thomson, Channel 4 News, 17 January 1997

¹⁰¹ T264

FS 7.1856

*same area. You would only need literally a fraction of a second to align the next individual and complete the job.*¹⁰²

8C-102 Dr McClean's medical report also espoused the theory that William Nash, John Young and Michael McDaid were shot from the Walls and not by soldiers at ground level:

*The trajectory line of each bullet was strikingly similar in all three cases. The trajectory line in each case being from the front to the back and from above to below, with an angle of approximately 45 degrees.*¹⁰³

8C-103 He then spoke of "a clear eyewitness account" that William Nash was crossing the rubble barricade in the direction of Free Derry Corner when he was shot.

*From the post-mortem evidence which exists it is clear that this man could not have been shot by soldiers in Rossville Street, who were behind him. Equally, if he were upright or almost upright he could not have been shot from ground level. The conclusion to be drawn from the forensic evidence, allied to the eyewitness account, suggests the likelihood that William Nash was killed by a bullet fired from the vicinity of the Derry Walls. There is also the possibility that Michael McDaid and John Young may have been shot from a similar firing position. There are multiple eyewitness accounts of soldiers shooting from the Walls, even to the extent of claiming hits.*¹⁰⁴

8C-104 Dealing with paragraph 78 of the Widgery Report, Dr. McClean wrote:

Lord Widgery states that Nash was shot in the chest from the front. In this amazing section of the report, he moves directly from the evidence regarding the entry wound to discuss the presence of lead particles, present on the left hand. He disregards the evidence of the eyewitness account, which states that William Nash was positioned with his back towards Soldier P when he was shot... If William Nash was standing upright or nearly upright, then he must

¹⁰² T264; and see his BSI statement of 05.09.00 at M90.4

¹⁰³ T267

¹⁰⁴ *infra*

FS 7.1857

have been shot from above. He could not have been shot from ground level.¹⁰⁵

8C-105 He concluded:

An examination of attached diagrams (Appendix E) would suggest that all of these men were shot from above and not from ground level. The similarity of the trajectory lines through the three bodies would suggest that this was not haphazard shooting from different soldiers, at different angles, at ground level. The evidence as established, would indicate that these men were shot from a location above them, and possibly by a marksman or marksmen, firing from the same position.¹⁰⁶

5. APPENDICES

APPENDIX E

Trajectory line of bullets in the bodies of three people shot at the rubble barricade on 30 January 1972:

John Young



Entry: lower angle left eye fracture of several cervical vertebrae.

Exit: Below the left scapula. At the level of the 7th rib.

Trajectory: From the front, travelling backwards and downwards at an angle of approximately 45°.

William Nash



Entry: (R) Upper Chest 3rd - 4th rib 4.5cm (R) of mid line.

Exit: Below right 12th rib at the level of 2nd lumbar vertebra. 4.5cm from the mid line.

Trajectory: From the front, travelling backwards and downwards at an angle of approximately 45°.

Michael McDaid



Entry: Left chest, fracture (L) mandible and several cervical vertebrae.

Exit: Below right scapula, and just below the level of the 4th right rib.

Trajectory: From the front, travelling back wards and downwards at an angle of approximately 45°, and from left to right.

Appendix E from Dr. McClean's Medical Report

8C-106 Therefore, Mr Breglio and Drs Thomas and McClean all agree that William Nash, John Young and Michael McDaid were shot from above, Mr Breglio and Dr McClean both stating that the shots came from "the vicinity of the City Walls". Breglio and Thomas suggest that a single marksman was responsible, the former also felt able to assert that a telescopic sight was used. Dr McClean leaves open the possibility that more than one marksman was involved.

¹⁰⁵ T267

FS 7.1858

8C-107 The fact that such a theory could be promulgated in the first place, after apparently careful research, is evidence of the lack of any clear evidence, either forensic or from eye witnesses, linking a soldier or soldiers situated in the Bogside with these three deaths.

8C-108 The report of Dr Shepherd and Mr O'Callaghan includes a consideration of the City Walls theory:

We have been specifically asked to examine whether or not there is any evidence that shots fired from the City Walls were responsible for the deaths of William Nash, John Young and Michael McDaid. The apparently similar and steep angles at which the bullets struck the deceased has been interpreted by some as indicating that the shots may have come from an elevated position, possibly a point on the City Walls.¹⁰⁷

8C-109 They concluded:

Whether the shots were fired downwards from the walls or horizontally at ground level from the Kells Walk direction the deceased would have been bending forward for the shots to have caused the tracks that were found.

If facing towards the walls, the deceased would have to have bent forwards at an angle of approximately 40° to align the track through the body with a horizontal trajectory.

The difference in angle of shot is therefore only 5°, well within the possible error of measurement.

Consequently, our opinion is that the shots which killed William Nash, John Young and Michael McDaid, could have been fired from either the street or from the City Walls.

However, it is clear from the injuries that all three men were facing in the general direction from where the shots came. It follows that if the shots originated from the City Walls, the deceased would have to have had their backs towards Kells Walk at the time they were shot. Conversely, if the shots originated from the Kells Walk side of the barricade, they would have to have been facing in that

¹⁰⁶ **T268**

¹⁰⁷ **E2.065 paragraph 11.1**

FS 7.1859

*direction. Witness testimony and not pathology or ballistics is therefore the key to resolving this matter.*¹⁰⁸

8C-IV CIVILIAN EVIDENCE

8C-110 Dr Shepherd and Mr O'Callaghan have, accordingly, concluded that the key to discovering which soldier or soldiers was or were responsible for the deaths of William Nash, John Young and Michael McDaid is the "witness testimony". It is not possible from the soldiers' evidence to determine which of them was responsible for shooting Messrs Nash, Young and McDaid. The Tribunal is therefore left to consider the civilian evidence.

8C-111 The civilian evidence does not, however, help the Tribunal determine this important issue. It is so contradictory as to preclude any clear conclusion. The problems caused by the passage of time and lapse of memories are accentuated by the fact that there was clearly a substantial volume of noise and shooting and considerable confusion. Thus, from the moment of the events themselves, people's impressions and interpretations differed and their accounts of events were, in many cases, inherently unreliable.

8C-112 This fact was recognised at an early stage by Christopher Clarke QC, whose *Summary of Civilian Evidence in relation to the Barricade Deaths of 31st May 2000* referred to the "substantial disagreement between the various witnesses" and set out some of the areas of discrepancy in the civilian evidence, including

- (1) where on the barricade John Young, William Nash and Michael McDaid fell;
- (2) which way they were facing when they were shot;
- (3) what they were doing when they were shot.¹⁰⁹

¹⁰⁸ *infra*; the debate continues, see Dr McClean's further statement at AM105.108.

¹⁰⁹ TmpD 16.001 paragraph 2 (paragraph erroneously numbered 187.2)

FS - 7. 1860

8C-113 Mr Clarke's document provides the foundation for this section of our submissions. We refer to many of the witnesses whose evidence he considered in this context, and begin with the three areas of discrepancy identified above.

WHERE IN RELATION TO RUBBLE BARRICADE DID JOHN YOUNG, WILLIAM NASH AND MICHAEL MCDAID FALL?

8C-114 The confusion as to where precisely the three men fell is symptomatic of a wider confusion relating to the circumstances in which they were shot. The Tribunal has before it evidence suggesting that one or more of the three was shot:

- (1) north of the rubble barricade;
- (2) south of the rubble barricade;
- (3) on the eastern portion of the barricade; and
- (4) on the western portion of the barricade.

North of Rubble Barricade

8C-115 Various witnesses describe the shooting of William Nash and/or others at a position *north* of the barricade.

8C-116 Letty Donnelly saw a person she later learnt was William Nash, "who had been running in the direction of the barricade before he was shot", who "fell on his front before he reached the Rubble Barricade."¹¹⁰ She indicates on her plan a position just to the north of the eastern portion of the barricade.¹¹¹ She saw two further people lying north of the barricade, but in front of its western portion. They too were later removed from the barricade in an Army Pig.¹¹²

¹¹⁰ AD125.2 paragraphs 9 to 10

¹¹¹ AD125.7 position E

¹¹² Day 124/122/2; AD125.7 position G

FS 7.1861

8C-117 Similarly, Ronnie Ballard saw a person he later discovered was William Nash running south towards the rubble barricade:

*He ran towards the Rubble Barricade and reached the north side of it...and was right up to the Rubble Barricade about to hurdle it when he stopped. I heard a couple of shots and he collapsed face down onto the Rubble Barricade.*¹¹³

8C-118 Olive Mottram saw a body "lying face down with the head towards Free Derry Corner and feet towards William Street", north of the rubble barricade, "quite close to Glenfada Park North". Another young man, who was also north of the barricade, fell a little further to the east.¹¹⁴

8C-119 Monica Whoriskey¹¹⁵ gave an account suggesting the three men were shot as they lay in positions north of the barricade:

8. ...I saw three young men lying to the north of the Rubble Barricade... They were lying on their stomachs with their heads on the Rubble Barricade and their feet pointing north... The young man lying closest to Block I turned his head and seemed to talk to the other men lying there.

*9. After a short time I looked out of the window again at the three men lying at the Rubble Barricade but this time I noticed they were not moving at all...*¹¹⁶

South of Rubble Barricade

8C-120 Many others suggest that the three were in fact shot while they were on the other side of the barricade. There is conflicting evidence as to where, south of the barricade, they were actually shot. Some suggest that they fell parallel to the eastern portion of the barricade, others apparently recall seeing the men fall parallel to the western portion. This evidence is considered below.

¹¹³ **AB6.3 paragraph 18**

¹¹⁴ **AM441.5 paragraphs 29 to 32**

¹¹⁵ A.K.A. Monica Hegarty **AH63**

¹¹⁶ **AH63.5**

FS 7.1862

Eastern Part of Rubble Barricade

- 8C-121 Frank Lawton saw three young men all lying still on the south side of the barricade, all east of its centre.¹¹⁷
- 8C-122 Michael Lynch saw three people lying behind (south of) the eastern part of barricade, one of whom may in fact have been Alexander Nash, because he was waving what appeared to be a handkerchief over the top of the barricade.¹¹⁸
- 8C-123 Jack Nash helped to carry Michael Kelly away from barricade. When he next looked at the barricade he could see three people lying together, one of whom was Alexander Nash. The two others were lying close by. All were to the south of the eastern portion of barricade.¹¹⁹
- 8C-124 Kathleen Brown saw a young man lying face down on the eastern part of the rubble barricade. An elderly man lay over him.¹²⁰ It is, therefore, possible that the older man was Alexander Nash and the younger man William Nash.
- 8C-125 Letty Donnelly believed that William Nash was shot north of the barricade, but to its eastern side.¹²¹

Western Part of Rubble Barricade

- 8C-126 Denis McLaughlin saw a man he identified as William Nash¹²² fall just behind the western part of the barricade. He saw the man:

16. ... crossing the barricade in a southerly direction towards Free Derry Corner. He was approaching the barricade from Block 1 of the flats. He was not holding anything in his hands and did not look

¹¹⁷ AL6.3 paragraph 13

¹¹⁸ Day 148/194 to Day 148/197; AL38.011

¹¹⁹ AN27.3 paragraph 13; Day 137/019/10; AN27.018

¹²⁰ AB94. paragraphs 16 to 18; AB84.019; Day 144/116 to 117

¹²¹ AD125.16; Day 124/132/19

¹²² AM326.6 paragraph 20

FS-7.1863

as if he was about to pick anything up... He was running towards Free Derry Corner.

*17. As I caught sight of his he fell back and rolled over on his mouth and nose, on the Free Derry side... of the Rubble Barricade. He lay no more than 3 to 4 yards from me and closer to the Glenfada Park pavement side.*¹²³

8C-127 Hugh Duffy saw William Nash and another lying at the rubble barricade, shot. They were "lying very close to each other to the west of the gap in the Rubble Barricade..."¹²⁴

8C-128 Bernard Feeney saw three men shot on the barricade; they were nearer to the Glenfada Park end and were staggering around as if drunk before collapsing on the south side.¹²⁵

8C-129 Albert Faulkner observed a group of people run across Rossville Street; he believed they were heading for cover in Glenfada Park.¹²⁶

*Four of the people who were running across Rossville Street towards Glenfada Park, the ones who were at the tail end of the group, dropped to the floor. Three of them fell flat, either on their faces or on their sides, I cannot quite recall. These three fell quite close to one another, but not on top of one another, and lay still. They were on the pavement on the west side of Rossville Street (the Glenfada Park North side) when they fell, and were probably two feet south of the Rubble Barricade, on the Free Derry Corner side.*¹²⁷

8C-130 Marie Kopiak gives a similar account to that of Mr Faulkner.¹²⁸

¹²³ AM326.4 paragraphs 16 to 17

¹²⁴ AD156.3 paragraphs 14 to 15

¹²⁵ AF8.4 paragraphs 21 to 22; Day 141/058 to Day 141/059

¹²⁶ AF4.2 paragraph 7

¹²⁷ AF4.2 paragraph 8

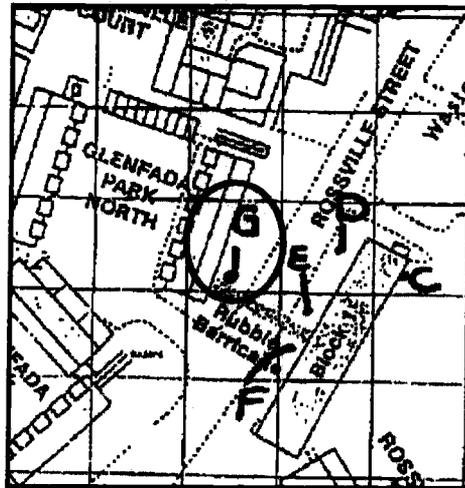
¹²⁸ AK39.3

FS 7.1864

Both sides of Rubble Barricade

8C-131 There are several witnesses who suggest that William Nash, John Young and Michael McDaid did not all fall on the same side of the rubble barricade. For example, Letty Donnelly believed that William Nash was shot north of the barricade, but to its eastern side¹²⁹ and that two others fell on the western portion of the barricade:

In addition to Mr Nash and the boy that had been shot, I saw two other men lying still on top of each other and more or less on the top of the barricade itself. The approximate point at which they were lying is marked G on the map¹³⁰... I have never found out who they were.¹³¹



8C-132 The “substantial disagreement between the various witnesses” relating to “where on the barricade Young, Nash and McDaid fell”, first identified by Mr Clarke, therefore persists to this day.

¹²⁹ AD125.16; Day 124/132/19

¹³⁰ AD125.7

¹³¹ AD125.2 paragraph 16

FS 7.1865

WHICH WAY WERE WILLIAM NASH, JOHN YOUNG AND MICHAEL MCDAID FACING WHEN THEY WERE SHOT?

8C-133 Another area of disagreement identified by Mr Clarke related to the direction in which these men were facing when they were shot.

Facing North

8C-134 A number of witnesses suggest that one or more of the three was facing *north* when shot. Paul Coyle is an example of such a witness. He saw a youth, who may have been William Nash, "facing north with his arms outstretched, gesticulating with his two fingers up, presumably at the soldiers standing north of his position." The youth then fell during a hail of SLR bullets.¹³²

8C-135 Dennis Irwin gave the following account in his BSI statement:

23. I remember that the boy closest to me... had dark hair and was wearing a blue denim jacket. He was standing on the barricade facing north towards William Street... The sound of gunshots continued and I saw the boy double over clutching his stomach. He dropped down on to his knees and then kneeled over onto his face.

*24. I then saw the other young boy, who was also standing on top of the Rubble Barricade and facing north towards William Street... get shot... At the time I thought that he might have been shot from behind...*¹³³

8C-136 Brian Rainey's evidence was that the three to four young lads he saw fall at the barricade had been facing the soldiers to the north at the time they were shot.¹³⁴

Facing/Moving South

8C-137 There is, however, a body of evidence suggesting that at least one of the three was in fact facing or moving *south* when shot.

¹³² AC105.2 paragraph 10; and see PRAXIS account at 05.5.

¹³³ A13.3; and see Day 170/083/23.

8C-138 Several witnesses refer specifically to William Nash. They include Ronnie Ballard, who saw a person he later discovered to be William Nash, running south towards the rubble barricade:

*He ran towards the Rubble Barricade and reached the north side of it...and was right up to the Rubble Barricade about to hurdle it when he stopped. I heard a couple of shots and he collapsed face down onto the Rubble Barricade.*¹³⁵

8C-139 Letty Donnelly saw a person she later learnt was William Nash, "who had been running in the direction of the barricade before he was shot". She added that "He fell on his front before he reached the Rubble Barricade"¹³⁶ and indicated on her plan a position to the north the barricade.¹³⁷

8C-140 Denis McLaughlin referred to a man he later identified as William Nash,¹³⁸ who was:

16. ... crossing the barricade in a southerly direction towards Free Derry Corner. He was approaching the barricade from Block 1 of the flats. He was not holding anything in his hands and did not look as if he was about to pick anything up... He was running towards Free Derry Corner.

*17. As I caught sight of him he fell back and rolled over on his mouth and nose, on the Free Derry side... of the Rubble Barricade. He lay no more than 3 to 4 yards from me and closer to the Glenfada Park pavement side.*¹³⁹

8C-141 One witness refers specifically to Michael McDaid moving south. James Doherty described how he noticed a well dressed fellow he later learnt was Michael McDaid:

¹³⁴ AR3.2 paragraph 14

¹³⁵ AB6.3 paragraph 18

¹³⁶ AD125.2 paragraphs 9 to 10

¹³⁷ AD125.7

¹³⁸ AM326.6 paragraph 20

¹³⁹ AM326.4 paragraphs 16 to 17

FJ-7.1867

*... running towards the barricade. I am certain that he had nothing in his hand. He got over the top in a crouched position. He then fell back and lay still with his hands outstretched.*¹⁴⁰

8C-142 Other witnesses suggest that more than one person was shot whilst facing or moving south. James Chapman's evidence was that he saw three people fall as they made their way over the rubble barricade.¹⁴¹

8C-143 Kevin McCloskey ran south through the gap in the rubble barricade as shots were fired. Three men, all of them to his right, went down. They fell on their fronts, with their heads in the direction of Free Derry Corner. Mr McCloskey stated: "My impression was that they were hit whilst they got over the Barricade."¹⁴²

8C-144 Susan Coyle gave the following account in 1972:

*... three youths and a man were running over the barricade at the entrance to the High Flats. I heard gunfire from the army and two of the youths and the man fell. The third youth took cover by one of the other bodies. As he lay there I actually saw the bullet hit the boy in the head and from his position I assumed him to be dead. The other two youths, when shot, had fallen, one on top of the other and never moved, so I thought they had died immediately. The man raised himself and beckoned to the army and called to them that the boys lying beside him needed an ambulance...*¹⁴³

8C-145 Further witnesses claim that those shot whilst facing or moving south were shot in the back. Sheena Martin gave a statement in 1972, which seems to refer to the death of William Nash and the shooting of Alexander Nash and another:

I saw a soldier jump out of a Saracen tank and start shooting indiscriminately. He didn't care what he shot at. There was a fellow trying to get over the barricade and he shot him in the back. When this fellow was shot, a man whom I later learnt was his father, came out and tried to pull him in. When they got his father out they shot him as well. There was a fellow who came out of

¹⁴⁰ AD70.1

¹⁴¹ AC59.2; AC59.8 paragraphs C to F

¹⁴² AM116.4 paragraphs 24 to 29

¹⁴³ AC86.1

FS 7.1868

*Abbey St. the end of Glenfada Park and put his hands up in the air. He had nothing in his hands and he called to the soldier, "Go on shoot me." The soldiers took him at his word and they shot him down.*¹⁴⁴

8C-146 Chris Barrett described how:

*The first thing I saw was a young fellow running and jumping over the barricade. The next moment he was lying on the ground with his back all covered in blood. They had shot him in the back as he went over the barricade. There were two other lads lying besides him. They also had been shot.*¹⁴⁵

8C-147 It is clear from the evidence of the pathologists that none of William Nash, John Young and Michael McDaid was shot in the back. It is also clear from photograph P597 that Michael McDaid at least was not shot as he fled towards or scrambled over the barricade; the photograph shows him walking south through its centre. Yet such is the confusion surrounding the deaths of these young men that suggestions of this type continue to be made.

Moving West to East

8C-148 The situation becomes even more confused and unclear with a consideration of evidence from witnesses who believe that at least one the three men was in fact shot moving in an *easterly* direction.

8C-149 Marie Kopiak recorded that:

14. I saw three boys coming out from the gap between Glenfada Park South and Glenfada Park North...I assumed they were trying to cross over Rossville Street for cover. They came out in a straight line one behind the other, with their hands behind their heads... The young men were walking slowly and looked terrified, with their heads bent forward, almost crouching. The shooting was still going on at that stage...

¹⁴⁴ AM27.8; In her BSI statement, she could understandably remember less. She did specifically suggest that the 1972 account would be correct, however, AM27.5 paragraph 18.

¹⁴⁵ AB21.1

FS 7.1869

15. I must have looked away for a few moments (I could not watch) because, the next time I looked out, the three men were all lying down on the ground. The other people in the flats were in a terrible state crying, "They've shot three young lads!" The three young men had not got very far when they were shot...¹⁴⁶

8C-150 Joseph Doherty saw a youth, who he later discovered was William Nash,¹⁴⁷ walk out from the gable end wall of Glenfada Park North, across Rossville Street in the direction of Block 1 of the Rossville Flats. He was shot as he leant down as if to pick something up from the barricade.¹⁴⁸

8C-151 William Etherson saw three young men, who were south of the rubble barricade, run out (west to east), one behind the other:

They were running for no more than 10 or 20 paces. Suddennly they all went down to the ground but I could not tell whether they had been shot. When they were running they were all close together. I was not sure if they were running to try to get to the Rossville Flats. I thought they were trying to get to the Rubble Barricade to take cover. They got fairly near to the south side of the Rubble Barricade.¹⁴⁹

8C-152 Teresa Maxwell saw two young lads run out from the south east entrance to Glenfada Park North, more or less straight across the road towards the Rossville Flats. The next moment she saw one of the lads fall. Somebody said he was called Nash.¹⁵⁰

Moving East to West

8C-153 That evidence is contradicted by witnesses who saw the young men go down as they moved in a *westerly* direction.

¹⁴⁶ AK39.3

¹⁴⁷ AD76.012

¹⁴⁸ AD76.3 paragraphs 22 to 24; Day 138/147/15

¹⁴⁹ AE4.004 paragraph 22; Day 143/007 to Day 143/009

¹⁵⁰ AM30.002 paragraphs 6 to 7; Day 396/163 to Day 396/166

FS 7.1870

8C-154 Albert Faulkner observed a group of people run across Rossville Street; he believed they were heading for cover in Glenfada Park:¹⁵¹

*Four of the people who were running across Rossville Street towards Glenfada Park, the ones who were at the tail end of the group, dropped to the floor. Three of them fell flat, either on their faces or on their sides, I cannot quite recall. These three fell quite close to one another, but not on top of one another, and lay still.*¹⁵²

8C-155 Edward Rigney gave a similar account:

24. ...I saw a lad run from the east side of Rossville Street towards the west side...he was not running nimbly but was running in a direct line across Rossville Street...I think that he reached approximately half way across the Rubble Barricade when he fell forwards. He fell face down. My impression was that he had tripped. I did not see him get up and assumed that he was being sensible and taking cover behind the Rubble Barricade...

*25. After he fell, I noticed two other lads run out on to the Rubble Barricade, one after the other, from the east side of Rossville Street...They were only one or two seconds behind the first boy I had seen fall. I received the impression that they might have been going out to him...they, too, fell, one behind the other. The one in the lead seemed to fall forwards, west towards Glenfada Park North, and the boy behind him seemed to collapse straight down upon the ground and did not fall forwards.*¹⁵³

8C-156 Finally, in this regard, Seamus Fleming noted that:

*When the five or six people left on the Rubble Barricade were trying to come towards us, they were trying to make for the opening where I was standing between Glenfada Park North and Glenfada Park South. They were definitely facing towards Glenfada Park. They were heading in my direction, but the minute they got up two of them were hit by shots.*¹⁵⁴

¹⁵¹ AF4.002 paragraph 7

¹⁵² AF4.002 paragraph 8

¹⁵³ AR10.005; confirmed Day 136/039/12

¹⁵⁴ AF22.004 paragraph 25; confirmed Day 146/079/08

FS - 7.1871

8C-157 The “substantial disagreement between the various witnesses” relating to which way John Young, William Nash and Michael McDaid were facing when they were shot, therefore persists to this day.

THE CONDUCT OF WILLIAM NASH, JOHN YOUNG AND MICHAEL MCDAID IN AREA OF RUBBLE BARRICADE

8C-158 A further area of discrepancy identified by Mr Clarke in his *Summary of Civilian Evidence in relation to the Barricade Deaths*, relates to what the three men were doing when they were shot. Some suggest that they were throwing stones, others are clear that they were not.

Nothing in their Hands

8C-159 Kevin McCloskey saw three men go down at the rubble barricade. “All three had nothing in their hands that I could see, Their hands were flat out in front of them and they all fell with their hands in front of them...”¹⁵⁵

8C-160 Paul Coyle referred to the actions of a person he believed to be William Nash, who was part of a group hurling abuse at the soldiers but who had nothing in his hands at the time he was shot.¹⁵⁶

8C-161 Dennis Irwin gives evidence of the shooting of a young boy who was on the rubble barricade: “He was standing doing nothing at the time he was shot. He was not holding anything in his hands.”¹⁵⁷

8C-162 The man Denis McLaughlin identified as William Nash¹⁵⁸ was

crossing the barricade in a southerly direction towards Free Derry Corner. He was approaching the barricade from Block 1 of the

¹⁵⁵ AM116.4 paragraph 29

¹⁵⁶ AC105. 2 paragraph 10; 05.5

¹⁵⁷ AI3.4 paragraph 24

¹⁵⁸ AM326.6 paragraph 20

FS 7. 1872

*flats. He was not holding anything in his hands and did not look as if he was about to pick anything up...*¹⁵⁹

8C-163 James Doherty's evidence was that Michael McDaid had nothing in his hand when he was shot, although William Nash had leant down as if to pick something up from the barricade: "He may have intended to pick up a stone from the barricade and throw it at the soldiers."¹⁶⁰

Stones in Their Hands

8C-164 Brian Rainey's evidence was that the three to four young lads he saw fall at the barricade had all been throwing stones, grabbing what was nearest.¹⁶¹

8C-165 Eugene Bradley's evidence was that William Nash had been throwing stones before he was shot.¹⁶²

8C-166 Similarly, Alphonsus Cunningham suggests that William Nash had been lifting some rubble off the barricade to throw when he was shot.¹⁶³

8C-167 The evidence about even this issue therefore remains in conflict, a conflict which symbolises the state of the civilian evidence relating to the barricade deaths generally.

ARREST THEORY

8C-168 Various civilian witnesses maintain that Michael McDaid was arrested by the Army and put in the back of a Pig in Rossville Street. The accounts conflict but some witnesses elaborate this allegation by suggesting that CS gas was fired into the vehicle whilst Michael McDaid was in it. It is even claimed that he was shot shortly after he left the vehicle to escape the gas.

¹⁵⁹ AM326.004 paragraphs 16

¹⁶⁰ AD70.001

¹⁶¹ AR3.002 paragraph 14

FS 7.1873

8C-169 Joe Begley gave a statement to Detective Sergeant Ruddell in 1972, which included this account of his arrest:

I saw Michael McDaid of Tyroconnell Street. He is well known to me. I have known him for at least 10 years. He stepped over the barricade going towards William Street. He didn't seem to be concerned about the shooting. I was not aware live rounds were being used nor was Michael McDaid. It was at this time that I saw a youth lying behind the barricade... I didn't pay too much attention to him. I heard an elderly man saying he had been shot... I looked up and saw Michael McDaid and one other civilian being marched towards an Army Personnel Carrier which was parked at the William Street end of Rossville Flats on waste ground... Michael had both his hands behind his head... The rear doors of the Army Personnel Carrier were open and I assumed they were going to put Michael into it. I didn't see Michael again...¹⁶⁴

8C-170 Mr Begley now claims that he was inebriated when he made this statement to the RUC.¹⁶⁵ However, he is not the only witness to talk of Michael McDaid's arrest. Others who describe it, do so in more colourful terms.

8C-171 Ciaran Donnelly described, in a statement he gave in 1972, how a youth was arrested, assaulted and placed into a military vehicle:

... I saw a youth run out from the back of the Rossville flats and make his way towards the soldiers. A parachutist ran after him from an army vehicle and the youth ran back to the Rossville flats but was caught by another paratrooper who came from behind the Rossville flats. They hit him with batons and took him back into a vehicle. They had to drag him as he was unable to walk. At some time, but I am not sure, I thought that someone said his name was McDaid. I thought little of this until I heard that McDaid was the name of one of those who were killed. If anyone mentioned his name to me it would probably have been a resident in Bogside.¹⁶⁶

¹⁶² Day 169/168/07

¹⁶³ AC125.002 paragraph 7

¹⁶⁴ AB30.006; statement dated 23.02.72.

¹⁶⁵ AB30.005

¹⁶⁶ M22.2

FS 7.1874

8C-172 Donnelly has subsequently agreed that what he saw was similar to the incident depicted in Jeffrey Morris's photographs of the arrest of John Dillon.¹⁶⁷ It may, therefore, be that the story of the McDaid arrest started with the misidentification of somebody who was arrested within sight of the rubble barricade.

8C-173 Frankie Boyle was in the area of Kells Walk. His version of events includes the allegation that CS gas was fired into the military vehicle from which Michael McDaid was to escape:

14. Amongst the people throwing stones at the soldiers was Michael McDaid ... He threw some stones from Rossville Street then went towards the soldiers on the waste ground in the area ... between Block 1 of the Flats and Pilot Row ... He came more or less face to face with one soldier. He was arrested with two or three others and thrown into the back of a Saracen that was close by. Those arrested were kicking about in the back of the Saracen and a soldier fired CS gas inside. About two or three of the lads, including Michael McDaid, escaped from the back of the Saracen. They were choking on CS gas.

15. Michael McDaid ran away from the Saracen towards Rossville Street. When he was about 20 yards away from the Saracen, I heard a bang and saw him fall to the ground. I am not sure exactly where he was when he fell, but I think he was on Rossville Street close to the Rubble Barricade. He seemed to be facing me though I have the impression he was shot in the back. He was not carrying any weapons at all and all he was doing when he was shot was rubbing his eyes from the effects of CS gas.¹⁶⁸

8C-174 Mr Boyle confirmed the account of the arrest and of the shooting in oral evidence, albeit with some confusion as to the location of the Saracen in question.¹⁶⁹

8C-175 A week after Bloody Sunday, the Sunday Independent's Joe McAnthony referred to "what numerous eye-witnesses regarded as the most appalling massacre in the

¹⁶⁷ Day 071/025/19; the photographs are at EP2/6-7.

¹⁶⁸ AB48.2

¹⁶⁹ Day 122/057/18 to Day 122/063/23

FS 7.1875

whole affair."¹⁷⁰ He reported the arrest and murder of Michael McDaid in similar though not identical terms to those used by Mr Boyle.

8C-176 Photograph P597 shows Michael McDaid walking south through the gap in the centre of the barricade at a time after Michael Kelly had been shot. At this stage he does not appear to be in any way disconcerted. It might be thought that this photograph alone disproves the allegations concerning his arrest. He certainly does not look or behave in the photograph like a man who has just successfully escaped from the back of a Pig. The evidence about his arrest, therefore, serves to illustrate how distorted have become the accounts of his death and the circumstances surrounding it.

8C-V CHRONOLOGY

8C-177 Christopher Clarke QC's *Summary of Civilian Evidence in relation to the Barricade Deaths* suggests that there is a consensus in the civilian evidence that:

*Young, William Nash and McDaid fell a little after Kelly did, more or less at the same time as each other.*¹⁷¹

8C-178 Nothing is clear in relation to the barricade deaths; one of the photographs challenges even this preliminary conclusion.

8C-179 Michael Mansfield QC referred to EP27/11, below, when he made an opening statement on behalf of the Nash family. He suggested that William Nash appears in it (marked with an arrow) at the end of the gable wall of Glenfada Park North.¹⁷²

¹⁷⁰ L165; 06.02.72.

¹⁷¹ TmpD16.002

¹⁷² Day 050/134/10

FS 7.1876



8C-180 Mr Mansfield initially contended that the photograph was taken before Michael Kelly had been shot.¹⁷³ It was brought to his attention that the photograph may well depict the beginning of the passage of Mr Kelly's body into Glenfada Park North (circled) and that the photograph must therefore have been taken after the shooting of Mr Kelly. Mr Mansfield agreed that might be the case:

I accept it could be that that group has already retrieved Mr Kelly and therefore William Nash has not yet gone round the corner to the rubble barricade with the others. It is difficult to be precise about that.¹⁷⁴

8C-181 Mr Mansfield, therefore, acknowledged the difficulty in determining when William Nash was shot. However, rather than being difficult, it is, in fact, impossible.

8C-182 Arthur Harvey QC also opened on the basis that **EP27/11** may show William Nash at the gable wall.¹⁷⁵ He, however, added that it might also show Michael McDaid and, at its extreme right hand side, Kevin McElhinney:

¹⁷³ Day 050/135/08

¹⁷⁴ Day 050/136/19

¹⁷⁵ Day 047/067/14, there referred to as P420

FS 7.1877

There is also a possibility, if one looks at this photograph, that that is Michael McDaid. Michael McDaid was wearing a white shirt and checked coat, but one cannot be sure. In the corner is, as one can see, a very small portion of an individual. It appears to be an individual either lying or crawling on the ground; that is possibly Kevin McElhinney.¹⁷⁶

8C-183 The identification of William Nash (and possibly Michael McDaid and Kevin McElhinney) at this time would have important ramifications for the timing of various incidents.

(1) It would suggest that the shooting of William Nash, and possibly Michael McDaid, did not happen as soon after that of Michael Kelly as had previously been assumed. On this hypothesis, Mr Nash (and Mr McDaid) were not shot until *after*:

(a) Michael Kelly was shot and photographed on the ground in the area of the barricade (P597, which proves that Michael McDaid had not been shot at this stage);

(b) Michael Kelly had been carried away from the barricade to the mouth of Glenfada Park North (EP23/10 and EP23/11);

(c) Father Bradley had administered the last rites;

(d) Michael Kelly's body had been picked up and had started on its way through Glenfada Park North (EP27/11).

(2) The provisional conclusion that William Nash, John Young and Michael McDaid were shot at the same time is also called into question by a photograph which may show two of them in Glenfada Park when Michael Kelly's body was brought in from the barricade.

¹⁷⁶ Day 047/067/24

- (3) The relationship between the shooting of William Nash and Hugh Gilmore is also brought into question by the photograph. Liam Mailey gave detailed evidence to Lord Widgery, during the course of which he explained the EP23 series of photographs that he took. Mr Mailey himself probably appears in the well known photograph of Hugh Gilmore running past the entrance to Block 1 of the Rossville Flats (EP23/9A), apparently taken *after* Mr Gilmore had been shot. Mr Mailey confirmed in his evidence that this photograph would have been taken before he himself took (EP23/10).¹⁷⁷ EP23/10 is the photo showing a crowd gathered around the prone Michael Kelly at the gable end, the first of the series of three photographs taken at the gable end, all of which were clearly taken *before* EP27/11. Thus, this series suggests that Hugh Gilmore was shot before William Nash (and possibly Michael McDaid).
- (4) Mr Harvey potentially identifies Kevin McElhinney alive in EP27/11 and crawling alongside Block 1 of the Rossville Flats. It is suggested by those representing Mr McElhinney that he was shot in about this position. If correct, the photograph would also suggest that he was shot *before* William Nash (and possibly Michael McDaid).¹⁷⁸

8C-184 Therefore, it can no longer be assumed that William Nash, John Young and Michael McDaid were shot shortly after Michael Kelly, nor that they were necessarily all shot within a short time of each other. Mr Nash, and possibly Mr McDaid, may even have been shot *after* Mr Gilmore and Mr McElhinney. It is now clear that even the most basic preliminary conclusions regarding the circumstances in which they were shot are questionable.

¹⁷⁷ M50.28 to M50.29

¹⁷⁸ Submissions in relation to Kevin McElhinney are in chapter 8B.

FS 7. 1879

8C-VI MISSING CASUALTIES AND MISSING PHOTOGRAPHS

- 8C-185 Civilian evidence suggests that more people were wounded or killed in the area of the rubble barricade than those who have been identified. Whilst the existence of unidentified, "missing" casualties further confuses the situation, it may provide an explanation for what happened to the bodies of some of those shot by the military in this part of the Bogside.
- 8C-186 Significant photographs taken in Sector 3, and particularly of those events in the area of the rubble barricade, have gone missing. They are said to have suffered a variety of fates: unreturned by a journalist, destroyed in a flood or deliberately suppressed. This is considered in detail in chapter 7, in relation to the activities of the Mortar Platoon in Sector 3. It is now clear at the very least that the remaining photographs do not resolve the many problems associated with determining the circumstances in which William Nash, John Young and Michael McDaid were shot.

8C-VII CONCLUSION

- 8C-187 The problem of identifying the soldier or soldiers responsible for shooting the three men at the rubble barricade remains unresolved. That much was demonstrated by the fact that the same questions and allegations were put to soldiers of three different platoons. Christopher Clarke QC and Arthur Harvey QC asked Mortar Platoon's Soldier P whether he shot the three men. Mr Clarke then proceeded to question members of Anti Tank Platoon on the basis that one or more members of that platoon had fired the relevant shots. The situation became still more confused with the suggestion by Mr Harvey and Mr Mansfield that Soldier L of Guinness Force, was in fact, responsible.
- 8C-188 The "City Walls" theory posits that the three men were in fact shot by a soldier or soldiers situated on the Walls. The fact that such a theory was promulgated in the first place is itself evidence of the lack of any clear evidence linking a soldier or soldiers situated in the Bogside with these deaths.
- 8C-189 Dr Shepherd and Mr O'Callaghan have accordingly concluded that the key to discovering which soldier or soldiers was or were responsible for the deaths of

FS 7.1880

William Nash, John Young and Michael McDaid is the "witness testimony". It is not possible from the soldiers' evidence to determine which of them was responsible for shooting Messrs Nash, Young and McDaid. The Tribunal is, therefore, left to consider the civilian evidence.

8C-190 The civilian evidence does not, however, help the Tribunal determine this important issue. It is so contradictory as to preclude any clear conclusion. The problems caused by the passage of time and lapse of memories are accentuated by the fact that there was clearly a substantial volume of noise and shooting and considerable confusion. Thus, from the moment of the events themselves, people's impressions and interpretations differed and their accounts of events were, in many cases, inherently unreliable.

8C-191 Evidence suggesting that Michael McDaid was arrested before he was shot further illustrates how distorted have become the accounts of his death and the circumstances surrounding it.

8C-192 It can no longer be assumed that William Nash, John Young and Michael McDaid were shot shortly after Michael Kelly, nor that they were necessarily all shot within a short time of each other. William Nash, and possibly Michael McDaid, may even have been shot *after* Hugh Gilmore and Kevin McElhinney. It is now clear that even the most basic preliminary conclusions regarding the circumstances in which they were shot are questionable.

8C-193 The Tribunal cannot, in these circumstances, reach any conclusion as to the soldier or soldiers responsible for the shooting of William Nash, John Young and Michael McDaid.

FS 7.1881

CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 7

CHAPTER 9

SECTOR 4

FS 7.1882

CHAPTER 9

SECTOR 4

CHAPTER 9A - SECTOR 4

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CHAPTER 9

SECTOR 4

9A-1 ALLEGATIONS

GLENFADA PARK NORTH

9A-1 In relation to the shootings in the areas of Glenfada Park North and Abbey Park, it is alleged that soldiers moved into Glenfada Park North without good reason and proceeded to fire upon civilians without justification resulting in the deaths of William McKinney, James Wray, Gerard McKinney and Gerard Donaghy and injury to Patrick O'Donnell, Michael Quinn, Joseph Friel and Danny Gillespie.

9A-2 Specifically, it is alleged that:-

- (1) The soldiers from the Anti-tank platoon who moved into Glenfada Park North had no legitimate reason for doing so.
- (2) On entering Glenfada Park North, Soldiers E, F, G and H fired in an undisciplined way and at random.¹ One or more of them fired from the hip.²
- (3) There was no justification for such firing and these soldiers intended unlawfully to kill or seriously injure James Wray, William McKinney and Joseph Mahon.³

¹ per Christopher Clarke QC: Day 375/109/08

² per Lord Gifford Day 376/153/03

FS7.1884

- (4) Such firing was part of a “joint attack”.⁴
- (5) James Wray was shot at point blank range while lying prone on the ground by either Soldier G or Soldier H.⁵
- (6) Soldier H did not fire 19 rounds into a toilet window as he has claimed and has given this account merely to cover up unjustified shooting.⁶

ABBEY PARK

9A-3 It is alleged that Gerard McKinney and Gerard Donaghy were shot without justification.

EVIDENCE ON WHICH ALLEGATIONS ARE BASED

9A-4 In making such allegations it is understood that Counsel for the Tribunal and the interested parties rely upon:-

- (1) Civilian evidence of the behaviour of soldiers in Glenfada Park North and Abbey Park.
- (2) Civilian assertions that there were no gunmen or nail bombers present in Glenfada Park North on Bloody Sunday and no aggressive behaviour towards soldiers in the area.
- (3) The evidence of Soldier 027.

³ per Lord Gifford Day 376/153/03

⁴ per Lord Gifford Day 376/142/18

⁵ per Christopher Clarke QC to Soldier H Day 377/093/09; per Lord Gifford Day 378/110/16

⁶ per Christopher Clarke QC Day 377/085/20

FS 7-188j

- (4) The inconsistencies between the forensic evidence relating to the dead and injured and the accounts given by the soldiers of their firing in the area in that
 - (a) The number of targets identified by Soldiers who fired in Glenfada Park North (6) is insufficient to account for the number of dead and wounded (7 in Glenfada Park North).
 - (b) The accounts given by soldiers of their targets in Glenfada Park North do not tally with the known circumstances of the dead and wounded in that area and in Abbey Park.
- (5) Inconsistencies and omissions in the various statements of soldiers who entered Glenfada Park.

9A-II SUBMISSIONS - SUMMARY

GLENFADA PARK NORTH

9A-5 The inconsistencies and omissions in the civilian evidence as to the circumstances of the shooting in Glenfada Park North are such that the Tribunal cannot reasonably rely upon it as a basis for establishing what took place in Sector 4 on 30 January 1972. Evidence has emerged over the years of the Inquiry to clearly demonstrate that, contrary to many civilian accounts:

- (1) There were gunmen and nail bombs in Glenfada Park and the surrounding areas.
- (2) There were individuals in Glenfada Park North at least preparing to attack soldiers as they entered the area.
- (3) The soldiers did not open fire on an isolated group of three men but in fact encountered a scene of considerable chaos and confusion.

FS7-1886

(4) James Wray was not "executed" as he lay on the ground.

9A-6 Indeed Civilian evidence of military conduct generally is inconsistent and biased, either deliberately or unconsciously, towards a condemnatory account.

9A-7 The evidence of Soldier 027 has been wholly discredited and can be shown to be entirely inaccurate in respect of Glenfada Park North.

9A-8 The proximity in time and space of those who were killed and injured in Glenfada Park North was such that, taking into account the possibility of so-called 'shoot-throughs' and ricochets, the number of "hits" claimed by soldiers who fired there is sufficient to explain the number of dead and wounded.

9A-9 Glenfada Park North was a haven of paramilitary activity in January 1972.

9A-10 Soldiers entered Glenfada Park for legitimate and proper reasons having observed armed activity in the area.

9A-11 There were individuals in Glenfada Park North armed with nail bombs and rifles who were reasonably perceived to present a threat to soldiers entering the area.

9A-12 Those who were killed and injured in Glenfada Park North were probably close to individuals who were so armed.

9A-13 Soldiers entering Glenfada Park North were presented with a scene of chaos and confusion.

9A-14 It is hardly surprising, and far from an indication of dishonesty, that soldiers who were suddenly confronted with such a scene gave accounts which were, at least in part, incomplete or inaccurate.

FS7. 1887

9A-15 There were additional casualties to the known dead and wounded.

9A-16 There is no evidence from which the Tribunal can conclude that there was an agreement between any of those who entered Glenfada Park North to mount a "joint attack" on the civilians there.

ABBEY PARK

9A-17 No allegation is or can be made that any client represented by Mr Anthony Lawton fired any shot in Abbey Park.

9A-III THE DEAD AND INJURED IN SECTOR 4

THE DEAD

9A-18 The weight of the evidence suggests that James Wray and William McKinney were shot in Glenfada Park North and fell in the positions shown in P439.

9A-19 The weight of the evidence, while not without contradictions, suggests that Gerard McKinney and Gerard Donaghy were shot and fell in Abbey Park.

THE WOUNDED

9A-20 The weight of the evidence suggests that Joseph Mahon was shot and injured in Glenfada Park North and fell in the position shown in P439.

9A-21 The weight of the evidence suggests that Joseph Friel, Patrick O'Donnell and Michael Quinn were shot and injured in Glenfada Park North.

9A-22 The evidence of and relating to Daniel Gillespie is inconsistent as to the location and circumstances of his shooting, and, indeed, as to whether he in fact sustained a gunshot wound at all.

FS 7.1888

9A-23 It is likely that, with the exception of Daniel Gillespie, the injuries sustained by the dead and injured in Glenfada Park North and Abbey Park were the result of military firing.

9A-24 Counsel to the Tribunal's Report No.1 suggested that the evidence of the soldiers who fired in Glenfada Park North refers to insufficient rounds to account for the dead and injured in Sector 4.⁷

<u>SOLDIER</u>	<u>HITS</u>	<u>SHOTS</u>
E	1	2
F	1(2 shots hit 2 the same man)	
G	1 or 2	3
H	2 (in open air) 1 (behind window)	3 19
Total:	7	29

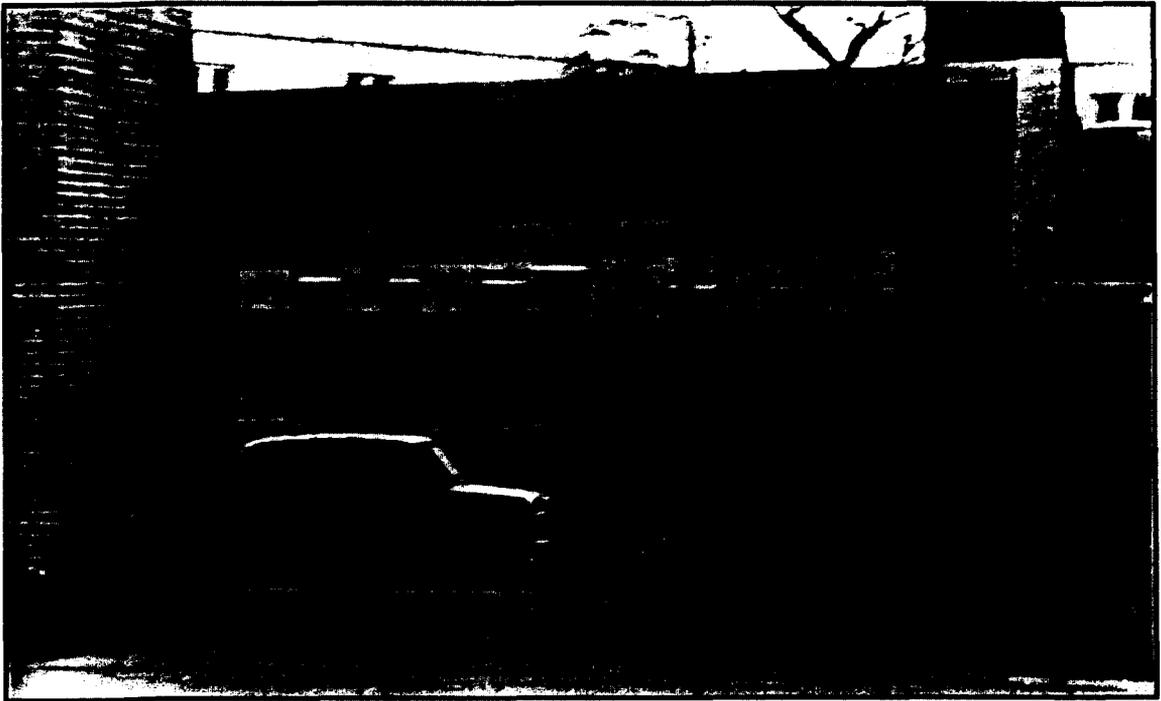
Thus, taken in its own terms, the evidence of the soldiers accounts for 7 hits at most, of which only 6 were in the open air. Yet there would appear to be 9 dead and wounded in the open air in either Abbey Park or Glenfada Park.

9A-25 Because of the nature of SLR fire, it is of course entirely possible that one shot can cause injury to more than one person. Because injury or death may result from a ricochet or "shoot through", the number of shots fired and persons injured may not equate. The proximity in time and space of those who were killed and injured in Glenfada Park North was such that the number of rounds fired may in fact account for all of the injuries suffered.

⁷ Counsels' report no:1 Para 18.2

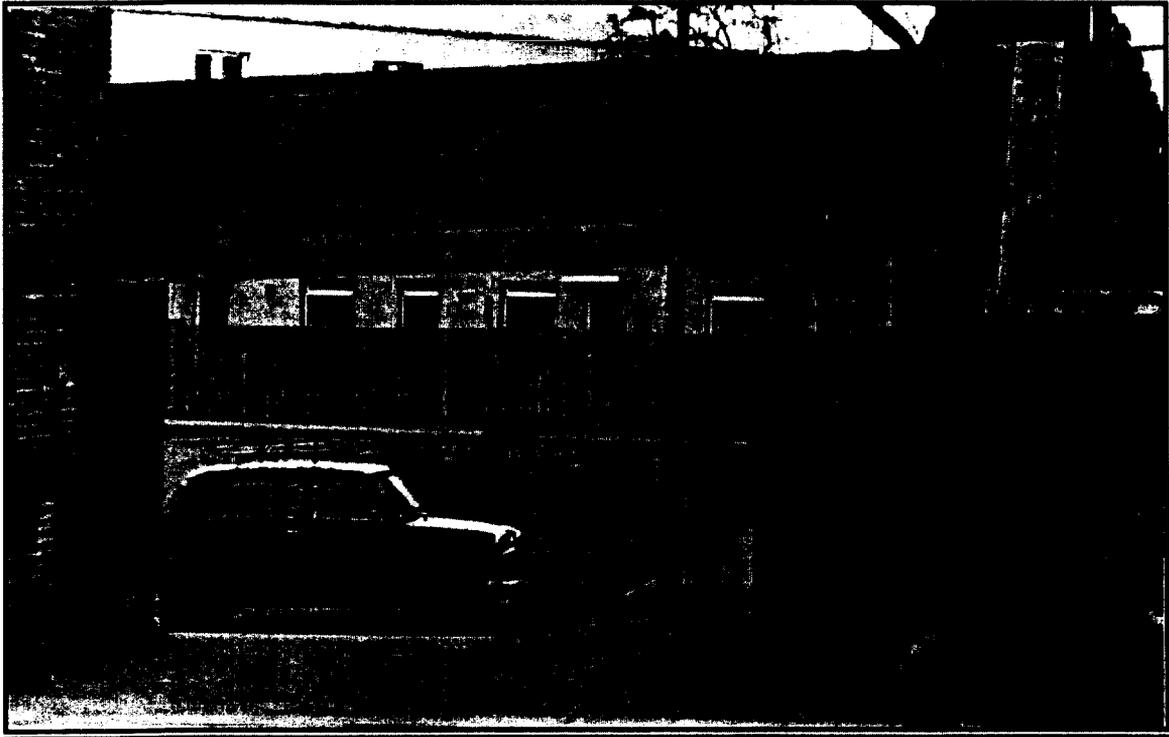
FS 7. 1889

9A-26 This possibility is illustrated by the shooting of Joseph Mahon and William McKinney. The position in which they fell is most clearly shown by Mr McBride's photographs at P438/439.



P438

FS7.1890



P439

9A-27 Dr Shepherd and Mr O'Callaghan concluded in their report in respect of Joseph Mahon that:

The damage to the bullet is unlikely to have been caused during its passage through the clothing or the body. It is most likely that this bullet has struck an intermediate object prior to hitting Joseph Mahon.⁸

9A-28 Furthermore, there is evidence to suggest that Joseph Friel, Michael Quinn, and James Wray were all shot very close to each other and in the same burst of shooting. The position in which James Wray fell is again shown in P438/439. Joseph Friel has said that he was hit about 8-10 feet from the southwest exit⁹ and Michael Quinn also fell at a position close to the

⁸ E10.9.

⁹ AF34.2:13

FS7. 1891

southwest corner as he could see the raised footpath.¹⁰ As neither heard any firing prior to the burst in which he was hit they would appear to have been shot at the same time.¹¹

9A-29 Joseph Friel himself told the Tribunal that “It is my presumption, it is only presumption, that when I was shot the likes of Jim Wray, Joe Mahon and Willie McKinney were shot.” He presumes they were immediately behind him.¹²

9A-30 Michael Quinn also believes he was shot at the same time as James Wray. As he stumbled immediately after being shot, he saw

...slightly in front of me, a man's head hitting the ground just in front of me. I did not see his hands come out as if to stop him falling – the man's head hit the ground directly.¹³

9A-31 Mr Quinn ran on. He believes the man was Wray although he did not recognise him as he fell.¹⁴ He was clear in oral evidence that Wray had been running ahead of him to his right.¹⁵

9A-32 Dr Shepherd and Mr O'Callaghan's report drew no conclusions as to the round which hit Joseph Friel saying only that

...no comment can be made concerning the nature of the projectile.

¹⁰ Day 169/088/07

¹¹ Day 155/058/14

¹² Day 155/085/06

¹³ AQ11.24:25

¹⁴ AQ11.24:25

¹⁵ Day 169/138/16

FS 7. 1892

- 9A-33 According to Mr Bennett, a Consultant Surgeon who treated Mr Friel at the time, however, he had suffered a flesh wound or an “almost near miss bullet”.¹⁶
- 9A-34 There would also appear to have been some suggestion that the bullet which struck Michael Quinn had first struck another object. Foreign material described as “fragments” were reported to be present in x-rays and were submitted to the DIFs. They were found to be “several small spherical pieces of a brittle, black non-metallic substance”.¹⁷ Unfortunately, Dr Shepherd and Mr O’Callaghan can offer no comment on the potential significance of this substance¹⁸ but it would seem to be common sense that foreign objects must have been carried into the wound in some way, quite probably by the bullet having struck some intermediate surface.
- 9A-35 Patrick O’Donnell, who was some distance from the other casualties, suffered what is describes in hospital notes as a “through and through” wound to the right shoulder.¹⁹ A number of metal fragments were found on his x-ray, one of which was submitted to DIFs and identified as a piece of lead which “could be part of a bullet”.²⁰ The fractured condition of the bullet again makes it likely that O’Donnell was hit by a ricochet, which, indeed, he is happy to accept.²¹
- 9A-36 The location and timing of the injury to Danny Gillespie is the most unclear as his own account has varied so considerably over time. Mr Gillespie having

¹⁶ D780

¹⁷ D945

¹⁸ E10.9

¹⁹ D0899

²⁰ D0906

²¹ Day 156/118/19

never sought hospital treatment, there are no medical records available with regard to the nature of his wound. However, he himself said, in the account given to the Praxis team, that the suggestion that “the bullet hit a wall and then hit him in the head”²² is a distinct possibility.

9A-37 Even more curiously, a man with an injury very similar to Mr Gillespie’s gave the following account when treated by Dr McDermott (AM5) at a house in Lisfannon Park²³

... he had been peeping around a wall and that he had seen a brick in the wall splinter when hit by a bullet and he assumed that a splinter of brick had hit him on the forehead.

9A-38 The doctor says in his BSI statement that

*I saw immediately that his forehead had been grazed by a bullet. He did not know that he had been shot.*²⁴

9A-39 McDermott then changed his account when giving evidence to this Tribunal, saying that in fact the man had been hit by a piece of “mosaic” and had not been grazed by a bullet at all.²⁵

9A-40 It is, then, very likely that a number of those shot in Glenfada Park North were in fact the victims of “shoot through” or ricocheting bullets such that it would be in no way surprising if one round caused injury to two or more of them.

²¹ Day 157/005/15

²² AG34.18

²³ (Vinny Coyle, in whose house Mr Gillespie says he was treated, lived at [REDACTED] AG34.19)

²⁴ AM5.5 paragraph 24

²⁵ Day 176/185/20 and Day 176/208/02

9A-IV SOLDIERS PRESENT IN GLENFADA PARK NORTH/ABBAY PARK

9A-41 Soldiers E, F, G, H and J entered Glenfada Park North and were present when some or all of the shooting in that area took place. Lieutenant 119 also entered Glenfada Park North but did so at a late stage when the shooting there was all but over.

9A-42 While it is likely that other members of Anti-Tank Platoon entered Glenfada Park North in order to assist with those detained or arrested there, there is no basis on which the Tribunal can conclude that they were present while shooting was taking place.

9A-43 The weight of the evidence suggests that only one soldier entered or fired into the Abbey Park area and that that soldier was Soldier G.

9A-V THE TRIBUNAL CANNOT RELY UPON THE CIVILIAN EVIDENCE IN GLENFADA PARK NORTH

9A-44 There is very little photographic evidence of events in Glenfada Park North and none showing the moments in which the dead and injured fell. The Tribunal is therefore largely dependent on the oral evidence of civilians and soldiers which is clearly at odds. The Tribunal cannot, however, in comparing these accounts, rely upon civilian evidence as definitive of events in Glenfada Park. This evidence is confused and inconsistent as might be expected given the chaotic conditions on the day and the fact that much of the evidence has been given to the Tribunal at 30 years' remove.

9A-45 The potential for confusion is amply demonstrated by those witnesses who place William McKinney in Abbey Park when he was shot whereas it is now established almost beyond doubt that he fell in Glenfada Park North.

FS 7. 1895

- 9A-46 The Tribunal will recall, for example, the evidence of Maureen Doherty, AD85, who knew William McKinney and had seen him at a Christmas dance only weeks before,²⁶ and claimed to have seen him in the Abbey Park area. She was insistent that he was, at the time a soldier stepped through into Abbey Park,²⁷ “crawling along the west block of Glenfada Park North flats towards the entrance between Abbey Park and Glenfada Park North flats”.²⁸
- 9A-47 The Tribunal will also recall the BSI statement of James Eugene McLaughlin, AM463, in which he said that he carried William McKinney from steps in Abbey Park into the O’Reilly household.²⁹ Mr McLaughlin indeed gave accounts of carrying William McKinney’s body from such a position in both a NICRA statement³⁰ and in a 1972 interview with Peter Pringle.³¹
- 9A-48 Noel Kelly, AK 17, a man who, as a neighbour, knew William McKinney and indeed his entire family³². was also quite positive that he saw him lying on the steps in front of Abbey Park and helped to carry him from there into No 7 Abbey Park. He gave that account both in a 1972 interview with Peter Pringle³³ and in his BSI statement³⁴ in which he was able accurately to describe his clothing and injuries.³⁵

²⁶ Day 161/095/22

²⁷ AD85.3 paragraph 11

²⁸ AD85.3 paragraph 11

²⁹ AM463.4:18

³⁰ AM337.1 (Mr McLaughlin is apparently also listed as Jim McLaughlin AM337)

³¹ AM337.2

³² Day 062/030/18

³³ AK17.1

³⁴ AK17.11:12

³⁵ AK17.13 paragraph 15; AK17.11 paragraph 13 (Mr Kelly describes a graze above the eye which is not mentioned in the autopsy report³⁵ but can be seen in autopsy photograph P131.)

FS 7. 1896

- 9A-49 It is only when shown a photograph at AK17.29 of himself carrying Mr McKinney's body out of Glenfada Park North³⁶ that Mr Kelly acknowledged that was "totally confused" as that photograph was entirely at odds with his clear recollection of Mr McKinney lying on the Abbey Park steps.³⁷
- 9A-50 Michael Feeney, AF9, also recognised William McKinney, who again he knew as he lived just around the corner from him in the Westway,³⁸ as the man he carried from the steps of Abbey Park into the O'Reilly household.³⁹
- 9A-51 While it is not suggested that William McKinney was shot, or at any time lying, in Abbey Park, the testimony of these witnesses provides ample evidence of the potential for apparently consistent and persuasive evidence to prove to be entirely mistaken. Indeed, were it not for the existence of Photograph P689 from which William McKinney can be identified, from a distinctive blazer button (which also appears in mortuary photographs)⁴⁰ as one of those being carried from Glenfada Park North, such evidence might well have been accepted.
- 9A-52 The unreliability of civilian evidence, whether honest or otherwise, is such that the Tribunal certainly cannot rely upon it to determine the nature of events in Glenfada Park North. Civilian evidence as to the soldiers' actions in that area, as well as being clearly open to bias, is so inconsistent as to be of little use.

³⁶ Day 062/054/09

³⁷ Day 062/054/24

³⁸ AF9.2:10

³⁹ AF9.2:9

⁴⁰ P129/P131

FS 7-1897

9A-53 Civilian estimates, for example, of the number of soldiers entering Glenfada Park North vary from one⁴¹ to “a dozen or so”⁴² with every variation in between having some adherents. Indeed the estimates of key witnesses themselves has changed over time. Daniel Gillespie revised the estimate given in 1972 to Peter Pringle of seeing three soldiers⁴³ to one soldier only when he gave his BSI statement.⁴⁴ Joseph Mahon moved in the other direction having told the Sunday Times team in 1972 that he had only seen one soldier,⁴⁵ he changed to having seen four or five by the time he gave his BSI statement.⁴⁶

9A-54 While many witnesses see soldiers enter from the north east corner, consistency is also lacking in this regard as others, such as Joseph Martin Gallagher,⁴⁷ Pat Moyne,⁴⁸ John O'Kane⁴⁹ and Gregory Wild⁵⁰ are sure that some or all of the soldiers entered from the north west corner. Michael Wilson, one of the witnesses to the alleged “execution” of Jim Wray, is sure that the soldiers he saw were not on the ground in Glenfada Park North at all but on the “verandas” or balconies of the blocks Glenfada Park North.⁵¹

9A-55 Nor is there any consistency in the civilian evidence as to how many of the soldiers who entered Glenfada Park North opened fire. A number of

⁴¹ George Downey AD134.4 paragraph 22; Joseph Martin Gallagher AG18.3 paragraphs 14-17; George Hillen AH74.4 paragraph 20-21.

⁴² Wilson, Michael AW18.1 paragraph 7

⁴³ AG34.17

⁴⁴ AG34.4 paragraphs 22-23

⁴⁵ AM18.14

⁴⁶ AM18.3 paragraphs 12-13

⁴⁷ AG18.3 paragraphs 14-17

⁴⁸ AM444.5 paragraph 33

⁴⁹ AO48.3 paragraph 13

⁵⁰ AW15.6 paragraphs 10-12

⁵¹ AW18.1. 7, Day 029/049/07

witnesses suggest that the two soldiers who entered first opened fire.⁵² Others, however, saw only the first soldier to enter Glenfada Park North fire⁵³ and Joseph Friel was able to say that he was quite sure that the other soldiers did not fire.

*I noticed what the other soldiers were doing with their guns.
They were not shooting.⁵⁴*

- 9A-56 Estimates as to the number of shots fired by soldiers entering Glenfada Park North also varied from “two or three”⁵⁵ to “continuous shooting lasting half a minute”⁵⁶ and ten or twenty rapid fire shots.⁵⁷
- 9A-57 The Tribunal has also heard evidence from civilians of shooting which is highly unlikely to be correct such as: Malachy Coyle’s graphic description of the shooting of a young boy at close range in the south east corner of Glenfada Park North⁵⁸ or Mrs Frances Lyttle’s account of Jim Wray being shot twice at point blank range by two different soldiers as he was passing through his grandmother’s garden gate.⁵⁹
- 9A-58 There are, moreover, certain, contentious areas of the evidence relating to Glenfada Park where there is overwhelming reason to doubt the veracity and reliability of many of the civilian accounts to this Inquiry.

⁵² Paul Coyle AC105.3 paragraph 14; Dennis Irwin Day 170/085/03; Donncha MacFicheallaigh AM7.3 paragraphs 15-16

⁵³ Pat Moyne AM444.5 paragraph 33; Malachy Coyle AC97.5 paragraphs 32-35; Dennis McLaughlin AM326.7 paragraph 24

⁵⁴ AF34.5:29

⁵⁵ Joseph Friel AF34.5 paragraph 29

⁵⁶ Pearse McCaul Day 164/100/18

⁵⁷ Paul Coyle Day 152/075/15

⁵⁸ AC97.5 paragraph 32-35 and Day 152

⁵⁹ AL36.3 paragraph 13

- (1) There is clear evidence of gunmen and nail bombers having been present in Glenfada Park North who the civilian witnesses to the Tribunal simply fail to mention.
- (2) A number of witnesses have given graphic evidence to the Inquiry of soldiers opening fire on an isolated group of three men as they crossed the southern end of Glenfada Park North. This demonstrably did not happen.
- (3) Similarly, a number of witnesses have presented the Tribunal with an equally graphic account of James Wray being 'executed' as he lay upon the ground. This evidence is equally fictitious.

THERE WERE GUNMEN AND NAIL BOMBERS WHICH CIVILIANS SIMPLY DO NOT MENTION

9A-59 It has become clear as evidence has emerged, largely in the later stages of the oral hearings, that there were paramilitaries operating with handguns, rifles and nail bombs in plain sight in Glenfada Park North and the surrounding areas on Bloody Sunday. That evidence is examined in detail below. It is an unavoidable conclusion that others must have seen such activity but have failed to provide such information to this Tribunal.

9A-60 Indeed the Tribunal will no doubt recall the evidence of the highly respected Mr Barry of the Sunday Times Insight Team as to his experience of this phenomenon:

It is true to say that my experience of Northern Ireland up to that time was that nationalist sympathisers had a near-genius

FS 7. 1900

for not mentioning the presence of the IRA when giving their versions of some event, and we initially met that in Derry.⁶⁰

9A-61 Tony Geraghty, then Chief Reporter for the Sunday Times, was of a similar view:

Experience in Northern Ireland had taught me not to rely on eyewitness testimony as it was often coloured by subjectivity and at variance with what had actually happened.⁶¹

9A-62 Ciaran MacLochlainn was at least prepared to admit, when questioned by Mr Glasgow, that he would not have contemplated admitting to seeing "Republican" activity in Glenfada Park North.

Q. ... is it not the plain truth that if you had seen Republican armed activity in Glenfada Park on Bloody Sunday, you would not ever have told this Tribunal about it?

A. That is correct.⁶²

9A-63 In addition to this blindness to IRA activity, civilian witnesses to this Tribunal have also provided evidence of military conduct in Glenfada Park North which can be shown to be exaggerated and in many cases entirely false. The allegations, for example, that three men were shot in cold blood as they ran isolated and alone across Glenfada Park North and that James Wray was executed at point blank range are, in fact, contradicted by a close examination of the evidence. The extremely widespread currency and appearance of consistency that these versions of events have gained and the widespread willingness of civilian witnesses to support them severely undermines the value of all of the civilian evidence as to events in Sector 4.

⁶⁰ M03.5 paragraph 19

⁶¹ M28.1 paragraph 2

⁶² Day 415/133/22

SOLDIERS DID NOT OPEN FIRE ON AN ISOLATED GROUP OF THREE MEN

9A-64 Lord Gifford has himself posited two, mutually contradictory, versions of the scene upon which soldiers fired in Glenfada Park North. To Soldier F he put the accounts of Terence O'Keefe, Eamon McAteer and John McLaughlin of soldiers firing at an isolated group of three men as they fled across Glenfada Park North.⁶³ To Soldier H Lord Gifford put the alternative account that he and Soldier G fired into a crowd.⁶⁴

9A-65 In fact, accounts of Joseph Mahon, William McKinney and James Wray running together in an isolated group, while providing an attractively coherent narrative, are untrue. Rather there is considerable evidence to suggest that soldiers entering Glenfada Park North encountered a scene of general chaos and confusion, rather than an isolated square across which three broke for cover.

9A-66 Whether there was any riotous activity in Glenfada Park North at this time is unlikely ever to be conclusively established. Many civilian witnesses have, in contrast to the evidence given by the soldiers who entered the area, denied that there was rioting of any kind in Glenfada Park North or *any* kind of confrontation with the Army there. There are, nonetheless, exceptions to that account which suggest that some of the crowd, at least, were preparing for a violent encounter.

9A-67 PIRA 25, AG17 has said in his BSI statement that

⁶³ Day 376/149/23; Day 376/152/02; Day 376/152/16

⁶⁴ Day 378/105-108; Day 378/100-101

FS7-1902

When I arrived in Glenfada Park there were lots of people there. They were gathering stones and bottles, ready to throw them at the soldiers.⁶⁵

9A-68 He told the Tribunal in oral evidence that

There was a whole crowd gathering stones in Glenfada Park⁶⁶

one of whom he was sure was Jim Wray⁶⁷.

9A-69 PIRA 25 said that these people were

Getting ready in case they (the soldiers) would come in, you know.⁶⁸

9A-70 Danny Gillespie also said in his BSI statement that he saw "5 or 6 boys entering GPN with broken flagstones". He assumed that they intended to use the flagstones as missiles to throw at soldiers but did not see them thrown at any stage.⁶⁹

The "Three Isolated Men" witnesses.

9A-71 A number of witnesses gave evidence of three men being shot while running from the south east to the south west corner of a deserted Glenfada Park North in an isolated group. Lord Gifford relies particularly on the statements of Eamon McAteer, John McLaughlin and Terence O'Keefe:

9A-72 Eamon McAteer, **AM41**, was at the south east gable end wall in Glenfada Park North and saw, according to his BSI statement:

⁶⁵ **AG17.2 paragraph 8**

⁶⁶ **Day 424/118/08**

⁶⁷ **Day 424/114/09**

⁶⁸ **Day 424/130/01**

FS7-1903

Three men from our group run from the gable wall where I was in the direction of the south west exit of Glenfada Park North going into Abbey Park. People were saying "don't run" but they did... I heard three shots, "bang, bang, bang" and two just dropped, one after the other. I do not know what happened to the third one. In the movies people seem to go down dramatically, but these men just dropped to the ground. It was very frightening. It was like a grouse or turkey shoot.⁷⁰

9A-73 Mr McAteer had given a similar account in a 1972 statement that:

The three of our group dashed from the corner of the gable wall inside Glenfada.⁷¹

9A-74 In oral evidence to this Tribunal Mr McAteer felt that he had seen three men fall

I only recall seeing two bodies, but when the people actually ran from our group and then the shots occurred, I felt as if it was three people went down, three positive single shots.⁷²

9A-75 John McLaughlin, AM334.6, was also at the gable end and gave a dramatic account to Peter Pringle in February 1972 of seeing three men run in an isolated group for the south west exit of Glenfada Park North:

Three of the group made a dash for the entrance of the small flats opposite us. I know now that Gerry McKinney was one of them. Just as they reached the pavement on the other side, they all fell down shot; it was as if they had been hit by a single bullet, they all just went down and never moved. I just could not believe I had seen three unarmed men shot down before my eyes. No-one of them was carrying anything in his hands.⁷³

⁶⁹ AG34.3 paragraph 20-21

⁷⁰ AM41.4 paragraph 27- 41.5 paragraph28

⁷¹ AM41.33

⁷² Day 168/020/24

⁷³ AM334/007

9A-76 As well as being clearly wrong about the presence of Gerry McKinney, MrMcLaughlin gave an entirely different account in his NICRA statement, where he did not suggest that the men who fell were part of an isolated group:

Some people attempted to run across the entrance to the Park. A few made it across but three were cut down...⁷⁴

9A-77 Father Terence O'Keefe gives a highly coherent account of events at the gable end of Glenfada Park North. He says that there were four "lads" who made to run from the south east gable wall one was restrained. He continues:

Everyone at the gable wall was very frightened. There were however four young men who were very agitated... I remember them shouting "we're going to run for it". They were gesturing across the southern block of Glenfada Park North towards the south western exit out of the courtyard which leads to Abbey Park. I remember others including myself in the crowd saying "no, stay and give yourselves up - you'll get killed if you run away". Some of the members of the crowd were able to physically restrain one of the four young lads, who I distinctly remember had red hair. However, the other three made a run for it. They had only taken a few steps into the Glenfada Park North courtyard when a further and recognisably separate burst of gunfire rang out. I assumed that this gunfire came from some soldiers who had veered off to the right when the Saracens first entered the area and had entered the Glenfada Park North courtyard from the north. The three boys fell to the ground in a row. I think that the first and third boys fell on the pavement and that the middle boy fell slumped at an angle across the pavement, partly on the pavement and partly on the courtyard. It was shocking to see them fall in that way.

9A-78 Father O'Keefe gave a very similar account in his statement to Lord Widgery and to the *Insight* team. He has told the present Tribunal that the boys he saw fall fell in a position very similar to that in P438/P439.⁷⁵ In a taped interview

⁷⁴ AM334.1

⁷⁵ Day 127/121/16

FS 7.1905

with the Praxis team, Father O'Keefe was very clear that "they broke from ourgroup you know".⁷⁶

9A-79 Other witnesses who support such an account include James Kelly, AK12:

*All of a sudden, Jim Wray, who was wearing a woolly hat and a black jacket, made a dash for it across the square with two other men. They all seemed to fall at the same time and were lying quite close together. They appeared to be dead.*⁷⁷

9A-80 Mr Kelly believes he saw James Wray run from the gable end. Referring to photograph P435 he told Lord Gifford:

Q. From what point, as far as you can recall, did James Wray run out; where had he been?

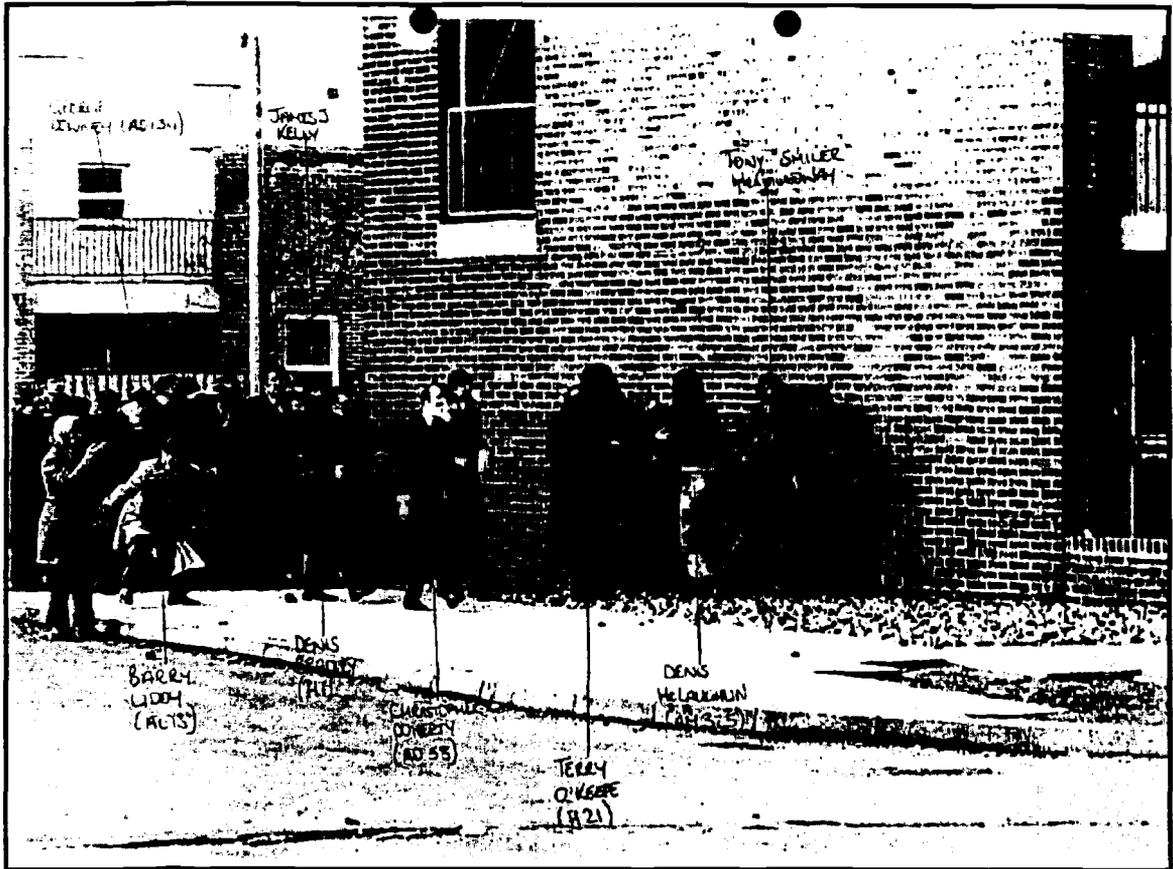
*A. Towards the end of the gable wall, fairly close maybe to where Denis Bradley is at the moment, you know, in that vicinity.*⁷⁸

⁷⁶ O12A.14

⁷⁷ AK12.4 paragraph 17

⁷⁸ Day 145/048/06-10

FS 7. 1906



P435

9A-81 Fergus McAteer, AM42, in his 1972 statement says he was sheltering at the gable end wall of Glenfada Park North when:

...suddenly three men dashed away from my right along the footpath in Glenfada Park. They had only got a few yards away from me when there was a burst of firing which came from the other end of Glenfada Park. The three men fell. I could see them clearly lying on the footpath. Within seconds of this incident, troops appeared around the right hand corner of the gable wall.⁷⁹

⁷⁹ AM42.1-2

FS 7. 1907

9A-82 Mr McAteer repeated this account in his BSI statement, clarifying his position as being at the centre of the south east gable end wall of Glenfada Park North⁸⁰ with his back pressed against the wall:

Suddenly I was aware of three figures running in front of me and west across Glenfada Park North towards the south west exit into Abbey Park (grid reference H14). The three men appeared in front of me as a group as if they had decided to make a run for it together⁸¹....They got a little way along the pavement to the west when there was a burst of very loud fire⁸².....All three men fell at the same time.⁸³

9A-83 Mr McAteer explained in oral evidence his impression that:

...they came from my left as I had my back to the gable wall, from the east running to the west in front of me. When I first noticed them they were running, yes. So their original origin, whether it was from our immediate group or somewhat in front of the group on the roadway in front of the gable wall, I cannot be sure.⁸⁴

9A-84 These witnesses clearly describe a group of three young men breaking away from the group at the south east gable wall of Glenfada Park, running alone across the square and being shot down before reaching the south west exit. Either there were additional casualties in Glenfada Park North about which this Tribunal has heard nothing or these three men were Joseph Mahon, William McKinney and James Wray.

9A-85 Photographic and other civilian evidence including that of Joseph Mahon himself show, however, that this cannot be the case.

⁸⁰ AM42.8 paragraph25

⁸¹ AM42.9 paragraph30

⁸² AM42.9 paragraph30

⁸³ AM42.9 paragraph32

⁸⁴ Day 168/062/24

FS7.1908

9A-86 There was no "Isolated Group" The evidence of Patrick McGinley, AM241, who was at the gable end, suggests that he was the young man held back at the gable end, giving the appearance of corroboration for the account of Father O'Keefe. Mr McGinley said:

...people started saying to us that the soldiers were coming in....As soon as people started saying this a group of four of us who were all very young decided to make a run south across the entrance to the Glenfada Park North car park into the alleyway at the north east corner of Glenfada Park South. The others made a dash for it and I went to run but suddenly was grabbed from behind and before I knew it I had someone's arm around my neck and I was struggling to get free.⁸⁵

Suddenly, I saw one of the three boys who had run out in front of me crumple to the floor. He was less than 20 feet away from me and near a gate and a wooden fence. I am not sure if the other two boys were shot.⁸⁶

9A-87 In fact Mr McGinley speaks of boys running towards the opening at the north east of Glenfada Park South. Moreover, he, as a sixteen year old, described them as "all very young", a description which hardly fits either 27 year old William McKinney or 23 year old James Wray.

9A-88 Patrick McGinley AM241 has not given oral evidence.

9A-89 The evidence relating to the three individuals who are known to have fallen in Glenfada Park North, William McKinney, Joseph Mahon and Jim Wray, shows that any account of three isolated men running from the south east corner of Glenfada Park North cannot relate to them.

⁸⁵ AM241.4 paragraph 22

⁸⁶ AM241.4 paragraph 23

FS 7. 1909

9A-90 There is virtually no eyewitness evidence which refers specifically to seeing William McKinney either immediately before or when he was shot. The only person who claimed to have witnessed his fall was Don Campbell, AC8, whose account, by the end of his oral evidence on Day 157 was in such disarray as to be of little assistance to the Tribunal.

9A-91 It would appear both inherently unlikely and out of character that William McKinney should have chosen to “run for it” when soldiers entered Glenfada Park, however. Unlike many others who were sheltering there, there is no suggestion that he had been engaged in rioting or stone throwing or had any other reason to fear arrest. Indeed it appears that Mr McKinney, a keen amateur photographer, had something of a reputation for standing his ground in such situations. According to Ivan Cooper,

It was always the joke that even if violence flared up on a march and CS gas was in the air, William McKinney would still be in the thick of the action.⁸⁷

9A-92 Mr McKinney’s own brother, George, AM301, concurs.

He did take big risks with photos. I have seen footage in the house where he stood for the last minute for pictures.⁸⁸

9A-93 Peter Barnes Harrigan, AH37, indeed, describes William McKinney on Bloody Sunday itself climbing on windowsills and a concrete block to get a better view while photographing rioting at the barrier in William Street.⁸⁹

9A-94 Nor does the account of three men running, in an isolated group from the gable end, accord with the evidence of Joseph Mahon who said in his BSI

⁸⁷ KC12.2.2 paragraph24

⁸⁸ AM301.5 paragraph29

⁸⁹ AH37.1 paragraph7

F57-1910

statement that, at the time soldiers entered Glenfada Park North he was standing, not close to the gable wall, but on the pathway just at the entrance to Glenfada Park South.

When I saw them (the soldiers), I was standing on the pathway just by the north eastern block of Glenfada Park North. The position where I was standing is marked with a D on the attached map (grid reference 115).⁹⁰

9A-95 He confirmed in oral evidence to the Tribunal when questioned by Mr Glasgow that this was his position

So there is no trickery of any kind, or trap for you, I make it plain some people recall you as being in the group that was really close to the gable wall, running out with just three of you, with one person being pulled back and the general group saying "Don't go, don't go" or words to that effect. That is not your recollection, you believe you were well clear of the wall to the south?

A. Yes.⁹¹

9A-96 Mr Mahon reports nothing of running with three other boys or of the conversation between them "we're going to run for it" and "no, stay and give yourselves up – you'll get killed if you run away" that Father O'Keefe so graphically recounts.

9A-97 Mr Mahon's account also contradicts that of the "isolated group" witnesses in that he did not run straight across Glenfada Park North but says he was

Banging on the wooden fences on the south side of this pathway as I went to see if any of them were open.⁹²

⁹⁰ AM18.3 paragraph 12

⁹¹ Day 167/060/03

⁹² AM18.3 paragraph 12

FS7.1911

- 9A-98 Joseph Mahon also perceived himself to be one of a much larger group than three or four saying he was running with a group of "15, 20 people or more".⁹³
- 9A-99 One of the few pieces of photographic evidence available in Glenfada Park, **P436**, shows James Wray's position at the time that Michael Kelly was being carried across Glenfada Park North. If, as many witnesses suggest, firing commenced at this time (see below) James Wray clearly did not run from the gable end at all. He was in fact already a good way across the courtyard at the point when soldiers entered Glenfada Park North. Nor, self-evidently, was Glenfada Park deserted of all but three men at this time. At least seven were involved in carrying Mr Kelly's body.
- 9A-100 Michael Quinn, **AQ11**, who is shown in **P436** sheltering by a fence, is able to confirm that a man he presumed to be James Wray came from a position ahead of him and to his right:

Q. The reason I ask that is that your recollection is crystal clear of Jim Wray going down in front of you?

A. Of a man going down in front of me.

Q. It was not someone converging on you from your left; he had been running ahead of you, had he not?

A. To the right.

Q. To the right, certainly not coming from the left?

A. No.

Q. If you could activate the screen. If your path was approximately like that across the car park, no question in

⁹³ Day 167/021/03

FS7. 1912

your recollection of James Wray coming across your path from the left like that?

A. No, the person was ahead of me.

Q. Was ahead of you and to your right?

A. Yes.⁹⁴



P436

9A-101 There is also considerable evidence from those around James Wray that he was amongst a sizeable group when he fell with others in front, to the side of, and behind him and not in an isolated group of three.

⁹⁴ Day 169/138/08-25

FS7-1913

9A-102 Pat Moyne, AM444, told the Tribunal that in fact he started running with James Wray. This was not part of a small group but a scene in which “everyone started running”

Do you know what it was that made people suddenly start to run?

A. Well, I think it was only natural if there is gunfire that people run.

Q. Did everybody in Glenfada Park run, or just a small group?

A. I presumably think that everybody ran, but some could have stopped.

Q. You tell us that you and Jim Wray started to run towards Abbey Park.

A. Yeah.⁹⁵

9A-103 Nor did Mr Moyne believe he began running from the gable end

MR TOOHEY: It is perhaps a bit unfair to give you those directions, but as you come into the entrance there is a wall, a gable wall on your right.

A. Yeah.

MR TOOHEY: Where some people gathered for a time. Did you join those people or were you somewhere else?

A. I think when I came in, in the entrance from, as you would say, the Rossville Street Flats, right, I came in and Glenfada Park is a square in there, I think I was in round the square, I did not, you know, I stopped in Glenfada Park.

MR TOOHEY: Within the square itself?

A. Yeah.⁹⁶

⁹⁵ Day 162/018/06-16

FS 7.1914

9A-104 In fact, far from a scene in which soldiers fired at an isolated group of three men, the Tribunal has heard evidence from some 20 individuals, in addition to Joseph Mahon, William McKinney and James Wray, who were running for the South West exit when the first shots were fired in Glenfada Park North. See the evidence of: George Hillen, AH74; Martin Gallagher, AG18; Donncha MacFicheallaigh, AM7; Pearce McCaul, AM93(with Seamus Friel); Pat Moyne, AM444; John O’Kane, AO48 (with Gerry McKinney); Don Boyle, AB47; Gregory Wild, AW15; Michael Quinn, AQ11; Patrick Bradley, AB68; Paul Coyle, AC105; Joe Donnelly, AD124; George Downey, AD134; Joseph Friel, AF34; Charles McLaughlin, AM321; James McNulty, AM377; OIRA1; and OIRA7.

9A-105 There are also many witnesses who, while not prepared to concede that there was any element of armed or violent activity in the square, describe a scene of chaos and confusion which is wholly inconsistent with three isolated individuals being shot as they ran across an otherwise deserted square.

9A-106 Joe Donnelly AD124 has said in his BSI statement that at the time soldiers entered Glenfada Park North he was assisting in carrying Michael Kelly and was conscious that there were:

... a large number of people in Glenfada Park North.⁹⁷

9A-107 Indeed, it was Mr Donnelly’s view that

I am sure that had there not been so many people in GPN the soldiers would have had a clear shot at me and I am in no doubt that I would have been fired at.⁹⁸

⁹⁶ Day 162/020/24-021/12

⁹⁷ AD124.4 paragraph15

⁹⁸ AD124.4 paragraph 19

FS 7-1915

9A-108 George Downey, AD134, who was with Mr Donnelly, told the Tribunal that when soldiers entered the square

... there were people running all over the place you know.⁹⁹

9A-109 George Hillen, AH74 saw many people trying to get out of Glenfada Park North at the time when James Wray fell:

A lot of the people in the car park were also trying to get through that gap and it was completely blocked; I would estimate that probably between 40 and 60 people were ahead of me in the alleyway.¹⁰⁰

9A-110 Charles McLaughlin AM321 heard the first live rounds fired in Rossville Street just as he entered Glenfada Park North via the north eastern corner. He said in his BSI statement that:

When I entered through the alleyway, I was literally climbing over people

9A-111 Some time later, after soldiers had entered GPN he says that:

As I was running, I was aware of a couple of dozen other people also running through the courtyard trying to avoid the bullets.¹⁰¹

9A-112 According to Martin Gallagher AG18, at the time he saw Jim Wray fall in front of him

... there was people going everywhere.¹⁰²

⁹⁹ Day 123/089/03

¹⁰⁰ AH74.4 paragraph 19

¹⁰¹ AM321.4 paragraph 13

¹⁰² Day 165/016/04

FS7. 1916

9A-113 Ciaran MacLochlainn AM12 has said in his BSI statement that, just before Michael Kelly was carried across Glenfada Park North:

There were hundreds of people panicking and running through Glenfada Park North...There was blind fear and panic. I could see people pouring through the north east and north west corners into Glenfada Park North.¹⁰³

9A-114 In oral evidence he described the scene as one of "basic pandemonium"¹⁰⁴ and said that the south western alleyway into Abbey Park was crowded with people looking for shelter.¹⁰⁵

9A-115 Indeed when questioned by Mr Glasgow about the bullet hole which he claimed to have found in his jacket, Mr MacLochlainn described the scene of chaos in Glenfada Park in graphic terms.

Q. And that shot was fired very, very close to you, while you were in Glenfada Park North?

A. It was -- I believe it was fired -- I believe it was fired in that vicinity. I just do not believe it was fired at me. I believe it was fired at, at everyone that was trying to scramble to safety.

Q. That is what I wanted you to help the Tribunal with if you can and if you will: do you know what was going on immediately around you at the time when that bullet hit your clothing? Do you know what was going on?

A. Um, what I can sense is being, um, among hundreds of people, um, and British soldiers being very close and firing upon -- on us, um, obviously deliberately now and that is why everybody, especially the girls, were squealing and, and, you

¹⁰³ AM12.4 paragraph24-25

¹⁰⁴ Day 415/109/13

¹⁰⁵ Day 415/109/21-23

*know, we were just trying to stay alive, you know, everybody, we were looking for cover.*¹⁰⁶

9A-116 John James McCourt AM144 ran into Glenfada Park North and straight to his wife's granny's yard in the square. He says

*... the shooting had actually started before I had actually got into the yard.*¹⁰⁷

and describes

*...pandemonium in the square. There was a lot of noise from people squealing and screaming.*¹⁰⁸

9A-117 Joseph Friel AF34 explained in his BSI statement that:

*People were running with me, running to get out of Glenfada Park. Everyone was panicking. People were in front and behind me and at the side. The bulk of people were at the west side trying to get out.*¹⁰⁹

9A-118 Jim Doherty AD73 told the Tribunal that shortly before he heard that soldiers were coming into Glenfada Park North.¹¹⁰

*I would say there could be up to 50, maybe 100 people there at that time.*¹¹¹

9A-119 Furthermore, any suggestion that the soldiers opened fire in a square deserted by all but three men is contradicted by the evidence of those who say they were carrying Michael Kelly's body across Glenfada Park North when shooting began. Certainly those who represent the family of James Wray

¹⁰⁶ Day 415/132/21

¹⁰⁷ Day 152/157/17

¹⁰⁸ AM144. 2 paragraph 8

¹⁰⁹ AF34.2 paragraph 13

¹¹⁰ Day 065/086/10-11

FS7. 1918

appear to accept these accounts as it has been put to Soldier F by Lord Gifford that he fired from a kneeling position on the group carrying Michael Kelly.¹¹²

9A-120 That soldiers opened fire at a time when the group carrying Kelly were still in Glenfada Park North is supported by a number of accounts, several from those who were part of that group.



¹¹¹ Day 65/084/24

¹¹² Day 376/148/20

FS 7-1919



P437 and P436

9A-121 Pearse McCaul AM93.3 says that

As soon as I saw the soldier I must have either dropped Michael Kelly on the ground or put him down somewhere in the carpark. Seamus Friel and I started to run towards the northwest [corrected in oral evidence to south west¹¹³] corner of Glenfada Park North. The gunfire started almost immediately.¹¹⁴

9A-122 John O'Kane AO48.3 was also helping to carry Kelly and says that,

...as we dropped the boy, I looked to my right and saw that three Paras had entered Glenfada Park North, two via the northeastern entrance and one via the northwestern entrance.

¹¹³ Day 164/095/02

¹¹⁴ AM93.4 paragraph 16-18

FS7 1920

..... The Paras were firing, and I could hear the bullets whizzing past my head and hitting the wall to my left.¹¹⁵

9A-123 Joe Donnelly AD124 was assisting Mr Liddy, who had been hit in the chest a with rubber bullet, when Michael Kelly was shot.¹¹⁶ He says in his NICRA statement that:

Six blokes helped to pick him up and moved him into the courtyard. At the far corner of the courtyard came paratroopers and started shooting.¹¹⁷

About six men picked up Kelly and ran with him from the rubble barricade west into Glenfada Park North. They were going to carry him into the safety of Glenfada Park North. I do not recall seeing them put Michael Kelly down on the way.

9A-124 In his BSI statement Mr Donnelly describes how, as soldiers entered at the north east corner:

The crowd carrying Michael Kelly almost dropped him in panic at the sight of the soldiers, and he slipped down in between their arms. I took him in my arms and carried him on my own...

... As I got hold of him, I noticed that one of the soldiers was taking up a firing position. He was kneeling on the ground with his rifle as his shoulder and was aiming towards us. The two other soldiers had their rifles at waist height. All three soldiers fired shots at the crowd...I ran across Glenfada Park North towards the entrance to Abbey Park carrying Michael...¹¹⁸

¹¹⁵ AO48.3 paragraph 13

¹¹⁶ AD124.3 paragraph 13

¹¹⁷ AD124.1

¹¹⁸ AD124.4 paragraph 17-18

FS 7. 1921

9A-125 George Downey, AD134, Michael Kelly's brother in law, gives a similar account, although he believes Mr Donnelly carried Michael Kelly only once he had tripped in the Abbey Park alleyway.¹¹⁹

9A-126 Michael Quinn, AQ11, saw the group carrying a body from, he thought, the south east to the north west corner. He recognised the man he now knows to be James Wray amongst them.¹²⁰ The group had reached the centre of Glenfada Park North when "the crowd ran into Glenfada Park and someone shouted that 'the Army was coming in'". Mr Quinn told the Tribunal that this happened almost simultaneously with the scene shown in P643.¹²¹

9A-127 A taped interview given to press under the name "Joe McCourt" recounts

*I was in Glenfada Park on Sunday when I seen five British soldiers run into the park. They fired on four fellas carrying a wounded civilian. They fired at the wounded civilian and hit him on the head. These four blokes run with the civilian and had to drop him at the far side of Glenfada Park.*¹²²

9A-128 John James McCourt, AM144 has no recollection of seeing this or of giving the interview¹²³ despite the fact that the address and personal details given match his own.

9A-129 There are a number of witnesses who do not recall seeing the Kelly group in Glenfada Park when soldiers opened fire.

9A-130 George Hillen AH74 saw James Wray fall but did not see the group carrying Michael Kelly's body. He agrees he could not have missed it had it been

¹¹⁹ AD134.5 paragraph 23

¹²⁰ AQ11.23 paragraph 21-22

¹²¹ Day 169/086/07

¹²² AM144.6

FS7-1922

carried across while he was there.¹²⁴ Julian Daly, AD2, also saw James Wray as he was running through GPN and immediately before shots were fired in GPN but did not see a group carrying Kelly.¹²⁵ Paul Coyle, AC105 was running for the south west exit when he says shooting started.¹²⁶ He says however that he saw nothing of Kelly's body or the group carrying it.¹²⁷ Joseph Martin Gallagher, AG18, says he was running behind James Wray when he fell but recalls nothing of people carrying Michael Kelly's body.¹²⁸

9A-131 The apparent ease with which a witness might have failed to see or forgotten seeing this scene is, however, demonstrated by Gerry McLaughlin, AM332. He has no recollection of seeing Michael Kelly carried yet agrees he is pictured in P142.001 standing close to and apparently watching that very scene.¹²⁹ Pat Moyne AM444, is actually shown in P642 helping to carry Michael Kelly but has no recollection of doing so.¹³⁰

9A-132 Despite these witnesses' evidence the Tribunal may well conclude that the group carrying Michael Kelly were still crossing Glenfada Park North at the time when soldiers entered the square and opened fire, in all probability adding to the scene of chaos and confusion. It must be highly unlikely that any soldier intended to fire at that group however as none of those surrounding Michael Kelly sustained any injury. As Lord Gifford pointed out to Soldier F in a slightly different context:

¹²³ Day 152/148/12

¹²⁴ Day 164/037/05

¹²⁵ Day 183/036/10

¹²⁶ Day 152/074/19

¹²⁷ Day 152/098/22

¹²⁸ Day 165/013/08

¹²⁹ AM332.2 paragraph12

¹³⁰ Day 162/032/18

FS7-1923

As an experienced soldier, as you were already in 1972, if you were shooting at about 50 yards range at a young man running, you could hardly miss; could you?¹³¹

9A-133 While, then, a number of apparently highly persuasive witnesses have drawn a picture of an isolated group of three men, picked off by soldiers as they were running for the south west exit of Glenfada Park North, a wider examination of the civilian evidence simply does not support this allegation. There is considerable evidence to suggest that, in fact, soldiers entering Glenfada Park North were confronted with a scene of considerable chaos and confusion.

JAMES WRAY WAS NOT "EXECUTED"

9A-134 A further area of civilian evidence which has proven to be false and misleading is that surrounding the death of James Wray. The Tribunal has heard evidence that James Wray was shot while lying prone and defenceless on the ground in Glenfada Park North in the position shown in **P438/439**. It has been suggested that all the soldiers who were present in Glenfada Park North must have either been involved in or witnessed this atrocity and are engaged in a conspiracy to conceal it. In fact, while James Wray died tragically on Bloody Sunday, the suggestion that he was "executed" while lying on the ground is an example of the myths that have grown up around Bloody Sunday.

9A-135 Counsel for the Wray family has claimed that

Sometimes too the evidence of civilians is directly supported by expert evidence. For example, there are several witnesses looking from different angles who saw Jim Wray shot while he was on the ground and his coat moved. Now the Tribunal's

¹³¹ Day 376/152/05-07

FS 7. 1924

experts have said that their most likely explanation of the forensic evidence which they have examined is that James Wray lay on his left side on the ground when he suffered the wound, which exited on his left shoulder.¹³²

- 9A-136 In fact, the civilian evidence is both inconsistent in itself and directly contradicted by the forensic facts. The very evidence to which Lord Gifford refers, when carefully examined, shows that this incident simply did not occur.

Accepted Facts

- 9A-137 It is accepted that James Wray's body is, very probably, that lying furthest to the right in P438/P439 and that this is the position in which he fell. It is further accepted that he was struck by two bullets which both entered from the right hand side of his back. The higher of the two exited from the top of his left shoulder and the lower bullet exited from the lower left side of his back. The injuries inflicted by these two bullets are described in the autopsy findings of Dr Carson as follows:-

The upper of the two entrance wounds was associated with the exit wound on the back of the left shoulder and in its path this bullet had passed through the muscles on the back of the right chest, damaged part of the 5th thoracic vertebra, fractured the posterior parts of five left ribs and lacerated the left lung, before leaving the body.

The lower entrance wound was associated with the exit wound on the back of the left chest below the shoulder blade. In its path this bullet had passed through the muscles on the back of the right chest, damaged the spinous process of the 10th and 11th thoracic vertebrae and fractured the posterior parts of the 10th and 11th left ribs opening the left chest cavity and bruising the lower posterior part of the left lung.

¹³² Day 029/029/11

Bleeding and escape of air into the left chest cavity from the damaged lung caused death, which may have been fairly rapid but should not have been instantaneous.¹³³

9A-138 The track of the bullets can best be seen from photograph **P125**. Dr Carson described the track of the upper of the two wounds in his evidence to Widgery as being

...from right to left and upwards at about 45° to the horizontal plane with an inclination forwards at about 30° to the coronal plane.

9A-139 The track of the lower of the two wounds was described as

...from right to left with an inclination upwards at about 15° to the horizontal plane and forwards about 10° to the coronal plane.¹³⁴

Forensic Evidence

9A-140 The Tribunal has had the benefit of expert evidence from a number of forensic scientists, namely Dr Carson, Dr Shepherd and Mr O'Callaghan and, more recently, Dr Di Maio. All have given opinions as to the likely positions of James Wray and the firer or firers of the weapon(s) which discharged the rounds resulting in his death.

9A-141 The indicators on which each relies principally are: angle of bullet entry, appearance of wounds (*i.e.* shoring) and damage to clothing.

¹³³ **D252**

¹³⁴ **D252**

FS7-1926

Damage to Clothing

9A-142 Mr O'Callaghan has made clear to the Tribunal that little can be deduced as to the range of the shots which struck James Wray from the condition of his clothing. They can conclude only that the shots were fired from a distance greater than one metre.

A. Yes, if there was a thorough examination of the jacket for any discharge, evidence of the muzzle discharge, then, yes, the shot was fired from greater than about a metre.¹³⁵

Q. Could we have on the screen, please, F23.6. These are Dr Martin's notes of the examination of the jacket of Jim Wray. The majority of them appear to have been created by his assistant, Mr Donnelly. On the right-hand side you will see a note "no sign of close range", and underneath the first diagram we see "range more than 30 feet". From the material available to you, can you say that the bullets were fired from more than 30 feet?

A. Absolutely not.

Q. Is there anything to indicate to you that the bullets were in fact fired at close range?

A. At close range?

Q. Yes, at close range?

A. No.

Q. Indeed is there anything to indicate to you that they were not?

A. No, basically we cannot say anything about the range at all, other than to say if we take at face value the comment that there was no sign of close range, which in turn we take to mean that the detailed examination of the jacket was made to look for evidence and none was found, then it stands that the

¹³⁵ Day 230/035/04

FS7.1927

shot was most likely to have been fired from greater than about a metre.¹³⁶

9A-143 Nor is the pattern of damage to James Wray's clothing conclusive as to the position he was in according to Dr Shepherd and Mr O'Callaghan, although the Tribunal will recall the efforts made to photograph James Wray's jacket on Day 230 of the hearings in order to demonstrate that damage was consistent with his lying on the floor.

9A-144 In pursuit of that theory, Mr Harvey put the following to Mr O'Callaghan:

Q. If we can have F4.28.4 on the screen, please. If we could leave it like that. That is a photograph which was taken this morning in your presence and indeed with your assistance?

A. That is correct, yes.

Q. Was this arrangement of both the position of the individual and the crumpling of the jacket done by you?

A. That is correct, yes, and it illustrates one particular position in which the damage can be reconciled with the position of the deceased.

Q. This, of course, is with a person lying full length on the ground and slightly pushing himself up with his arms?

A. That is correct, yes.

Q. Perhaps just for completeness, could we see 4.28.3, a similar shot. There we see the bunching on the left side of the jacket. It is that position essentially that you think accounts for all of the ragged marks that we see in the exit position on F4.1?

A. That is correct, yes.¹³⁷

¹³⁶ Day 230/035/08

¹³⁷ Day 230/063/10

FS7-1928

9A-145 Putting aside the fact that the majority of the civilian eyewitness evidence does not support the position in which James Wray's jacket was posed in this demonstration, Mr O'Callaghan's evidence was quite clearly that this is "*one* particular position in which the damage can be reconciled with the position of the deceased". His opinion is unchanged from that given in his original report that:

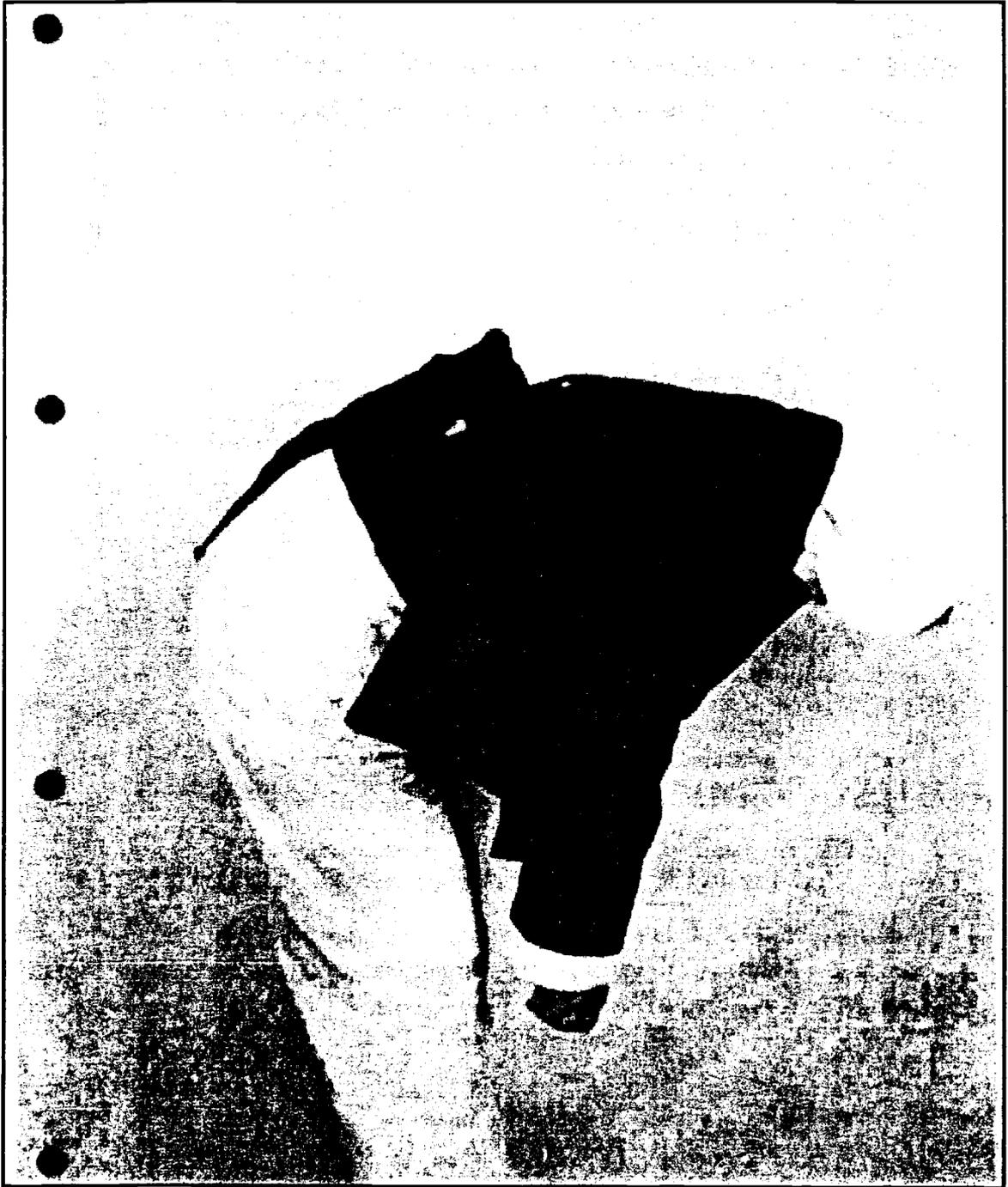
...the most likely explanation for the damage is that the bottom of both the left and right sides of the jacket were folded or crumpled up when the lower of two shots struck¹³⁸ and that The pattern of damage to the clothing associated with wound 2 (lower) is consistent with the jacket being displaced upwards and folded. This folding could have occurred while James WRAY was lying on the ground, however we cannot exclude the possibility that it could also have occurred in other situations.¹³⁹

9A-146 Indeed a striking image is also presented by Mr O'Callaghan's own photograph of a technician wearing the jacket at F04.10.

¹³⁸ E2.0037 paragraph 7.6.2

¹³⁹ E2.0039 paragraph 7.6.4

FS7-1929



F04.10

9A-147 This shows that the damage to the jacket is, for example, wholly consistent with James Wray having been bending forwards. Both Dr Carson's and Dr Shepherd and Mr O'Callaghan's reports agree that this position is consistent with the angle of entry of both bullet wounds (see further below). The

FS 7-1930

damage to James Wray's clothing is therefore inconclusive as to his position when shot.

The Appearance of the Exit Wounds

9A-148 Both Dr Shepherd and Mr O'Callaghan and Dr Carson¹⁴⁰ agree that the upper of James Wray's two exit wounds was "shored" *i.e* displayed an area of abrasion around it (the lower wound showed no such signs).

9A-149 Dr Shepherd and Mr O'Callaghan's original report stated that:

The shoring of this exit wound could be as a result of pressure by tight clothing or it may be the result of pressure by or against a firm surface.¹⁴¹

In some circumstances, particularly when the velocity of the bullet has been reduced by its passage through the body or for any other reason, even heavy clothing can present a sufficiently firm surface to produce a shored exit.¹⁴²

9A-150 James Wray was wearing 5 layers of clothing on his torso¹⁴³ which might well be expected to have been pulled tight over the shoulder area by the action of running, falling or bending. Nevertheless, Dr Shepherd and Mr O'Callaghan concluded in their "overall conclusions" that:

The exit wound from wound 1, lying on the left shoulder, is in our opinion a shored exit, which indicates that the left shoulder was in contact with a firm surface and/or his clothing was pulled tight at the time that the bullet exited from this site. We believe that the most likely explanation for this is that James

¹⁴⁰ Day 206/045/10

¹⁴¹ E2.0034 paragraph 7.6.1.2

¹⁴² E2.0009 paragraph 2.2.7

¹⁴³ D228

FS7-1931

WRAY lay on his left side on the ground when he suffered this wound¹⁴⁴”.

9A-151 It was not clear at that stage why the suggestion that James Wray was lying on his left side should be a more likely explanation for the shoring than his clothing being pulled tight in other circumstances and indeed the Treasury Solicitor sought clarification at E8.16.

9A-152 Dr Carson, in oral evidence commented on the suggestion that the shoring to this wound might have been caused by contact with a firm surface as a result of James Wray lying on his left side on the ground when he suffered this wound.

9A-153 He made the point, apparently overlooked by Messrs Shepherd and O’Callaghan that it would in fact be extremely difficult for Mr Wray to have been lying with the point of exit in contact with the ground. His point is well illustrated by Photograph P125.

¹⁴⁴ E2.0039 paragraph 7.6.4



P125

9A-154 Dr Carson said:

A. Well, no, I do not really see any evidence of that. I have seen many gunshot wounds and on the trunk. Where the trunk is covered by clothing I have often seen areas of abrasion around them, which I attribute to the impact of the tissues on the clothing as the bullet exits. It seems to me in this case that the - - it is a rather curious position. Dr Shepherd seems to have described the wound as being on the tip of the shoulder. Now to my mind the tip of the shoulder would be half an inch or an inch to the left of the tip of the blue arrow and it is -- I find it difficult to conceive how that part of the body, where the exit wound actually is, would be in contact with the ground. If the person is lying on the back then a more prominent part of the back is the shoulder blade, which is well below that wound. If he is lying on his left side then the outer side of the shoulder would be in contact with the ground. So I have some difficulty in deciding how that part of the body could be in contact with

FS 7. 1933

*the ground. I am not saying it is impossible, but I just have difficulty with it.*¹⁴⁵

9A-155 Dr Carson agreed that the appearance of the wound could be consistent with James Wray's shoulder "being hard up against a very hard surface such as concrete or granite"¹⁴⁶ such as a kerb stone.¹⁴⁷ He said, however, that in that case the likelihood of the bullet having disintegrated would be increased¹⁴⁸ so that:

*There often is fragmentation damage bordering the wound, bordering the exit wound.... Let us say I have seen it quite frequently and if not on the body surface, then I would have expected fragments of debris, concrete, brick or whatever to be lodged or to have hit -- struck the clothing and to be lodged perhaps in the clothing.*¹⁴⁹

9A-156 Dr Carson agreed that he did not examine James Wray's clothes for debris. He could say only that the wound's appearance would not be inconsistent with pressure against a hard surface.¹⁵⁰ None of the signs that might appear on the surface of the body if this had occurred were present, however.

9A-157 Following Dr Carson's evidence on Days 206/207, Dr Shepherd modified his evidence and accepted the difficulty of the shoulder being in contact with a solid surface.

A. I am aware this has been put forward as a suggestion and I think I would agree with Dr Carson, it is quite hard to see how this part of the body could come into contact with a

¹⁴⁵ Day 206/045/25

¹⁴⁶ Day 207/042/02

¹⁴⁷ Day 206/047/15

¹⁴⁸ Day 207/017/08

¹⁴⁹ Day 207/030/20

¹⁵⁰ Day 207/042/02

FS7. 1934

flat piece of ground. I find it easier to associate it potentially with a kerb stone or something of that type.¹⁵¹

9A-158 However, Dr Vincent di Maio, on whose expert publications¹⁵² on gunshot wounds Messrs. Shepherd and O'Callaghan explained they had relied, concluded, having examined the same material as was available to the Tribunal's experts, that it was extremely unlikely that the shoring of this wound was due to contact with a firm surface such as a kerb. He considered this extremely unlikely due to the minimal degree of shoring and the absence of secondary fragment wounds.

9A-159 The Tribunal will, moreover, recall that eyewitness evidence does not suggest that James Wray's shoulder was pressed against a kerb.

9A-160 In fact, in oral evidence Dr Shepherd no longer contended that the shoring had been caused by contact with a firm surface but favoured the theory that the shoring was the result of James Wray's clothing being anchored against a hard surface rendering it sufficiently taut to produce the observed shored effect. He explained that this was the scenario he had intended to suggest in the "conclusions" to his first report at E2.39.

A. Indeed. I think in our minds at that time was the possibility, we were aware, having considered this injury, that the clothing was clearly very tightly pulled against this surface or there was considerable pressure against it. We felt that simple movement of the body probably would not achieve sufficient shoring of the wound, whereas lying on the ground with the possibility of tighter pulling of the clothing or contact with a surface could account for this.¹⁵³

¹⁵¹ Day 229/031/07

¹⁵² Author of "Gunshot Wounds".

¹⁵³ Day 229/026/19

F57.1935

9A-161 Questioned by Christopher Clarke QC, Dr Shepherd explained that this premise, that James Wray's clothing must have been pulled tight in order to create the shored effect of the upper exit wound, formed the basis of his conclusion that Mr Wray was lying on his left side on the ground when he received this wound. :

Q. If we go to page E8.16, we will find a question that was asked by the Treasury Solicitor and your answer. The question was this: "In respect of James Wray it is concluded that:" And then the paragraph from your report is set out: "Please state the ground on which these conclusions were reached." Your reply was:

"The grounds for forming the opinion that this is the 'most likely' conclusion concerning the position of James Wray are:

"1. The exit wound in the left shoulder is a 'shored' exit.

"2. The 'standing' or 'bending' scenarios are extremely unlikely to result in sufficient tightening of the clothing and cannot result in outside pressure against the shoulder.

"3. The 'lying' scenario can result in either or both of these effects.

"4. In order to 'shore' an exit of the left shoulder it is therefore 'most likely' that James Wray was lying on his left side.

"While the possible orientations of James Wray are infinite the orientation that allows for the tracks of the injuries and the shoring of the wound are limited and, based on the information available to us, we believe that lying on his left side is the most likely orientation."

Does that still represent your view about this injury?

A. Yes, it does.¹⁵⁴

¹⁵⁴ Day 229/027/15

FS 7. 1936

9A-162 The Tribunal will no doubt already be alive to the very obvious difficulty in Dr Shepherd's conclusion – the fact that eyewitness evidence does not describe James Wray as lying on his left side at all. That evidence is examined more fully below. Indeed that simple contradiction suggests that Dr Shepherd must be mistaken in the conclusion he draws as to the shoring of the upper exit wound and suggests that there must be some other explanation for this shoring.

9A-163 Indeed both Dr Shepherd and Mr O'Callaghan were frank in acknowledging their lack of experience in the field of shored exit wounds and the fact that they had based their conclusions about James Wray largely on the basis of comparison with one other control sample – the wounds of William Nash.

Q. Are you content with the statement that the standing or bending scenarios are extremely unlikely to result in sufficient tightening of the clothing to create a shored exit, or does that in any way overstate the position?

A. I think the -- we felt that the shoring of the exit in James Wray was considerably greater than that seen in Nash and so we felt that the pressure or tightening had to be consequently greater, which then means that we have to consider the mechanisms that would cause that in this particular case, hence the need for increased pressure caused by lying on the side or by contact with the surface.¹⁵⁵

We have seen, in the case of Mr Nash we have seen shoring of the wound to his back, which we believe is caused simply by clothing. We believe in the case of Mr Wray there is a quantitative -- or a qualitative difference in the type of shoring, requiring greater pressure and it was our interpretation that clothing had to be pulled tighter than would possibly be achieved by simple movement and that lying on the ground and

¹⁵⁵ Day 229/028/08

pulling the clothing in that manner, or by contact with the ground, would achieve that degree of shoring.¹⁵⁶

9A-164 Mr O'Callaghan agreed that this had, indeed, been the course of their reasoning

A. It was our opinion that the shoring in the case of Mr Wray was more significant than that seen in the case of Mr Nash, and on that basis we formed the conclusion that the shoring itself must have been -- the shoring that caused that change must have been greater, hence the conclusions that we drew, that it was most likely that Mr Wray was -- the clothing was being pulled tight by something other than an action of the body. In other words, he was on the ground and the clothing was somehow being pulled against in order to cause the level of shoring that we see here.¹⁵⁷

9A-165 Both Dr Shepherd and Mr O'Callaghan accepted their limited expertise in shored, high velocity exit wounds and reliance on texts such as that of Dr Vincent Di Maio.¹⁵⁸ Dr Shepherd conceded:

Q. do you have a lot of experience of shoring of wounds with high velocity rounds?

A. No, I do not believe that anyone in the United Kingdom does. To an extent we have to rely on texts, we have to rely on advice that we receive.¹⁵⁹

9A-166 He conceded later when questioned by Peter Clarke QC that:

Q...you have never seen a shored high velocity shoulder wound before or since?

¹⁵⁶ Day 229/029/23

¹⁵⁷ Day 230/100/15

¹⁵⁸ Day 229/081/18

¹⁵⁹ Day 229/081/18

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A. Not in my personal examinations, but I have seen them as demonstrated by other pathologists. It is not a unique photograph that I am looking at but, no, in my personal experience, I have not seen another shored one.¹⁶⁰

9A-167 Mr O'Callaghan also explained:

Q. Would it be fair to say that you have no personal experience of clothing, shoring of high velocity rounds?

A. No, correctly, no.

Q. Have you found any literature that has indicated to you the different scales of shoring that can occur?

A. I think this is a question obviously better put to Dr Shepherd, but I think there is reference material such as Vincent Di Maio book on –

Q. Whose book, sorry?

A. Vincent Di Maio which deals in detail with shoring.¹⁶¹

9A-168 Indeed Mr O'Callaghan was happy to concede that he could not discount a "lurch" forward as having caused the shoring:

Q. I think, whatever the mechanism, it has to be sufficient to draw the clothing tight against the shoulder to produce the shored injury.

Q. The mechanism could be a lurch forward, could it not?

A. I do not know, is the short answer. I think, if there was sufficient force within the movement to pull the clothing sufficiently tight for the injury to be shored in the way it has, then, yes.¹⁶²

¹⁶⁰ Day 230/105/20-25

¹⁶¹ Day 230/072/12

¹⁶² Day 230/073/05-12

FS 7. 1939

9A-169 Following Dr Shepherd and Mr O'Callaghan's evidence, and given their own declared reliance on the work of Vincent Di Maio in forming their conclusions as to the shoring of this wound,¹⁶³ Mr Anthony Lawton instructed Dr Di Maio to review the issue of the shoring of the upper exit wound on James Wray's back. Dr Vincent Di Maio is, as the Tribunal is aware, a highly respected expert on gunshot wounds and the author of a book with that title. He has set out in his report provided to the Tribunal both his own extensive experience and a number of texts relating to shored exit wounds of which Dr Shepherd was apparently unaware.¹⁶⁴ Dr di Maio said, commenting on Dr Shepherd's testimony:

The suggestion is made in the testimony that the clothing was "pulled tight" due to Mr Wray lying on the ground. In actuality, this positioning of Mr Wray is not necessary to explain the occurrence of the shoring. Mr Wray was dressed in multiple (five) layers of clothing, specifically a corduroy jacket, a polo neck sweater, a round necked sweater, a polo neck sweater and a white shirt. I have seen a number of cases of shoring associated only with multiple layers of clothing. In such cases, the clothing is often tight or pulled tight by the act of bending. The clothing in such cases reinforces the skin sufficiently so as to produce a shored exit. Therefore, there is no necessity for Mr Wray to have been lying on the ground when he incurred the shored exit. The act of bending over and running away or of pitching forward would be sufficient to tighten the clothing such as to produce a shored exit. In other words, there is no way one can say with certainty whether at the time he received the wound, Mr Wray was bent over, pitching forward or already on the ground.¹⁶⁵

¹⁶³ Day 230/072/12-16; Day 230/101/15

¹⁶⁴ "Characteristics of Shored Exit Wounds" D.S. Dixon, Journal of Forensic Sciences, Volume 26, No4, 1981, pp691-698; "Shored gunshot wounds of Exit" J.C. Anguilar. American Journal of Forensic Medicine and Pathology, Volume 4, No.3, 1983, pp 199-204.

¹⁶⁵ Circulated to the parties without reference

FS7-1940

9A-170 Dr Shepherd indeed appears to accept Dr Di Maio's opinion in his response dated 31st October 2003 as he concludes that

Dr Di Maio concludes that James Wray "could have been bent over, pitching forward or already on the ground". He does not express a preference

In both our written and oral evidence we considered all these scenarios and expressed a view on which we considered most likely. We accepted that this view was subjective.

In my opinion it is not possible to take this matter further in terms of the pathology of the injury.

With the pathology of shored injuries in mind any final conclusions concerning the position of James Wray when he received this injury will now depend on an assessment of any eye witness accounts that are available to the Inquiry.¹⁶⁶

9A-171 Dr Shepherd thus appears to concede that the shoring of James Wray's upper exit wound is not determinative of his position when he suffered this wound. Both the damage to Mr Wray's clothing and the shored exit of the wound remain consistent with his bending or lurching forward at the time of impact of this round.

9A-172 Mr Shepherd's apparent suggestion that, without the "clue" offered by the shoring of the wound the

possible orientations of James Wray are infinite¹⁶⁷

so that

any final conclusions concerning the position of James Wray when he received this injury will now depend on an assessment of any eye witness accounts that are available to the Inquiry¹⁶⁸

¹⁶⁶ Circulated to the parties without reference

¹⁶⁷ Day 229/027/15

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would appear, however, to be something of an over-simplification as, according to Dr Shepherd's own evidence, something can still be learned of Jim Wray's position when shot from the angle of bullet entry observed.

Bullet Track/Angle of Entry

One or Two Firers?

9A-173 It appears that the forensic evidence cannot offer any positive conclusions as to whether the two rounds which struck James Wray were fired by the same firer or as to the time lapse between them.

9A-174 Dr Carson, who had the advantage of having performed the original autopsy on James Wray on 31 January 1972, concluded at that time that the close proximity and appearance of the two entrance wounds suggested that they had been fired by the same weapon while the divergence of the exit wounds suggested some movement of the body between the two shots. He posited a scenario in which the lower wound was caused first with a second round being fired in rapid succession as the body was falling.¹⁶⁹ He felt that the second round would have to be fired after an interval of less than 3 seconds.¹⁷⁰ Such a scenario would be consistent with firing known as a "double tap" in which two shots are fired at a target in rapid succession.

9A-175 Dr Shepherd and Mr O'Callaghan agree that

...two bullets fired from his right struck JAMES WRAY.

9A-176 In their opinion, however,

¹⁶⁸ Circulated to the parties without reference

¹⁶⁹ DO529 at C

¹⁷⁰ DO530 at B

FS 7-1942

Despite the close proximity of the two entry wounds and the apparent similarity of the bullet tracks they need not have been caused in very quick succession or by the same weapon.

9A-177 Notably, however, Dr Shepherd and Mr O'Callaghan reject only the necessity and not the possibility, or even the probability, that the rounds were fired by the same weapon in quick succession.¹⁷¹ Indeed, they put forward three propositions

... that would satisfy the angles of entry of these two bullets

on the basis that

we believe, the same individual fired both shots.

9A-178 Why Dr Shepherd and Mr O'Callaghan should form the belief that the rounds were fired from the same weapon unless they felt that the circumstances in which they were fired were very close in time and space is not clear.

The Relative Positions of Firer and James Wray

9A-179 The evidence of bullet track/angle of entry also offers information as to the relative positions of James Wray and the firer at the time of firing of the rounds which struck him.

9A-180 There would, however, appear to be some difference of opinion as to the conclusions that can be drawn from the trajectory of the bullet.

9A-181 The pathologist who performed the autopsy on James Wray, Dr Carson, concluded that, if the person firing the gun was standing....

¹⁷¹ And Dr Carson agreed that they need not have been fired from the same weapon.

FS7-1943

It would be very difficult to conceive of any position in which he (Wray) was not standing.¹⁷²

9A-182 Dr Carson's report was reviewed in 1972 by the Home Office Pathologist Dr Keith Simpson who also gave evidence to Lord Widgery. Dr Simpson's opinion was that:

I am not able to say whether the victim of the discharge I am describing was erect or lying down.¹⁷³

9A-183 More recently, to this Tribunal, Mr O'Callaghan has warned firmly against the dangers of assuming that the track from exit to entry wound can be extrapolated to indicate the direction of fire:

A. One thing I would say about the trajectories you have drawn, it falls into the trap of joining a line between the entry and exit which does not indicate the initial angle at which the bullet enters the body.

MR CLARKE: It is not determinative of it?

A. Absolutely not, and it is in fact very dangerous to link those two and suggest it is.¹⁷⁴

9A-184 Dr Shepherd explained what, in his view, could be deduced from the angle of entry of a bullet:

We have said in our original report, Mr O'Callaghan has reiterated this afternoon, we have to be very careful not to simply draw a line between entry and exit and say that that must reflect the angle at which the bullet hit the body or necessarily travelled through the body. I think all we can do is use these marks to link -- put a line between entry and exit,

¹⁷² DO529 at E

¹⁷³ D634 at B

¹⁷⁴ Day 230/066/13

FS 7-1944

*remembering that caveat as we do so. It is an aide memoir, but it does not represent necessarily tracks or angles.*¹⁷⁵

*A...clearly the point of entry on Mr Wray's body must have formed a straight line between the end of the barrel and the entry wound on his body, forgetting what it did once it entered his body, but there must have been a line between those two.*¹⁷⁶

9A-185 It would seem, however, that the information that can be derived from examination of "wound tracks" or angle of entry must go somewhat further than the assertion that one must be able to draw a line between the entry wound and the barrel of the gun. Such an assertion would indeed preclude Dr Shepherds initial conclusions that there were "Three broad propositions that would satisfy the angles of entry of these two bullets" as there would clearly be many other relative positions between which such a line could be drawn. While minimising the information that can be deduced from wound tracks, Dr Shepherd appears to continue to suggest in oral evidence that these remain the only three possibilities.

Q. Can you actually deduce anything at all about the position of the firer from the wound tracks?

A. From the wound tracks themselves, no, there is nothing I can deduce, other than as I say at the bottom of E2.38, and I think we define three possibilities then, and the third of these is that if he was lying on the ground, the shots must have been fired from above and to his right as if by someone standing, it is the very bottom bullet point on that page.

Q. Are you able to say which, if any, of the possibilities, either outlined in your report or put to you more specifically to you today, are more likely than any other?

A. From the pathology alone, no, we cannot.I cannot say from the pathology that that angle is the only solution; all

¹⁷⁵ Day 230/095/11-20

¹⁷⁶ Day 230/097/04-08

FS 7-1945

three remain, and it must be on other witness evidence that the conclusions are reached.¹⁷⁷

9A-186 The “three possibilities” to which Mr O’Callaghan referred were set out in his report at E2.38 as being “Three broad propositions that would satisfy the angles of entry of these two bullets if, as we believe, the same individual fired both shots”. They were:

If JAMES WRAY was vertical the shots must have been fired from upwards, as if by someone lying on the ground.

If the firer was standing and the shots were fired horizontally JAMES WRAY must have been bending forwards and the shots must have been fired from his right.

If JAMES WRAY were laying on the ground the shots must have been fired from above and to his right as if by someone standing.

These are three possible variations of the relative positions of the firer and James WRAY, however, others will exist.¹⁷⁸

9A-187 The first scenario would seem to exclude the possibility of a shot fired by a standing soldier at a standing Mr Wray, yet the “line between barrel and entry wound” test that Dr Shepherd appears to deem appropriate would certainly not preclude such a scenario.

9A-188 Indeed, the Tribunal will recall Dr Carson’s original opinion that, if the person firing the gun was standing,

It would be very difficult to conceive of any position in which he (Wray) was not standing.¹⁷⁹

¹⁷⁷ Day 230/096/15

¹⁷⁸ E2.0038 paragraph 7.6.4

¹⁷⁹ DO529 at E

FS 7. 1946

9A-189 The Tribunal will recall that Dr Shepherd and Mr O'Callaghan of course went on in their conclusions to reject scenarios 1 and 2 in favour Scenario 3, based on their conclusions as to the shoring of the upper exit wound. Those conclusions led them to believe that James Wray was lying on his left side when he suffered the upper, shored, wound, an assumption on which they appear to have proceeded when suggesting that

If JAMES WRAY were laying on the ground the shots must have been fired from above and to his right as if by someone standing.

9A-190 Indeed, when Dr Shepherd was questioned in relation to photographs AM18.12, and F4.28.4 approximating the position of a firer above and to the right of a prone body, as described by Joseph Mahon, Dr Shepherd confirmed that the shot could only have come from a firer in this position IF James Wray were lying on his left side.

Q. But are you able to say whether it is possible that one or more, one or both of the wounds on Mr Wray could have been caused by somebody standing in the position that we see on the left?

A. I think the answer to that is: yes, they could, but not if Mr Wray was lying in the position in which we see him lying on the right.

Q. What position would he have had to be in, first of all dealing with wound 1?

A. In a sense in both wounds, because they are both coming to the right-hand side of his body, in order for a bullet to be fired as shown in the photograph on the left, which is coming down at an angle of about 45 degrees, let me take that as a rough angle, then clearly the point of entry on Mr Wray's body must have formed a straight line between the end of the barrel and the entry wound on his body, forgetting what it did once it

FS7-1947

*entered his body, but there must have been a line between those two. So Mr Wray I think, if the photograph on the left is correct, would have to have been tipped so that his body was, once again in a very rough angle, at an angle of about 45 degrees to the horizontal or vertical, left side down, right side up.*¹⁸⁰

9A-191 Dr Carson also agreed, when asked by Peter Clarke QC, that Jim Wray's upper injury was "inconsistent with a soldier standing over the body and firing downwards into the ground" he replied "Yes, it may not be totally inconsistent, but in my view it seems unlikely, for the reasons that I gave last week".¹⁸¹ He agreed that it would be consistent with a soldier standing in that position only if Wray was "on his side, facing certainly sideways, if not almost upwards".¹⁸²

9A-192 The importance of Dr Shepherd's and Dr Carson's conclusions that the wounds to James Wray could not have been caused by someone standing to his right become clear once close examination is made of the eyewitness evidence which is virtually unanimous in placing Mr Wray either flat on his front or even raised on his right side. If such eyewitness evidence is taken into account it becomes clear that James Wray cannot have been shot by a soldier standing over him as Joseph Mahon and other witnesses suggest.

9A-193 Dr Shepherd was not questioned as to whether, if Mr Wray was lying flat on his front as the evidence overwhelmingly suggests, it would be possible for his wounds to have been inflicted by a soldier firing from a more distant position.

¹⁸⁰ Day 230/096/15-097/13

¹⁸¹ Day 207/029/11 (apparently a reference to "shored" features about which he was examined in his first day of testimony).

¹⁸² Day 207/029/20

FS 7.1948

9A-194 Dr Carson was of the view, when questioned by Peter Clarke QC, that if, as all eyewitness evidence suggests, James Wray was lying in this position his wound could only have been caused by a soldier firing from ground level.

Q. If James Wray was actually lying flat, even if he was trying to push himself up but lying flat rather than on one side, if he is lying flat, right?

A. Yes.

Q. The situation would be that the firer of the weapon would be having to lower his weapon to ground level and fire sideways, would he not?

A. Yes, or he could be lying on the ground, of course.¹⁸³

9A-195 No such conduct was ever observed of a soldier in Glenfada Park North.

Summary of Forensic Evidence

9A-196 The condition of James Wray's clothing and the shored appearance of the upper exit wound do not enable conclusions to be drawn as to his position when he was shot. This evidence neither indicates that he was on the ground when he was shot, nor that he was not. At most, the shored wound would suggest that his clothing had been pulled tight, quite possibly by the action of bending or falling forward.

9A-197 Nor is the expert evidence relating to angles of bullet entry conclusive as to the position that James Wray was in when he was shot. There are a number of relative positions of firer and entry wound which could account for the injuries James Wray sustained.

¹⁸³ Day 207/035/07-14

FS7-1949

- 9A-198 One scenario which Dr Shepherd is able to exclude, however, is one in which James Wray, lying flat on his front, was shot by a soldier standing over him and therefore holding his rifle at a steep angle. In view of the eyewitness evidence as to James Wray's position, the scene described by Joseph Mahon can therefore no longer be entertained as being accurate.
- 9A-199 As to whether Mr Wray, if lying down, may have been shot by a soldier firing from a distance, Dr Carson expresses the view that this would be possible only if the soldier fired from a very low angle, potentially a lying position. There is no suggestion that any soldier in Glenfada Park did so. This was not an area that was explored with Dr Shepherd.
- 9A-200 The scenarios in which Mr Wray was either falling or bending forwards remain consistent with all of the forensic evidence before the Tribunal.

Eyewitness Evidence

- 9A-201 Lord Gifford has described the eyewitness evidence of the shooting of James Wray as "a framework on which the Tribunal can rely" where, while there are "discrepancies of detail" the "corpus of evidence coming from many observers at the same scene can provide irrefutable truth about what happened at that scene".¹⁸⁴ In fact, the eyewitness evidence is contradictory in far more than detail and has in the majority of cases come forward at a very late stage. The flaws in the eyewitness evidence itself as well as its clear contradiction of the forensic evidence shows that, far from being a framework on which the Tribunal can rely, the evidence as to the shooting of James Wray is typical of the myths that have grown up around the events of 30th January 1972.

¹⁸⁴ Day 049/132/06

James Wray's Initial Fall

9A-202 The Tribunal will need to consider whether James Wray's initial fall was due to his tripping or sustaining a gunshot wound. Counsel for the Wray family has accepted in opening that in fact he is likely to have fallen initially as a result of a gunshot wound saying:

We believe it to be overwhelmingly likely that Jim Wray was first hit in the lower back as he ran across Glenfada Park North and that he fell because he was hit and not merely because he stumbled. If he had merely stumbled the likelihood is we think that he would have scrambled the last few feet to the shelter of the alley. George Hillen says that Jim said "I am hit" as he fell and Malachy Coyle, among other witnesses, said that when Jim was on the ground, "I cannot move my legs"; that you may think -- we will explore it with the experts -- would be consistent with a man who had been struck and possibly paralysed by a shot at the lower back."¹⁸⁵

9A-203 Those who represent the family of James Wray have now resiled somewhat from that position:

*MR HARVEY: Sir, just one matter. Mr Lawson very fairly put to the witness that Lord Gifford had in fact opened the case on the basis that it was an overwhelming likelihood that Jim Wray had been felled by one bullet as he was crossing Glenfada Park and then shot with another. It may no longer be our position at the end of this case, this, of course, was before the testimony of Mr O'Callaghan and Dr Shepherd which did certainly give rise to the inference that both bullets were fired at Jim Wray as he was lying on the ground. I did not want to interrupt Mr Lawson before, but I also did not want him to be under any misapprehension as to what our final position may be on the subject.*¹⁸⁶

¹⁸⁵ Day 050/004/11

¹⁸⁶ Day 398/188/13-25

FS7-1951

9A-204 Nonetheless the weight of eyewitness evidence is to the effect that James Wray's fall was caused by a gunshot wound.

9A-205 John O'Kane described in his BSI statement seeing James Wray behind him and to his right when he fell. His evidence suggests that he actually saw a wound at this stage as, looking back through the south western exit, he is able to say that he

...saw that he had been shot in the right side.¹⁸⁷ George Hillen, AH74, heard James Wray say "I'm hit" and saw him fall forward.¹⁸⁸

9A-206 Pearse McCaul, AM93, also described James Wray as "shot" having seen him fall about two feet away from him.¹⁸⁹ Mr McCaul thought that he had been shot rather than merely stumbling "because of the way he fell, he just went flat down, he just (indicating) toppled over."¹⁹⁰

9A-207 James Patrick McNulty, AM377, believed he had seen three men fall and was sure they were shot rather than stumbling or diving for cover. Asked if he thought they had been shot he said,

I definitely did, I think, all right.

Q. Why did you think that rather than think they had just dived to the ground, say, for cover?

A. Because they had never moved.¹⁹¹

9A-208 Pat Moyne, AM444, described James Wray as being "hit".

¹⁸⁷ AM48.4 paragraph14

¹⁸⁸ AH74.4 paragraph 21

¹⁸⁹ AM93.4 paragraph17 corrected from north west to south west at Day 164/095/05

¹⁹⁰ Day 164/099/9

¹⁹¹ Day 152/008/05

FS7-1952

My impression was that Jim Wray was hit whilst he was standing, but I do not know if it was whilst he was still frozen or whilst he was running.¹⁹²

9A-209 Mr Moyne is, however, "pretty sure" that Wray had been hit by a bullet and had not just fallen.¹⁹³

9A-210 Others have clear memory of James Wray's head hitting the pavement in a fall which clearly lacked the usual reflexes of a man who had merely tripped. Michael Quinn, AQ11, said in an interview with the Sunday Times Insight team

James Wray (who he now recognised from the pix) fell beside him and hit his head of (sic) the kerb of the footpath.¹⁹⁴

9A-211 When making his BSI statement Mr Quinn recalled that, immediately after he was shot he saw out of the corner of his eye

...a man's head hitting the ground in front of me. Giving it thought, I now think this was Jim Wray being shot at the same time as me.¹⁹⁵

9A-212 He confirmed in oral evidence that he thought James Wray had been shot rather than just stumbling

I recall thinking that someone else has been shot with me because -- I guess from the way he fell. He did not put his hand out. I recall his head hitting the kerb stone.¹⁹⁶" "I could tell (he had been shot) I could tell from the fact that his head was

¹⁹² AM444.5 paragraph 31

¹⁹³ Day 162/019/23

¹⁹⁴ AQ11.13

¹⁹⁵ AQ11.24 paragraph 25

¹⁹⁶ Day 169/089/13

hitting the kerb stone, his hands were nowhere in view. He did not put his hand out to stop his fall.¹⁹⁷

9A-213 William O'Reilly AO69 said in his statement to Lord Widgery

The last one to run out (of GPN) suddenly fell down. He fell heavily and his head hit the ground first. He lay with his head on the flagstones and his body on the tarmac.¹⁹⁸

9A-214 Mr O'Reilly repeated that description in his deposition to the Coroner investigating James Wray's death and in his evidence in chief to Lord Widgery when he describe how he fell "flat, with his head on the path and his body on the tarmac".¹⁹⁹ It was only when cross-examined by Hill that Mr O'Reilly agreed that James Wray could have tripped and fallen.²⁰⁰

9A-215 Only a few witnesses suggest that James Wray may have tripped. Don Boyle saw a man "stumble and fall to the ground".²⁰¹ He assumed that this man, who may have been wearing a hood or hat, had just tripped. On later seeing photographs he realised it was James Wray.²⁰²

9A-216 Michael Wilson, AW18, also assumed at the time that the boy he saw "fell or threw himself on to the ground to my right..... I was sure that he had either fallen or thrown himself to the ground because of the shooting".²⁰³ He also concedes though that although "I do not think he was shot at that stage ...he could well have been for all I know".

¹⁹⁷ Day 169/136/03

¹⁹⁸ AO69.24 paragraph 2

¹⁹⁹ AO69.8 at F

²⁰⁰ AO69.10 at D

²⁰¹ AB.2 paragraph10

²⁰² AB47.2 paragraph10-11

²⁰³ AW18.2 paragraph 8

FS7. 1954

9A-217 John Porter, AP11, says in his SC that the man he saw “stumbled and fell at the corner of Glenfada Park”. He had, however, described in his NICRA statement signed on 1 Feb 72 seeing Wray fall saying, “I saw a young man falling and as he fell he hit his head on the sidewalk”.²⁰⁴ Such an image would certainly suggest that the man had been shot.

9A-218 The overwhelming probability is then that James Wray was shot while running to the south west corner of Glenfada Park North. It is quite possible he sustained both wounds at this stage in the “double tap” scenario described by Dr Carson while either bending or falling forwards.

9A-219 It is not and has never been suggested by those representing the soldiers that James Wray was armed on Bloody Sunday although PIRA 25 gave evidence on Day 424 that he did see Jim Wray collecting stones in Glenfada Park, ready for the entry of soldiers. There is persuasive evidence, set out below, however, that at the time he was running for the south west exit of Glenfada Park he was close to members of the Official IRA who were carrying rifles.

The “Execution” of James Wray

9A-220 There is certainly evidence from a number of witnesses that James Wray was shot again whilst lying in Glenfada Park North, an account which has gained considerable currency and indeed been included in film portrayals of Bloody Sunday which, like many of the equally misleading television programmes which preceded them, will have been seen and accepted as accurate by a number of the witnesses who have since given evidence about the events portrayed and/or discussed. Some of that evidence, such as that of Joseph

²⁰⁴ AP11.2

FS 7.1955

Mahon was described by Mr Clarke in opening as being “of the most graphic character”.²⁰⁵

9A-221 The Tribunal may well consider, however, that more useful indicators of the weight that should be applied to this evidence are: (1) whether it can be reconciled with the forensic evidence and (2) when it was first put forward. The latter is particularly significant bearing in mind the opportunity afforded to all civilians to make statements to NICRA. It seems inconceivable that every effort would not have been made to testify to the fact that a defenceless man had been shot in the back as he lay on the ground. A number of highly graphic witnesses – including Mr Mahon – fail both of these tests.

9A-222 There are in fact only six witnesses who gave an account in 1972 of James Wray being shot while prone. Of these six, Malachy Coyle and Michael Wilson were observing from yards (or perhaps the same yard) in Glenfada Park North. Mr and Mrs O'Reilly, Gerry Campbell and, he claims, John Porter were observing from 7 Abbey Park.

1. Malachy Coyle

9A-223 Malachy Coyle AC97 has said that he was sheltering in the backyard of the southernmost house at the south gable end of the west block in Glenfada Park North. He was dragged into there by a bald man in his 40's who was wearing a leather jacket.²⁰⁶ He believes he can now name him as Mr McCourt.²⁰⁷ They

²⁰⁵ Day 029/004/23

²⁰⁶ AC97.4 paragraph24

²⁰⁷ Day 156/016/09

FS 7.1956

crouched looking out of the slats in the wooden fence into Glenfada Park North.²⁰⁸ Mr Coyle says that he was frightened but not hysterical.²⁰⁹

9A-224 In his NICRA statement, Mr Coyle described hiding in the backyard and seeing three unarmed men lying in Glenfada Park North. He says that one of these men had his left eyebrow shot away. The man exchanged a few words with Mr Coyle's companion. Mr Coyle then says he

... heard another shot coming from the direction of the soldiers and I then knew that the man had been shot again in the back of the left hand shoulder.²¹⁰

9A-225 It is only then that Coyle mentions seeing

... about eight soldiers running across from my left to right.

9A-226 Mr Coyle cannot now say how he was able to locate the shot into James Wray's left shoulder in this way in his NICRA statement. He can only say now that he was shot in the back in some way and he draws this conclusion from the way in which sparks came up from under his body.²¹¹ Mr Coyle indicated to the Tribunal in photograph AC97.27 the area in which he saw the sparks, explaining that James Wray was not lying flat but at an angle with a "gap between the left side of his body and the pavement".²¹²

²⁰⁸ AC97.4 paragraph 25

²⁰⁹ Day 156/061/13

²¹⁰ AC97.20

²¹¹ Day 156/033/03

²¹² Day 156/035/09

FS 7-1957



AC97.27

9A-227 In his BSI statement, Mr Coyle explained that the man he understood to be James Wray was lying half on and half off of the pavement with one knee on the pavement and the other in the car park. His head was nearest to Mr Coyle and his feet pointing back towards Rossville Street.

9A-228 The man then raised his head from the pavement, looked directly at Mr Coyle and his companion and said "I can't move my legs". Mr Coyle said "Don't move, pretend you're dead".²¹³ Moments later, Mr Coyle heard a shot coming from the Kells Walk/Columbcille Court area to the north and saw "the pavement near the wounded man explode in sparks". Mr Coyle saw the

FS 7.1958

wounded man groan and saw his head "go slowly down towards the pavement".²¹⁴ Mr Coyle gave the same account in oral evidence.²¹⁵

9A-229 It is only *after* this that Mr Coyle saw four or five soldiers "come up -- advance up the far side".²¹⁶ Mr Coyle then claims that one of these men then shot a young boy from point blank range the gable end²¹⁷ at which point he "lost it" and ran through the alley at what he described as the south east corner of Glenfada Park North.²¹⁸

9A-230 Malachy Coyle is quite sure that he remained focused on James Wray after this saying that

*My full attention was on the body. I think, if I can remember, my full attention was on the body, I was not looking round me.*²¹⁹

9A-231 He is quite sure that no soldier ever approached within yards of James Wray "not while I was in the car park, no".²²⁰ He is quite sure that "the sparks was, it seemed to have come from the far corner, it seemed to have to me, it seemed to come from way down at the far corner."²²¹

9A-232 Malachy Coyle's account is then of James Wray being shot once while prone from a distance. There is, however, considerable reason to doubt his account

²¹³ AC97.5 paragraph30

²¹⁴ AC97.5paragraph31

²¹⁵ Day 156/027/15

²¹⁶ Day 156/091/07

²¹⁷ AC97.6 paragraph38

²¹⁸ AC97.7 paragraph39

²¹⁹ Day 156/065/15

²²⁰ Day 156/091/24

²²¹ Day 156/091/24

FS 7. 1959

not least that he believed that James Wray was shot in the back of the left shoulder.

9A-233 Moreover, Mr Coyle's evidence is quite incredible in other respects as he goes on to give an account immediately after this incident of the close-range shooting of a boy in blue denims in circumstances which cannot be correct,²²² despite the fact that he says that "to me it is as real as anything else that happened".²²³ It may well be that Mr Coyle was indeed "in hysterics" as John McCourt has described the teenage boy who he pulled into a yard.

9A-234 Indeed if Mr Coyle was with John McCourt (AM144) as he believes, their evidence is strangely at odds. McCourt says that he was hidden in the yard of his wife's grandmother's house at [REDACTED] This was in fact [REDACTED] although he does say he pulled boy of 14 or 15 "in hysterics" in with him, a description which would fit Malachy Coyle.

9A-235 Mr McCourt says that he called out to people in the square and told them to "lie there and to keep still and not move".²²⁴ However, he did not see James Wray at all at this stage and can only assume he was there as he later saw him lying dead.²²⁵ He could see into Glenfada Park North but saw nothing of the shooting Mr Coyle describes and makes no reference to the boy he was with mentioning this to him either. Matters contained in the transcript of an interview conducted with Mr Coyle by Paul Mahon also raise significant questions as to the accuracy and honesty of Mr Coyle's evidence to this Tribunal. Firstly, Mr Coyle appears to have been somewhat reticent as to

²²² AC97.6 paragraph 38

²²³ Day 156/051/10

²²⁴ AM144.2 paragraph 11

FS 7.1960

what he has been prepared to tell the Tribunal about the man he was sheltering with in Glenfada Park North. The Tribunal will recall the interchange between Mr Coyle and Mr Clarke as to this man's name and Mr Coyle's eagerness to correct what he claimed was a slip when it was first given. The Tribunal will be well aware of the significance of the first name which Mr Coyle gave.

Q. Since you made your statement you have been able to --

A. I have met him.

Q. You have met him. What is his first name?

A. Tommy, I think.

Q. Tony?

A. Tommy, I think. Is it Thomas -- I just know him as Mr McCourt, I am not 100 per cent sure of his first name. But after the incident I always assumed the man had been killed, I always assumed he was one of the casualties.

Q. What happened: you met him, did you, after you made your --

A. Sorry, John McCourt his name is.

Q. John McCourt. You are sure about his name, are you?

A. I am sure -- well, I have it written down here, that is why I am sure.... I think it was with the, when I was making my statement, as we came down, I was introduced to him and I am not very good at faces, especially after long times, so I did not -- I cannot say I recognised him.

LORD SAVILLE: Mr Coyle, did he recognise you?

*A. He seemed to, yes.*²²⁶

9A-236 Mr Coyle appears also, in his evidence to the Tribunal, to have minimized the role of this man in events in Glenfada Park North. He was asked by Mr Roxburgh why he ran from his position at the garages in the north of Glenfada Park North:

Q. Do you remember what it was that made you start running; was there some specific thing that set you off?

A. I think, I think now again that some of the people that were with me started to run and I, I did not want to be left on my own so I just had to run. I think that is what happened. Some people ran first, panicked, whatever, whatever you want to call it and I panicked along with them, when I saw them going, I was not going to be standing there alone.

Q. Do you know whether in fact the whole of that group of people ran at more or less the same time or did some of them stay behind?

*A. You are asking me a question which I at the time had no concern about, I just wanted to get out of there.*²²⁷

9A-237 In his interview with Mr Mahon, however, Mr Coyle describes to Mahon how the mature, bald man in a leather jacket who later pulled him into a yard in fact took control at this earlier point:-

*A. this man says, "we'd better move"....And he says "We'll make a run for it!...."*²²⁸

...And the man that was sort of ...he took charge more or less....

Q. So he took charge really of all the people there?

²²⁶ Day 156/018/19

²²⁷ Day 156/012/18

²²⁸ X4.45.24

FS7.1962

A. He says, "Look we're going to have to move here, we're going to have to move or we're in serious trouble"²²⁹....

....Umm, he points, he says, "We're going to run for that corner there, that opening there"

Q. He actually points to that?

A. Aye, he says that [indecipherable] by there... there were four or five of us.... And I was putting my trust in this man because I didn't know what to do.²³⁰

9A-238 It is not clear why, when his recollection of this man was so clear when interviewed by Mr Mahon in March 1998, Mr Coyle should now seek to conceal from the Tribunal his role in directing operations in Glenfada Park North.

9A-239 Another issue of which the Tribunal was apparently unaware when Mr Coyle gave evidence was the extent of his contact with Jim Wray senior at a very early stage in 1972. Indeed Mr Coyle seems deliberately to have kept this information from the Tribunal when he spoke of how and when he came to know Jim Wray's identity.

MR TOOHEY: You were, what, told later that in fact it was Mr Wray?

A. Yes, that is correct.

MR TOOHEY: Do you mean on the day or at some later stage?

A. No, not on the day, no. I think, I think the first time I was told was when I went down to make my statement in the Nazareth house, that original statement that was shown earlier. I think I was told then by the person that was taking the

²²⁹ X4.45.26

²³⁰ X4.45.28

FS7-1963

statement that it was Jim Wray. I did not -- even then it was a name to me, I had not -- you know, until I started talking to other people, "Oh, his father was a milkman." ²³¹

- 9A-240 It is apparent from Mr Coyle's interview with Paul Mahon, however, that this is simply not true. In fact, Jim Wray Snr had actually come to Mr Coyle's home and asked him to go and make the statement he refers to above.

The next thing I remember was umm Jim Wray coming up. This man I didn't know he was at the time, Jim Wray, the father... He came up to the house and he talked to me and he says, "I want you to.... It wasn't very far it was one or two days away (After BS).. Somebody, somebody told him that I must have been talking about it... I think it was maybe more than two or three days, maybe four or five days. He must have hear... he came with another man, umm to talk to me about..." ²³²

- 9A-241 Mr Coyle then describes to Mr Mahon how he went down to Glenfada Park North with Mr Wray and described the scene there to him. He makes it clear that he had not until this time known the identity of the man he had seen shot "I didn't know the person who had been lying there was"²³³ and that it was Jim Wray Snr who told him "Yeah he went through the whole, concerning his son".²³⁴ He explains how Mr Wray Snr later went with him to Coleraine to make a statement to the Widgery Tribunal which was refused.²³⁵

- 9A-242 The fact that Mr Coyle had such contact with Mr Wray Snr at this early stage, at the alleged scene of his son's shooting and apparently before Coyle had given a statement to anyone must be relevant to the reliability of his later

²³¹ Day 156/026/03

²³² X4.45.76

²³³ X4.45.76

²³⁴ X4.45.77

²³⁵ X4.45.79/85

FS 7-1964

evidence. It is not, however, something about which Mr Coyle has chosen to tell the Tribunal.

9A-243 Mr Coyle also, like every other of Mr Mahon's interviewees, failed to mention this interview.

9A-244 Most importantly, and in common with virtually every other eyewitness, Mr Coyle places Mr Wray in a position which is at odds with the forensic evidence as to the angle of entry of either bullet. He describes the *left* side of Wray's body as being raised on the pavement with the right side lowered into in the car park. He clearly was not attempting to raise himself up as he describes him as having his hands stretched out in front of him.²³⁶ In this position, lying on his right side, he could not have sustained the wounds he did.

2. Michael Wilson

9A-245 It may be that Mr Coyle is, in fact, mistaken in his identification of Mr McCourt and was in fact with Michael Wilson (AW18).

9A-246 Mr Wilson describes in his BSI statement observing events from the southernmost backyard in the western block of Glenfada Park North. He recalls that there were other people in the yard "perhaps two or three"²³⁷ although in his NICRA statement he referred only to "another fellow and myself" going into the yard.²³⁸

²³⁶ AM93.9 paragraph17

²³⁷ AW18.2 paragraph15

²³⁸ AW18.6

FS 7. 1965

9A-247 In his NICRA statement of 30 January 1972 he described seeing "a fellow about twenty five years old who threw himself down at the kerb."²³⁹ In his BSI statement he noticed

*... a boy who fell or threw himself on to the ground to my right. I do not think he was shot at that stage but he could well have been for all I know. I was sure that he had either fallen or thrown himself to the ground because of the shooting.*²⁴⁰

9A-248 Mr Wilson describes James Wray's position as

*... his body was tight up against the kerb and his head was pointing towards the alleyway at grid reference H14 and his feet were out into Glenfada Park North pointing in the direction of Rossville St. He was on his stomach.*²⁴¹

9A-249 In his NICRA statement, Mr Wilson said that:

*I called to him to come in with us and he had just shouted back that he couldn't because they had him pinned down when he was shot in the back.*²⁴²

9A-250 In his BSI statement Mr Wilson is less certain. He says he called to James Wray to come into the yard. "He said "I can't move". I think he may also have said something like "I'm pinned down here" however I cannot be sure of that.²⁴³ Mr Wilson does note, however that "He made no attempt to get up or move his hands."²⁴⁴

²³⁹ AW18.6

²⁴⁰ AW18.2 paragraph8

²⁴¹ AW18.2 paragraph9

²⁴² AW18.6

²⁴³ AW18.2 paragraph8

²⁴⁴ AW18.2 paragraph12

FS 7 · 1966

9A-251 Mr Wilson says that shortly afterwards James Wray was shot. In his NICRA statement he simply says "he was shot in the back."²⁴⁵ In his BSI statement he explains that he did not know where the shot came from but says

*I saw the round hit him in the back and I saw his coat lift a little. The round hit him in the middle of his back and the coat lifted about one inch or so and left a small tear in his coat.*²⁴⁶

9A-252 According to his BSI statement, the only soldiers that Mr Wilson had seen in Glenfada Park North prior to this were "on the balconies of the buildings opposite...and to my left...on the catwalk or verandah."²⁴⁷ He did not see any soldiers on the ground in Glenfada Park. Mr Wilson has not given oral evidence due to ill health.

9A-253 Mr Wilson, then, gives an account of James Wray being shot once in the back while prone and sees no soldiers close to him. He cannot say who shot him.

3. Bridget O'Reilly

9A-254 Bridget O'Reilly (AO66) was one of the three witnesses (four if Mr Porter is accepted as being there also) watching from 7 Abbey Park and appeared from her NICRA statement to be the only witness to give evidence in 1972 of having seen James Wray shot at close range. In that statement she said

*I saw the man in Glenfada Park raise himself from the ground... then... I saw a soldier run up to im (sic) and shoot him again. He fell in the road again. This same soldier then fired at the man who had stepped over the wall ..(in AP).*²⁴⁸

²⁴⁵ AW18.6

²⁴⁶ AW18.2 paragraph11

²⁴⁷ AW18.1 paragraph7

²⁴⁸ AO66.2

FS 7. 1967

9A-255 In her BSI statement she says that she saw Wray "lying half on the pavement and half off"²⁴⁹ and saw him "move his head and look up"²⁵⁰

*The next thing I saw was Jim Wray's body jerk. I saw his coat jump up. Then I saw a soldier coming into view and I think that he shot Jim Wray again..... The soldier stepped over the top of him. The soldier wasn't tall, he was small and stocky.*²⁵¹

9A-256 Mrs O'Reilly appears then to suggest that she saw Wray shot at close range. In oral evidence, however, it became clear that in fact she saw the soldier only after she had seen Wray's body jerk.²⁵² This soldier then "stepped over the top of him and came on up".²⁵³ She did not see him aim his gun at Wray.²⁵⁴ Nor was he pointing it into the ground.²⁵⁵

9A-257 Mrs O'Reilly adds in her oral evidence that Wray was "kind of" lying on his stomach rather than his back.²⁵⁶ He moved his head "straight up"²⁵⁷ but did not move his head and shoulders "all I seen was a head going up".²⁵⁸ The soldier who she says shot James Wray then came on through to Abbey Park and fired there.

9A-258 Mrs O'Reilly's oral evidence amounts then to having seen Wray's coat "jump" and his body "jerk". The account she gave in her NICRA statement of a close-quarters shooting is no longer borne out by her current memory.

²⁴⁹ AO66.1 paragraph9

²⁵⁰ AO66.1 paragraph9

²⁵¹ AO66.2 paragraph12

²⁵² Day 172/006/23

²⁵³ Day 172/008/02

²⁵⁴ Day 172/008/20

²⁵⁵ Day 172/010/02

²⁵⁶ Day 172/005/09

²⁵⁷ Day 172/005/13

²⁵⁸ Day 172/023/01

FS 7 · 1968

9A-259 Once again, this supposed eyewitness account is at odds with the forensic evidence, however, as she is clear that Wray was lying on his stomach and did not move his torso at all which could not, it seems, account for the angle of entry and track of either bullet. If Wray was lying on his stomach, he could not have been shot by a soldier standing above him or near to him.

4. William O'Reilly

9A-260 In his NICRA statement William O'Reilly describes James Wray being shot apparently for a second time after he fell saying,

*He moved slightly and just as I was going out to him more shots rang out, the youths body jerked and lay still.*²⁵⁹

9A-261 A soldier then appeared who jumped over Wray and went on to fire in Abbey Park

*A soldier jumped over his body and then stood at the Housing Trust Office, a youth in blue denims running with his hands above his head towards the steps, the soldier took aim and shot.*²⁶⁰

9A-262 In his evidence in chief to Lord Widgery Mr O'Reilly also described how James Wray "lifted his head and tried to look round" and how "I was going to run down like, to get him up, and the body gave a jerk"²⁶¹ and how "his head just went down again".²⁶² He agrees he was unable to see what caused the jerk or twitch. It was only when it was put to him that Mr O'Reilly agreed that his assumption was that the body jerked "because the boy was deliberately shot when he was lying flat and motionless".

²⁵⁹ AO69.7

²⁶⁰ AO69.7

²⁶¹ AO69.10 at E

FS 7 · 1969

- 9A-263 In his statement given on 24 February 1972, however, Mr O'Reilly made no reference to any shooting of James Wray while he was prone saying only that "after Mr Wray had fallen, a soldier with a rifle came through the opening.....". He then described how this soldier went on to shoot Gerard Donaghy and Gerald McKinney.²⁶³
- 9A-264 Examination on this point before Lord Widgery produced no satisfactory answer as to why Mr O'Reilly had not mentioned this shooting in his statement. Asked "Why didn't you mention the shot that killed him?" Mr O'Reilly answered "I didn't see a shot kill him".²⁶⁴ A further attempt to renew that line of questioning foundered in an unsatisfactory and unclear exchange.²⁶⁵
- 9A-265 Mr O'Reilly also failed to mention this alleged shooting in his deposition to the Coroner given on 21 August 1973. In that statement Mr O'Reilly said only that "after Mr Wray fell a soldier came through the opening and the people who were hiding behind the wall appeared to be frightened"²⁶⁶ Even at the official inquiry into James Wray's death then, he makes no mention of a second shooting while he was lying prone.
- 9A-266 By the time Mr O'Reilly came to make his BSI statement on 5 May 1999, he no longer recalled seeing Wray fall at all, beginning his account with

I can remember seeing a young fella who was lying down at the corner of this alleyway... ..and he seemed to be looking

²⁶² AO69.10 at F

²⁶³ AO69.24 paragraph4

²⁶⁴ AO69.12

²⁶⁵ AO69.15

²⁶⁶ AO69.28

FS7-1970

around²⁶⁷we saw the clothes of the young lad who was lying down, and who was wearing a grey coat, jumping up in the air. When I saw his clothes rise, I automatically and instantly thought that he had been shot. I assumed he was lying down in the first place because he had been shot.²⁶⁸

9A-267 Mr O'Reilly says that he then

...saw a soldier come into vision and step over the lad moving to his left. I cannot remember much about him except that he had a uniform on and that he seemed doped up. He was like a zombie. He ran past the body of the lad and stopped in the alleyway.....²⁶⁹.

9A-268 Mr O'Reilly does not give any indication of how much time elapsed between the shooting of Wray and the soldier coming into his vision.

9A-269 Unfortunately, Mr O'Reilly has not given oral evidence to the BSI due to ill-health so that, following the unsuccessful attempts at Widgery, there has been no opportunity to examine him regarding the inconsistencies in his various accounts. It would seem extremely odd, however, that a man who had witnessed what Mr O'Reilly claims in his BSI statement to have seen would have failed to mention these details at the inquest into Wray's death. Mr O'Reilly has also now changed his account to include in his BSI statement the fact that James Wray "seemed to be looking around". This contradicts his earlier evidence to Lord Widgery that James Wray was lying "flat and motionless" when he was shot.

²⁶⁷ AO69.2 paragraph9

²⁶⁸ AO69.2 paragraph9

²⁶⁹ AO69.2 paragraph10

FS 7 1971

9A-270 Indeed the weight that should be attached to Mr O'Reilly's evidence must be re-considered in light of his interview with Paul Mahon in which his propensity to present hearsay as his own first hand account is fully revealed.

9A-271 The Tribunal may recall the evidence which Mr O'Reilly gave in his BSI statement in May 1999 that

The one lad who was wearing a denim jacket and tight denim jeans jumped over the small wall that bordered the grass area... He had his hands in the air.... An older fella then jumped after him The soldier who was then in the position that I have shown shot both of them²⁷⁰

As I recall it, the elder fella even had his hands in the air.²⁷¹

9A-272 Mr O'Reilly's account to Paul Mahon appears initially to repeat this evidence.

I just heard the shots. Saw two boys lying there, the wee boy was there. He ran this way, up the steps you see [reference to the boy's hands being up]. He must have seen the soldier too.²⁷²

9A-273 It becomes clear, however, following Mr Mahon's far from oppressive questioning that Mr O'Reilly did not actually witness these events at all.

9A-274 With reference to the "boy with the blue denims", the transcript records Mr Mahon asking

Did you actually see him jump that wall? No. Right. That's what you think happened.

And later

²⁷⁰ AO69.2 paragraphs 11-12

²⁷¹ AO69.3 paragraph:17

FS 7.1972

Q. Did you see this boy when he was actually on his feet or did you see him when he was down?

to which Mr O'Reilly replies

*When he was on the ground.*²⁷³

9A-275 As for his evidence about Gerard McKinney, Mr Mahon asks Mr O'Reilly,

Q. the older man, the middle aged man, behind him, did you see him put his hands up in the air?

A. No....I was told.

Q. You were told that, so you only see (sic) him when he was down on the ground, but you did see the soldier, am I right?"

A. Oh, the soldier, aye.

9A-276 Mr O'Reilly also said in his BSI statement that he did not go on the march and only left his house to look for the daughter of a friend. He clearly told Mr Mahon something different, however, as he introduces the interview by saying that:

*we're gonna follow your route that you took that day. Not the first time when you came home back from the march, OK, but the second time when you went in the house.*²⁷⁴

9A-277 Even on his own account, Mr O'Reilly again claims no more than one shot hit James Wray while prone and does not suggest that the soldier was standing over Wray when he fired. Again his account of James Wray lying "flat and motionless" must be borne in mind when considering the forensic evidence.

²⁷² X4.33.7

²⁷³ X4.33.10

²⁷⁴ X4.33.1

FS 7. 1973

5. Gerry Campbell

9A-278 Also in the O'Reilly house was Gerry Campbell AC13 who first said in a taped interview with Kathleen Keville that he saw a man "Lying between an opening already shot". He lifted his head up for somebody to help him and another shot hit him in the side. "The position he was lying, the only place it could have come from would have been Derry Walls".²⁷⁵

9A-279 While his NICRA statement is very poorly legible, it includes the details given in the Keville interview and is dated 30 January 1972.

9A-280 In his BSI statement Mr Campbell has said that he saw a man "At the gap between Glenfada Park North and Glenfada Park South lying face down with his head and shoulders on a pavement". The top of his head was pointing towards Mr Campbell²⁷⁶. The man "kept raising his headthree times".²⁷⁷ Mr Campbell then saw

*a cloud of dust inches away from the right side of him as I was looking at him, which would have been his left. His body raised on his left side and then he fell down. He did not move again.*²⁷⁸

9A-281 Mr Campbell clearly did not see a soldier close to James Wray as he "assumed that he had been shot from the northern area of Glenfada Park North".²⁷⁹ He then goes on to give some rather confused evidence about events in Abbey Park.

²⁷⁵ AC13.9

²⁷⁶ AC13.4 paragraph 21

²⁷⁷ AC13.4 paragraph 21

²⁷⁸ AC13.4 paragraph 21

²⁷⁹ AC13.4 paragraph 21

FS 7. 1974

9A-282 Mr Campbell's evidence amounts then to an account of one shot being fired from a distance into James Wray's side while he was lying face down. He gives no clue as to the identity of the soldier responsible and indeed thought the shot must have come from the walls.

6. John Porter

9A-283 The most comprehensive description given in 1972 was that of John Porter (AP11) a former Quartermaster Sergeant in the Irish Army.

9A-284 John Porter's statements, while comprehensive, are extremely curious as they report a chronology of events which is wholly at odds with that given by other witnesses. He also describes James Wray being shot twice in the back whilst prone which is clearly inconsistent with his having been shot only twice, the first shot causing him to fall. Mr Porter also describes shooting by paratroopers in Glenfada Park which was not seen by any other witness present.

9A-285 Mr Porter appears to have made two NICRA statements. In the first dated 31 Jan 1972 the first event he reports witnessing events from an address he describes as "8 Glenfada Park". The first event he describes seeing from the house was

... a man running towards the front of Glenfada Park. The next thing I saw was the man falling. I think that this man was shot from the walls behind the flats, to the right of Butcher's Gate

9A-286 He then saw two paratroopers appear. One "fired two shots directed towards the corner of Rossville Flats. The next paratrooper fired one shot". These paratroopers then arrested a group of people "standing behind the flats" including a woman in a green coat who protested and was kicked. Mr Porter then says:

FS 7. 1975

I saw a man lying on the ground wounded, he was shot in the arm and as he fell he cut his right eye. I ran out and was halfway between the man and the flats when there was a volley of shots rang out....I learned later that two men had been shot around the corner, one of them dead.

9A-287 Mr Porter then returns to the house next door to that he had been in earlier. He then speaks of one soldier firing four shots and the next two shots “not even aiming”. It is not clear where these shots were fired. Mr Porter then reports seeing man lying on his back and hearing shouts that he had had a heart attack. A young lad running with a white handkerchief was then knocked off his feet and Mr Porter says that “I know that he was shot dead with a high powered rifle”. A first aid girl then ran to his assistance who stumbled and fell. It is then far from clear who Mr Porter is speaking of when he says

One of the paratroopers passed where the man was unconscious and he didn't come back. I saw the man that was lying on the ground move. The clothes on him (sic) back then jumped up and I knew that he had been shot again because smoke started to rise from his clothes. He had been shot at close range by a rifle. Then the paratrooper came out about four yards behind the man. Then I went to help carry this man away. Another bullet was in his right side but the shot that was fired at close range entered his body in his left side and came out at his right shoulder. We then carried him into the house. I couldn't believe that a paratrooper had shot a wounded man on the ground.²⁸⁰

9A-288 In his NICRA statement²⁸¹ signed the next day Mr Porter again describes taking refuge in “8 Glenfada Park” and looking “through the slip-way between the houses in front of us”. From there he saw “a young man falling and as he fell he hit his head on the sidewalk”. He looked away for a period

²⁸⁰ AP11.19-20

²⁸¹ AP11.1-3

FS 7-1976

and then saw "his head was raised up looking towards me and I saw a cut above his left eye. He tried to raise himself up but failed and then I saw blood on his wrist". Mr Porter then describes attempting to run out and assist the man but retreating under fire to "No 7". Mr Porter then reports seeing a man lying on the ground who is reported to have had a heart attack. He then sees a young man approach this man waving a white handkerchief. He was "knocked off his feet onto the ground". A girl in white coat with a red heart then runs from a similar place, stumbles and falls. While Mr Porter's statement is unclear as to locations, he sees two soldiers fire one and two aimed and elevated shots respectively. These soldiers then arrest a group of people "shepherding together" including a woman in a green coat who objects and is kicked. Two more soldiers then arrive followed by a third who turned and followed the group of arrestees away. The first of these two further soldiers then fires four shots from his hip, fanning his rifle. The second fired two shots from chest height. He then sees the man he saw fall lift his head off of the ground.

I then saw the back of the man's coat jump up twice about 4 or 5 inches in the air. I saw some smoke rise from where he'd been shot. A few seconds afterwards I saw a second para move out to clear view. That's the last I saw of that para. He was of light complexion and appeared to have blonde type hair.

We waited a few minutes and the area became completely silent. Myself and a few men rushed out of the house towards this man. We lifted him and carried him back towards the house. When we carried the first man into the house before we lay him face down ... We lifted his shirt up and he had a bullet wound on his right lower back and also one on his left lower back. As we pulled his shirt further up I noticed the long triangular shaped laceration on his left shoulder..... I then said

FS 7. 1977

*that the man would have a wound in his lower right/left arm and I stood up and left the house.*²⁸²

9A-289 Considerable difficulties arise already in reconciling Mr Porter's evidence with what is known of the shooting of James Wray, even if it is accepted that he has simply confused Glenfada Park for Abbey Park. Most strikingly, he places the alleged shooting of the prone James Wray after events which appear to refer to the shooting of Gerard McKinney and Gerard Donaghy and the appearance on the scene of Evelyn Lafferty. That sequence contradicts the evidence of almost every other witness in both Abbey and Glenfada Park.

9A-290 Mr Porter also says, in his first statement, that when he saw the man fall initially, he believed he had been shot from Butcher's Gate. That is not an assumption that would have made sense to a man observing James Wray from a house in Abbey Park. It suggests that the man was closer to the Rossville Street area, exposed to the walls. Mr Porter then describes running out to apparently the same man saying "he was shot in the arm and as he fell he cut his right eye". James Wray was not shot in the arm, and the laceration he suffered to his face was to his left eyebrow.²⁸³ William McKinney was of course shot in his left arm²⁸⁴ and, as can be seen in the autopsy photograph at P131 suffered a laceration to his right eye.

9A-291 Moreover, Mr Porter describes carrying the man into "the house" apparently a reference to the house he had been sheltering in. In these first statements he states that, while he was initially in No 8, he, having attempted to attend to the man he saw shot, returned to "No 7" or "the house next door" because the door to number 8 was closed. This sequence is confirmed in his taped

²⁸² AP11.1-3

²⁸³ D0249

²⁸⁴ D281-282

interview with Kathleen Keville where he says that, having left 8 Abbey Park to run to a wounded man

*the wo - house - er - house what I left was - the door was closed and - and - and then that woman next door told me to come into her house number seven. I went into number seven....*²⁸⁵

9A-292 William O'Reilly has confirmed in his interview with Paul Mahon that Mr Porter was indeed observing events at this stage from 7 Abbey Park.²⁸⁶

9A-293 James Wray was of course taken into the Carr's house at 8 Abbey Park. William McKinney was the only casualty taken into the O'Reilly household in 7 Abbey Park. He also describes wounds to the man's right and left back which of course does not match James Wray's wounds.

9A-294 In his second statement Mr Porter also describes bullet wounds to both the man's right lower back and left lower back. He also describes "a long triangular shaped laceration on his left shoulder". Mr Porter also said "that the man would have a wound in his lower right/left arm" no doubt a reference to having seen the man shot in the arm as mentioned in his first statement. In this statement Mr Porter says that "we lifted him and carried him back towards the house". When he then refers to taking the man into the house he must be referring to the house from which he has come, 7 Abbey Park. Mr Porter also makes reference to the fact that "a man began to wrap a large wide bandage round his body"²⁸⁷. Autopsy photographs P129 and P131 show just such a bandage wrapped around the body of William McKinney.

²⁸⁵ AP11.26

²⁸⁶ X4.33.4

²⁸⁷ AP11.3

9A-295 It is only in his SC statement that Mr Porter says that he carried the man he had tried to rescue into 8 Abbey Park.²⁸⁸ He no longer makes any reference to the man having been shot in the arm and corrects his evidence to say he had an injury to his left eyebrow.²⁸⁹ This is also the first time that Mr Porter has made any reference to the man wearing a green/brown corduroy jacket.²⁹⁰

9A-296 The chronology of events which Mr Porter describes remains the same as before and similarly in contradiction with almost every other witness.²⁹¹ He clarifies his evidence as to the soldiers he saw fire in Glenfada Park North saying that two soldiers came to the south west corner of Glenfada Park North. One fired two rounds in the direction of Joseph Place, the other fired one round. He again reports seeing the arrest of a woman in a green coat and then describes firing by a further three soldiers in Glenfada Park who fired a total of seven rounds towards Joseph Place and the north east corner of Glenfada Park North.²⁹² None of the witnesses in Glenfada Park at the time saw such firing. Porter says he then

looked at the man I had tried to rescue. He raised his head. I then noticed his green/brown corduroy jacket rise at the back twice and I realised he had been shot again. I didn't see who fired but I saw two puffs of smoke and I think he was shot at from the southern side of GPN. He then lay still. I then saw a paratrooper move across Glenfada Park behind him.²⁹³

9A-297 It is similarly at this stage that Mr Porter ascribes the "smoke" he sees to rifle discharge.

²⁸⁸ AP11.17

²⁸⁹ AP11.16

²⁹⁰ AP11.17

²⁹¹ AP11.16

²⁹² AP11.17

²⁹³ AP11.17

FS7-1980

9A-298 Mr Porter described a similar sequence of events in his evidence to Lord Widgery although he failed to mention that, after his first attempt to assist James Wray, he ran into No7 Abbey Park, the house next door to that which he had just come from. He then described seeing James Wray “at a later stage” when:

He started to lift his head up off the park and as he lifted his head up off the park I saw his jacket jump up in the air twice four or five inches. At the same instance I realised the young man had been struck by two bullets in the small of the back. I also saw what I took to be two puffs of gas or smoke as from a rifle”²⁹⁴ “They (the puffs) came from the direction just behind the man where the shot struck his back.”²⁹⁵

9A-299 Again Mr Porter has added the detail of seeing smoke from a rifle. Lord Gifford has relied on this fact as an indicator of a close-range shooting as

if Mr Porter saw puffs of smoke, one can see that the soldier firing at the prone body of Jim Wray would be close but somewhere out of sight, having advanced towards the southern square.”²⁹⁶

9A-300 This fact of course did not feature in Mr Porter’s first two statements in only one of which he mentions smoke and this coming from the injured man’s clothes.

9A-301 Mr Porter also says now that the man he speaks of was carried into 8 Abbey Park. By this stage Mr Porter has also corrected his description of the wounds which he observed to “an entry wound down here, just there on the right side

²⁹⁴ AP11.7 at E

²⁹⁵ AP11.7 at F

²⁹⁶ Day 049/147/01

FS 7 · 1981

of the small of his back” and “another entry wound along here a slight bit higher”²⁹⁷.

- 9A-302 Under cross-examination by Counsel for the deceased, Mr Porter confirmed that James Wray “had his head raised up looking around him” at one stage but “he was lying flat” when the bullets struck his body.²⁹⁸
- 9A-303 Finally, Mr Porter, recorded an interview with Kathleen Keville which appears at AP11.24-28. It is quite apparent from that narrative that the man Mr Porter first saw shot in the arm, apparently from Butcher’s Gate, the man that Mr Porter attempted to rescue, the man whose clothes Mr Porter saw “jump” and who was later carried into 7 Abbey Park with a wound in his arm were all one and the same person. That person is, on the facts described by Mr Porter, clearly William McKinney. He has later altered his evidence to fit the location, dress and wounds of James Wray, no doubt having been impressed by the rumour that James Wray was the man who had been shot while prone.
- 9A-304 Mr Porter’s account, quite apart from all the difficulties set out above, still placed James Wray as lying flat on the ground and is thus again inconsistent with the forensic evidence relating to angle of entry.
- 9A-305 In Mr Porter’s case there is also the additional issue that he claims that the man he saw shot in the back was shot twice at close range. This cannot be an accurate account in relation to James Wray as he sustained only two gunshot wounds, one of which caused his initial fall. Lord Gifford has sought to explain this inconsistency with the theory that

²⁹⁷ AP11.8 at A to B

²⁹⁸ AP11.11 at B

FS7-1982

When he was shot again by the soldier who came up at close quarters, it may well be that two shots were fired, one of them striking the upper back and the other narrowly missing his body. Malachy Coyle described how the pavement beside Jim exploded with sparks, which may be consistent with a direct hit of a bullet against the pavement.²⁹⁹

- 9A-306 This theory simply does not reflect Mr Porter's evidence however: his evidence to Lord Widgery was not just that two shots were fired but that two shots hit James Wray's body. Indeed he explained that he had had fifteen years experience in the army and could clearly recall where he saw the bullets strike Jim Wray's body.³⁰⁰
- 9A-307 The evidence given by those who were in 7 Abbey Park must be viewed in the light of the potential for contamination between the witnesses who were there particularly in light of the fact that the most graphic of them all, Mr Porter, has in fact re-written his evidence for the benefit of the Widgery Tribunal in order to match the known facts relating to James Wray. This fact together with the suggestibility of Mr O'Reilly (as demonstrated by the contrast between his evidence to this Tribunal and the account he gave to Paul Mahon) must raise serious doubts about the evidence emanating from that address.
- 9A-308 These doubts are compounded by the apparent failure of Mr Porter, Mr Campbell and the O'Reillys to repeat their shocking account to those around them. Certainly there was no shortage of other people in 7 Abbey Park. Gerry Campbell also reports being in the house with several other people including a Gerald Louge.³⁰¹ This is possibly a reference to James Logue, (AL18) who

²⁹⁹ Day 050/004/11

³⁰⁰ AP11.12 at B to D

³⁰¹ AC13.3 paragraph 13

FS7-1983

says that when he arrived "the house was full".³⁰² Maureen Doherty (AD85) reported that it was "packed with people".

9A-309 Mr Logue himself gave an account in his NICRA statement of seeing Gerard McKinney shot, then seeing a person crawling towards him and later another body close to his. He makes no reference to James Wray³⁰³. In his BSI statement he gives a similar account of a man crawling towards Gerard McKinney who is then shot in Abbey Park but now names this man as Wray. Clearly this could not be Wray and Mr Logue's evidence would seem to reflect, however unconsciously, the influence of the James Wray "myth". Certainly it does not corroborate the Porter/Campbell/O'Reilly version of events despite the fact that Mr Logue says he had a clear view "through the alleyway in the south west corner of Glenfada Park North".³⁰⁴

9A-310 Maureen Doherty was also looking from 7 Abbey Park. She explains in her NICRA statement that she was looking from the scullery window in 7 Abbey Park from where she witnessed the shooting of Gerard Donaghy and Gerald McKinney by a soldier who was visible to her but whose position is unclear in her account.³⁰⁵

9A-311 In her SC statement Ms Doherty explains the very good view she had of what would have been James Wray's position saying "I could see *right* through the arch of Glenfada to the barricade of Rossville Street".³⁰⁶ She explains in her BSI statement that she was able to see people coming out of the gap between Glenfada Park North and Glenfada Park South and remembers "standing at

³⁰² AL18.2 paragraph 10

³⁰³ AL18.7

³⁰⁴ AL18.2 paragraph 13

³⁰⁵ AD85.9

³⁰⁶ AD85.11

FS7.1984

the window for some time".³⁰⁷ From that position she saw a soldier step into view in Abbey Park and shoot two men there.³⁰⁸ She makes no reference to James Wray however.

9A-312 There were other witnesses who had a view of the alleyway and/or James Wray and who gave an account in 1972 which did not corroborate the accounts of the five witnesses who claim to have seen him shot.

9A-313 John Carr (AC42) was thirteen years old at the time and observed Wray from a window in 8 Abbey Park. In his NICRA statement he refers to seeing a

...youth lying on the edge of the kerb, a soldier ran towards the corner where the youth was lying, he put his boot on top of the youth and pushed him off the footpath. Then he ran forwards.....³⁰⁹

9A-314 He does not suggest that James Wray had been shot while prone.

9A-315 John Carr gave a similar account to the Coroner.³¹⁰ In his SC statement he confirmed that James Wray was alive when he first saw him as he says that "He raised his head and moved" before the soldier came and pushed him with his foot.³¹¹ Similarly, in his account to Lord Widgery, he says that "he moved his head and his hand" before the soldier came but did not move after this.³¹² Here he expands that the soldier "sort of stopped, kicked and ran on"³¹³ after which the soldier "paid no more attention to him".³¹⁴ Mr Carr was observing

³⁰⁷ AD85.2 paragraph10

³⁰⁸ AD85.3

³⁰⁹ AC42.11

³¹⁰ AC42.27

³¹¹ AC42.14

³¹² AC42.21 at F

³¹³ AC42.21 at C

³¹⁴ AC42.21 at G

FS 7-1985

James Wray closely from a point in time when he was still able to lift his head until a soldier ran through the south west alleyway to Abbey Park, yet at no point does see his clothes jump or his body jerk as others suggest.

9A-316 It is only in his BSI statement that Mr Carr gives any indication that he may have witnessed the effects of a second shot as he now says that

*He lifted his head and he lifted his left arm. It was almost as if he did it in slow motion. His head and arm then went down.*³¹⁵

9A-317 Mr Carr is far from describing a shot and the position he describes is as usual inconsistent with the forensic evidence. In oral evidence to this Tribunal he had clarified that James Wray lifted only his hand, from the elbow,³¹⁶ a movement at odds with any suggestion that he turned onto his side. Moreover Mr Carr saw him raising his left arm which would bring him even further from the position lying on his left side which Dr Shepherd and Mr O'Callaghan propose as the most likely explanation for his wounds.

9A-318 Any suggestion that James Wray was shot at close range is contradicted by almost all the 1972 evidence that he was lying on his front. If he was lying on his front the forensic evidence from the Tribunal's experts establishes that he cannot have been shot a close range: a close range shot is *only* compatible with his having been laying on left side at the time, presenting his right, rear flank to the firer.

9A-319 Any account of Wray being shot twice on the ground is undermined by evidence that his initial fall was almost certainly caused by a gunshot wound.

³¹⁵ AC42.3:16

³¹⁶ Day 158/169/05

FS 7-1986

9A-320 Thus, at its absolute highest, there is some limited contemporaneous eyewitness evidence which suggests that James Wray was shot once from a distance. Were that to be the case, the question of whether the shot was aimed at James Wray or hit him by accident would remain insoluble.

9A-321 There are however, serious doubts as to the independence and accuracy of those witnesses who were in 7 Abbey Park and the Tribunal will no doubt have registered concern at the manner in which Malachy Coyle was encouraged to make a statement in 1972 having viewed the scene with James Wray's father. The potential for contamination of his evidence by such a process together with his failure to mention these events to this Tribunal must seriously undermine the persuasiveness of his evidence. Moreover, in considering the conclusion that James Wray was shot while prone, the Tribunal will have to overcome the very considerable difficulty that, if it is alleged that the soldier who shot him was standing over him, the angle of entry of either of the bullets which struck him require him, if lying on the ground, to have been lying on his left side. Not one of these eyewitnesses supports that proposition. If it is alleged that Jim Wray was shot from a distance, it can only have been by a soldier lying or bending into a very low position. No eyewitness describes any soldier behaving in such a way.

Recent Evidence

9A-322 The Tribunal will no doubt be highly reluctant to accept evidence of the alleged dramatic shooting of James Wray which has not been put forward until almost 30 years after the event. The Tribunal is well aware of the propensity of witnesses, honest or otherwise, to "adopt" recollections they have heard of over the years, particularly where such stories have become part of local lore. It would seem inconceivable that anyone witnessing the brutal shooting of a man lying defenceless on the ground would have failed to report the same to NICRA. The fact that much of such recent evidence is

FS 7. 1987

contradicted by both the forensic and 1972 eyewitness evidence shows that it is in fact a clear example of adopting and adding to a myth.

9A-323 Joseph Mahon has given perhaps the most graphic and oft quoted evidence of all of the shooting of James Wray. He was not called to give evidence by Lord Widgery nor did he make a NICRA statement, possibly because he was in hospital at the time. The most contemporaneous record of his account is therefore the notes of the Sunday Times journalists dated 2 March 1972³¹⁷ in which no reference is made to Wray's shooting at all. Instead, Mr Mahon described how James Wray was lying in front of him with his head pointing through to Abbey Park and his feet towards Mr Mahon.

The next thing I recall clearly is seeing a single soldier on the opposite side of the court from the others looking towards the passageway and firing two or three shots from under his arm, at the same time shouting to the other soldiers "I've got another one, them Dave (sic)". The soldier then pulled back towards the van.

9A-324 Mr Mahon has referred to the Sunday Times notes in his BSI statement. He recalled someone from the Sunday Times coming to interview him at home but says that:

The statement appears to me to have been put together by someone from the Sunday Times after that visit, and it is not an accurate account of what happened to me on Bloody Sunday. What happened to me is what I have set out in this statement.³¹⁸

9A-325 While he disputes the accuracy of their note, Mr Mahon does not deny that he that he met with the Sunday Times journalists nor does he claim to have told them about the execution of James Wray. His only explanation to this

³¹⁷ AM18.15

³¹⁸ AM18.7 paragraph46

FS 7.1988

Tribunal for his failure to do so was that he "was feared for my life".³¹⁹ He told the Tribunal that this was because

Q. Why were you fearful of your life if you were to tell the Sunday Times about that?

*A. Well, who was I going to tell. If I had made a statement to the police about it, they are the Security Forces and who killed Jim Wray, who did I see killing Jim Wray while he lay on the ground. It was the Security Forces.*³²⁰

9A-326 The logic of Mr Mahon's explanation is far from clear as he had had no qualms about telling the Sunday Times team about the shooting in Abbey Park that he witnessed. Mr Mahon also failed to mention the James Wray incident in what is assumed to be³²¹ an interview conducted while he was in hospital by Fulvio Grimaldi.³²²

9A-327 Indeed the first time Mr Mahon mentioned the shooting of James Wray was in an interview with Channel 4 News given in the late 1990's where he gives an account which is at odds with his BSI statement and all other evidence. The transcript states:

*And the paratrooper he made his way across this this corner and er ... Jim Wray who was lying on the corner went to move again and as a paratrooper was passing them He just put shot in the (face)".*³²³

9A-328 Mr Mahon's fully developed account of James Wray's execution emerged only in his BSI statement, signed on 17 September 1999.

³¹⁹ Day 167/069/05; Day 167/074/25

³²⁰ Day 167/079/24-080/05

³²¹ Day 167/039/03

³²² AM18.25 paragraph3

³²³ AM18.23

FS7. 1989

After I had seen Jim Wray, as I lay on my side, my face was looking towards the north and I saw a Para walking towards the body of Jim Wray. This was the same Para as I had seen shooting from the hip as described in paragraph 12. This para appeared to be wearing a different coloured jacket to the other paratroopers that I had seen that day. Although the jacket was green, its colour and markings seemed to stand out more than the jackets that the other Paratroopers were wearing. He was holding his rifle down by his hip with the muzzle pointing down towards the ground, as if patrolling. He made no move to search William McKinney or I and effectively he walked in a direct line towards Jim Wray. He did not try and search Jim Wray or to look for a weapon of any kind. He saw Jim Wray's soldiers move and realised that he was still alive. The soldier then pointed the rifle at Jim Wray's back and fired two shots into his back at point blank range. I could see Jim Wray's coat move twice. I was absolutely terrified and realised that if the soldier saw me move, he would shoot me as well".³²⁴

9A-329 Mr Mahon describes the soldier going to Abbey Park and hears further shooting. He then describes him coming back into Glenfada Park North.³²⁵

I saw him take his helmet off and wipe his forehead with the back of his hand. His face was blacked up and I could see that he had blonde hair. He then shouted out "I've got another one!"³²⁶

From the way the soldier was standing Mr Mahon took him to be shouting towards the south eastern corner. The soldier then received an order to pull out and walked towards the north east entrance.

For some reason, I then turned my head to look towards this north eastern entrance and I saw the same soldier standing there. He must have seen me move, because he got down on

³²⁴ AM18.4 paragraph18-20

³²⁵ AM18.4 paragraph 21

³²⁶ AM18.4 paragraphs22-23

FS7-1990

one knee and aimed his rifle at me. I turned my head to look the other way³²⁷ and prepared to die.

Mr Mahon then heard a woman's voice shouting "Don't shoot – first aiders." He heard a shot but has no memory of hearing the bullet strike anything.

9A-330 The drama and significance of Mr Mahon's account is increased as he claims to be able positively to identify the blond soldier who he saw shoot both James Wray and in Abbey Park as appearing in video 3, reference 0903.³²⁸ Mr Mahon has also now identified Soldier G from a family photograph as being this man. He is "not 100 per cent certain, but that was who he thought it was".³²⁹

9A-331 It would seem inexplicable that Mr Mahon failed to mention this dramatic incident in earlier interviews. Moreover there is little corroboration for his account of the close range shooting he describes in any of the 1972 eyewitness evidence. His account is also contradicted by the forensic evidence not least as Mr Mahon describes two shots being fired into James Wray "at point blank range". As set out above in relation to Mr Porter, there cannot have been two shots fired into James Wray's body while he was lying prone. Nor were either of the wounds he suffered inflicted at point blank range³³⁰. Dr Shepherd was also closely examined by Counsel for the Tribunal as to the consistency of the angle of bullet entry of both of these wounds given the position of the soldier which Mr Mahon described. He confirmed

³²⁷ AM18.5 paragraphs24-27

³²⁸ AM18.5 paragraph28

³²⁹ Day 167/045/07

³³⁰ Day 230/035/08

FS 7 · 1991

that this could only be consistent if James Wray were lying on his left side.³³¹
We know from numerous eyewitnesses that he was not.

9A-332 Paddy McCauley AM97 is another witness who gives a full, if rather unique, account in his BSI statement of James Wray being shot at point blank range. He made no reference at all to the shooting of James Wray in his 1972 NICRA statement³³². His only explanation for his failure to do so is that "I was 16 at the time and I wanted to make that as brief as possible".³³³

9A-333 In his BSI statement he describes seeing a British soldier with a foot on the body of a man lying in the alleyway leading to Abbey Park, at the western gable end of the northern block of Glenfada Park South.³³⁴ He concedes in oral evidence however that he may be wrong about this positioning.³³⁵

*The man on the ground had his face turned in my direction and his head pointing in a southerly direction. The soldier, a tall and well-built man, possibly with a painted face, had the muzzle of his rifle pointing towards the rib cage of the fallen man. I know now that man was Jim Wray.*³³⁶

Mr McCauley then describes seeing Gerard McKinney running either towards a man lying further down Abbey Park or towards the soldier and James Wray. He describes Gerard McKinney running with his arms in the air shouting "Don't shoot" or "Don't shoot him".

In what seemed to me to be one movement, when the soldier shot Jim Wray he then spun to his right and, with his rifle at

³³¹ Day 230/097/09

³³² AM97.12

³³³ Day 162/093/06

³³⁴ see reference N on the map at AM97.8 corrected in oral evidence as AM97.14.

³³⁵ Day 162/099/02

³³⁶ AM97.5 paragraph24

FS 7 · 1992

hip level, shot in the direction of myself and Gerard McKinney. I saw the soldier's gun recoil as he shot Jim Wray. I think the bullet entered his rib cage around the middle of his left hand side. As the soldier turned and shot in my direction, I dropped to the ground and, at the same time, I heard Gerard McKinney go "Ugh" as I believe he was hit."³³⁷

9A-334 In oral evidence to this Tribunal, Mr McCauley conceded that he might be wrong about just about all of the detail of his account

A. I cannot sit here today and say "that is 100 per cent", all I can recall is Jim Wray lying on the ground and a soldier with his foot on him as if to hold him there.

Q. Whatever the angles left and right, you have no doubt that you saw a soldier fire a shot into Jim Wray's lying body?

A. Yeah."³³⁸

9A-335 The vagaries of Mr McCauley's account together, its contradiction of numerous other accounts and incompatibility with the forensic evidence and his failure to mention this shocking scene to NICRA must make him an extremely unimpressive witness to the shooting of Jim Wray. Indeed he is clearly a prime example of the susceptibility of witnesses to report as fact incidents about which they have heard only rumour and story-telling.

9A-336 Pearse McCaul AM93 again made no reference to the shooting of James Wray in 1972 according to notes taken by the Sunday Times team.³³⁹ Nor did he present himself to make a NICRA statement. In his BSI statement however he describes seeing James Wray

³³⁷ AM97.5 paragraph25-27

³³⁸ Day 162/099/19

³³⁹ AM93.14

FS 7 · 1993

lying face down with the whole of his body on the pavement and his arms were stretched out. I saw him try to push himself up from the ground with his hands but he lurched forwards very suddenly as if he had been shot. He then lay still."³⁴⁰

9A-337 In his oral evidence Mr McCaul clarifies that "I think he was shot a second time, but I could not be sure."³⁴¹ He is not a supporter of the close quarters shooting version however, confirming that "there is certainly no recollection of any soldier near Jim Wray's body."³⁴²

9A-338 John O'Kane AO48 is yet another witness who makes no reference in his NICRA statement to seeing James Wray shot while prone.³⁴³ In this handwritten statement dated 23 February 1972 he refers to Wray falling and describes how "we dived for cover around the corner of the block and stood wondering how we were going to reach the boy". No reference is made to James Wray being shot for a second time.³⁴⁴

9A-339 In his BSI statement however he is able to recall looking around the corner of the south western exit and seeing James Wray

*lying in the corner of the courtyard with his head facing the alleyway and his feet facing the middle of the courtyard. The upper part of his body was on the footpath and his legs were on the tarmac. He was still alive, and was raising his right hand, saying "help me, help me. The next thing I remember is that one or two shots rang out, the man's body jumped on the floor and he fell back down, limp. I believe that he was shot again, at that time in his back."*³⁴⁵

³⁴⁰ AM93.9

³⁴¹ Day 164/100/01

³⁴² Day 164/133/15

³⁴³ AO48.24

³⁴⁴ AO48.39

³⁴⁵ AO48.4 paragraph15

FS 7-1994

9A-340 Mr O’Kane alleges in his BSI statement that Wray was shot at close range.

*Although I did not see the para who shot him, I was pretty sure that he was shot by the para who came in through the north west entrance and had been firing almost at right angles to us. I was also sure that the para was standing over the man when he shot him.*³⁴⁶

9A-341 This assumption is based on the fact that this was the nearest soldier he saw to James Wray.³⁴⁷ In fact, it is clear from Mr O’Kane’s oral evidence that the most he claims to have seen was James Wray lying on the ground, saying "help me"; then, when he heard a couple of shots, his body jump up and then fall back down. He concedes that he could not, from his position, see round into Glenfada Park North at all.³⁴⁸ All his other observations are assumptions based on these facts.³⁴⁹

9A-342 Despite Mr O’Kane’s insistence that "I am 100 per cent certain that I seen this"³⁵⁰ his failure in 1972 to mention seeing James Wray shot for a second time together with his apparent willingness to present assumption as fact must raise doubts about his account.

9A-343 Mr O’Kane’s evidence also contradicts that of Messrs. Mahon, McCauley, Carr and others who suggest that a soldier moved into Abbey Park and shot Gerard McKinney immediately after James Wray was shot while Mr O’Kane describes moving and talking with Gerard McKinney for some time after this.³⁵¹

³⁴⁶ AO48.4 paragraph15

³⁴⁷ Day 163/023/01

³⁴⁸ Day 163/062/010

³⁴⁹ Day 163/023/22

³⁵⁰ Day 163/066/15

³⁵¹ AO48.4 paragraph16-17

FS7 1995

9A-344 Vincent Harkin (AH34) appears to be another victim of recovered memory syndrome as, having made no reference to the Wray shooting in either his NICRA statement of 1 Feb 1972 or his taped interview with Kathleen Keville, he now remembers that he saw

a man crawling on the ground in Glenfada Park North north towards the entrance into Abbey Park. I believed that he was crawling because he had been shot"³⁵². ... The next thing that happened was the person who was crawling was shot again and was lying still on the ground and I remember people were shouting "They've shot a boy on the ground. They've shot him, they've shot him!"³⁵³

9A-345 Indeed Mr Harkin appears to have been merely repeating what others had told him as, in oral evidence he conceded that:

Q. You say that the person was shot again, but did you actually see him or her hit; did you see that person hit?

A. No.³⁵⁴

9A-346 Frances Lyttle AL36 also gives a startlingly graphic account in her BSI statement which was not mentioned in her 1972 NICRA account and which described Jim Wray being shot at point blank range by two soldiers as he approached his grandmother's garden gate.³⁵⁵ It is so fantastic in its detail as to have no direct evidential value with regard to Wray's shooting. The Tribunal will no doubt bear this account in mind however when considering the propensity of civilian witnesses to give highly detailed accounts of events which they believe to be part of the lore of Bloody Sunday.

³⁵² AH34.3 paragraph 11

³⁵³ AH34.3 paragraph 11

³⁵⁴ Day 417/149/13-16

³⁵⁵ AL36.3:13

FS7. 1996

9A-347 Contradicting all these accounts is the BSI evidence of John McGee who suggests that he reached James Wray when he was still moving and alive and remained until he saw his body removed. He says

I believe Jim Wray may have been alive when I saw him; he may have moved his head. I was in a complete daze and I sat down on the ground beside him. While I was there I picked up either from Jim Wray's hands or from the ground very close beside him a small brown handled steak knife and a couple of pebbles. I also picked up Jim Wray's watch which had come off"³⁵⁶ then "Jim Wray's body was taken away I think by St John's Ambulance."³⁵⁷

9A-348 The Tribunal will, as well as considering the evidence of those who claim to have seen James Wray shot while prone, also bear in mind that none of those gathered at the gable end of the eastern block of Glenfada Park North witnessed any shooting within the square after the initial burst of firing as soldiers entered. They certainly did not see what would have been the shocking sight of a soldier shooting a defenceless man a matter of feet away from them.

9A-349 Eamon McAteer AM41, for example, is clear that "I did not see any soldiers go over to the bodies in GPN and I do not know what happened to them."³⁵⁸

9A-350 Fergus McAteer AM42 said "I do not recall any of these soldiers shooting while they were visible to me in Glenfada Park North"

³⁵⁶ AM223.5 paragraph10

³⁵⁷ AM223.5 paragraph11

³⁵⁸ AM41.5 paragraph32

FS7-1997

Soldier 027's account of Jim Wray's "execution"

9A-351 Soldier 027 of course gives an account of Soldier H firing at a man on the ground. He said that

*H fired from the hip at a ? of ? yards. The bullet passed through one man and into another and they both fell, one dead and one wounded. He then moved forward and fired again, killing the wounded man. They lay sprawled together half on the pavement and half in the gutter.*³⁵⁹

9A-352 This account hardly corroborates the civilian eyewitnesses who make no suggestion that James Wray was laying even close to much less "sprawled together" with another man. Soldier 027's observations also of course contradict Mr Mahon's identification of Soldier G as the soldier responsible for the alleged close range shot.

9A-353 Indeed, in his BSI statement, Soldier 027 retracts this part of his evidence saying that

*I cannot say now whether I saw the incident or whether I was told of it later by Soldier H or one of the others in Glenfada Park North*³⁶⁰.

9A-354 He now says of Soldier H "I have a feeling that he had been shooting down by Joseph Place."³⁶¹

³⁵⁹ **B1565.007**

³⁶⁰ **B1565.056 paragraph177.9**

³⁶¹ **B1565.048 paragraph135**

FS 7. 1998

The Myth of James Wray's "Execution"

9A-355 There is a great deal of civilian evidence referring to the shooting of James Wray whilst lying prone in Glenfada Park North. The Tribunal will, however have noted both the fundamental contradictions in their accounts and the very late stage at which most of them first came forward. Such evidence is very far from providing a "framework on which the Tribunal can rely" or "corpus of evidence coming from many observers at the same scene" which "can provide irrefutable truth about what happened at that scene"³⁶² as Lord Gifford suggests. Rather, the eyewitness evidence of James Wray's "execution" demonstrates an understandable but alarming propensity amongst civilian witnesses to perpetuate popular myth, albeit, perhaps, in some cases sincerely and apparently convincingly at first glance.

9A-356 An excellent example of this tendency, as explained by an honest and self-aware witness is the recollection described by Nell McCafferty (**M54**) of seeing James Wray come towards the house she was sheltering in and later falling.³⁶³ She candidly admits that "Memory plays many tricks"³⁶⁴ and that on many details she has "a vague memory, which may be totally untrue."³⁶⁵ She acknowledges the power of emotion in distorting memory, admitting that she may have imagined seeing James Wray because "I am just feeling rotten about it."³⁶⁶ She also acknowledges how convincing such "false" memories can be, explaining that, while she would trust the article she wrote

³⁶² Day 049/132/06

³⁶³ Day 168/135/04

³⁶⁴ Day 168/128/21

³⁶⁵ Day168/134/07

³⁶⁶ Day 168/134.14

FS 7 · 1999

immediately after Bloody Sunday more than her later memory, "the later memory is so vivid."³⁶⁷

9A-357 Ben Keaveney AK2 (with experience of counselling trauma victims) gives an excellent and honest description of the mythologizing process, saying about James Wray,

*I still have a vision of him lying on the floor, but that could be just something that has been imposed by reading about it, although emotionally, which is maybe not the best way to give evidence, emotionally I feel that I saw him, I feel that he was there.....*³⁶⁸

9A-358 John O'Kane AO48, while sticking to his account of James Wray's shooting recognises that other parts of his evidence have been unintentionally fabricated. He admits that, while he claimed in his BSI statement to have seen Damien Donaghy and John Johnston shot,

*they were actually shot before I got up there. It was only that, on hearing it from people in the crowd what happened, I actually thought I seen it, but ...*³⁶⁹

9A-359 He is prepared to concede that it is perfectly possible to have

*"an honest mental picture of something that you believe you saw, although you subsequently come to realise that you could not have done."*³⁷⁰

9A-360 Mr O'Kane himself gives the excellent example:

³⁶⁷ Day 168/137/03

³⁶⁸ Day 60/037/22

³⁶⁹ Day 163/002/22

³⁷⁰ Day 163/047/10

FS 7.2000

*"if you go to another country, you say to yourself "I think I was here before", but actually seen it on TV, maybe years ago; that is what you are actually saying."*³⁷¹

9A-361 Certainly the Eversheds interview process is likely to have contributed to solidifying certain myths, presumably as a result of the interviewers' unconscious pursuit of consistency in eyewitness accounts. Consider for example the comments of Gerry Doran on Day 157 who, when speaking of his Eversheds interview said,

*It was pointed out to me that in fact I had identified the wrong people in the wrong place. I was made aware Jim Wray was shot at the entrance to the alleyway.*³⁷²

It is extremely unfortunate that evidence should have been influenced in this way.

9A-362 Ultimately, while James Wray died tragically on Bloody Sunday, the evidence, closely examined, demonstrates that he was not shot either at close or long range while on the lying on the ground, as, with the possible exception of a shooting by a soldier lying prone on the ground which no civilian witnessed, the angle of bullet entry cannot admit such a possibility if he was lying flat on his front as almost every eyewitness acknowledges. Whether he was shot by a soldier firing from a lowered position, leaning over a car for example, or while he was leaning or bending forward will never be known. What is clear is that the suggestion that he was "executed" is a product of the contamination of evidence over many years. Such a process is aptly summed up by Malachy Coyle himself in a Secret History broadcast³⁷³

³⁷¹ Day 163/049/03

³⁷² Day 157/182/09

³⁷³ Video 7

FS 7-2001

It [Bloody Sunday] is really in the Derry folklore.

9A-VI THE TRIBUNAL CANNOT RELY UPON THE EVIDENCE OF SOLDIER 027

9A-363 Soldier 027 has shown himself to be a witness on whom the Tribunal cannot rely in any aspect of his evidence. His supposed revelations as to events in Glenfada Park are no less incredible than the rest of his evidence to this Tribunal.

9A-364 Soldier 027 claimed in the document he wrote in 1975 that "E, H, G, F and myself then leapt the wall" and ran into Glenfada Park North. The scene he encountered was of "A group of 40 civilians were there running in an effort to get away."³⁷⁴

9A-365 His allegation that

H fired from the hip at a range of 10 (? illegible) yards. The bullet passed through one man and into another and they both fell, one dead and one wounded. He then moved forward and fired again, killing the wounded man. They lay sprawled together half on the pavement and half in the gutter".³⁷⁵

has already been dealt with above. Soldier 027 has, indeed, admitted in his BSI statement that he cannot in fact say if H's shooting was something he saw or whether he was told about it later by H or someone else.³⁷⁶

9A-366 027's next allegation in this document is that "E shot another man at the entrance of the Park who also fell on the pavement".³⁷⁷ This corroborates

³⁷⁴ B1565.006

³⁷⁵ B1565.006/007

³⁷⁶ B1565.055

³⁷⁷ B1565.007

FS 7. 2002

Soldier E's own evidence presuming that the "entrance" refers to the opening to Rossville Street.

9A-367 He then says "A fourth man was killed by either G or F".³⁷⁸ Again, their evidence does not dispute this. Soldier 027 concedes "I can no longer remember the order of fire or who fell first."³⁷⁹

9A-368 By reference to a "fourth man" however, Soldier 027 bears witness to the presence of an additional, unknown, casualty in Glenfada Park North unless of course this latter reference is taken to refer to shootings in Abbey Park which he could not have seen on his account.

9A-369 Soldier 027 goes on

The crowd stopped immediately in their tracks turned to face us and raised their hands. This is the way they were standing when they were shot.

9A-370 This does not accord with any civilian evidence as to the demeanour of Joseph Mahon, Michael Quinn, James Wray or William McKinney who are all described or describe themselves as running when they were shot. Patrick O'Donnell was pressed on top of Mrs. O'Brien. Danny Gillespie was either running or facing the soldiers depending on his account. Only Joseph Friel has said that he had stopped and turned at the time when he was shot and it is not suggested that any of these men raised their hands. Soldier 027's recent admission that this further detail about dead and injured in GPN, "may have

³⁷⁸ B1565.007

³⁷⁹ B1565.007

FS7.2003

been influenced subsequently by having read Don Mullan's book and read and seen other material"³⁸⁰ is perhaps not surprising.

9A-371 Soldier 027 then provides an account of the treatment of arrestees and goes on to describe how he was left alone in Glenfada Park North watching the retrieval of the bodies by first aid workers. If nothing else, this would of course suggest that 027 was the soldier who, according to her evidence, insulted and shot at Evelyn Lafferty.³⁸¹

9A-372 Indeed all of Soldier 027's account of events in Glenfada Park North included in his 1975 material is undermined by the statement in his BSI statement that

*It is inappropriate for me to claim with any degree of certainty the accuracy of the events in Glenfada Park as described in that document. I do not know now how much of that account was first hand experience and how much of it was hearsay or anecdotal.*³⁸²

9A-373 All he now recalls in his BSI statement is that "F and G then ran to the right closely followed by Soldier E and Soldier H" while he followed on behind.³⁸³

*As we ran towards GPN there was a metre or two between each man... .. Before I entered GPN, shooting had already recommenced*³⁸⁴.

As I came on the scene there was at least one body down. I saw a crowd of about 40 shocked and terrified people along the south side of the car park, trying to get away. They were in the process of exiting the south west corner of the car park when,

³⁸⁰ B1565.057 paragraph 177.10

³⁸¹ AM17.4

³⁸² B1564.044 paragraph 114

³⁸³ B1565.042 paragraph 101

³⁸⁴ B1565.042 paragraph 102

FS 7.2004

in the presence of the shattering noise of the SLRs they became submissive and acquiescent. Some froze in a static huddle.³⁸⁵

9A-374 027's memory is then unclear. He is not sure where he went but

one of my first images is of seeing a man in a pale grey suit who had been shot, lying in the pavement or gutter that ran along the left side of where I was standing.³⁸⁶

I then remember being on my own in the car park.

9A-375 He says he saw the bodies removed and

I remember the man in the pale grey suit was the last to be removed.³⁸⁷

9A-376 This description of a man in a pale grey suit fits none of the dead or wounded. Moreover the order in which bodies were removed appears in the video taken by Michael Rodgers³⁸⁸ to be Joseph Mahon first, then William McKinney and James Wray at the same time. Again, Soldier 027 appears to have identified an unknown casualty.

9A-377 Soldier 027 does not, then, in his current evidence claim to have witnessed shooting by any soldier. He concedes that his account of Soldier H may be hearsay and while he is confident that four soldiers fired in Glenfada Park North it is not at all obvious how he has reached this conclusion as he has no recollection of Soldier E (one of the only four soldiers he recalls seeing in Glenfada Park North) firing at all.³⁸⁹

³⁸⁵ B1565.042 paragraph 104

³⁸⁶ B1565.042 paragraph 105

³⁸⁷ B1565.042 paragraph 107

³⁸⁸ Video 19

³⁸⁹ B1565.042 paragraph 109

FS7.2005

9A-378 He says that

I cannot now, with any certainty, associate any soldier with a particular incident.³⁹⁰

9A-379 Soldier 027's current allegations therefore amount to:-

As I initially entered Glenfada Park North, within a very short space of time there were some 10 or 15 rounds fired in a series of rapid, staccato shots, which came in a burst. They were followed by more intermittent firing.³⁹¹

9A-380 In fact this hardly conflicts with the evidence of Soldiers G, F, H and E who say they fired 10 rounds in total in the initial burst followed by Soldier F's shots from the south east corner and Soldier H's 19 rounds into a window.

9A-381 Soldier 027 says he saw no weapons, bombs or threatening behaviour,³⁹² but concedes he arrived after the others and when at least one casualty was down. He cannot describe any of the dead or injured.

9A-382 Soldier 027 insists that Soldiers F and G were prime movers even though he cannot really say why.³⁹³ He makes no more than a vague and subjective allegation that Soldiers F and G "in particular appeared to assert themselves and influence events". His suggestion that "I believe LCpl F and Soldier G had a preconceived idea of what they were going to do that day"³⁹⁴ is completely unsubstantiated.

³⁹⁰ **B1565.042 paragraph 109**

³⁹¹ **B1565.042 paragraph 103**

³⁹² **B1565.042 § paragraph 104**

³⁹³ **B1565.042 paragraph 114-115**

³⁹⁴ **B1565.042 paragraph 115**

FS 7. 2006

9A-383 Indeed the most likely scenario is that Soldier 027 did not enter Glenfada Park North until after the shooting had finished, if at all. Lt 119 specifically told Lord Widgery that, as would be expected, his radio operator came in shortly after him.³⁹⁵ He has confirmed in evidence to this Tribunal that this is where he would expect his radio operator to be³⁹⁶. Lt. 119's evidence is of course that he entered Glenfada Park North after the forward party of men including Soldiers F and G and saw, at most, the last shots fired by Soldier F.

9A-384 In support of Lt 119's evidence, the majority of civilian witnesses saw four or less soldiers in Glenfada Park North when shooting was ongoing which would not, on his own account, allow for 027's presence or that of Lt 119.

³⁹⁵ B1466 at E

³⁹⁶ Day 364/003/14

FS 7-2007

THE SOLDIERS' ACCOUNTS OF ACTIONS IN SECTOR 4

9A-VII SOLDIERS ENTERED GLENFADA PARK NORTH FOR LEGITIMATE AND PROPER REASONS.

9A-385 It is accepted that a number of soldiers give differing accounts of their reasons for entering Glenfada Park North. That their accounts should differ in this way is not, perhaps, surprising in view of the conditions in which these soldiers were operating. There is, moreover, evidence to show that the armed and other activity which they reported at that stage was indeed taking place in the area at the time they describe. Not only was Glenfada Park regularly used by paramilitaries but a small minority of civilian witnesses have been prepared to state that they saw such activity on Bloody Sunday.

GLENFADA PARK WAS A HABITUAL HAVEN FOR PARAMILITARY ACTIVITY

9A-386 There is considerable evidence that Glenfada Park North was a habitual haven of paramilitary activity and a regular sanctuary for rioters and armed individuals. Such evidence has emerged entirely separately from the soldiers' accounts of observing just such activity in the area.

9A-387 William Barrett (**AB110**) described, when questioned by Counsel to the Tribunal, regular firing by one individual from Glenfada Park towards the Embassy Ballroom:

A. He would run into what you would call Glenfada Park North, is it? I remember he was in there one night anyhow. The lower part of Glenfada, it used to be to me the next square along. Even from in there he could not hit the top of the Embassy anyhow.³⁹⁷

³⁹⁷ Day 198/064/21-065/02

FS 7-2008

9A-388 Mr Barrett continued:

Q. In the square itself, from inside the square?

A. Yes, and there would be a crowd following him, like the Pied Piper.

Q. People would follow him around?

A. Certainly I remember that.

Q. How often did that happen?

A. I remember it happening a number -- enough times for people to know, here comes so and so, and suddenly there would be a bang, bang, bang, and everybody would look and run, regularly enough occurrence.

Q. Did this happen before Bloody Sunday?

A. I cannot remember now. I mean, I lived there from, I lived there for 8 or 9 years, the things may not be in the right order that I remember them, but I cannot remember exactly when.³⁹⁸

9A-389 Mr Barrett continued

.....there was a terrible lot of things happened around the one area, to actually put a time on it I could not be too sure at all, you know, an exact time. It must have been fairly early on because whenever the shooting really started you did not get many people following a boy around, you know, it was, it was hit the dirt time when you heard shooting.

Q. Did you know where this man obtained the machine-gun?

A. Not at all, no.

Q. Did you know to which, if any, paramilitary organisation he belonged?

A. No.

³⁹⁸ Day 196/065/15-066/05

FS 7. 2009

Q. Or was it known generally that he was or might be a member of the Provisional IRA, the Official IRA?

A. No, I think it was maybe somewhere in the back of me mind that he was a member of the Official IRA, but I do not know if he was or not, it was just general talk.³⁹⁹

9A-390 Raymond Rogan (AR24) agreed in his evidence to the Widgery Tribunal that it was “common knowledge” that firing came from the area of Glenfada Park against the troops

Q. Can you tell my Lord this: Is it not right that frequently rifle fire or IRA fire comes from Glenfada Park Flats?

A. That I couldn't say with a great degree of certainty who actually does the firing

Q. But firing does come from that area against the troops, doesn't it?

A. It is common knowledge.⁴⁰⁰

9A-391 Mr Rogan, when questioned by Christopher Clarke QC, maintained that such firing did indeed take place:

Q. I understand you there to have been saying that prior to Bloody Sunday it was common knowledge that fire directed against the troops came on occasion from the Glenfada Park flats; is that what you were accepting?

A. That is correct, yes.⁴⁰¹

9A-392 Other witnesses gave evidence that Glenfada Park North, and in particular the North East corner, was well known as a place to which hard line rioters and others might retreat for safety at times of disturbance in the Bogside.

³⁹⁹ Day 196/066/14-067/05

⁴⁰⁰ AR24.31 at C-F

⁴⁰¹ Day 184/007/25-008/04

FS 7. 2010

9A-393 Paddy McCauley (AM97) said in his BSI statement that

From my experience of rioting and experiencing gun battles, I knew that the safest place to be in the Bogside when there was trouble was the north eastern corner of Glenfada Park North. I knew that if I was there I could not be seen from the soldiers on the City Walls and on top of the Embassy Ballroom. I also knew that I could not be lifted by the soldiers on the ground as they would not cross the lines at the northern boundaries of the Bogside.⁴⁰²

9A-394 Mr McCauley described fleeing to the north east corner of GPN as going "back to base".⁴⁰³ He reiterated the point in evidence to the Tribunal when questioned by Edwin Glasgow QC:

If there was trouble of any kind, you and the hardline rioters with you would normally try and flee to Glenfada Park North?

A. Yeah.

Q. It was generally known to be a fairly safe place to go, even if you had been involved in rioting?

A. Yeah.

Q. And even if you had got petrol bombs or nail bombs or other weapons like that with you; you were reasonably safe in Glenfada Park North?

A. To me, the way I would have looked at things in those days would have been: you cannot be seen from the Embassy buildings, you cannot be seen from the Derry Walls and the army will not come in that far.

Q. And even if, Mr McCauley, you were carrying weapons of any kind?

A. Yeah.

⁴⁰² AM97.1 paragraph6

⁴⁰³ AM97.3 paragraph17

FS 7. 2011

Q. Even if one was carrying weapons, even if a person was carrying weapons of any kind, again Glenfada Park North was the obvious place to run to as being somewhere that was reasonably safe where you could not be seen?

A. Yeah, it was a blank spot, yeah.⁴⁰⁴

9A-395 Paddy McCauley's evidence is of course supported by the evidence of and relating to OIRAs 1 and 7, examined below. Such evidence confirms that Glenfada Park North was used by the Bogside section of the Official IRA as an area in which to store arms under the control of the OIRA for potential use against the Army.⁴⁰⁵

9A-396 Notes taken by Paul Mahon suggest that Glenfada Park was also used as an area for storing weapons by the Provisional IRA. Mr Mahon was referred to pages in his notebooks by Edmund Lawson QC:

Q. Over the page, 232, the notes continue with reference to: "The IRA often would use a car positioned in Glenfada Park as an arms dump." What is not apparent, can you assist, is whether this is a continuation of the same conversation or a different one?

A. That definitely came from "Mad Dog", that information.

Q. That is "Mad Dog" too?

A. Yes.

9A-397 Even on the account of events now put forward by OIRAs 1, 2 and 7, it is clear that, at a time when, according to OIRA 1, security considerations were paramount,⁴⁰⁶ the eastern side of Glenfada Park North was a place considered safe to park their vehicle. It was moreover, according to this account, a safe

⁴⁰⁴ Day 162/106/4-107/21

⁴⁰⁵ AOIRA1.1

⁴⁰⁶ AOIRA1.25 paragraph11

FS7-2012

area in which to “dump” a weapon which was, according to OIRA 1 “in short supply”,⁴⁰⁷ even in circumstances where, as OIRA 1 told the Tribunal, “there was a fear the British Army would seize any of our weapons at all times”.⁴⁰⁸

9A-398 Others support the suggestion that Glenfada Park North was a place which was considered secure from incursions by the Army. Joseph Mahon (**AM18**) told the Tribunal when questioned by Mr Glasgow that Glenfada Park North was a “safe area”.⁴⁰⁹ Mr Glasgow continued:

A safe area. Mr Mahon, somebody else told the Tribunal this week that it was an area where people went at times of trouble for refuge because it was known to be safe?

A. Yeah.

Q. It was not overlooked?

A. Yes.

Q. And it is a place you knew you could not be seen and you were reasonably safe, could not be seen by the soldiers?

A. No, that is, it is not that you could not be seen. They never came that far before.⁴¹⁰

9A-399 Seamus Doherty, (**AD102**), also confirmed in his BSI statement that

I was anxious about the shooting and so I ran.... to point F which was at the west entrance between Glenfada Park North and Glenfada Park South because I thought that was the safest place to be.⁴¹¹

⁴⁰⁷ **Day 395/020/04-05**

⁴⁰⁸ **Day 395/055/01-02**

⁴⁰⁹ **Day 167/050/11-16**

⁴¹⁰ **Day 167/050/17-051/03**

⁴¹¹ **AD102.2 paragraph7**

FS7.2013

9A-400 There is then clear evidence that Glenfada Park North was indeed likely to be the destination of both rioters and armed men surprised by the Army incursion into the Bogside that day.

MILITARY EVIDENCE RE ENTRY INTO GLENFADA PARK NORTH

9A-401 Soldier E gave consistent evidence in his RMP statement at **B87**; SA at **B95** and to the Widgery Tribunal at **B102** of having taken a decision to pursue rioters/part of the crowd which was moving from the barricade into Glenfada Park.

9A-402 Soldier F described in his RMP statement of 31.1.72 at **B167.026** moving into Glenfada Park North having seen rioters move there from the barricade. He added in a further, undated RMP statement at **B167.031** that there were amongst that crowd three men, one of whom appeared to be carrying a rifle. Soldier F confirmed such evidence in his SA at **B167.035** and in his evidence to the Widgery Tribunal at **B167.039E**. Consistently with Soldier E, he told the Widgery Tribunal that the decision to enter Glenfada Park was taken by Soldier E.⁴¹²

9A-403 Soldier G followed Soldier F's initiative in moving into Glenfada Park North having seen a gunman moving in the alleyway between Glenfada Park North and Columbcille Court.⁴¹³

9A-404 Soldier H described pursuing a group of young men in possession of nail bombs through the north eastern entrance of Glenfada Park North.⁴¹⁴

⁴¹² **B167.050G – 051A**

⁴¹³ **B168-9; B186**

⁴¹⁴ **B264.020-021; B230; B264.07; B264.029 at A-D**

FS7-2014

9A-405 Lieutenant 119 took a decision to send men into Glenfada Park having seen a man firing around the corner of Glenfada Park North, apparently with a pistol.⁴¹⁵

9A-406 There is civilian evidence, albeit given it appears with some reluctance, to confirm that soldiers entered Glenfada Park North with just the apprehensiveness and trepidation that might be expected in these circumstances.

9A-407 Malachy Coyle included in his draft statement the note that:

*As they ran into the car park, they were all (with the exception of the soldier without a helmet) in a slightly crouched position and seemed to be taking care to look around and obtain cover. I had the impression that they were afraid of being shot at themselves and were looking for snipers.*⁴¹⁶

9A-408 Mr Coyle now says, wholly implausibly, that all of this description was a mistake which he does not ever recall giving.⁴¹⁷ Asked about this statement by Mr Glasgow. Mr Coyle denied ever saying this to Eversheds:

Q. Did you at least say that, even if you have changed your mind about it afterwards, or are you saying you never even said that?

A. I do not think it was part of my initial statement, no. I do not know, those two things were in and when I read them, I did not, I cannot -- I am almost positive I did not say that, you know. The other one too, which I countersigned, I did not say that either, you know.

Q. I have to ask you, Mr Coyle, because it might have quite serious implications.

⁴¹⁵ B1443; B1450; B1456

⁴¹⁶ AC97

⁴¹⁷ Day 156/094/20

FS7.2015

A. I understand that, it is not a case of changing it to make it look good. I cannot remember having said that.

Q. You cannot remember having said it?

A. Having said it. I got the transcript, I think the next day, and when I read I went down to Paddy and I says, "Look, that there is not right, I do not know what it is doing in there". I do not know who put it in there, but it was not me.⁴¹⁸

Strangely, however Mr Coyle had also said in his taped interview with Paul Mahon that the soldiers who entered Glenfada Park North were:

"military alert to danger and they were kneeling down or standing up"⁴¹⁹

a description very similar to that which Mr Coyle required to be deleted from his BSI statement.

9A-409 Furthermore, there is compelling civilian evidence to corroborate the presence of the gunmen with both rifles and pistols, boys with nail bombs and rioters that these soldiers reported seeing. While the soldiers' accounts may give different reasons for their entry into Glenfada Park North, it is inconceivable that the correlation between the men they reported seeing and those men seen by civilians coming forward over 25 years later can be a matter of coincidence.

9A-VIII THERE WAS ARMED ACTIVITY IN GLENFADA PARK NORTH

⁴¹⁸ Day 156/094/09-095/03

⁴¹⁹ X4.45.52

FS 7.2016

INTRODUCTION

9A-410 There is now before the Tribunal considerable evidence to prove that, not only was Glenfada Park North regularly used as a haven of paramilitary activity, but that, on Bloody Sunday itself, there were in Glenfada Park North:

- (1) gunmen who carried and fired handguns at soldiers in Rossville Street;
- (2) young men armed with nail bombs; and
- (3) a car or cars belonging to the Official IRA from which rifles and other weapons were removed at or around the time that soldiers entered the Bogside.

9A-411 There is also evidence to prove that some of those weapons were present in Glenfada Park North when soldiers entered the area and were likely to be precisely those guns and nailbombs seen by soldiers in the hands of individuals in Glenfada Park North.

9A-412 In considering such evidence the Tribunal will no doubt wish to place particular reliance upon any evidence of gunmen or paramilitary activity given by civilians who have no possible motivation for inventing such accounts and who indeed might be expected to be extremely reluctant to come forward, as they have been in the past. The point was well made by Mr Barry when he gave evidence to the Tribunal:

A. As a general proposition, and I ask you to believe I am not being facetious here, but as a general proposition I do remember repeatedly telling my colleagues or reminding my colleagues of a saying which I have found very useful, which is a rubric by the great mathematician CS Hardy, who once advised his pupils that when the Archbishop of Canterbury says he believes in God, that is just in the way of business; it is when he says he does not that you can take it he means it, and

FS7.2017

*that weighed with us on the question of what the IRA had done that day and what the civilian witnesses said.*⁴²⁰

THE NORTH EAST CORNER OF GLENFADA PARK NORTH

- 9A-413 Evidence of gunmen and young men with nail bombs operating in Glenfada Park at the time soldiers entered the area is set out below. Photographic evidence also indicates that there was activity in the north east corner of the square shortly before soldiers entered which caused concern to the civilians gathered in the area.
- 9A-414 It is clear from photograph P432 that efforts were first made by the group carrying Michael Kelly to take him towards the north east of Glenfada Park North. Photographs P436 and P437 then show that the group diverted from that route to carry him across to the south west exit.

⁴²⁰ Day 194/041/18

FS 7.2018



P432

FS 7-2019



P436



P437

FS 7. 2020

9A-415 Pearse McCaul, who was part of the group carrying Michael Kelly, has confirmed, when questioned by Mr Glasgow, that this diversion was not the result of soldiers being seen at that entrance:

Q. Are you able to help the Tribunal: why was it that whoever it was who was leading the party, or all of you were carrying Mr Kelly in a northerly direction at one stage, but then must have turned round and came in the opposite direction?

A. I could not honestly (inaudible).

Q. The only thing you are certain about, you very kindly answered my question on this, but you should reconsider it in the light of this photograph: you are quite sure that it was not until you got down to this corner of the southern side over there, that the soldiers came in, that you say you are sure of?

A. That is correct.

Q. You are sure?

A. As far as I can remember.

Q. Whatever it was that made you change your minds -- if there were more than one mind operating -- whatever it was that made you change your direction from north to southwest, could not have been the entry of the soldiers?

A. I do not know why, there was a lot of confusion⁴²¹

9A-416 **P433** (aka **P1122**) also shows a man signalling or remonstrating towards the north east corner of Glenfada Park North. Clearly, as Michael Kelly is shown still lying on the ground at this stage, the entrance of soldiers cannot be the object of his attention. It would appear from the photographic evidence that something was taking place in the north east of Glenfada Park North in the period shortly before soldiers entered.

⁴²¹ Day 164/128/18

FS 7. 2021

HANDGUNS

Michael Lynch

9A-417 There is compelling evidence that a man was operating with a handgun in the Glenfada Park area at the time soldiers entered the Bogside and took up positions on Rossville Street. Michael Lynch (AL38) was watching from the eighth floor of the Rossville Flats when he saw

A man with a handgun come out quickly from the north east side of Glenfada Park North at approximately the point marked B on the attached map (grid reference J13) and fire two shots towards the soldiers in Rossville Street. I think the pistol was in his right hand. I do not think he had time to aim at anyone. He was wearing a Parka jacket and he had the hood of the jacket up covering his head....

....As soon as he had fired the shots, he ran away in the same direction from which he had come from (sic).⁴²²

9A-418 In oral evidence, Mr Lynch gave a more detailed description of the man's movements and position:

MS McGAHEY: Could you mark for us, please, where he was when you first saw him?

A. Probably just there and he just come to that corner there (indicating).

Q. Did he put his entire body round the corner in order to fire?

A. No, he just put his right-hand, right arm -- sorry, like that.

Q. Would he have been able to see what he was firing at?

A. I do not know. I do not know would be the answer, only he could say that, I suppose. It seemed -- it happened very quickly

⁴²² AL38.2 paragraph10

and it seemed as if he just put his hand round the corner and fired two shots and then ran straightaway again. It happened really within seconds.

Q. Did he run back into the alleyway that you can see on this picture?

A. Yes.

Q. Could we save that image, please, as AL38.10.⁴²³



AL38.10

FS 7 2023

9A-419 Mr Lynch could not see any soldiers at the time he saw the gunman due to his position.

A. I could not really see because from where I was looking I would have seen -- I did not come fully up to the window because of what had happened before, so a lot of that area immediately below would have been cut off and I would only have seen from, if you see roughly that footpath there, you know, that corner, about there, I would have only seen from about there back, so I cannot say with certainty if they had moved away, but I certainly did not see them.⁴²⁴

9A-420 He is clear however that he saw the gunman after soldiers had entered the Bogside.⁴²⁵ Mr Lynch was also able to say that he saw the man prior to seeing three bodies lying on the barricade.⁴²⁶ It would not seem possible that the gunman could have acted as and where he did at a time when soldiers were in Glenfada Park North and this incident must have preceded their leaving that area as Mr Lynch saw, after the gunman had departed, a crowd at the gable end of Glenfada Park North attempting to assist the casualties at the barricade.⁴²⁷ This crowd was of course escorted away from Glenfada Park by the soldiers in the area. Mr Lynch must therefore have spotted the gunman at some time between soldiers entering Rossville Street and their movement into Glenfada Park North.

Margo Harkin

9A-421 Margo Harkin saw two young men, one of whom carried a pistol, in a very imilar position to Mr Lynch, marked as K on her plan at AH23.22.

⁴²³ Day 148/188/20-189/14

⁴²⁴ Day 148/190/09-17

⁴²⁵ Day 148/189/23-24

⁴²⁶ Day 148/192/12-18

⁴²⁷ AL38.3 paragraph15

FS 7. 2024

9A-422 She saw this young man fire one or more shots from the pistol into Rossville Street.

I did not really think he took aim at all, he just did this wild, whatever it was. I thought it was one shot, it may have been more, I do not know.⁴²⁸

9A-423 While Mrs Harkin believed she had seen this man at a considerably later stage than Mr Lynch, she readily agreed that she might be mistaken as to the sequence of events about which she gave evidence.⁴²⁹

9A-424 Despite attempts by Mr Treacy to persuade her otherwise, she was quite sure as to the position in which she saw these boys. In reply to the suggestion that she was mistaken about their position she said that:

A. I really do not think so. I mean, if I am wrong I am only wrong by a matter of, you know, it is either one side or other side of that ramp, you know.⁴³⁰

Father O’Gara

9A-425 Father Thomas O’Gara (**H19**) also described in his SC statement seeing a man fire at soldiers from a similar position. He told the Widgery Tribunal in oral evidence that this had occurred 30 seconds to a minute after army shooting.⁴³¹

A young man appeared from the Cathedral side of Kells Walk unknown and unseen by soldiers, drew a pistol from his pocket, leaned over a wall at the end of Kells Walk and fired three

⁴²⁸ Day 416/027/23

⁴²⁹ Day 416/047/08

⁴³⁰ Day 416/042/21

⁴³¹ H19.1

FS 7.2025

shots quickly. The soldiers didn't even recognise his presence and he disappeared. ..The man wore a longish coat...⁴³²”.

9A-426 Others have also corroborated the existence of handguns in the area of Glenfada Park/Kells Walk. John Long (AL20) reported in his BSI statement that, having seen the injured John Johnston and Damien Donaghy, he went to seek medical help and returned to the area with a doctor:

...as we went through the alleyway from Kells Walk towards Columbcille Court there were quite a few people pushing to get out in the opposite direction. Someone mentioned that a man with a handgun had been seen and they all wanted to get away.⁴³³

Mr Long confirmed his evidence to the Tribunal on day 068.⁴³⁴

Marian McMenamin

9A-427 Marian McMenamin (AM363) mentioned nothing of any civilian gunman in her NICRA statement⁴³⁵ and indeed indicates in her BSI statement the pressure operating on civilians not to reveal such evidence saying:

I hate myself for saying this; I have never told anybody about this before, not even my husband and we have been married for over 25 years.⁴³⁶

9A-428 Nonetheless, Mrs McMenamin bravely went on to give her account of running south down Rossville Street as the pigs entered and seeing a man with a handgun in a position close to that indicated by Michael Lynch and Father O’Gara.

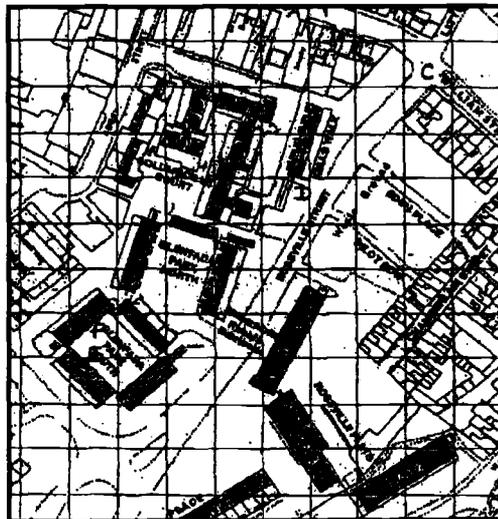
⁴³² H19.5-6

⁴³³ AL20.2 paragraph7

⁴³⁴ Day 068/096/12-19

FS 7. 2026

The gunman was in an alleyway, near the pram ramp at the south gable end wall of Kells Walk. I have marked his approximate position on the attached map point D (grid reference K12). The man was at ground level in the area around the pram ramps, but not actually on the pram ramp. To the best of my recollection, he had his back to the gable end wall of Kells Walk. He was young, probably in his mid to late 20s, about 5'8" tall, average build, dark hair and wearing dark clothing (3/4 black coat). He did not have his face covered with a mask or balaclava. He was on his own – there was no-one around him; he was just a single gunman. He had a quite big, squarish, hand gun in his right hand. He was holding the hand gun out in front of him, but not aiming it. I did not see him fire it. He appeared from behind the wall, walked east towards RS, looked south towards the Rossville flats' shops and then withdrew again. I do not know where he went after that.⁴³⁷



AM363.5

⁴³⁵ AM363.1

⁴³⁶ AM363.2 paragraph 7

⁴³⁷ AM363.2 paragraph 7

FS7-2027

9A-429 Mrs McMenamain explained that she saw the gunman after the Pigs had entered Rossville Street⁴³⁸ and while shooting was going on.⁴³⁹

9A-430 In oral evidence Mrs McMenamain gave a great deal of thought to where she had seen the gunman in the course of which it appeared she may well in fact have seen him closer to the north eastern entrance into Glenfada Park North. Mrs McMenamain responded as follows when viewing virtual reality hotspot 9 A. Yeah, I would say, you know, there is a possibility that it was there because I know that I saw him ahead of me, whereas the other place that you pinpointed, I would have had to look round to see him, but I was looking straight at him.

LORD SAVILLE: I think what you are saying is, if you take the first one we looked at, the difficulty is that the wall of Kells Walk in the way.

A. Exactly.

LORD SAVILLE: So you would not have seen him as you remember seeing him, whereas further down here on this other pram ramp area, in this other pram-way, you would have seen him as you remembered seeing him.

A. Yes.

LORD SAVILLE: Do I understand you correctly?

A. That is correct.

LORD SAVILLE: Could it have been in the area of this alleyway? A. Yes, quite possibly.

MR TOOHEY: Mr Rawat, are we now speaking about the alleyway to the north of Glenfada Park North, at least the ramp to the north of Glenfada Park North?

⁴³⁸ AM363.2 paragraph 6

⁴³⁹ AM363.3 paragraph 8

FS7.2028

MR RAWAT: Yes, it would be.

MR TOOHEY: Because that is face on basically to Mrs McMenamain as she comes down?

MR RAWAT: Yes, it would be, yes. Well, it is the alleyway you would go down to get to Columbcille Court.

MR TOOHEY: But in terms of the pram ramp she is speaking of, does the ramp not go from west to east?

MR RAWAT: Yes, it does.

MR TOOHEY: It is giving a north-facing appearance on one side?

MR RAWAT: I wonder if we can try and save this view. Now you have seen this, Ms McMenamain, we are going to give you control again. Can you mark the general area where you think you saw this man?

A. I would say there is a good possibility he was in this area.

Q. But positioned on Rossville Street. Let us save that, please, as AM363.10, the blue arrow marking the approximate position where Ms McMenamain saw a man with a gun on Bloody Sunday. Just to make clear for the transcript, the man was standing on Rossville Street. He was not on a pram ramp or behind a wall, was he?

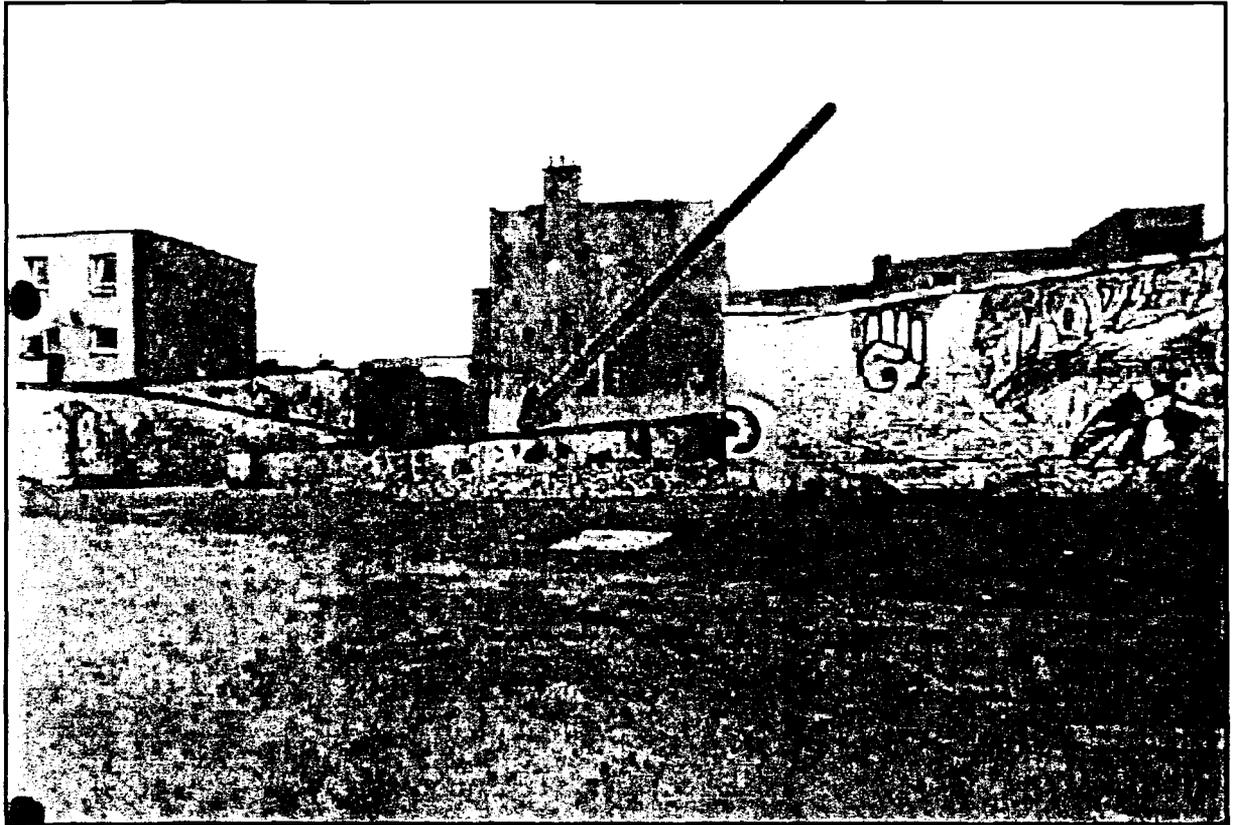
A. He was along a wall, he was moving slowly along a wall.

Q. When you say "moving slowly along the wall", in which -- what exactly do you mean by that?

A. He was moving slowly along the wall, he had his back to the wall, as it were, and he was moving to stay out of sight, he was moving very carefully.⁴⁴⁰

⁴⁴⁰ Day 194/211/04-213/08

FS7.2029



AM363.10

9A-431 Mrs McMenamain made the reservation in marking the exact position in which she saw the gunman that

A. I think it is 30 years and I think I would be, in the capacity of my work I would have been quite familiar with the Bogside, but it is still hard after 30 years to actually pinpoint it by photograph.⁴⁴¹

9A-432 She describes his movements in similar terms to those used by Michael Lynch

⁴⁴¹ Day 194/214/17-20

FS 7.2030

He came out from -- he walked along a gable wall with his back to the gable. He came out towards Rossville Street and then he withdrew; he did not actually put his foot on Rossville Street.⁴⁴²

And confirms that she saw him at a time when soldiers and Pigs were present in Rossville Street

Q. At the time you saw him, I know you have told us about your recollection of seeing Saracens coming into the Bogside, but at the time you saw him, were you aware of soldiers being in Rossville Street?

A. Yes

Q. Were you aware of Army vehicles being in Rossville Street?

A. I remember hearing the noise of them.⁴⁴³

9A-433 The Tribunal has been invited to consider on a number of occasions the lack of civilian evidence about the presence of gunmen which, as witnesses such as Mrs McMenamin have been brave enough to confirm, were operating in plain sight on Bloody Sunday. Indeed Mrs McMenamin herself was able to say that:

Q. At the time you saw this man with a gun, was there a lot of people running south along Rossville Street?

A. Yes.

Q. So there would have been others who would have seen him as well?

A. Yes.⁴⁴⁴

⁴⁴² Day 194/214/24-215/02

⁴⁴³ Day 194/215/09-16

⁴⁴⁴ Day 194/215/03

FS7.2031

Liam Mailey

9A-434 Liam Mailey (M50) in his 1972 statement described hearing low velocity shots fired at around this time and location. From his position just south of the rubble barricade he saw the soldiers' Pigs come in and stop

After this there were rifle shots from the soldiers who had got out of their vehicle and I saw at least two people injured in the advancing crowd. The others got down. I moved across Rossville Street towards the flats and just behind the barricade. While I was crossing I heard three single shots which appeared to be of lower calibre than the rifle shots. They appeared to be fired from the area of Glenfada Park or Kells Walk. I cannot give the direction.⁴⁴⁵

He described in his evidence to the Widgery Tribunal hearing

3 shots of a much lower calibre than what the Army were firing...I would imagine it came from somewhere around Kells Walk...⁴⁴⁶

9A-435 By the time he came to give his BSI statement Mr Mailey had little recollection of when he had heard the shots but was able to confirm that he did hear

Three or four shots which were all low calibre and which sounded to me like an air rifle being fired. I am certain that they were not high velocity rounds and I did not see any soldiers in the vicinity when I heard them...

.....I think it was after the march had started because I remember thinking to myself that it was a particularly stupid time to be firing shots and that we don't need this in the middle of a Parade.....

⁴⁴⁵ M50.57

⁴⁴⁶ M50.27

FS7.2032

*... I think the shots came from the area of either Glenfada Park North or, perhaps, the southern end of Columbcille Court. I am not sure, but I think the latter is more likely.*⁴⁴⁷

Mr Mailey was unable to be any more precise in assisting the Tribunal when he came to give oral evidence as to where he was when he heard the low calibre gunfire?⁴⁴⁸

Michael Kivelehan

9A-436 The Tribunal will also recall the evidence of John Goddard as to the information which he was given, in 1991, by Michael Kivelehan (**AK45**) at a Kivelehan family gathering:

Me into Glenfada Park, and to my Grannie's flat, top right corner of top quadrangle. Soldiers coming into G Park from Kells Walk... ..

Off the record:

-Man with short arm in their flat, disarmed and got rid of.

*-Two nail bombs dumped in street outside his flat. Know because dragged the two boys in who had them. Ends*⁴⁴⁹

9A-437 Mr Goddard also noted that

Michael is believable up to a point, but all the contentious stuff which is off tape, his two sisters and mother backed up immediately with more detail.

9A-438 Mr Goddard confirmed in oral evidence that the "contentious stuff" referred to the information about the gun and nail bombs and emphasised that this evidence was backed up by other members of Mr Kivelehan's family.

⁴⁴⁷ **M50.2 paragraph 6**

⁴⁴⁸ **Day 163/095-096**

⁴⁴⁹ **AK45.1**

FS 7.2033

But the second point was -- I would make is that they were very, very detailed in what happened and that the people with these contentious objects were quickly disarmed, clipped round the ear and told to sit in a corner, which again correlated with other things we had been told in other areas.⁴⁵⁰

9A-439 Mr Kivelehan himself eventually, having been summonsed by the Tribunal, gave, presumably reluctant, evidence on Day 406 when he had only a vague memory of being interviewed by Mr Goddard⁴⁵¹. He was able to confirm, however, when questioned by Mr Clarke, the accuracy of much of the information contained in Mr Goddard's notes⁴⁵². Indeed Mr Kivelehan appeared to accept the accuracy of Mr Goddard's notes, despite having no recollection of the interview.

Q. You do not seriously doubt, do you, that these are notes compiled by a journalist on the basis of things that you told him?

A. I do not doubt it at all, but I just cannot remember them.⁴⁵³

9A-440 Mr Kivelehan refuted any suggestion, however, that he had seen either a short arm or nail bombs on Bloody Sunday.

Q. Your evidence about that is that you do not remember anything about two boys with nail bombs and you do not remember any shortarm in the flat; is that right?

A. Definitely not.

Q. Just to be quite clear about it: did you see any nail bombs that afternoon either in the flat or outside it?

A. Definitely not.

⁴⁵⁰ Day 233/200/03

⁴⁵¹ Day 406/067/21

⁴⁵² Day 406/069/03

⁴⁵³ Day 406/078/03

FS 7. 2034

Q. Did anyone tell you that some nail bombs had been dumped anywhere near the flat?

A. No.

Q. Did anyone tell you that there had been two boys with nail bombs anywhere near the flat?

A. No.

Q. Did you see anyone with a shortarm anywhere in the area?

A. A shortarm?

Q. Did you see anyone with a shortarm?

A. A gun?

Q. Yes?

A. No.

Q. Did anyone tell you anything about a man with a pistol or a shortarm anywhere in the area?

A. No.⁴⁵⁴

9A-441 The Tribunal will recall that, questioned further by Mr Clarke, the only explanation which Mr Kivelehan could offer for Mr Goddard's notes was that he, Mr Kivelehan, was drunk at the time he spoke to Mr Goddard.

Q. Are you aware of any reason why the journalist would have wanted to make up information about a man with a gun and boys with nail bombs and put it in these notes?

A. No.

Q. You suggested that one explanation may be that you were drunk. But if you were drunk, even if drunk why would you have wanted to say this sort of thing to a journalist?

⁴⁵⁴ Day 406/079/01

FS7. 2035

A. I really do not know.

Q. Can you think of any other explanation of why this information appears in these notes?

A. No.

Q. Is another possibility that you did see these things happen on Bloody Sunday and that you are not telling the truth to this Inquiry?

A. I do not like that accusation.

Q. Well, what is the answer to my question?

A. What is your question again?

Q. Is another possibility that you did see these things happen on Bloody Sunday and that you are not telling the truth to this Inquiry?

A. No, that is not true.⁴⁵⁵

9A-442 It would appear overwhelmingly likely that the last suggestion put to Mr Kivelehan, that he did see these events and is not prepared to tell the truth to this Tribunal, is correct.

Ivan Cooper

9A-443 John Barry was able to verify the authenticity of notes of a lengthy interview he had conducted with Ivan Cooper in which reference was made to a gunman in Glenfada Park.

Could we have KC12.65? This is what appears to be notes of an interview with Ivan Cooper; do you have any doubt now that you took this interview?

⁴⁵⁵ Day 406/082/01

FS 7. 2036

A. No, I have no independent recollection of it, but I am sure that these are my notes of an interview.

Q. The handwriting that is on the left-hand side on this page –

A. Is mine.⁴⁵⁶ ...

... Again, so far as this document is concerned, if we can go back to it, KC12.65, are you able to tell whether this would have been notes made from a tape-recording?

A. Yes, certainly a tape.

Q. Is that because of the length of it?

A. It is the length and the detail, and also there are various parts in it which are clearly verbatim and I would only have used verbatim material if it came from a tape.⁴⁵⁷

9A-444 In such notes, Mr Barry records that:

IC had seen the Officials in the march. But nowhere else. And IC only heard later that OIRA6 had fired a revolver in Glenfada Park. CIV2 [according to these notes CIV2 told IC that OIRA6 had been running around mad with a pistol all afternoon. CIV2 says he fired very early.⁴⁵⁸

9A-445 Mr Cooper has of course described these notes as “poisonous and disturbing” in his written evidence to the Tribunal and rejected them in their entirety.⁴⁵⁹

CIV2 has in turn described Mr Cooper as “a fantastic liar”.⁴⁶⁰

9A-446 The Tribunal may never be in a position to reach a firm conclusion as to the reason Mr Cooper named CIV2 and OIRA6 as he did but will no doubt have been persuaded by Mr Barry that

⁴⁵⁶ Day 193/120/24-121/07

⁴⁵⁷ Day 193/122/02-10

⁴⁵⁸ KC12.71

FS 7.2037

*I am sure we made mistakes. But we did not invent things.*⁴⁶¹

9A-447 The Tribunal may also wish to consider whether there is any other source from which Mr Barry is likely to have received the name of OIRA 6 who was, himself, unable to explain where Mr Barry could have got his name from if not given to him by Ivan Cooper.

Q. This may be a question you cannot answer, but do you have any idea at all why a journalist should write down your name if it were not given to him?

*A. I do not know. This is the first time I have heard of this here, of this here, that is why I was brought here, about this. All the years it has gone on, I have never heard of this.*⁴⁶²

9A-448 Indeed it is not clear from where Mr Cooper would have received OIRA 6's name if not via an intermediary such as CIV2 as OIRA 6 claims that he did not know Mr Cooper.⁴⁶³

9A-449 Whether OIRA 6's claim to know nothing of CIV2, the alleged original source of the information, is credible bearing in mind CIV2's own estimation of himself as a prominent citizen of Derry is a matter for the Tribunal. OIRA6, while agreeing when questioned by Mr Lawson, that Derry was a very small and intimate environment, denied knowing CIV2 at all:

Q. It was a place in which people tended to know others, would know what others were doing; was it not?

A. I do not understand your question.

⁴⁵⁹ KC12.30 paragraph 97

⁴⁶⁰ AM208.5 paragraph 17

⁴⁶¹ M3.7 paragraph 30

⁴⁶² Day 413/164/05-11

⁴⁶³ Day 413/163

FS 7 2038

Q. Did everyone know everybody else's business? It was not put very well.

A. Well –

Q. Pretty well, did they not?

A. One half of town knew the half and the other half knew the other half.

Q. You wanted to gather a meeting of the volunteers out of your section, word could be passed and within half an hour they would all be together?

A. Near enough, yes.

Q. Right?

A. Near enough, yes⁶⁴.

Q. Help in this regard: CIV2 however you pronounce it, is not a name, I gather, known to you?

A. No, it is not.

Q. Let me ask you this: at the time of Bloody Sunday, were you somebody who had been born and bred in Derry?

A. On Bloody Sunday?

Q. Yes?

A. I was born here, aye.

Q. That is a rather stupid question, what I was not seeking to do was to ascertain where you lived now, but you were a Derry man born and bred; is that right?

A. That is correct.

Q. Did you know of CIV2 ?

A. I have never heard of the man.

Q. Someone who, according to him, ran a substantial business in Derry?

A. CIV2 ? (Witness shaking head) No.

Q. Ran a business called Derry Office Supplies until 1971, when he sold or transferred it. Does that ring any bells?

A. No, I never heard of that at all, to be quite honest with you.

Q. And then was involved in the selling of ice-cream machines and cash registers from Donegal, but still coming to Derry?

A. No.

Q. You had never heard of him?

A. Never heard of him.

Q. In this very, very small place?

A. That is true.⁴⁶⁵

9A-450 Certainly OIRA 6 has denied carrying a weapon on the day.⁴⁶⁶ His account of his activity on the day is, however, extremely odd as was highlighted by Mr Lawson's questioning of him on Day 413 of evidence:

Q. You have virtually no recollection of what happened during the main part of the violence on Bloody Sunday, have you? A. No, I have not.

Q. Is it right that while you were sitting on the wall having your cigarette and you became aware of people running away down Rossville Street, that as far as you were concerned there was nothing unusual going on at that time?

A. No, that is correct.

⁴⁶⁵ Day 413/167/10-21

⁴⁶⁶ Day 413/162/21-163/07

FS 7. 2010

Q. You did not hear any vehicles?

A. No.

Q. You did not see any Army vehicles?

A. No, I did not, I was out of view.

Q. You did not hear a single shot fired?

A. I heard banging all right, but I took it for granted it was rubber bullets or gas.

Q. Do you have any recollection of hearing any shooting of live rounds on the day?

A. No, only what I heard people shouting.

Q. None at all?

A. No.

Q. And you being somebody who was not only in the Official IRA, but someone with particular knowledge about weaponry, you, of course, would recognise the sound of live rounds being fired; would you not?

A. Probably, probably so, yes. I was not paying any particular attention to anything going on.

Q. You were not paying particular attention?

A. No, I was just sitting there having a cigarette.

Q. And you clearly remember sitting there having a cigarette, do you?

A. Yes.

Q. But you have no recollection whatever of hearing a single live round fired?

A. What is the problem there? I was not paying any attention.

Q. Is that true?

I was not paying any attention.

Q. Is that the truth?

FS7.2041

A. Probably so⁴⁶⁷.

PIN 437 and L210

9A-451 The document known as PIN 437, which is examined in detail below and which purports to represent notes of an interview with OIRA1 and deals largely with OIRA activity in and around Columbcille Court and Glenfada Park North also makes reference to a man in an area referred to as “the car park” who fired a couple of shots with a .38 automatic.⁴⁶⁸ It may be that such reference is to the actions of a gunman in the car park of the Rossville Flats, although OIRA4’s evidence is of course that he was armed with a .32 pistol.⁴⁶⁹

9A-452 The Tribunal will also have noted the reference to pistol fire in Mr Kemp’s article L210, also examined below and the product, it is claimed, of a further interview with OIRA1. In that article, Mr Kemp reports OIRA 1 as saying that:

After I fired that one shot I went back to my car and put the rifle in the boot. Ten to 15 minutes later the Paras moved up and I told our boys to get their weapons out of their cars... .. One guy got on to a balcony and fired at the Paras. Someone else fired with the pistol.⁴⁷⁰

9A-453 This reference to firing with *the* pistol certainly appears to refer back to the preceding quote from OIRA1 “I told some of the boys to get their weapons out of their cars”. The Tribunal may well conclude OIRA1 is in fact referring to a pistol being fired in the area having been retrieved from one of the cars in

⁴⁶⁷ Day 413/189/20-191/10

⁴⁶⁸ AOIRA1.1

⁴⁶⁹ AOIRA4.15 paragraph4

⁴⁷⁰ L210

FS7 .2042

Glenfada Park rather than the scenario involving Father Daly's gunman or OIRA 4.

OIRA Movements in Glenfada Park Area

- 9A-454 The evidence set out above demonstrates the nature of Glenfada Park as a location of IRA activity and undermines the accuracy of those many civilian witnesses in the area who have not mentioned seeing gunmen who were clearly operating in the area in plain view.
- 9A-455 It appears unlikely that the Tribunal will be in a position to identify the individuals who fired handguns from the vicinity of Glenfada Park North but will no doubt wish to consider the activities and evidence of those admitted paramilitaries who were in the area at the relevant times.
- 9A-456 OIRA's 1 and 2 entered Glenfada Park after OIRA1 had fired a shot at soldiers from Columbcille Court. They dumped the rifle that had just been fired in a car parked in Glenfada Park North. Both admit they were members of the Bogside Unit and Command Staff of OIRA.⁴⁷¹ OIRA1 has said that he then took up a position at the south eastern gable wall of Glenfada Park North looking out onto Rossville Street.⁴⁷² He was still in Glenfada Park North when soldiers entered via the north east entrance at which point OIRA1 ran from the south east to the south west exit to Abbey Park as soldiers opened fire.⁴⁷³
- 9A-457 OIRA2 has told the Tribunal that he too was in Glenfada Park North and was with OIRA1 when he dumped the rifle.⁴⁷⁴ In his first statement to this Inquiry

⁴⁷¹ AOIRA1.4 paragraph 6; AOIRA2.4 paragraph 4

⁴⁷² AOIRA1.29 paragraph 27

⁴⁷³ AOIRA1.29 paragraphs 31-32

⁴⁷⁴ AOIRA2.6 paragraph 17

FS 7.2043

he said that he then started to make his way out of the “area” when soldiers arrived at which point he ran towards either Columbcille Court or Abbey Park,⁴⁷⁵ he “honestly cannot now remember”.⁴⁷⁶ By the time he came to make his second statement to this Inquiry OIRA2 had recovered his recollection of exiting Glenfada Park via the gap between Glenfada Park North and Glenfada Park South.⁴⁷⁷ He said that as he was running he heard a crescendo of shots which he assumed came from “the paras”.⁴⁷⁸ The Tribunal will bear in mind OIRA2’s failure to account for the time which elapsed between his depositing the rifle in the car and soldiers entering Glenfada Park North, time which OIRA1 claims to have spent at the gable end watching events on the rubble barricade.

9A-458 OIRA7 has also admitted being in Glenfada Park at the relevant time. He has explained how he assisted OIRA1 and 2 to place the rifle in the car then says that:

I therefore went out of Glenfada Park North through the access way at the north east corner of Glenfada Park North, turned right past a pram walk and came out onto Rossville Street near the pram walk at Kells Walk and was standing about. I have marked my position on the map at point F. [not marked]..... While in Rossville Street I remember hearing the revving of the engines of the army vehicles. The army had not come into the Bogside at this stage. ...Armoured cars then came into view. I was still at the Glenfada Park North pram ramp (grid reference J13)....⁴⁷⁹

⁴⁷⁵ AOIRA2.6 paragraph20

⁴⁷⁶ AOIRA2.6 paragraph 20

⁴⁷⁷ AOIRA2.16 paragraph15

⁴⁷⁸ AOIRA2.16 paragraph16

⁴⁷⁹ AOIRA7.10: paragraph 52- 7.11 paragraph54

FS 7.2014

9A-459 OIRA7 explained that he was still in this position when he heard the first live shot fired by the army. He retreated into Glenfada Park North when he saw soldiers at the Kells Walk pram ramp.⁴⁸⁰ He was still by the north eastern entrance when Michael Kelly was brought into Glenfada Park North:

There was a crack of bullets and I remember someone saying "somebody else has been shot". At that time I was still somewhere near the north end of Glenfada by the north eastern entrance into Glenfada Park (through which I had come), and I recall seeing the body of the boy I now know to be Michael Kelly being carried through Glenfada Park North from the south eastern exit towards the south western exit.⁴⁸¹

Very shortly after I saw the group of people carrying Michael Kelly, the square just erupted with gunfire from behind coming towards us, from the entrance where we had entered (north east). Everyone started running to the south west exit. No one wanted to be the last guy through the gap into Abbey Park. There was a big scramble to get through that south western exit.⁴⁸²

9A-460 Questioned by Counsel to the Tribunal, OIRA7 described in further detail his movements after assisting with the rifle:

Q. AOIRA 7.10. You describe how at some stage -- this is after the rifle has been put into the car in Glenfada Park -- you went out of Glenfada Park North through the access way at the northeast corner, turned right past a pram walk and came out into Rossville Street and were standing about near the position marked as F?

A. Which is not on the map.

Q. Which is not on the map. We will come to that in a moment. You then describe how, whilst you were in Rossville Street, you heard the revving of engines. At the top of the next page,

⁴⁸⁰ AOIRA7.11 paragraph:56

⁴⁸¹ AOIRA7.12

⁴⁸² AOIRA7.12 paragraph 61

FS 7. 2045

paragraph 54, you describe how armoured cars came into view and your statement goes on to say: "I was still at the Glenfada Park North pram ramp," which is somewhere different from the pram ramp at Kells Walk. Could we have on the screen P200. If you came out of the northeast corner of Glenfada Park North, you would come out in that direction (indicating) and you would end up immediately near the pram ramp at Glenfada, which is what I am pointing out in yellow, but you would not be far away from the pram ramp at Kells Walk, which I am pointing out in red. Do you recall now whereabouts you went to and where you were when armoured cars came into view?

A. I must have said the general area actually between the two pram ramps and that was actually getting a physical description, because there was a bit of confusion earlier, when I talked about the barricade, the assumption was that I was talking about the rubble barricade. I was not talking about the rubble barricade, it was a barricade that had originally been at the end of Rossville Street.

Q. Can we take it in this way: that when you came out of Glenfada Park, you were roughly in the area between the two pram ramps? A. That is correct.

Q. The Glenfada ramp and the Kells Walk ramp?

A. That is correct.

Q. May we go back, please, to paragraphs 55 and 56 on AOIRA 7.11. You describe how you were about 150 to 200 yards from the Army and could see them, see the Army at the junction of Little James Street, Rossville Street and William Street and could also see others running. There was a lot of noise, a lot of shouting and people running. You then say that you saw an armoured car stop where you had been standing earlier near Kells Walk and the doors of the vehicles opened. You describe how soldiers were getting out of the vehicles and taking up positions.⁴⁸³

⁴⁸³ Day 398/057/22-059/23

FS 7.2046

Q. May we come back, please, to AOIRA 7.11, paragraphs 55 and 56. You describe at the end of paragraph 55 how the crowd, when the vehicles came in, split into three groups, one going into the car park, one going into Rossville Street and the third running into the area of Kells Walk and Glenfada Park. You say in paragraph 56 that it was about this time that you heard the first live shot fired by the Army which seemed to come in your direction along Rossville Street towards Free Derry Corner and from the direction of the soldiers who had made their way from their vehicle to the Kells Walk pram ramp.....⁴⁸⁴

You yourself ran into Glenfada Park when the firing began; is that right?

A. That is correct, yes.

Q. Could we come, please, to paragraphs 57 and 58 on AOIRA 7.11. You ran into the northeast entrance; is that right?

A. That is correct.....you describe a memory, at some point when you were in the square, of catching your breath and there being a crack of bullets and someone saying that somebody else had been shot at a stage when you were somewhere near the northeastern entrance into the park and then you say that you recall seeing the body of the boy you now know as Michael Kelly being carried through Glenfada Park.⁴⁸⁵

9A-461 All of those members of OIRA who were present in Glenfada Park have of course denied carrying handguns despite the references in PIN437 and L210 set out above.

9A-462 Furthermore, the evidence of OIRA3,⁴⁸⁶ OIRA5⁴⁸⁷ and OIRA4⁴⁸⁸ was to the effect that it was entirely normal and authorised for Command Staff members

⁴⁸⁴ Day 398/062/22-063/08

⁴⁸⁵ Day 398/067/15-068/10

⁴⁸⁶ AOIRA3.24 paragraph34

⁴⁸⁷ AOIRA5.21 paragraph 39.5

⁴⁸⁸ AOIRA5.5 paragraph22

FS7. 2017

to carry short arms for personal protection. OIRA3 confirmed that there would have been no need for special authorisation to do so on Bloody Sunday⁴⁸⁹ and, indeed, OIRA4 has confirmed that he carried such a weapon on the day, as he did almost every day.⁴⁹⁰

9A-463 Vincent Browne in the Sunday Press on 6 February 1972, in an article which was clearly critical of the Army on Bloody Sunday, gave the following information:

*The Officials had an Active Service Unit of four men on duty. They were all either to be armed during the parade or to have immediate access to arms should they become necessary. In addition, a number of other volunteers in the parade were armed for their personal protection.*⁴⁹¹

Mr Browne no longer recalls the circumstances in which he obtained the information contained in this article but assumes he spoke to members of the Official IRA.⁴⁹²

9A-464 OIRA2 was certainly under the impression that at least two members of the Command Staff were carrying personal protection weapons on Bloody Sunday and told Mr Lawson that:

Q. Were you aware of no other gunmen, apart from what you later heard, about the man who came to be known as Father Daly's gunman. Let us put him to one side, he was mentioned at your evening debriefing; was he not?

A. Yes, that is correct.

Q. Were you aware of no other gunmen that day?

⁴⁸⁹ AOIRA3.24 paragraph34

⁴⁹⁰ AOIRA4.15 paragraph4

⁴⁹¹ M8.2

⁴⁹² Day 203/087/20-25

FS7-2018

A. I was aware that another member was carrying a sidearm for personal protection.

Q. Where was he?

A. I am not quite sure.

Q. Was he a member of the command staff?

A. He was a member of the command staff, yes.

Q. That is apart from OIRA 4 who apparently volunteers himself to be Father Daly's gunman?

A. That is correct.

Q. So in addition to him, in addition to OIRA 4 there was another member of the command staff carrying a sidearm?

A. It may well have been the quartermaster.

Q. Mr Tester?

A. That is right.

Q. Anybody else?

A. Not as far as I am aware, no.⁴⁹³

9A-465 It is hardly credible that only one member of OIRA Command Staff carried a personal protection weapon on Bloody Sunday when all were authorised to do so and all were operating in circumstances of equal if not greater danger. Mr Lawson's questioning of OIRA2, about his and OIRA 1's alleged foray to recover a damaged weapon, highlighted the absurdity of such a suggestion:

Q. So what was, and obviously recognised at the time, to be a dangerous operation?

A. That is correct.

⁴⁹³ Day 393/023/01-023/22

FS 7. 2049

Q. A member of the IRA at the time when carrying out a dangerous operation of a quasi military nature, what would you take with you?

A. Could you repeat the question, please.

Q. I will be blunt about it if it is not clear: what guns did you take with you?

A. We did not take any guns with us.

Q. Why not, you were embarking on a dangerous military operation to recover guns and if you had been stopped by the military, you could have been shot dead, you are saying you took no weapons at all, neither of you?

A. That is correct.

Q. What was going to happen if you had been stopped, were you simply going to surrender meekly?

A. I do not know.

Q. Had you thought about it?

A. No.⁴⁹⁴

.... For the avoidance of doubt you were authorised to carry a handgun for your sole protection?

A. I was authorised but I did not carry a handgun.

Q. So was OIRA 1?

A. He did not carry a handgun either to the best of my knowledge

Q. He was authorised?

A. He would have been authorised, yes.

Q. As you have told us, despite the dangerous mission on which you were engaged neither of you chose to arm yourselves?

A. The only weapon in our control was the .303.⁴⁹⁵

9A-466 OIRA7's evidence as to his movements must be considered in light of the compelling evidence set out above that there was a gunman armed with a short arm close to the north east entrance to Glenfada Park North at a time when soldiers had entered the Bogside and shooting had commenced but prior to their entry into Glenfada itself. OIRA7 has said he left Glenfada Park via the north east entrance and remained close to that entrance as soldiers entered the Bogside in APC's. He remained there up to the point where soldiers opened fire before running back into Glenfada Park North via the same entrance and making for the south west corner. Soldiers entered the square as he reached that corner.

9A-467 As was put to him by Mr Lawson, OIRA 7 was at or retreating from the north east entrance throughout the period when witnesses saw an armed man in that area.

Q. Where did you go, then?

A. Um, the way that I had come in to Glenfada Park.

Q. Out of the northeast corner?

A. Yes, the northeast corner.

Q. The Rossville Street side?

A. Yes, yes.

Q. Is that right? Is that the point at which you saw the Saracens come into Rossville Street?

⁴⁹⁵ Day 393/096/11-22

FS 7. 2051

A. That was after a bit of time and listened, watching the gas and listening to plastic bullets, yes, that is where I was when I saw the Army car move.

Q. So you spent a bit of time, did you, standing there or thereabouts?

A. Yes, it definitely did not happen immediately after that weapon was put into the boot of the car⁴⁹⁶.

...Q. And you stood there or thereabouts, did you, after you had left the other two IRA men until after the soldiers had come into the Rossville Street wasteground area.

A. Yes.

Q. Indeed, you were still there when the shooting began?

A. Yes. After some shots had been fired you retreated?

A. Of course.

Q. But it was after a number of shots had been fired?

A. Yes, after a few shots had been fired, yes.⁴⁹⁷

Yes....

.....
Q. Michael Lynch has said -- let me give the reference and if you want to see the statement, of course I will put it up at AL38.2, paragraph 10, evidence which he confirmed when he gave evidence to this Inquiry on Day 148, page 186, referred to being on the eighth floor of Block 1, seeing a man with a handgun emerge from the northeast corner of Glenfada Park North at or about the time the Army were coming in, or had come in, and firing two shots at the soldiers in Rossville Street. His position, if we can go back to it, please, AL38.8, the middle again, the position as marked by Mr Lynch on this map of that gunman was at letter B, which is the approximate position

⁴⁹⁶ Day 398/160/21-161/10

⁴⁹⁷ Day 398/161/14-162/08

*apparently occupied by you, from what you tell us, at that time.
Did you see such a gunman?*

A. No.

Q. Did you have a gun? A. No⁴⁹⁸....

*.....Father O'Gara made the statement back in 1972, it is at
HI9.5 going on to page 6 in which he referred -- it has been
put on the screen, you might as well have it, the very bottom of
that page, the last two lines.*

A. Yes.

*Q. The third incident, he said: "I can clearly recall happened
about 30 seconds after the soldier discharged his shot." I
pause there, the soldier he is referring to, it is apparent from
earlier on, that is the first shot in Rossville Street area, right?*

A. Okay.

*Q. "A young man appeared from the cathedral side of Kells
Walk, unknown and unseen by soldiers, drew a pistol from his
pocket, leaned over a wall at the end of Kells Walk and fired
three shots quickly. The soldiers did not even recognise his
presence and he disappeared." He talks of the man wearing a
longish coat, right?*

A. Yes.

*Q. You see what else he says about it there. That, on Father
O'Gara's account, would have happened -- if it did -- just in
front of you, would it not?*

A. On that account, yes.

Q. Yes. Did you see anything of that?

A. No, I did not see it.⁴⁹⁹

⁴⁹⁸ Day 398/164/9-22

⁴⁹⁹ Day 398/165/02-166/03

FS 7. 2053

Referring OIRA7 then to the evidence of Mrs McMenamin, Mr Lawson asked:

Q. "As we were running away, I saw a civilian with a gun. I hate myself for saying this; I have never told anybody about this before, not even my husband and we have been married for over 25 years. I feel disloyal to the innocent men who died on Bloody Sunday, but I did see him and I feel that the truth must now be told. The gunman was in an alleyway near the pram ramp at the south gable end wall of Kells Walk. I have marked his approximate position on the attached map, point D." Can we flick on to the same reference, page 5. You see the letter D sufficiently clearly at the bottom of Kells Walk?

A. Yes.

Q. If I may be allowed to interpolate, effectively the same position as was suggested by Father O'Gara, right?

A. Yes.

Q. Go back to the statement, please, at 363.3 to finish it off, the top paragraph, please. She describes in the third line his position, the area around the pram ramp, it is not actually on it, back to the gable end wall. He was young, mid 20s, five-foot eight, dark clothing, et cetera, on his own, squarish handgun, holding it out in front of him, not aiming it. She says she did not actually see him firing it, right?

A. Yes.

Q. It says he withdrew?

A. Yes.

Q. Let us put that together with what I reminded you of, in relation to the late Father O'Gara. Did you see anything of that?

A. No, I did not see it.⁵⁰⁰

⁵⁰⁰ Day 398/166/11-167/17

FS 7. 2054

Military Evidence about Handguns

- 9A-468 There is a coincidence between the accounts set out above and the evidence of gunmen given by Lieutenant 119 and Soldier 017, more fully set out in Chapter 8 of these submissions.
- 9A-469 The evidence given by Soldier 017 was summarised by Mr Lawson in the course of his questioning of OIRA7

This is his Eversheds statement,⁵⁰¹ as we call it in shorthand and, in his case, it is an echo of the description which he gave in his 31st January 1972 statement at page 1472, the same series. He is describing, as you can see, I need not read it all out, youths throwing bottles or bricks at him. About five lines in: "I saw a man with a pistol come round the corner from the northeast corner of Glenfada Park North into the alleyway towards me. The gunman was about 20 to 30 yards from me. I do not remember which hand his gun was in, but I could see that it was a pistol. He was pointing it in my direction. I fired a rubber bullet ... he shied away. I then ran round the corner ... called P. I cannot be certain as I did so whether or not the man with the pistol fired at me, but I think that he did.

- 9A-470 In Lieutenant 119's RMP statement of 4 February 1972 he described being in the cover of the Kells Walk wall when:

I then heard a number of shots, from what sounded like a pistol, and also from an M1 rifle.... From my observation of the origin of the shots I can state the following: The weapon which sounded like a pistol was located at ground level at the corner of Glenfada Park Flats, about 30 metres ahead and to my right at MR 43221684. I saw distinct muzzle flashes, but not the actual weapon or the person holding it. He was obviously aiming quickly around the corner of this building without exposing himself at all.... I noticed that it was possible to get into Glenfada Park from an entrance directly to

⁵⁰¹ **B1484.5, paragraph 29**

FS 7.2055

my right. I sent E and F together with a party of men around the right of Glenfada Park.....⁵⁰²

9A-471 Lieutenant 119 repeated to the Widgery Tribunal that evidence of seeing pistol fire from the south eastern gable of Glenfada Park North:

A Our initial reason for taking up cover there (Kells Walk wall) was that we were fired on there. If I can show you on the model, it was from this corner of the building on Glenfada Park.

Q. The south east corner

LORD WIDGERY: very near the barricade?

A. Yes sir that is right and also from the flatsthis weapon here, I think, being a pistol of some kind, certainly a hand held weapon which was fired round the corner. The firer of course I was unable to see.....

....A. It was a pistol, I think, sir. I could see the muzzle flashes. It was certainly a weapon that was easy to put round the corner without the firer being observed by me...

...Q. How many shots were fired?

Three or four rounds of fire that I observed.⁵⁰³

NAIL BOMBS

9A-472 The Tribunal has also heard evidence from civilian witnesses who saw nail bombs in Glenfada Park North.

⁵⁰² **B1443**

⁵⁰³ **B1456 B-E**

FS 7.2056

Michael Quinn

9A-473 Michael Quinn (AQ11) told Lord Widgery nothing of seeing any nail bombs when he gave evidence to that tribunal but told Peter Pringle and Philop Jacobsen of the Sunday Times Insight Team “under guarantee of total anonymity”⁵⁰⁴ in an interview on 1st March 1972 that he had seen two youths with nail bombs in Glenfada Park North. Their notes of the interview read:

2. While standing between the fences on the south side of Glenfada he saw two youths carrying nail bombs in their hands. One had long fair hair and was wearing a blue denim jacket. The other had very black hair, shortish and was wearing a fawn jacket. The bombs were cylindrical shape with a black fuse projecting from the top; they were about six inches long, he estimates. At no time did he see the bombs lit, but he is adamant that he saw them. One description fits Gerard Donaghy perfectly.

3. He says that he heard from close source that a senior official IRA man arrived on the scene and told the nail bombers to take them away as there was too much danger to other civilians.⁵⁰⁵

9A-474 Mr Quinn agrees that he gave this information to the Sunday Times team but now has a slightly different recollection of the boys he saw. He describes taking shelter in Glenfada Park North having seen soldiers take up positions in the area of the Kells Walk wall.⁵⁰⁶ He then moved to a position about halfway along the eastern block of Glenfada Park North. He continues:

I do not know how long I was in Glenfada Park North, but I remember after some time seeing two young fellows in the northeast corner at the point marked 1 in grid reference J13 (and on photograph MQ1) who were looking round the corner

⁵⁰⁴ AQ11.12

⁵⁰⁵ AQ11.12

⁵⁰⁶ AQ11.22 paragraph 17

FS7.2057

of the flats into Rossville Street. They were only young, about my age or a little bit older, and I did not know them. I was concerned in case they did anything. They were clearly nervous too, looking out and back again. I recall one of them having a denim jacket and dark hair and one with fair hair and a quilted anorak. The boy with the fair hair and quilted anorak had something which might have been a nail bomb in his left side pocket. I had not seen one before and didn't know what it looked like but I remember something like a Coke tin with grey tape and a piece of material coming out of the top. Coupled with the fact that they were peering out towards the army and seemed very nervous and were keeping a look out I was very frightened by what I saw.⁵⁰⁷

9A-475 Mr Quinn has thus slightly revised the descriptions he gave to the Insight team and also now states that in fact he actually witnessed the boys leave the area rather than merely hearing about it.

I saw a man coming from the northwest corner of Glenfada Park North... I remember hearing him say words to the effect of "put those away, you will only get people killed". My only recollection is of seeing what I took to be a nail bomb in a pocket, but my memory of these words suggests to me that the boys may have had something in their hands which I saw, but cannot now remember seeing... the boys did as they were told and left by the northwest corner of Glenfada Park with this man back the way he had come. I did not recognise the man, or know whether he was an IRA man but concluded later that the man probably was a member of the IRA by virtue of the way the boys unquestioningly did what he told them. The man was older than we were and was wearing a long coat. I would say he was in his mid twenties but I had never seen him before or since.⁵⁰⁸

9A-476 Mr Quinn goes on to say, when commenting on his Sunday Times interview that:

⁵⁰⁷ AQ11.22:19

⁵⁰⁸ AQ11.22:19

FS7.2058

It is alleged that I had heard from someone else of a man arriving to tell the two boys to get out of Glenfada Park. This is incorrect, for as I have stated above, I witnessed this episode and the fact that they left some time before the entry of the army.⁵⁰⁹

9A-477 Messrs. Pringle and Jacobsen were both content to concede that they may have misinterpreted what Mr Quinn told them about the IRA man and the boys' departure from Glenfada Park North and that he had in fact told them that he witnesses that event.⁵¹⁰ Even if, however, Mr Quinn did indeed see the boys leave it would seem most unlikely that this was very long before the entry of the army as he himself says that "*The shooting in Rossville Street was going on at this time and was reasonably intense.*"⁵¹¹

Danny Craig

9A-478 Danny Craig (AC111), in a statement written in 1972, stated that

At no time did I see anyone of the civilians with either a gun, a nailbomb or a petrol bomb.⁵¹²

9A-479 He has now given evidence to this inquiry, however, that he also saw a young boy with nail bombs on Bloody Sunday, again at a time after soldiers must have taken up positions at the Kells Walk wall. It is not clear from Mr Craig's evidence whether or not soldiers had in fact entered Glenfada Park at the time of the incident he describes.

⁵⁰⁹ AQ11.26:46

⁵¹⁰ Day 190/065/07-066/05; Day 191/150/02-03

⁵¹¹ AQ11.22 paragraph 19

⁵¹² AC111.9

FS 7. 2059

9A-480 Mr Craig explained in his BSI statement that he was with Michael Kelly when he was shot and he has identified himself in EP35/9 running away from the rubble barricade. He then describes how:

I got into an area I thought was Glenfada Park North.... There was a fence with about 10-12 people hiding by it and I ran to it. I can't recall where this fence was.... When I was by the fence in Glenfada Park North with the other people I saw this young kid of about 10. He was carrying a tray made of a biscuit tin lid which looked to be full of petrol or nail bombs, although it may not have been as I have never seen a nail bomb and so do not actually know what one looks like. They looked like fireworks.⁵¹³

The boy was crying and asking what to do with them. Mr Craig said that "the big guys" (his name for the soldiers) were coming across Glenfada Park North at the time and so he "kicked the tray out of the boy's hands and told him to get out of there."⁵¹⁴

9A-481 Before the Tribunal, Mr Craig became, as he honestly admitted, confused as to the location in which he had seen these boys:

MR CLARKE: Just a few matters, can you help me on this, Mr Craig, I am a little lost about where your present recollection is that you saw the boy with the tray of nail bombs. In your statement to this Tribunal, if we go to AC111.3, in paragraph 15, you say: "When I was by the fence in Glenfada Park North I saw this young kid of about 10. He was carrying a tray made of a biscuit tin lid". I understood you to say a little earlier to Mr Richard Harvey, who sits close behind me, that you saw the boy with the tray in Abbey Park in the place where you went over a fence. Which is it?

A. Before I went over the fence I saw the child with the bombs.

⁵¹³ AC111.3 paragraphs 14-15 and 10-12

⁵¹⁴ AC111.3 paragraph 15

FS 7. 2060

Q. Where was the tray, the boy with the tray when you saw him? A. That is my confusion. It was somewhere in Glenfada Park or further, closer to where we had got out from the house. I cannot rightly answer that, that is where my confusion lies.

Q. Is it fair to sum up your position that you are satisfied that you saw a boy with a tray somewhere, but whether you saw him in Glenfada Park North or in Abbey Park, you cannot really be certain about?

A. Abbey Park may have been closer to the truth, but –

Q. You think Abbey Park is more likely, do you?

A. More likely.

Q. Why is it that you think Abbey Park is more likely?

A. I felt I had moved a fair bit from where the incident happened, where all of the shooting took place which was in Rossville Street. I had moved away from that, that is why I say there. As I say, I am confused, I cannot remember.⁵¹⁵

9A-482 What is, however, clear from Mr Craig's BSI statement is that, when at the fence where he saw the boy, he was in a position both to see Michael Kelly pulled in from the rubble barricade and to feel a sense of, unfulfilled, obligation to assist him:

Two braver men than me ran out and pulled Michael Kelly on to the footpath.⁵¹⁶

This would suggest that Mr Craig was in fact close to the south east corner of Glenfada Park North albeit he cannot now pinpoint his location on a map or photograph.

⁵¹⁵ Day 135/151/01-152/11

⁵¹⁶ AC111.3:14

FS 7. 2061

9A-483 Mr Craig also explained that in fact he had simply been told that soldiers were coming through Glenfada Park. He did not himself see them at this time.⁵¹⁷ His evidence clearly shows, however, that nail bombs were present in Glenfada Park North at the time when Michael Kelly was being attended to there, shortly before soldiers entered the area.

Thomas McGill

9A-484 Thomas McGill (AM230) also saw young men in the area with nail bombs, carried on a tray reminiscent of that seen by Danny Craig. He made no mention of seeing either this or a man with a rifle which he also describes when he made a statement to NICRA in 1972.⁵¹⁸ Nor, when he was interviewed by Eversheds, was he willing to reveal what he had seen in his statement as "he says that he has to live round here".⁵¹⁹ He did, however, tell Eversheds in confidence that

... long after the shooting was over. He saw three people, young men with long hair, who were panicking wanting to get rid of nail bombs. They had a tray with about 10 nail bombs in, which looked like grenades, shiny and well made. He saw them at about the same time and in the same area as the man with the rifle. He thinks that these men were Official IRA (Stickies).⁵²⁰

9A-485 Mr McGill confirmed in a supplementary BSI statement that, as he first told Eversheds, he saw a man with a rifle in the same area and at the same time that he saw the boys with nail bombs, although he did not think they were

⁵¹⁷ Day 135/114/19-25

⁵¹⁸ AM230.8

⁵¹⁹ AM230.11

⁵²⁰ AM230.11

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together.⁵²¹ He told Eversheds in his first interview that he saw the man with the rifle in Glenfada Park although he stated in his supplementary statement that in fact he had seen him in Abbey Park. Mr McGill was questioned at some length about the location in which he saw the gunman during which he demonstrated a peculiar insistence that he had not even entered Glenfada Park despite its lying directly in the path he described taking.

9A-486 Mr McGill was also challenged as to his assertion that he had seen both the gunman and the boys with nail bombs long after the shooting had finished. Referring to the gunman, Mr McGill was questioned at some length by Mr Lawson to the effect that in fact shooting was ongoing at the time he saw him.

9A-487 With reference to the boys with nail bombs, Mr McGill was unable to explain, when questioned by Mr Lawson, why the boys should be panicking if this was long after the shooting had stopped and soldiers withdrawn

Q. Is this note accurate in that respect, if you look at the first line of the second paragraph: "I mentioned nail bombs, he said he saw these long after the shooting was over." Is that right?

A. Yeah.

Q. You are recorded there as saying that "the youngsters were panicking, wanting to get rid of them"?

A. That is the opinion I got.

Q. That is what it appeared to be?

A. Yeah.

Q. The soldiers had all gone by then, had they not?

A. I never seen any soldiers there.

⁵²¹ AM230.10 paragraph10

FS 7-2063

Q. There were not any soldiers about at that stage?

A. No, I never seen any soldiers.

Q. Was it apparent to you what they were panicking about?

A. It is okay talking now, you asked me a question now that people did not know when the army was going to come in, nobody was to say that the army was going to come in to lift people and arrest people.

Q. That is what you assume that they were panicking about?

A. Yeah.

Q. The possibility that the army which had disappeared was coming back? A. It is you is using the word "disappeared". I never seen the army in that area of Glen -- Abbey Park, that general area.⁵²²

9A-488 Mr McGill was able to confirm that the tray he saw was "similar" to the "biscuit tin" described by Danny Craig.⁵²³ He cannot say if their clothing was as described by Quinn but they were "young people" as Quinn suggested.⁵²⁴

9A-489 The Tribunal will also recall the information given "off the record" to John Goddard by Michael Kivelehan (AK45) in 1991 and recorded in Mr Goddard's notes:

...man with short arm in their flat, disarmed and got rid of. Two nail bombs dumped in street outside his flat. Know because dragged the two boys in who had them" AK45.1. Flat (grannie's) was Glenfada Park "top right corner of top quadrangle".⁵²⁵

⁵²² Day 069/157/14-158/19

⁵²³ Day 069/159/25

⁵²⁴ Day 069/161/16

⁵²⁵ AK45.1

FS7.2064

9A-490 The evidence surrounding the authenticity and accuracy of these notes has already been examined above.

Ben Keaveney

9A-491 Ben Keaveney (AK2) also saw nail bombs in the area. He prepared a statement for submission to this Inquiry in May 1998 in which he describes helping an old man who had become distressed, leaving him with a woman somewhere near Rossville Street and then walking back to Abbey Parade. He went on to say:

Two young men appeared running, which was strange because everyone else was still and quiet and shocked. They were out of breath and one was upset but also angry. They had a number of nail bombs in their hands and some in a box. An older man stopped them going forward and told them not to throw the bombs and that the army had withdrawn. He then told them that 'They' the army will just use it as an excuse to say that is why they fired. They stood still holding the bombs and I told them that the army has moved back and that there is no point. The two men agreed and walked away further into the Bogside. I am very, very clear that the shooting was over and no more shots were ever fired. When I saw the men with the nail bombs, I had already helped carry people into houses and helped the old man.⁵²⁶

9A-492 In his BSI statement Mr Keaveney describes returning to "Abbey Parade"⁵²⁷ having assisted in carrying bodies in the Abbey Park area and escorted an old man to Rossville Street. Here he says he saw

... two people carrying a large box containing between two and four nail bombs. I remember that the box was too big for the amount of nail bombs contained in it. They were wearing bulky

⁵²⁶ AK2.21-22

⁵²⁷ which he earlier describes as "the pedestrianised area running between Glenfada Park South and Abbey Park" AK2.8 paragraph35

FS 7. 2065

jackets and may also have had some other bombs in their pockets. They appeared to have just arrived in the area and did not know anything about what had happened. They were between 19 and 20 years old and they asked me where the Brits were. At that point, an old man approached us and he and I both looked at the bombs. He said "Don't do it. The soldiers have moved back." And he added that they (by which he meant the army) would only use it as an excuse for their actions that day. After the old man had spoken to them, they appeared to be resigned and moved back towards the Bog Road.

I remember seeing these same men somewhere in Lisfannon Park a long time after the soldiers had retreated. They were standing around another man who was a Provisional IRA member and was wearing a long coat inside which I could make out the obvious shape of a rifle. He told these men to "Get back up"; i.e. to go back up to the Creggan which was an IRA stronghold. People in the area seemed to know him....⁵²⁸

Mr Keaveney explained in oral evidence that in fact he saw the boys with nail bombs for a second time with the man with a rifle only a few minutes after his first sighting of them.⁵²⁹

9A-493 Mr Keaveney told the Tribunal that he recognised one of the boys from previous riots in circumstances which would suggest he was a member of one or other wing of the IRA:

Q. What you are sure of is you knew one of them by sight and you had seen him at previous riots?

A. Yes.

Q. Had you seen him with a nail bomb at previous riots?

A. No, I did not see him ever having a nail bomb on the other occasions that I am referring to. He would have been

⁵²⁸ AK2.12 paragraph54-55

⁵²⁹ Day 160/051/05-08

FS 7. 2066

associated with people on previous occasions who had nail bombs, but I never saw that man with a nail bomb before.

Q. Did you see him with any other kind of weapon at a previous riot?

A. No, I never saw that man with any other weapon, any weapon at any other previous riot, but again, it is the same answer: he would have been associated with people who, at previous riots, had both nail bombs and rifles.⁵³⁰

9A-494 Indeed, Mr Keaveney explained to the Tribunal his belief that both the men with nail bombs and the man with the rifle were PIRA members. The man, he said:

... would have been referred to many times as a Provo in my hearing and he was a man who I was aware appeared on previous occasions, as on this occasion, to be in charge, able to have discipline over the IRA or at that stage in previous riots I would assume the people I am referring to were the Provisional IRA.⁵³¹

Mr Keaveney denied, however, that he knew the rifle man's name.

9A-495 Mr Keaveney also confirmed that his understanding that these men had rushed down from the Creggan was simply an assumption, he did not in fact know where they had come from.

So my assumption was they had rushed down; they were out of breath; they were out of sequence to everything else that was happening at that moment, but, no, I never found out where they had actually come from.⁵³²

⁵³⁰ Day 160/046/16-047/07

⁵³¹ Day 160/053/17

⁵³² Day 160/048/07-11

FS 7.2067

Military Evidence of Nail Bombs

9A-496 A number of soldiers gave evidence about the presence of nail bombs in the Glenfada Park area.

9A-497 Soldier H referred to seeing youths with nail bombs in his first RMP statement, which description he expanded in his second RMP statement taken on 31 January 1972 at 0230 hours:

We continued our advance and after moving about ten yards a group of about five youths appeared in an alleyway leading to a block of garages in Glenfada Park... One of the youths had in his right hand a round shaped object, brown in colour which looked like a nailbomb. The object struck the floor in front of me but did not explode. ... Following two other members of my section I ran up the alleyway which leads into a large square

...⁵³³

9A-498 Soldier H repeated this evidence in his SA statement:

Led by F and G I moved along a low wall leading forward from the Columbcille Court building. In front of us was an alley-way leading into Columbcille Court. A group of lads appeared just at the end of this wall. One of them had an object in his hand which I thought was a nail bomb. This is because of its shape and colour. It was smooth and cylindrical, about the same size as a Coca Cola tin. It was dark brown in colour. I am positive it was not a rock or other missile of that kind. The lad threw the bomb in our direction and although I did not (?) it land, I heard it hit the ground near us. It did not then explode. After it had landed I did not look at it again, but we chased these youths. They ran down the alley-way and turned left under an archway into Glenfada Park. We chased after them.⁵³⁴

⁵³³ **B230**

⁵³⁴ **B264.016 paragraph2**

FS 7.2068

And to Lord Widgery:

We began to advance to about here when some youths came and threw a round object....They came from here. That is all I could see, up to the end of that building...

Q. About how many youths were there?

A. About five, sir.

Q. When you saw that group of about five were you alone or with anybody else?

A. No sir. I was behind F and G....

Q...did he throw it in fact?

A. He did, sir... He threw it at us, sir... I heard it land.

Q. Did it go off?

A. No, sir.

Q. Did you pay any more attention to that object?

A. No, sir. We pursued the youths.

Q. Where did the youths go when you pursued them?

A. Into Glenfada Park, and we chased after them....⁵³⁵

9A-499 Soldier H told the Tribunal that he has no present recollection of this incident.⁵³⁶

9A-500 Having pursued these youths into Glenfada Park North Soldier H also saw youths with nail bombs in the square. His first RMP statement dated 31.1.72 at 0210 hours:

⁵³⁵ B264.029 at A-D

⁵³⁶ Day 377/047/10-11

FS 7. 2069

I saw three youths at a distance of about 70 metres, hiding behind the wall. They were dressed in light clothing....I saw the three youths in possession of nail bombs. I cocked my rifle, took aim at the youth in the middle of the group and fired 2x7.62 rounds at the centre of the stomach.

.....A youth then appeared from the north west block of flats. He ran from a crowd of people. He was dressed in a jeans suit; that was all I noticed. He picked up an object from one of the youths that had been shot and ran in the direction of the north block of flats across the waste land. I aimed my SLR and fired I aimed SLR round at him which struck him on the shoulder. He then disappeared into a crowd of people converging on the 3 youths who were lying at the side of the broken car.⁵³⁷

9A-501 In a further RMP statement also dated 31 January at 0230 hours Soldier H gave a similar account

I saw a youth aged between eighteen and twenty two years standing about five feet North East of the North East wall of number 59 Glenfada Park. He had his right arm drawn back in a throwing position and was about fifty yards South West of my position. I saw that he had in his hand a round object about the size of a coca-cola tin which looked like a nailbomb. I fired two aimed shots 7.62mm at the youth and he fell to the ground. The youth was dressed in dark coloured trousers and a bright coloured sweater or shirt. The nailbomb did not explode.

I saw another youth of about the same age, dressed in blue denim jacket and trousers run from the gap in the South West corner of the square. He picked up the nailbomb which was lying on the floor near the fallen youth. The youth turned and faced towards the gap he had run from. I fired one aimed shot 7.62mm at the youth. I saw him stagger and then run North East and into the gap where I noticed other people had assembled.⁵³⁸

⁵³⁷ B220

⁵³⁸ B230-231

FS 7. 2070

9A-502 Soldier H also gave a similar account in the undated RMP statement which appears at **B224-226** and in his SA statement which appears at **B233-235**. He also repeated this account to Lord Widgery at **B240A** to **B241B**.

9A-503 Soldier H repeated his recollection of this incident in his BSI statement, explaining that he could not recall whether the second youth had run from the southeast or southwest of the courtyard.⁵³⁹ He also now recalled seeing the nail bomb “smoking” but accepted in oral evidence to this Tribunal that his evidence to Lord Widgery that it was not fizzing or smoking was probably more accurate.⁵⁴⁰

9A-504 Soldier F also saw a man armed with a nail bomb in Glenfada Park North. In his first RMP statement given on 31.1.72 at 0204 hrs he said:

I saw about 30-40 rioters leave the barricade and go to the right behind a block of flats out of our sight. On seeing this we moved position to our right to Glenfada Park where I saw one of the man light something. I saw it fizzle and spark, and I realised it was some form of bomb. He raised his arm as if to throw the bomb. I fired two aimed shots at the man. The first I saw strike him in the shoulder and the second strike him in the stomach. The bomb did not explode. By this time other members of my unit had joined us and we advanced towards the rioters. The rioters dispersed.⁵⁴¹

9A-505 In an undated RMP statement marked “Soldier G” but apparently that of Soldier F he said:

I saw the three men... (who had decamped from the barricade)... on the other side of the square about thirty metres away near to 24 Glenfada Park, south west of our position. I shot and hit one man as he attempted to throw an

⁵³⁹ **B264.001 paragraph22**

⁵⁴⁰ **Day 377/058/25-059/07**

⁵⁴¹ **B122**

FS7. 2071

object which looked like a nailbomb. I saw G fire and hit another of the men who was carrying what appeared to be a rifle.⁵⁴²

9A-506 Soldier F repeated his evidence in his SA statement:

Then I saw three men leave the barricade. One was carrying a rifle and they moved to the right in the direction of Glenfada Park..... As we entered Glenfada Park the three men were directly in front of us on the far side. One of them turned and was about to throw what appeared to be a bomb (because it was fizzing) in our direction. Myself and G dropped down on one knee. I took an aimed shot. The first shot seemed to hit the man with the bomb in the shoulder, the second in the chest. The man fell to the ground. I saw G hit one of the others. I do not know about the third.⁵⁴³

9A-507 He then gave consistent evidence to Lord Widgery:

A. On approaching the alleyway into Glenfada Park three men directly in front of us saw us and one of the men, who was on the extreme left, looked at us and was attempting to throw what appeared to be a nail bomb... ..The bomb was in his hand and it was fizzing.⁵⁴⁴

The men were in the south west corner.⁵⁴⁵ Soldier F said:

A. I got down on one knee, took an aimed shot, the first shot hit him in the arm, I then took another aimed shot and hit him in the chest and he fell backwards... G was also firing at the other persons who were carrying a firearm... a rifle...

Q. Then did you see whether G hit that person?

A. Yes.

⁵⁴² B167.031

⁵⁴³ B138

⁵⁴⁴ B167.039 at F

⁵⁴⁵ B167.040 at B

FS7. 2072

Q. What about the third person?

*A. I do not remember.*⁵⁴⁶

9A-508 Soldier F has made it clear both in his BSI statement⁵⁴⁷ and in oral evidence that he no longer has any recollection of this incident.⁵⁴⁸

9A-509 Soldier J also gave evidence in 1972 of having seen nail bombs in Glenfada Park North. In his RMP statement dated 4 February 1972 he reported that:

*At approximately 1605 hrs I proceeded along Rossville Street and took up a further position on the left hand corner of Glenfada Park observing in the direction of this compound which was directly in front of me. As I took up this position I saw two male persons aged about 26 years positioned at the far left corner of the block of flats just beyond the compound. These persons were wearing suits one with an all dark suit the other a Brownish coloured suit. The two persons were in possession of nail bombs which failed to go off. The nail bombs were in their right hands. Two members of my platoon namely F and G fired at these two nail bombers and I saw them fall to the ground.*⁵⁴⁹

9A-510 In a further RMP statement he said he saw two men on the opposite side of GPN who had what looked like nail bombs. He could not be sure that is what they were. In his SA statement Soldier J gave a similar account:

*When I reached the entrance to Glenfada Park I saw soldiers F and G firing at two men on the opposite side of Glenfada Park and they fell. They had objects in their hands which looked to me like nail bombs but I could not be sure. These objects did not explode*⁵⁵⁰

⁵⁴⁶ **B167.040 at D- F**

⁵⁴⁷ **B167.004 paragraph 31**

⁵⁴⁸ **Day 375/090/25- 091/08**

⁵⁴⁹ **B270.002** (see manuscript statement for correct transcription)

⁵⁵⁰ **B273**

FS 7. 2073

9A-511 In giving evidence to Lord Widgery Soldier J again clarified that he could not be positive that the objects he saw were nail bombs:

*I don't know if they were explosives. I saw two objects in their hands which had a metallic glint to them*⁵⁵¹

9A-512 Soldier J has also made clear in his evidence to this Inquiry that he no longer recalls this incident.⁵⁵²

9A-513 Soldier E, now deceased, also reported seeing a man with a nail bomb in Glenfada Park North. In his SA statement he described seeing that

*There were about forty or fifty people there, some of whom started to throw missiles in my direction. On the extreme left of the crowd from my direction, I saw a man throwing a petrol bomb in my direction which landed about ten yards from me. I then saw that he also had a nail bomb in his hand which he lit. As he was lighting it I shouted to him to drop it but by this time he had already lit it and so I fired two aimed shots at him... The second one hit him and he fell down. The nail bomb exploded but I could not see anyone hurt.*⁵⁵³

9A-514 In oral evidence to Lord Widgery Soldier E repeated his evidence of seeing and shooting the man with a nail bomb⁵⁵⁴ and confirmed that the man he had shot was in the south east corner of Glenfada Park North.⁵⁵⁵ Soldier E also confirmed to Lord Widgery that he had seen only one nail bomb thrown in Glenfada Park North.⁵⁵⁶ Soldier E is of course the only soldier to have seen a nail bomb explode in Glenfada Park North and he was cross-examined at length in front of Lord Widgery as to how this could have been the case when

⁵⁵¹ **B285 at B**

⁵⁵² **B289.004 paragraph 27**

⁵⁵³ **B95**

⁵⁵⁴ **B103 at C-B104 at B**

⁵⁵⁵ **B114 at D**

⁵⁵⁶ **B111 at B - C**

FS 7. 2074

no damage appeared to have been caused to people or property in the area and others close to the scene did not report seeing or hearing the blast. As Soldier E is now deceased such questions can be taken no further.

9A-515 While we do not seek to rely on any of his evidence at any stage, the Tribunal may recall that Soldier 027, in his RMP statement taken on 5 February 1972 said:

As I reached the corner of the building I saw a crowd of about 40 civilians at the far end of the park. They appeared to be leaving through an exit in the NW corner of the area. Then I saw a male civilian in his early twenties wearing blue clothing and with long hair lighting something in his hand. I then heard someone say drop it but I do not know who said that or whether it was directed at the youth holding the petrol bomb. As he attempted to throw the bomb 'E' who (sic) knelt and fired at the youth at an estimated range of 20 metres. I saw the youth fall to the ground as the petrol bomb exploded nearby⁵⁵⁷

Nail bombs – Conclusions

9A-516 A number of soldiers claim to have encountered nail bombs in Glenfada Park and there is compelling civilian evidence that there were indeed nail bombs in the Glenfada Park area. There is, of course, no civilian evidence of nail bombs being thrown as seen by the soldiers but, as is clear from the material in Chapter 9A, the Tribunal cannot rely on civilian accounts as being definitive of events in Glenfada Park North. Certainly the Tribunal has not been told the full and accurate truth about the presence of nail bombs in the area. It is clear that those who have been prepared to admit seeing them give evidence of having done so in areas and at times when they must also have been seen by many others.

⁵⁵⁷ **B1548**

FS7-2075

9A-517 Michael Quinn has explained that he saw boys with nail bombs while he was at a position between two wooden fences behind houses on the east side of Glenfada Park North,⁵⁵⁸ indeed he is shown in this position in photographs at AQ11.39 and AQ11.41. From that position he saw Michael Kelly carried across the square as is indeed shown in those photographs. Many others were present in Glenfada Park North at that time again as shown by both the photographs and evidenced by the many accounts of witnesses seeing Michael Kelly's body carried. None, other than Michael Quinn, have come forward to say that there were boys with nail bombs at the north east entrance of Glenfada Park North.

9A-518 The Tribunal will have noted the evidence of OIRA7 as to his movements in Glenfada Park. It is clear that Michael Quinn saw the boys with nail bombs at the north eastern corner at some stage between the first shots being fired in Rossville Street⁵⁵⁹ and the body of Michael Kelly being carried across Glenfada Park North.⁵⁶⁰ OIRA7's evidence as set out above is that he was at or close to the north eastern entrance throughout this period and yet failed to see either the boys or the senior member of the IRA who approached them.

9A-519 Danny Craig also confirmed that there were 10-12 others at the fence with him when he saw, at close range, a boy with a tray of nail bombs.⁵⁶¹ Again none have come forward. Charles McGill has said that, at the time he saw the rifle man and boys with nail bombs "there were, as I say, many people milling about".⁵⁶² Ben Keaveney explained that people were talking to and appeared to know the man who he saw standing with the boys with nail

⁵⁵⁸ AQ11.11

⁵⁵⁹ AQ11.21 paragraph 15

⁵⁶⁰ AQ11.23 paragraph 21

⁵⁶¹ AC111.3 paragraph 14-15

FS 7. 2076

bombs.⁵⁶³ None of these witnesses has, however, given to the Tribunal the crucial information that there were nail bombs in Glenfada Park North. As well as undermining the credibility and completeness of the civilian evidence as to events in the Glenfada Park area, the sighting of these nail bombs is in direct contradiction to the evidence of both wings of the IRA that they did not have, and indeed had not even prepared, nail bombs for use on Bloody Sunday.

9A-520 The Tribunal is not, therefore, in a position to rely on civilian or paramilitary evidence to negate the evidence of the soldiers that nail bombs were employed in Glenfada Park North.

The Gerard Donaghy Group

9A-521 There is then clear military and civilian evidence that there were nail bombs in the area of Glenfada and Abby Park. As to who may have been in possession of such weapons, the Tribunal should, even if it wholly rejects the evidence of Paddy Ward, still have regard to the location, activities and paramilitary connections of those young men who began the day with Gerard Donaghy, an admitted Fianna member on Bloody Sunday.

9A-522 It has been accepted that Gerard Donaghy was a member of Fianna on Bloody Sunday, although it is less clear whether that membership implied at the time of Bloody Sunday an allegiance to the Provisional or Official IRA. The evidence as to the existence of such an organisation affiliated to either or both wings of the IRA has been set out in Chapter 4.

⁵⁶² AM230.10 paragraph 9

⁵⁶³ AK2.12 paragraph 55

FS 7. 2077

- 9A-523 Information collected by British Intelligence mentions Gerry Donaghy as being associated both with the Provisional⁵⁶⁴ and Official IRA⁵⁶⁵, information which may well reflect the drift from the latter to the former which was taking place at the time of Bloody Sunday, now emphatically confirmed by PIRA 24 .
- 9A-524 There is also no doubt that Gerard Donaghy started the day on Bloody Sunday with a group of eight young men of whom all but one have been engaged in terrorist violence and/or membership of terrorist organisations in the years intervening between Bloody Sunday and this Inquiry.
- 9A-525 The group with whom Gerard Donaghy started the day on Bloody Sunday is set out in Peter Taylor's notes at M76.44 as being Denis McFeeley, his brother, Conal, Frankie McCarron, Hugh O'Donnell, Jim Begley, Pudger O'Hagan, Kieran McLaughlin and Gerry O'Hara.

⁵⁶⁴ INT1.85-86

⁵⁶⁵ INT1.314-327; INT1.328-353

FS 7.2078

M76.44

CONAL NAME (18)

Group 16-19 : exciting times : bombs and
stones : threw stones - never thought anything
serious

CONAL (best man at Frankie's wedding
DENIS (17) - v. friendly with Gerry Donaghy
FRANKIE McCARRON - Computers
HUGH O'DONNELL - Creg Com Initiative
JIM BEGLEY -
PATRICK O'HAGAN -
GERRY DONAGHY [Boy]
KIERAN McLOUCHLIN -

- 9A-526 Mr Taylor stated in oral evidence that the information probably came from "Conal"⁵⁶⁶ an assumption confirmed by the transcript of his interview with Conal McFeeley which appears at I202 in which he says that four boys came to his house including his brother, Denis, Gerard Donaghy and Frankie McCarron. They had arranged to meet others at Donaree (sic) Gardens including Jim Begley, Patrick O'Hagan and Hugh O'Donnell.⁵⁶⁷
- 9A-527 The group can also be identified from their own evidence. Denis McFeeley confirmed this grouping in oral evidence⁵⁶⁸ and Hugh O'Donnell also

⁵⁶⁶ Day 218/058/04

⁵⁶⁷ I209

⁵⁶⁸ Day 409/090/24

FS 7.2079

acknowledged that he would have seen each of them at some stage on the march.⁵⁶⁹

9A-528 Ciaran Maclochlainn [Kieran Macloughlin] (AM12.1) could not recall exactly who he went on the march with but definitely remembers he was with Gerard Donaghy, Dennis McFeely & Pudger O'Hagan⁵⁷⁰.

9A-529 Gerry O'Heara (AO79) has said that he called for Dennis McFeely on the way to the march but he had already left. Mr O'Hara arrived at Central Drive and fell in with a crowd including Gerry Donaghy, Hugh O'Donnell, Ciaran McLaughlin, Frank McCarron & Denis McFeeley.⁵⁷¹

9A-530 Frankie McCarron AM82 claimed in his BSI statement to have gone on the march on his own and initially maintained that position in oral evidence

Q. Again, do you remember meeting up with Mr O'Hagan or with Mr O'Donnell?

A. No.

Q. Were they friends of yours?

A. They would have been the same as Jim Begley; they would have been sort of, not really friends, you know, I would have knew of them.

Q. Can you not remember any of the people you were with on the march that day?

A. Not really. I have a recollection of going to the march myself, you know.

Q. Did you know Kieran McLaughlin?

⁵⁶⁹ Day 405/034/04

⁵⁷⁰ AM12.1:1-6

⁵⁷¹ AO79.1: 1-2

FS7-2080

A. Just in the same way as the rest of them.

Q. Do you remember whether he was with you that day?

A. No, I cannot -- as I say, I cannot remember anybody that I was with at the march.⁵⁷²

- 9A-531 He eventually conceded, when questioned by Nicholas Griffin, that he must have been with the group from time to time on Bloody Sunday.⁵⁷³
- 9A-532 There has of course been no evidence to this Tribunal from either Jim Begley (**AB29**) or Paddy "Pudger" O'Hagan both of whom are deceased.
- 9A-533 There is no doubt that all of this group, with the sole exception of Conal McFeely, have been involved in paramilitary activity and membership of terrorist or paramilitary organisations.
- 9A-534 Gerard O'hEara has now, in his second BSI statement, admitted to being the OC of the Official Fianna from August 1971,⁵⁷⁴ until shortly after Bloody Sunday.⁵⁷⁵
- 9A-535 Denis McFeely confirmed in oral evidence that on 1st May 1974 he was convicted at Belfast City Commission on one count of attempted murder and two counts of causing an explosion likely to endanger life or property. These charges related to the attempted murder of seven British soldiers using a land mine on 12th April 1973 and the bombing of a shop in the city centre on an earlier occasion.⁵⁷⁶

⁵⁷² Day 389/171/03

⁵⁷³ Day 389/185/19

⁵⁷⁴ Day 406/090/02

⁵⁷⁵ Day 406/117/25

⁵⁷⁶ Day 409/134/21

FS7. 2081

- 9A-536 Frankie McCarron confirmed his conviction on 6th March 1974 at Belfast City Commission of two counts of causing an explosion likely to endanger life or property relating to bombs that exploded on 4th August 1973 at Park Avenue and Academy Road in Derry, and one count of possessing explosives with intent to endanger life or property.⁵⁷⁷
- 9A-537 Hugh O'Donnell confirmed to the Tribunal that he was convicted on 27th March 1974 at Belfast City Commission of one offence of causing an explosion likely to endanger life or property, and one offence of possessing explosives with intent to endanger life or property, charges relating to a bombing that took place on 22nd April 1973.⁵⁷⁸
- 9A-538 Kieran McLaughlin, described in Mr Taylor's notes as a senior INLA member in Derry⁵⁷⁹ confirmed his convictions 24th January 1989 on one count of possessing a firearm and ammunition with intent to endanger life or property and one count of possessing a firearm and ammunition in suspicious circumstances. Those counts related to the possession of a shotgun, a number of shotgun cartridges, a revolver and a quantity of ammunition on 24th February 1988.
- 9A-539 Mr McLaughlin was further convicted on 30th November 2001, also at Belfast Crown Court, on one count of possessing firearms and ammunition with intent to endanger life or property, one count of possessing items for terrorist purposes and one count of possessing prohibited weapons in relation to offences committed on 24th November 2000. Those charges related to possession of a 12 bore, sawn off, double barrel Rigby shotgun, a 9mm pistol,

⁵⁷⁷ Day 389/169/07

⁵⁷⁸ Day 405/034/17

⁵⁷⁹ M76.48

FS 7.2082

9mm self-loading pistol, .5-inch single shot rifle with telescopic sight, a 7.62 x 39mm AKM assault rifle, a sawn off 12 bore Savage shotgun, a 7.62 x 39mm semi-automatic assault rifle and a substantial quantity of shotgun cartridges and rounds of ammunition as well as a pepper spray and a Schock Tronic stun gun, a face mask, Balaclavas, wigs, car defenders, boilersuits, flak jackets, a quantity of uniform-type clothing, a reel of flex and some plastic gloves.⁵⁸⁰

9A-540 In respect of “Pudger” O’Hagan and Jim Begley, Conal McFeely confirmed in his interview with Peter Taylor that they both joined the IRA.⁵⁸¹ Mr Taylor’s notes record that “Pudger” O’Hagan was a “psychopath” and that he was arrested in 1973/1974 and charged with IRA membership. He escaped in about 1976, was not recaptured and later died of cancer⁵⁸². Mr Taylor further notes that Jim Begley was charged with IRA membership and was later killed in car accident.⁵⁸³

9A-541 The accepted “lore” is, of course that the reason for Mr Donaghy’s friends’ activities is that they were so distressed by his death and by what they saw on Bloody Sunday that they were motivated to join the Republican cause. Indeed this was precisely the “angle” that interested Mr Taylor.

“A. If you are making a television programme on Bloody Sunday, you set out with an idea of the kind of programme you want to make. In this particular case we wanted to reflect the experiences of both sides, those, people of the Bogside and Creggan in Derry and the Army and, in the course of our researches in Derry, talking to people, we learnt about this group of eight friends and it is not easy maintaining or getting,

⁵⁸⁰ Day 415/120/06

⁵⁸¹ I231/I253

⁵⁸² M76.49

⁵⁸³ M76.48

FS 7. 2083

maintaining interest in programmes about Northern Ireland outside of Northern Ireland and we thought that if we could do a film, part of which was the story of eight young men who joined the march and subsequently most of them went to jail because they joined the IRA, we thought that was an effective way. One of the points of the programme, which is why Bloody Sunday, as you know, is so important, was that it was as a direct result of what happened that day that literally hundreds of young men and women saw fit to join the IRA and take life; that was why.

Q. These were all people whom you understood had joined subsequent to –

A. Yes, that was the point, they had joined because of what they had seen on the march that day.

Q. Yes, I follow. Thank you.⁵⁸⁴

- 9A-542 In fact, however, there is reason to believe that some of this group at least were members of the Fianna and engaged in paramilitary activity prior to Bloody Sunday.
- 9A-543 Clearly Gerard O'hEara was a prominent member of the Fianna as at Bloody Sunday, a fact which he failed to mention in his first BSI statement.
- 9A-544 Gerard Donaghy was already a member of the Fianna on 30 January 1972 and information derived from British intelligence sources suggest that he was active in that role.
- 9A-545 INT1.317 records an interview conducted by the RUC with an individual whose name has been redacted; the date of the interview has also been removed. This person is recorded as having told the RUC about the way in which one could join the Official Fianna. He continued:

⁵⁸⁴ Day 218/56/14

FS 7. 2084

A few months later I was told by Gerard Donaghy (shot on Bloody Sunday) that there was a camp coming up. I lost contact with the scouts for a while then and I was contacted by Gerard Donaghy who asked me to go back again. Donaghy told me that they had been trained in the use of arms when they were away at the camps which were in the Limerick area.....

Donaghy and I went up to an old house near Creggan shops. There was a big man there and he said he was TO [training officer] was or is interned. There were about five to six others there. We were instructed on the use of a Thompson sub-machine-gun and a Sterling sub-machine-gun. We also done some drill.

9A-546 INT1.333 is another record of an interview which records that

It was the Official Fianna who stole the Army uniforms from the cleaners. They were taken by Gerry O'Hara, 19 to 20 years, Creggan, and Gerry Donaghy who was shot on Bloody Sunday. Gerry O'Hara left the Officials and is now in the Provos.

9A-547 The Tribunal will have noted that Mr Taylor's notes in respect of Denis McFeely refer to his having a conviction for the theft of British Army uniforms from a local launderette.⁵⁸⁵ Certainly INT 1.28, a record of interview of an individual who apparently joined the Fianna in 1970, suggests that Mr McFeely was a member at that time.

9A-548 Indeed, despite Mr McFeely's account of how Gerard Donaghy's death drove him to violence,

Well there was a moment of reflection, standing at Gerry Donaghy's grave – was there anything more I could do than just throw bottles and stones?⁵⁸⁶

⁵⁸⁵ M76.45-46

⁵⁸⁶ AM7.26-28

FS 7 · 2085

British intelligence materials suggest that Mr McFeely was involved in far more serious incidents prior to January 1972.

9A-549 INT1.44 records an interview which gives a date some time in 1971 as the date of a planned robbery. It then says that:

Denis McFeely tried to shoot a soldier in William Street but he missed and could not try a second shot because he might give away his position. He was using a .303 and Gerry O'Hara was waiting in a car to take away the weapon. This took place about August 1971.

9A-550 Intelligence materials also indicate that "Pudger" O'Hagan was involved in the Fianna prior to Bloody Sunday in that they suggest that he was involved in its foundation which, as the Tribunal knows, pre-dated January 1972. INT1.317 records an, again anonymous, interview in which it is said that:

I got fed up with the Officials policy. When we were out at night, Martin McGuinness would come around in a car and talk to us. He asked us to join the Provo organisation. "Pudger" Paddy O'Hagan was with the Officials at that time and he also left and many others also. Paddy O'Hagan then started the Fianna Eireann.

9A-551 Mr O'hEara might, as the OC of the Fianna, be in a position to assist the Tribunal with the then membership of this group but has refused to do so. In respect of Denis McFeely he said when questioned:

Q. Was he a member of the Fianna at the same time as you were?

A. Well, I am not prepared to name other people here in any capacity, so you should ask him about that.⁵⁸⁷

⁵⁸⁷ Day 406/104/06

FS 7. 2086

9A-552 He similarly refused to answer when asked about Paddy O'Hagan's membership of Fianna

Q. Is it right Mr O'Hagan is now dead?

A. Yes.

Q. Is it right that he was with the Officials, left and started -- I am not prepared to comment on that.⁵⁸⁸

And Mr O'Donnell.

Q. Hugh O'Donnell, he was asked about his role on the day. He has given us answers about that. Can you help as to whether he was a member of the Fianna on Bloody Sunday?

A. No.

Q. You cannot help?

A. No.

Q. Does that mean he was not as far as you were aware?

A. I mean I cannot help.

Q. Cannot or will not?

A. Hugh O'Donnell, I understand his being here, and I have not seen his evidence or heard what he said, but, you know, I think he is quite able to speak for himself.

Q. Of course he is, and you are also quite able to speak in relation to him. You see the Tribunal has to at the end of the day assess the credibility of what people say and look at the issue of consistency. The Tribunal is deprived of doing that if people will not, even in respect of people have come forward, indicate whether they were or were not members on the day. Will you help in relation to Mr O'Donnell?

*A. No.*⁵⁸⁹

9A-553 Eventually Mr O'hEara said

Q. Will you please answer whether or not Mr O'Donnell was a member of Fianna on Bloody Sunday?

*A. No, to my knowledge he was not.*⁵⁹⁰

9A-554 Mr O'hEara finally made clear his unwillingness to assist when questioned by Mr Lawson.

Q. I want to ask you this and to think carefully about it, please, I want to ask you -- whether you answer it or not is a matter for you and the Tribunal to direct -- about Fianna in respect of this group. You certainly were a member of Fianna at the time; you were OC, for want of a better title, yes?

A. Yes.

Q. Gerard Donaghy undoubtedly was, because you have told us that and in any event he must --

A. A matter of public record.

Q. Identified on the roll of honour as such; was he not, after his death?

A. Yes.

Q. How many other members of Fianna were there in that group?

A. I am not prepared to name other members of the Fianna.

Q. Was Pudger a member?

A. I am not prepared to name other members of the Fianna.

⁵⁸⁹ Day 406/166/20

⁵⁹⁰ Day 406/168/08

FS 7.2088

Q. Denis McFeeley?

A. I am not going to name anyone. I am not going to confirm or deny anything.

Q. Or Jim Begley, the same?

A. Yes, the same answer.⁵⁹¹

... Q. But you are not telling us that they were not members of Fianna, are you, because that would not be true, would it?

A. Well, if I start getting into saying who is or who is not, then I am going down the road I do not want to go down. What I am saying is that I am not going to name who was in the Fianna and I would not like to think that every name I mention is then accused of being a member of the Fianna.⁵⁹²

9A-555 The Tribunal might well consider that Mr O'hEara's reluctance to assist the Tribunal in this way is indicative of at least one or more of the individuals concerned indeed being a member of a paramilitary organisation at the relevant time.

9A-556 It is not suggested that there is before the Tribunal conclusive proof that any of the eight young men who began the day with Gerard Donaghy engaged in armed activity on Bloody Sunday although the Tribunal will recall the notes made by Kathryn Johnston, according to her from information received from several people,⁵⁹³ that:

High Street full of people ... Gerard Donaghy had several nail bombs, S McCallion wanted them." "Throw nail bombs over

⁵⁹¹ Day 406/197/21

⁵⁹² Day 406/199/10

⁵⁹³ Day 387/043/16

FS 7. 2089

roof." "Knows nothing about bomb." "Was fuse lit in bookies and not go off."⁵⁹⁴

And

"G Donaghy and McGuinness standing beside each other and Eddie Daly standing against a wall when argument with McCallion was going on."⁵⁹⁵

9A-557 Certainly at least some of the group who began the day with Gerard Donaghy were involved in an incident at a bookies at some stage as Jim Begley says in his 1972 statement that:

I went down Chamberlain St as far as the bookies. The soldiers came around the corner and we charged back, they caught a man and we ran back after them.....⁵⁹⁶

9A-558 The Tribunal may also wish to consider the significance of the location of the various members of this group. Certainly they are remarkable in that many appear to have been very close to casualties in areas where military witnesses saw men with either guns or bombs.

9A-559 Gerard Donaghy, Denis McFeely and Kieran McLaughlin were all in Glenfada Park North either shortly before or when soldiers entered, an area where of course young men were seen by more than one civilian witness to be in possession of nail bombs.

9A-560 It may be a matter of pure coincidence that so many young men with propensities to sectarian violence were associated with Glenfada Park North

⁵⁹⁴ M112.50

⁵⁹⁵ M112.51

⁵⁹⁶ AB29.1

FS7.2090

where much more paramilitary activity than has been admitted now appears to have occurred at the time when soldiers entered the area.

9A-561 Denis McFeely entered Glenfada Park North by the north east entrance⁵⁹⁷ and was shortly afterwards close to Jim Wray and Michael Quinn when they were shot.

A. I decided to follow the, the group of people who were carrying the body whom I believe was Michael Kelly. I, I crossed, um, Glenfada Park square and was heading towards the, the entrance out of, um, Glenfada Park, into Abbey Park basically.

Q. Let us look at what you say about that at AM7.9, paragraphs 15 and 16, where you say: "As I was walking towards the southwestern exit at Glenfada Park North, I heard somebody shout a warning 'there are the Brits' or something like that."⁵⁹⁸

A. I am aware of being in the corner and bullets having hit Michael Quinn in the face. I did not see the soldiers shoot him in the face, I know it was those soldiers who were in that vicinity that shot him in the face and I believe that the soldiers in that vicinity shot Jim Wray as I knew there was a person who fell, in close proximity to myself.⁵⁹⁹

9A-562 Kieran McLaughlin and Gerard Donaghy entered Glenfada Park North together and were at also at one point sheltering close to the north east entrance.⁶⁰⁰ Mr McLaughlin was also in the area of the south west exit when soldiers opened fire into that area and indeed claims to have discovered a

⁵⁹⁷ Day 409/100/03

⁵⁹⁸ Day 409/104/01

⁵⁹⁹ Day 409/110/14

⁶⁰⁰ AM12.4:24.

FS7.2091

bullet hole in his own jacket, although he did not reveal this in his BSI statement.⁶⁰¹

9A-563 The Tribunal will recall the evidence of Michael Quinn who saw young boys with nail bombs at the north east corner of Glenfada Park North and references apparently made by Michael Kivelehan to young boys with nail bombs in the Glenfada Park North area. The Tribunal are also of course aware of the evidence of Soldiers F and H of seeing and firing at nail bombers in the south west corner of Glenfada Park North.

9A-564 The Tribunal will also have noted that Eugene McGillan in his NICRA statement, placed himself in front of Joseph Friel when he was shot⁶⁰². Mr McGillan, while not part of the Gerard Donaghy group, was yet another paramilitary who was immediately next to a casualty shot on Bloody Sunday. The Tribunal will recall that Mr McGillan was in fact killed in an incident in Stanley's Walk together with Colm Keenan shortly after Bloody Sunday. When taken into consideration with the evidence of OIRA gunmen close to Jim Wray when he was shot, the presence of such individuals immediately next to so many of the casualties in Glenfada Park North would appear to be a remarkable coincidence.

9A-565 Indeed that coincidence extends outside of Glenfada Park North. Jim Begley (AB29), in a statement given in 1972, said that he was lying immediately next to William Nash, John Young and one other when they were shot⁶⁰³. He gave a similar account to the Sunday Times⁶⁰⁴.

⁶⁰¹ AM12.5 paragraph29; Day 415/108/18; Day 415/109/06

⁶⁰² AM233.1

⁶⁰³ AB29.1-3

⁶⁰⁴ S296/311

FS7. 2092

9A-566 Hugh O'Donnell's father (Hugh O'Donnell Snr AO31) saw both his son and Jim Begley mount an attack from the barricade on soldiers with stones.⁶⁰⁵ Mr O'Donnell confirmed the accuracy of this account in oral evidence

Q. "We were so angry, we picked up stones and ran at the soldiers throwing them." Should we understand from that that you were part of a group of people who ran forward to throw stones at the soldiers?

A. Yes.

Q. What sort of number of people was there in this group?

A. An approximation, 30 to 50, but I cannot be certain.

Q. Thirty to 50 actually throwing stones?

A. Thirty to 50 running forward.

Q. And of those, can you give any idea of how many were actually throwing stones?

A. No.

Q. Did you run forward towards a particular group of soldiers?

A. The soldiers at the corner of Rossville Street.

Q. How close did you get to them?

A. I am not too sure.⁶⁰⁶

9A-567 Mr O'Donnell also stated that he was running next to Hugh Gilmore when he was shot.⁶⁰⁷

⁶⁰⁵ AO31.4 paragraph 22-23

⁶⁰⁶ Day 405/013/22

⁶⁰⁷ Day 405/020/18

FS 7.2093

9A-568 Pudger O'Hagan appears not to have given any statement in 1972 but there is evidence to suggest that he was next to Kevin McElhinney when he was shot. Liam Mailey, in giving evidence to the Widgery Tribunal, said that the bullet which killed Kevin McElhinney, took a chip out of a doorpost which injured Paddy O'Hagan on the ankle.⁶⁰⁸

9A-569 In a radio interview Mr Mailey repeated that

After I took that print some more people ran up to the door of the flats and I stepped back from the door to let them in. I went and stood on the third step there just inside the doorway. Some five or six people arrived, some of them went up in the lift and others went out the back. I am not too sure where they went to, they went out in that direction anyway. Maybe a minute or so, it is very difficult to judge the time, but possibly a minute after that or half a minute after that Pat O'Hagan, which appears in that print of Gilmore that Barry White took. This is him here, the tall chap with the glasses. He is behind me. He said that there was someone crawling along the front wall of the High Flats. He must have been shot just as he arrived at the door because the bullet passed through his body and ricocheted back and hit Pat O'Hagan on the ankle.⁶⁰⁹

9A-570 This was put to Mr Mailey when he gave evidence to this Tribunal

It looks from that, does it not, as if your recollection, when this interview took place, is of Mr O'Hagan, who we can see in the White photograph was close to the door, indeed at the door, was giving a commentary --

A. Absolutely, yes.⁶¹⁰

9A-571 Although, strangely, Mr Mailey says when questioned further about his evidence about Mr O'Hagan to the Widgery Tribunal

⁶⁰⁸ AM19.37 at C-E

⁶⁰⁹ M50.52

⁶¹⁰ Day 163/127/11

FS 7.2094

Q. Can we assume that was something that you did yourself witness?

A. No, no, I do not actually remember that and while I do not remember that, as I have said before, I do not remember a lot of details. This is clearly something that I learnt later, as I do not know who Paddy O'Hagan actually is, so ...⁶¹¹

9A-572 Quite what this group of young men were doing on Bloody Sunday is unlikely ever to be known. There is evidence to show, however, that some of them at least were already connected with paramilitary organisations in January 1972. Their proximity to so many of those who were shot on Bloody Sunday would appear to be at least a remarkable coincidence if indeed they were no more than peaceful participants in the civil rights march.

RIFLES

9A-573 It is now admitted by OIRAs 1, 2 and 7 that a car under OIRA control was parked in Glenfada Park North when soldiers entered the square. They further concede that a .303 rifle was brought into Glenfada Park North shortly before soldiers entered, although all three maintain that this was left, locked in the car and was the only weapon available to them in the area. Each of OIRA1, OIRA2 and OIRA7 have denied that there was any armed activity in Glenfada Park North beyond their depositing one, broken, .303 rifle there.

Accounts to journalists

9A-574 Information recorded by journalists in 1972 gives an account of far more extensive OIRA activity in Sector 4 however. Evidence clearly shows that the information contained in these articles came from OIRA 1 who now seeks to repudiate these accounts given shortly after Bloody Sunday.

FS.7.2095

9A-575 According to the notes known as PIN437⁶¹² produced by John Barry of the Sunday Times, and the article "*IRA sniper tells of Bloody Sunday*" by Gerard Kemp of the Sunday Telegraph (L210),⁶¹³ the following events occurred in the Glenfada Park area on Bloody Sunday.

PIN 437

- (1) Weapons were stored in the boot of a car in Glenfada Park and a .303 was retrieved from there by OIRA 1 which was then fired at troops from Columbcille Court.
- (2) There were five or six members of the Official IRA in Glenfada Park North at the time troops entered the Bogside.⁶¹⁴
- (3) There were two .303's, a carbine, a Sten and a .22 automatic being moved around in Glenfada Park at a time after troops moved into the Bogside.⁶¹⁵
- (4) An OIRA gunman with a .22 automatic ran out of Glenfada Park North via the north west exit shortly before soldiers entered the square.
- (5) OIRA 1 exited Glenfada Park North immediately in front of James Wray.
- (6) There was a man in an area referred to as "the car park" who fired a couple of shots with a .38 automatic.⁶¹⁶

⁶¹¹ Day 163/148/20

⁶¹² AOIRA1.1-2

⁶¹³ L210

⁶¹⁴ AOIRA1.1

⁶¹⁵ AOIRA1.1

FS 7.2096

- (7) One gunman with a "sporting .303" remained in the area and considered returning to Glenfada Park to shoot at the soldiers there.

Corroborated by Kemp Article:

- (1) Weapons were stored in the boot of a car in Glenfada Park and a .303 was retrieved from there by OIRA 1.
- (2) When the "Paras" moved up, 10 to 15 minutes after OIRA 1's shot was fired, he gave an order for his men to move weapons⁶¹⁷ out of their cars.
- (3) One OIRA man got onto a balcony and fired at the soldiers.
- (4) A second OIRA gunman fired with the pistol.
- (5) At the time soldiers fired from the Kells Walk wall, OIRA 1 was at the Rubble Barricade.
- (6) OIRA 1 was exiting Glenfada Park North via the South West exit immediately in front of James Wray when he was shot.

9A-576 Such accounts were of course given to the Press at a time when the Official IRA was seeking to minimise its involvement in armed activity on Bloody Sunday and potential responsibility for the tragic events that unfolded that day. It is therefore unlikely that OIRA1 has given a full account of all such activity, even in these interviews. They provide what is likely to be a *minimal* account of OIRA activity in Glenfada Park North.

⁶¹⁶ AOIRA1.1

⁶¹⁷ L210

FS7.2097

9A-577 The Tribunal has heard OIRA1's denials that he was ever interviewed by John Barry, the author of PIN 437⁶¹⁸ or Gerard Kemp.⁶¹⁹ In considering such denials the Tribunal will bear in mind:

- (1) The credibility and working practices of both journalists as described to the Tribunal.
- (2) The accuracy of much of the information contained in both accounts as confirmed by OIRA1 himself and independent sources.
- (3) The fact that a great deal of such information would have been known to a very limited number of individuals and, in some cases, either OIRAs 1 and 2 alone or OIRA 1 alone.
- (4) The proven flaws, inconsistencies and inherent improbability of the whole account given by OIRAs 1 and 2 of their activities on Bloody Sunday.

PIN 437 - John Barry

9A-578 John Barry was the editor of the Sunday Times Insight team and an award-winning journalist of international repute. He was able to identify his initials on the document known as PIN437 and confirm that it was his document.⁶²⁰ The document in its unredacted form of course carries the name of OIRA 1. Mr Barry acknowledged that he did not recollect the circumstances in which he wrote PIN437 but was able to say that:

⁶¹⁸ Day 395/106/13-15

⁶¹⁹ Day 395/138/05-07

⁶²⁰ Day 193/100/21-24

FS 7.2098

A..... The name, the name rings a bell and I certainly am sure that I talked with him during the course of our stay in the Bogside, but I have no independent recollection of this particular interview.

and later that:

I recall the name and I recall having met him and I am sure that at least one of those occasions must have been in the Bogside Inn because I recall going to the Bogside Inn as a way of meeting a lot of people at that time, we all used to go there, but I have no recollection -- I come back: I have no recollection of the circumstances of the gathering of this note.⁶²¹

9A-579 While unable to recall the interview, Mr Barry was able to assist by describing his working practices in 1972 which demonstrate that the information presented in PIN437 was the product of an interview, however informal, with OIRA1. Mr Barry when questioned by Counsel for the Tribunal explained that:

Q. What would your normal practice have been if you interviewed someone like OIRA 1 -- did you take notes when you interviewed people?

A. Yes, I took notes and, on almost all occasions, I taped as well. I would not have taped if the interviewee particularly requested not or if it seemed likely that the tape recorder would so inhibit the interviewee that I would get less than I might otherwise. I see from a note at the bottom of the line 8 or whatever, "I think he said it was a green Avenger, but my notes do not record that", I deduce from that that I cannot have used a tape.

Q. It looks like that.

A. Sure.

⁶²¹ Day 194/93.11-18

FS 7.2099

Q. Can you give us any idea what interval might elapse between the time when you would have an interview and make the notes and the time when you produce a typed account of that interview?

A. Less than a day if possible.

Q. It may seem a silly question: do you type up from the notes?

A. Yes, the next morning, if possible.

Q. Did you ever consciously type up something that you had not actually been told?

*A. No.*⁶²²

9A-580 Mr Barry was then, when questioned by Christopher Clarke QC, able to assist the Tribunal further with the nature of the document:

Can I ask you something about your method of working which would have produced a document of this kind? It begins with a name which has been blanked out. There are then various references which say, "said" such and such, "OIRA I says", "OIRA I then", "then he toyed with the idea", and then there were various quotation marks, and then we get "OIRA I says", et cetera. If you had written in a note "OIRA I said" or "OIRA I says", is there any realistic possibility that that could in fact be summarising what somebody else said which involved or implicated him?

*A. No.*⁶²³

OIRA Corroboration of PIN 437

9A-581 As to the content of PIN 437, the Tribunal will recall that OIRA 1 rejected in oral evidence the accuracy of several of the facts and statements it contained. Some minor inaccuracies may well reflect Mr Barry's own conclusion that:

⁶²² Day 193/101/08-102/07

⁶²³ Day 194/151/03-14

FS7.2100

*... whatever was going on in this session or sessions, it was not a normal interview because I would have taken much better notes.*⁶²⁴

and

*... the notes were more fragmentary than I would have liked.*⁶²⁵

The Tribunal was able itself to witness OIRA's manner of speaking which, as suggested to him by Mr Lawson,⁶²⁶ might explain inaccuracies in the recording of any verbal account taken from him.

9A-582 It is clear, however, that the accuracy of a great deal of the information contained in PIN 437, which both Christopher Clarke QC and Edmund Lawson QC⁶²⁷ were able to confirm in lengthy questioning of OIRA 1, itself authenticates the document. The Tribunal will recall that OIRA 1 confirmed that:

"The main emphasis by the Officials that day was up in the Creggan"

*"They were waiting for a possible Army assault."*⁶²⁸

*"His constant companion on the early part of the action was OIRA 2."*⁶²⁹

*The description of slatted planks given in the area from which he fired is correct*⁶³⁰.

⁶²⁴ Day 194/152/12-14

⁶²⁵ Day 194/153/06-07

⁶²⁶ Day 396/106/23

⁶²⁷ Day 396/072/23

⁶²⁸ Day 395/109/20-23

⁶²⁹ Day 395/111/03-06

⁶³⁰ Day 395/113/02-12

FS7-2101

He did aim at a person or persons on the left side of the church.

OIRA 1 fired and OIRA 2, told him he had hit his target.

OIRAs 1 and 2 were tackled on the stairs of Columbcille Court.

There was an OIRA car in Glenfada, possibly a green Avenger.

After shooting from Columbcille Court, OIRA1 did go back to Glenfada, put the rifle back in the boot of the car, and wait rather at a loose end.

OIRA 1 did look round the corner and see the Saracens approaching.

He did run for it across Glenfada out of the Abbey Park entrance and was running out of Glenfada Park when there was a burst of firing.

He saw a soldier in the northeast corner of Glenfada Park North

OIRA 1 did then hear about Red Mickey and go to Vinny Coyle's house.

He then met with the acting CO.

9A-583 OIRA 2 was then able to confirm, when questioned by Mr Lawson about the details of PIN 437:

That:

"He and OIRA 2 had scouted around. Had a good look at the Army positions"

Was "probably" accurate.⁶³¹

⁶³¹ Day 393/082/12-13

FS 7. 2102

That:

I then heard two boys had been shot by the Army in William Street

Was "right"⁶³²

That:

In Columbcille Court in one of the areas outside the back door of each flat set aside for washing lines et cetera. The area is fronted by white wooden planks giving a slatted effect.

Was "an accurate description of where we were".⁶³³

That:

OIRA 1 went down, took aim, he says at the blokes on the left-hand side of the church. One of them was putting his head up very cautiously from time to time. I knew he was the one who had shot the two lads.

Was "broadly speaking, an accurate description".⁶³⁴

That:

Twice the man put his head up and OIRA 1 did not fire. The third time he put his head up, OIRA 1 fired. OIRA 2 told him he had hit.

Was "a pretty accurate description of your [OIRA2's] version of what occurred".⁶³⁵

⁶³² Day 393/084/08-09

⁶³³ Day 393/084/16-19

⁶³⁴ Day 393/085/21-24

⁶³⁵ Day 393/086/13-14

FS 7. 2103

That:

PIRA 2, the oldest of the group took the lead, said 'you cunt', et cetera. PIRA 1 tried to grab the gun, OIRA 1 stuck it in his stomach and said 'I will fucking shoot you' et cetera. PIRA 2 backtracked and said there was no need for all of this. Agreed that OIRA 1 would not fire again and he was allowed to depart in peace.

Is "accurate insofar as there having been an altercation".⁶³⁶

That:

"...went back to Glenfada, put the rifle back in the boot of the car."

Is "correct".⁶³⁷

9A-584 OIRA2 is unable to comment on OIRA1s movements after that point as he claims they split up⁶³⁸ but he also agrees in his BSI statement that the car in Glenfada Park "could have been an Avenger or a Cortina, both were popular at the time, and I think it was grey or green".⁶³⁹

9A-585 Mr Lawson also pointed out to OIRA 1 that Mr Barry's source stated in PIN437 that, at the time he fired, OIRA 1 was under the impression that two "boys" had been shot.⁶⁴⁰

They then heard that 'two boys' had been shot by the Army in William Street.⁶⁴¹

⁶³⁶ Day 393/089/09

⁶³⁷ Day 393/089/17-18

⁶³⁸ Day 393/090/04-05

⁶³⁹ AOIRA2.14 paragraph 8

⁶⁴⁰ Day 396/075/04-078/01

⁶⁴¹ AOIRA1.1

FS 7.2104

9A-586 Mr Lawson put to OIRA 1 the fact that he has repeated in his BSI statement having just such an impression

Within seconds there was an even louder buzz and more shouting and I heard from down below me, below the slats, that a couple of boys had been shot.⁶⁴²

9A-587 OIRA 2 had, indeed, used a very similar expression in his BSI statement:

Just then I heard someone in the crowd shouting "two boys have been shot"⁶⁴³

9A-588 OIRA 1 was unable to provide any explanation as to where Mr Barry may have obtained the accurate information about OIRA1 and 2's mistaken impression.⁶⁴⁴ That Mr Barry's source should, if not OIRA 1 himself, have known of his harbouring just such a mistaken impression is simply incredible.

9A-589 There is considerable independent corroboration of the facts set out in PIN 437 which is considered below. Significant to OIRA1's current evidence, however, is the fact that much of such information could have come only from a very limited number of people, principally OIRA 1 or OIRA 2. Indeed, the admittedly accurate information which Mr Barry is able to give as to OIRA 1's perceptions of events in Glenfada Park North and his movements after leaving the area can only have come from OIRA 1 himself.

9A-590 As far as, for example, the description of OIRA1's firing position is concerned, OIRA2 was able to confirm when questioned by Mr Lawson that it would have been known only to the two of them and that he did not tell anyone of it.

⁶⁴² AOIRA1.27 paragraph 18

⁶⁴³ AOIRA2.15 paragraph 11

⁶⁴⁴ Day 396/077/22-078/01

FS7. 2105

Q. Have you broadcast -- have you personally being telling a lot of people where you had conducted this firing exercise from? A. I did not tell anybody.

Q. You would expect, we will have to ask him, OIRA 1 to be equally discreet, would you not?

A. I would have thought so, yes.

Q. The author of this note, then, has managed to get from somewhere or other an accurate description of where you were and of the slatted effect of the wooden planks?

A. Yes. I have no idea where the author of the note got his information, he did not get it from me.

Q. Wherever he has got it from he has got that bit right?

A. Aye, he has that bit right, surely.⁶⁴⁵

9A-591 OIRA7 was also able to confirm some of the details included in PIN437 although, in similar fashion to OIRAs 1 and 2, he disputed that weapons were moved in Glenfada Park other than the one rifle he claimed was stored in the car.

9A-592 Certainly he was able to confirm that OIRA weapons were, as a rule, stored in cars.

If I was out on night duty the night before any weapons I had would have been in the car. They would have been left there for whoever took over the patrol from us⁶⁴⁶

9A-593 OIRA 7 was also able to confirm that the details given in PIN437 as to the number of men left in the Creggan were approximately correct.

⁶⁴⁵ Day 393/084/25-085/13

⁶⁴⁶ AOIRA7.3 paragraph 15

FS7. 2106

"Two sections of 16 men -- both the sections being Creggan ones -- were gathered in cars at the back of the Creggan." Yes, that is what it says?

It was mentioned yesterday, yes.

Q. And tell us, please, are the numbers there given for the Creggan section about right?

A. Yes.

Q. In relation to Bloody Sunday?

A. To the best of my recollection, yes.

Q. They are?

A. Again, I was not -- you know what I mean, I, I went to the Bogside, I did not go round counting the men left in the Creggan. The numbers, the numbers would be about correct, yes.

Q. That is about right for the Creggan guard, is it, so to speak?

A. Yes.⁶⁴⁷

9A-594 OIRA7 was also able to confirm that weapons would be stored in cars as described in PIN 437.

I am not sure where -- I mean, again, because, as I said, weapons were continually on the move and, you know, from one car to another, you know, being taken where it was felt they were needed to be taken, you know, it would have been kept in the boot of a car, it would have been kept with whoever was in control of it, whether that be the Creggan, you know, or the Bogside.⁶⁴⁸

9A-595 His evidence appeared also to be that he recalled the car parked in Glenfada Park North being an Avenger

⁶⁴⁷ Day 399/037/22-038/14

FS-7-2107

Yes, it would have been -- you know, I am saying it was an Avenger and, um, you know, again, the, the two most popular cars at that point were the Cortina and the Avenger.⁶⁴⁹

And that:

We could not drive the car out of Glenfada because of the people in Rossville Street.⁶⁵⁰

9A-596 OIRA7 was also able to confirm that the rifle fired in Columbcille Court and then brought into Glenfada Park was a "sporting" .303 as described in PIN437 as being in the possession of an OIRA gunman to whom OIRA1 spoke in the area of Lisfannon Park. OIRA7 confirmed when questioned by Mr Clarke⁶⁵¹ that he recognised it as such. He was later questioned on the point by Mr Lawson.

Q. I will take you to a passage in your statement and ask you if it is correct, AOIRA 7.8, please, paragraph 42 the second sentence of which you said you recalled the weapon?

A. Yes.

Q. "... stock stocked about halfway from the trigger guard which made it more of a hunting rifle." I pause there, it has been referred to as a sporting rifle; that is the one, is it?

A. Yes.⁶⁵²

OIRA 2 also confirmed that the rifle OIRA 1 had used was indeed a "sporting .303":

⁶⁴⁸ Day 398/044/08-14

⁶⁴⁹ Day 398/048/03-049/01

⁶⁵⁰ AOIRA7.9

⁶⁵¹ Day 398/036/07-15

⁶⁵² Day 399/029/01-10

FS 7. 2108

I think it would be described as a sporting rifle, yes. Q. Cut down .303?

*A. I think so, yes.*⁶⁵³

PIN 437 - OIRA1's Explanation

9A-597 In light of the evidence of Mr Barry and what is plainly obvious from the style and content of PIN 437, the Tribunal will consider carefully OIRA 1's evidence that, while he may at some time have met or been in the company of John Barry,⁶⁵⁴ the information contained in PIN 437 did not come from him.⁶⁵⁵

9A-598 OIRA 1 felt able to tell the Tribunal this with such certainty because:

*A. Because why -- I would have no reason to say it; it was not my position to say it. If it was a formal interview, that is a different situation. Conversations were conversations, they were not about this type of stuff.*⁶⁵⁶

9A-599 Such an explanation would appear to be at odds, however, with the position put forward by OIRA 1's own Counsel Mr O'Donovan when questioning Mr Barry when he said that:

*Q. If I may deal with the position of OIRA 1 now. It is his recollection that he may have spoken to you in the context of drinking in the Bogside.*⁶⁵⁷

And that

⁶⁵³ Day 393/110/22-24

⁶⁵⁴ Day 395/107/06-14

⁶⁵⁵ Day 395/107/15-25

⁶⁵⁶ Day 395/108/06-10f

⁶⁵⁷ Day 194/093/06-08

FJ 7.2109

Q. Perhaps in order to understand where I have been coming from and the Tribunal does as well, it is the case of OIRA 1 that he may have spoken to you, but that his comments to you were limited to his activities in Columbcille Court and the fact that thereafter he put one weapon into a motorcar in Glenfada, but that there were no other weapons. I suppose you cannot, without the documents going behind this document, you cannot help on that?⁶⁵⁸

The position described by Mr O'Donovan would appear to contradict OIRA1's assertion to Mr Clarke that he would not talk at all about "this type of stuff".

9A-600 As to the use of direct quotations and terms such as "OIRA1 said" or "OIRA1 says", OIRA 1 was unable to offer any explanation of such terms when questioned by Counsel for the Tribunal:

Q.... "OIRA 1 says he was then tackled." In this particular paragraph he seems to be saying in terms that you were the person who provided him with the information?

Yes, well that may be journalistic, just shorthand, you know, I do not know.⁶⁵⁹

L210 - Gerard Kemp

9A-601 It is, moreover, clear that Mr Barry was not the only journalist to whom OIRA 1 gave an account of Bloody Sunday including the facts that OIRA 1 retrieved his rifle from a car in Glenfada Park North and subsequently ordered other OIRA men to get weapons out of their cars, two of whom fired at soldiers. Such information was also given to Gerard Kemp of the Sunday

⁶⁵⁸ Day 194/093/24-094/07

⁶⁵⁹ Day 395/116/02-06

FS7. 2110

Telegraph. OIRA 1 also told Mr Kemp that Jim Wray was shot just behind him.

9A-602 Mr Kemp reported that information in an article titled "*IRA sniper tells of Bloody Sunday*", published in April 1972.⁶⁶⁰ While Mr Kemp can no longer recall the name of his source,⁶⁶¹ the reference in his article to "the sniper referred to in the Widgery report" who "admitted firing the single high velocity round but said he did so after he had heard two shots and seen the crowd dragging away the two wounded (Johnston and Donaghy)" quite clearly refers to OIRA1, as he himself conceded.⁶⁶²

9A-603 Moreover, the evidence clearly demonstrates that OIRA1 was the source as well as the subject of the article as Mr Kemp confirms in his BSI statement.

*The article itself detailed a conversation that I had with a man I knew to be an Official IRA man.*⁶⁶³

*I have no reason to doubt that this was told to me at the time and that the quotation in the article was an accurate record of what he said.*⁶⁶⁴

9A-604 It is known to the Tribunal that the Official IRA did not publicly admit any firing at the time of the Widgery Tribunal. Notes of an Official IRA press conference which appear at **ED12.4** record that

The officer [whoever it was] claimed that the IRA Official wing had at no time fired shots in the immediate vicinity of the area where the deaths occurred.

⁶⁶⁰ **L210**

⁶⁶¹ **M47.2 paragraph 4**

⁶⁶² **Day 395/137/21-24**

⁶⁶³ **M47.1 paragraph 2**

⁶⁶⁴ **M47.2 paragraph 4**

FS7. 2111

It would seem therefore that the accurate information reported by Mr Kemp must have come directly from within the ranks of the Official IRA.

9A-605 OIRA1 was questioned by Mr Lawson as to how Mr Kemp could have obtained the information that he did but provided no explanation.

Q. Although at the time that we are concerned with, that shortly after Bloody Sunday, that was not the official story, the Official story, the party line was, as we have agreed, no shots fired by anybody, by the Officials, was it not?

A. Yes.

Q. This is private information that somehow or other gets to the ears of Mr Kemp, and the private information that reaches him you would say is accurate?

A. Yes.⁶⁶⁵

9A-606 Mr Lawson was then again able to draw OIRA 1's attention to passages in the article giving detail of which only OIRA 1 is likely to have known.

Q. "He [that is attributed to you] told me, 'I did not go on the march.'" That is true, is it not?

A. Yes.

Q. "I left my car in Glenfada Park ..." That is true, is it not?

A. Yes.

Q. "... and walked over to Columbcille Court." That is true?

A. Yes.

Q. "... waiting for the marchers to come down." Is that true?

A. Again, I do not know where the march was at that point, but generally speaking, yes.⁶⁶⁶

⁶⁶⁵ Day 396/099/16-25

FS 7. 2112

...

Q. "A bit of stoning was going on" That is true, is it not?

A. As far as I am aware, yes.

Q. "Then I heard two shots." On your current version, that is true?

A. No, it is not, three shots.

Q. Two or three?

A. Three.⁶⁶⁷

...

Q. It is right, is it not, that most of the IRA were up on the Creggan?

A. The people who were on duty were in Creggan.

Q. For the reason there given: "Because we expected [perhaps feared] the Army to take advantage of the march and move in." Is that right?

A. Yes.

Q. That is accurate, is it not?

A. Uh-huh.⁶⁶⁸

...

"I went into a house in Abbey Park ... a young fellow there had been shot." Yes?

Yes.

Q. That is true, is it not?

⁶⁶⁶ Day 396/101/07-101/20

⁶⁶⁷ Day 396/102/06-13

⁶⁶⁸ Day 396/104/20-105/04

FS 7 -2113

A. Yes.

Q. "About 20 people in the house, men and women. It is difficult to give numbers ..." You would not argue with that, would you?

A. No.

Q. Gave you a cup of tea, do you remember that?

A. Vaguely, yes.

Q. Yes?

A. Well, vaguely, yes.

Q. A little detail picked up by the journalist, that you were given a cup of tea -- because you did speak to him, did you not?

A. No.⁶⁶⁹

9A-607 When questioned further by Mr Lawson, OIRA 1 could proffer no explanation as to how Mr Kemp could have obtained such information if not from OIRA1 himself. The Tribunal will recall that he replied only that:

*Well, I am not in a position to offer any explanations, it is for the journalist to offer those explanations.*⁶⁷⁰

9A-608 It is clear that the information provided in PIN437 and L210 did indeed originate from OIRA1. His attempts, while acknowledging the accuracy of the documents on numerous other points, to repudiate those central facts which implicate Official IRA gunmen in armed activity in Sector 4 are dishonest and incredible.

⁶⁶⁹ Day 396/105/21-106/13

⁶⁷⁰ Day 396/107/17-18

FS7-2114

9A-609 Indeed, in considering the evidence of OIRA1 and OIRA2 in relation to the presence of weapons in a car in Sector 4 and the subsequent movement and use of those weapons, the Tribunal should bear in mind the credibility of other, related areas of their evidence. The Tribunal will recall the evidence of both regarding their presence in Columbcille Court and their insistence that the rifle fired from there was a broken rifle that was being transported to the Creggan, fired only in response to the shooting of Damian Donaghy and John Johnston. Chapter 6 of these submissions addresses the credibility of much of that evidence in which many flaws were highlighted in the questioning of OIRA1 and OIRA2.

9A-610 The Tribunal will also bear in mind the totality of evidence as to the Official IRA's orders for the day on Bloody Sunday, the false accounts which were given shortly after the event and the manner in which members of OIRA have presented evidence to this Inquiry, all examined in more detail in Chapter 4 of these submissions. OIRA1 indeed admitted when questioned by Edmund Lawson QC that he was willing to lie in order to conceal the truth of Official IRA activity on Bloody Sunday.

Well, in 1972 it was decided that, given the propaganda that was coming out from the British establishment and the claims that there were gunmen all over the place and given that people you represent had said that they were fired upon by hundreds of gunmen and hundreds of shots and given the fact that half the world's press were in here trying to find these gunmen, we just decided it would not be right to give them any excuse by admitting to any shot.

Q. In other words, it would be better to lie?

A. Yes.⁶⁷¹

⁶⁷¹ Day 395/157/06-16

FS 7. 2115

9A-611 OIRA2 has also demonstrated, when questioned by Mr Lawson, his capacity to mislead:

Q. Did you actually see bodies that day?

A. No, because, um, I was trying to get away because of the total confusion that actually happened on the day. When we left the immediate area that we were in, we were trying to move away in the opposite direction.

Q. Because that is something fairly memorable, is it not, seeing bodies lying on the ground?

A. It would be, yes.

Q. You have no recollection of that?

A. I have no recollection of seeing any actual bodies, no. I would've seen photographs the following day.

Q. Why, in that case, did you say this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground"?

A. As I say, it could have been a wee bit of poetic licence, you are addressing a meeting of Irish people in London, so one might have got carried away a wee bit, you know, with the occasion.

Q. I was not referring in fact to the meeting that you addressed in London, I was referring to the statement that you delivered to this Tribunal, we will see it on the screen. AOIRA 2.7, please, paragraph 22, would you expand that. This is the statement that you produced in, we are told about, January 2002, as you have confirmed this morning, with the assistance of your own solicitors and prior to preparing the so-called Eversheds statement. In it, as you can see, in the fourth line of the paragraph on the screen, you solemnly declared this: "My memories of the rest of the day are of seeing people running and hiding and of bodies lying on the ground." So far as the last phrase is concerned, that is simply not true?

A. I have gone on to say there, if you notice: "These are not coherent memories as the time was frantic."

Q. It is not true, whether it is coherent or not? A. No, I am not saying that it is not true, what I am saying is that in the state of

FS7. 2116
IX-233

confusion that existed at the time and, even when I was submitting that statement through our solicitors, um, it may well be the case that that was -- that obviously was included.

Q. And it was not true?

A. Those are your words.

Q. Do you remember seeing bodies lying on the ground?

A. I cannot honestly remember whether I saw bodies lying on the ground.

Q. About two minutes ago when I asked you the question you gave a simple: no to that. Which is it, do you want to qualify the note?

A. No, I do not want to qualify it at all.⁶⁷²

9A-612 OIRA2's willingness to embellish his evidence regardless of the truth was again demonstrated when he was questioned by Mr Lawson about the shots he had heard while in Columbcille Court:

A. Well, I have already told the previous counsel that I have no recollection of actually hearing any shots. I am not sure. I may have done, I am just not sure.

Q. Are you in a position to assert that you can confirm that the shots were high velocity shots?

A. Which shots are we talking about here?

Q. The shots that allegedly preceded the rifle being fired?

A. I would imagine they would have been, yes.

Q. Can you definitely confirm that to be the position?

A. I cannot definitely confirm it.

⁶⁷² Day 392/125/01-127/03

FS7. 2117

Q. Why did you do so when you made this same statement for the benefit of the Inquiry?

A. Because --

Q. Just a minute, you ought to look at it, page 3, please, paragraph 9, where you said, did you not, in this statement of about January 2002, that you heard a number of high velocity shots with a gap between them. You cannot remember exactly at this time, but you believe there could have been two or three shots, right. You go on to say that you could not specify the time between them. Lest there be any doubt about the matter, concluded the paragraph by saying: "From my experience living in Derry at that time I can definitely confirm that these were high velocity shots." That is what you said, is it not?

A. That is what I said, yes.

Q. And you were in no position whatsoever to do that, were you, OIRA 2? A. Well, according to the way that you are putting it, the answer to the question would be that I probably was not, but again I think, in the general state of confusion possibly what I said there, you know, was, um, just a reflection of how things happened on the day.

Q. It was at best, was it not, a serious exaggeration?

A. No, I would not accept that.

Q. You would accept it was an exaggeration, presumably?

A. No, I would not even accept it was an exaggeration.

Q. What, when you said "I could definitely confirm these were high velocity shots", when you at least were unsure whether you had heard any shots; is that not an exaggeration?

A. It could well be, yes.⁶⁷³

⁶⁷³ Day 392/128/23

FS 7. 2118

Independent Corroboration of Facts Related in PIN 437/L210

9A-613 The accounts given in PIN 437 and L210 clearly originated from OIRA 1 rather than being any kind of journalistic fabrication. There is, moreover, independent evidence which proves that the account of significant armed OIRA activity in Glenfada Park North is correct.

David Mills – 24 Hours

9A-614 David Mills (M208) has told the Tribunal that in 1972 he was working as a producer for the BBC on a current affairs programme called 24 Hours. The day after that programme was broadcast he wrote a letter to Col Tugwell which included the following information:

You may also be interested to know that it is almost certain that there were a car load of Officials in Glenfada Park as the paratroopers came in. In their haste to escape they drove their car into a wall and fled on foot taking their weapons. Minutes after three of them started shooting from some way back near "Free Derry" Corner. The fourth circled back and was shot at by Soldier G or F".⁶⁷⁴

9A-615 Mr Mills has openly explained that he was probably first told about this incident by Peter Pringle but goes on to say:

I would probably also have done some of my own research to check the details relating to this incident. I have a vague memory of seeing a damaged wall in a small courtyard. I have been shown a map of the Bogside and I think the wall in question was somewhere near the West side of Glenfada Park North. My impression, after speaking to some of the local people about this, was that they felt the Officials had run away and had not engaged the army. I sensed that their actions were seen by the locals to be cowardly, although no one was prepared to say as much.....I remember being told that they

⁶⁷⁴ B1333.057

FS7.2119

*were armed and that later, after the army shooting had finished, they came back on foot and fired one or two shots, but I have no specific recollection of being told about a stash of weapons in the car.*⁶⁷⁵

9A-616 In oral evidence, Mr Mills conceded, quite openly when questioned by Mr Rawat, that as he did not intend to use this incident in his programme he did not investigate it very carefully.⁶⁷⁶ He also explained that the information regarding a man doubling back and firing may have come, uncorroborated, from Peter Pringle.⁶⁷⁷ Indeed Mr Mills made it clear when questioned that he no longer believed this to be accurate.⁶⁷⁸ He nonetheless confirmed that he had checked the authenticity of the generality of the account with people in the Bogside:

Q. Looking at what the Insight team wrote in the article, it is clear that they speak of a car load of Officials in Glenfada Park but they say nothing about that car being driven into a wall. Is it possible that the information you received from Peter Pringle you then subsequently relayed on to Colonel Tugwell, but relayed on inaccurate information?

*A. No, what would have happened is that Peter probably described the essence of what he has written here. I then checked that with various people in the Bogside.*⁶⁷⁹

Anthony Martin (AM24)

9A-617 Much of the information in the above articles including John Barry's reference in PIN 437 to a Green Avenger is corroborated by Anthony Martin (AM24). While he did not mention it in his NICRA statement, Mr Martin told Peter Pringle of the Sunday Times that, after assisting with the wounded:

⁶⁷⁵ M108.3:14-4 paragraph15

⁶⁷⁶ Day 235/014/17-18

⁶⁷⁷ Day 235/025/04-06

FS7. 2120

I met an ira man and he told there (sic) were two rifles in a car – a green avenger – parked in Glenfada Park and he wanted me to help him get to it. I learnt later that the rifles had been removed before the shooting started...⁶⁸⁰

9A-618 Mr Martin confirms in his BSI statement that, after helping with casualties from Glenfada Park North:

I headed out of Glenfada Park North and met the man I knew who was involved in the IRA. He explained that there was a Green Avenger car parked in Glenfada Park North that had rifles in the boot. He asked me if I would help him go and collect them. I was so angry by that point that I said I would take one of the rifles myself and do something. We went back into Glenfada Park South and made our way to the entrance at the east of Glenfada Park South, looking into Glenfada Park North to see if it was safe to go in. The car was in the position I have marked on the attached map at grid reference 114. The soldiers were still there and we decided it was too risky to approach the car.⁶⁸¹

Mr Martin also confirmed that the car:

Would have been there to store guns in the way I have described earlier.⁶⁸²

9A-619 These accounts which Mr Martin gave to Mr Pringle and to Eversheds in his statement signed 9th December 2000 corroborate the detail given in **PIN437** as to the make and colour of the car and its presence in Glenfada Park North. As to the cars use as a weapons dump and that more than one weapon was stored there, the information given to Mr Martin by the IRA man contradicts what OIRA1 has told the Tribunal.

⁶⁷⁸ **Day 235/043/22-25**

⁶⁷⁹ **Day 235/023/13-20**

⁶⁸⁰ **AM24.5**

⁶⁸¹ **AM24.13 paragraph27**

FS7 2121

9A-620 Clearly this IRA man was under the impression that the rifles were still in the car after the shootings had occurred in Glenfada Park North but Mr Martin explained both to the Sunday Times and in his BSI statement that he was later told that the rifles had been removed before the shooting started, information which is again consistent with PIN437 and L210 and contradicts the evidence of OIRA 1.

9A-621 Mr Martin appeared to wish to suggest in his oral evidence to the Tribunal that in fact the weapons had been removed much earlier in the day. Having, however, told the Tribunal when questioned by Christopher Clarke QC that the rifles were moved:

*shortly before the actual march*⁶⁸³

Mr Martin then acknowledged that he did not in fact know when the weapons were removed from the car. He was told only that they had been removed prior to the point when he re-entered Glenfada Park having dealt with the dead and wounded in the area but while soldiers were still present. Any further suggestion as to timing was conjecture.

*They said that car had nothing in it because the stuff had been removed, and I would assume it would have been before the shooting, not at the shooting or after.*⁶⁸⁴

9A-622 Mr Martin maintained however that he was told that the guns had already been moved at a time when soldiers were still present in Glenfada Park North. Clearly the information he was given contradicts the evidence of OIRA1.

⁶⁸² AM24.13 paragraph28

⁶⁸³ Day 176/103/16

⁶⁸⁴ Day 176/104/24

FS7.2122

9A-623 Mr Martin was able and willing to some extent to assist the Tribunal with the identity of the man who gave him this information.

Martin says that this man was called John and was part of the Creggan branch of OIRA. He cannot or will not give his second name.⁶⁸⁵

9A-624 OIRA7 has accepted that, in speaking of the IRA man, Mr Martin may be referring to him, although he does not recall seeing Mr Martin.⁶⁸⁶ OIRA7 claimed to have joined OIRAs 1 and 2 as they left Columbcille Court and to have remained with them while they deposited the rifle in the car in Glenfada Park. He was a member of the Creggan section and told the Tribunal that he did consider retrieving the rifle from the car in Glenfada Park North and discussed that possibility with others around him.

Q. You say in paragraph 85 that there was a heated discussion about the sense of your going into Glenfada Park North and you did not make it as far as the car. When you say "there was a heated discussion" was this with one person or were there a number of people?

A. I think there was a lot of anger; there was -- I mean, people were in shock, um, I think I was myself, you know, I, I would not be prepared to say if I was involved in a heated discussion with two, three, ten people, but I know there was, there was, um, a fairly loud exchange.⁶⁸⁷

9A-625 OIRA7 rejected, however, all those elements of Mr Martin's evidence that suggested that more than one rifle had at any time been stored in the car. Questioned by Christopher Clarke QC he said:

Q. Firstly, that account refers to the idea of taking more than one rifle

⁶⁸⁵ AM24.12 paragraph27; Dav 176/102/06

⁶⁸⁶ Day 398/097/02-05

⁶⁸⁷ Day 398/096/01-12

FS7. 2123

(Witness nodding)

Q. -- out of the car in order to have a go. Is he just wrong on that?

*A. Yes, he is wrong.*⁶⁸⁸

9A-626 Further questioned by Mr Lawson, OIRA7 categorically stated that only the weapon fired in Columbcille Court had been stored in the car.

Q. ...your recollection is that all three of you went to a car in Glenfada Park North and put the rifle in the boot of the car and that was it. You say that you do not recall there being anything else in the back or boot of the car. Presumably the car was one of the IRA cars; is that right?

*A. Um, my recollection again is -- and Eversheds posed the question to me -- my recollection is, as put in the statement, when you said to me were there any other arms in the car at the time when the rifle was put in, um, there were no other arms in the car when the rifle was put in.*⁶⁸⁹

9A-627 OIRA7 again told the Tribunal that

*I would emphatically deny that they were in the car.*⁶⁹⁰

9A-628 The Tribunal was, however, able to assess his evidence when questioned closely by Mr Lawson as to the circumstances in which he could have checked contents of the boot of the car as carefully as he now claims

Q... That is not what I asked you: who put it in there?

I cannot remember, probably the person who had possession of the weapon when the car was open.

Q. You cannot remember who that was?

⁶⁸⁸ Day 398/098/16-22

⁶⁸⁹ Day 398/46.25-51.-8

⁶⁹⁰ Day 398/054/11

FS7.2124

A. No, I do not remember, no.

Q. Presumably it would make sense if one was putting it in the car, the other two would have been keeping an eye open to see if there was anybody about, watching?

A. Yes, that makes sense.

Q. That would make sense; would it not, yes? Did you go to the boot of the car?

A. I did go to the boot of the car.

Q. Do you remember doing so?

A. I do, yes.

Q. Why did you go to the boot of the car?

A. To see that the weapon was put in there. If three of us were around the weapon, it was a lot harder for anybody else to see.

Q. You all stood huddled around the boot of the car?

A. I think that is the normal way that stuff like that was done.

Q. Is that what you assume happened or something you remember happening?

A. That is what I am saying happened.

Q. Did you look into the boot of the car?

A. Yes, when the boot of the car was open.

Q. That is not my question.

A. As the rifle was being put in I saw inside the boot of the car.

Q. Why did you look into the boot of the car specifically?

A. Because that is where the rifle was going.

Q. There was no particular reason to look in there, was there?

A. If there had have been a jack or a spare wheel or a can of petrol in there, you did not just want to throw a weapon into the boot of a car and slam the boot.

FS 7. 2125

Q. Did you in fact take any notice, if you were there, take any notice of what was in the boot of the car?

A. I was there and I do not remember anything being in the boot of the car that would have impeded that weapon going into the boot of the car⁶⁹¹.

Q. You cannot say, can you, with the best will in the world, OIRA 7, that there were no other weapons in that car?

A. I can say there were no other weapons in the car because I did not see any in the boot of the car.⁶⁹²

9A-629 OIRA7's account of him and his two colleagues huddling closely around the car in Glenfada Park North is indeed roundly contradicted by OIRA1 himself who claims not to have seen OIRA7 or any other member of the Official IRA in Glenfada Park North

From the time that you arrived in Glenfada Park with that rifle to the time that you left it having put the rifle in the boot, did you see another member of the Official IRA?

A. No.

Q. Are you sure about that?

A. I am sure I did not see any, yes.⁶⁹³

Indeed OIRA2 seemed to doubt whether OIRA7 had been present at Columbcille Court as he claimed saying in his BSI statement that:

We were the only two members involved in the incident.⁶⁹⁴

⁶⁹¹ Day 398/158/11-160/01

⁶⁹² Day 398/160/07-11

⁶⁹³ Day 395/117/07-13

⁶⁹⁴ AOIRA2. 22 paragraph46

FS 7.2126

9A-630 OIRA7 was also unable to explain (as was OIRA2) why, if there were no intention to use it further, the weapon should have been abandoned in the car as opposed to moved from the area of likely army incursion.

Q. Is there any reason why the rifle was not taken further into the Bogside as opposed to being left in the boot of the car?

A. The car was closest.

Q. It could safely have been taken off into the Bogside; could it not? A. The car was closest and that is where it was taken to.⁶⁹⁵

9A-631 OIRA7 also rejected, when questioned by Mr Clarke, Mr Martin's evidence that weapons had already been removed from the car at the time in the immediate aftermath of the shooting when they were both considering retrieving them.

Q. When he came to give evidence, Mr Martin said that when they were considering matters either at the end of the day or after Bloody Sunday, he learnt somehow that there had been rifles that had been in the car, but they had been removed before the Army shooting started. Again, if that is what he told the Sunday Times, that is wrong, is it?

A. That is Tony Martin's evidence, um, it does not, it certainly bears no resemblance to the truth as I know it.⁶⁹⁶

9A-632 There are then irreconcilable differences between the evidence of Mr Martin and OIRA7. Indeed, OIRA7 disputed in evidence to the Tribunal that he would have been in the position in which Mr Martin recollects the conversation with the IRA man took place.

⁶⁹⁵ Day 399/036/03-09

⁶⁹⁶ Day 398/099/25-100/09

FS 7-2127

Q. Do you have any recollection of attempting to get into Glenfada Park North via Glenfada Park South and deciding against it because soldiers were still in Glenfada Park North?

A. Um, if I am correct the entrance into Glenfada Park South is the same entrance -- it is off the entrance that leads into Abbey Park and, as I am saying, you know, I was in, um -- at the southwest exit when this discussion took place; it did not take place in Glenfada Park South.

Q. Did you go into Glenfada Park South in order to see whether it was safe to go into Glenfada Park North? A. No, because I could have seen from the alleyway whether it was safe or not.⁶⁹⁷

Mr Martin had, of course, clearly stated that the conversation to which he referred took place at the eastern entrance between Glenfada Park North and South.

We went back into Glenfada Park South and made our way to the entrance at the east of Glenfada Park South, looking into Glenfada Park North to see if it was safe to go in.⁶⁹⁸

9A-633 Other Evidence re IRA Cars PIN 437 describes an attempt to move an IRA car parked in Glenfada Park North. L210 refers to there being more than one such car. The OIRA witnesses have denied either case. OIRA 7, for example, said:

A. I do not remember there was an attempt to try and take the car out of Glenfada Park.⁶⁹⁹

9A-634 The Tribunal has had the opportunity to view Video 2 which appears to show the movement of people around a car parked on the eastern side of Glenfada Park North.

⁶⁹⁷ Day 398/098/16-099/11

⁶⁹⁸ AM24.13 paragraph27

FS 7. 2128

9A-635 It is understood that the Aitken Team have made detailed submissions as to the photographic and video evidence of the movement of cars in Glenfada Park which are not repeated here.

9A-636 Michael Quinn (AQ11) referred, in a statement he gave under guarantee of anonymity to Peter Pringle of the Sunday Times Insight team, to there being two IRA cars in Glenfada Park. Mr Pringle recorded Mr Quinn as saying that

*There were two 'IRA cars' parked in Glenfada Park. He knows they were IRA men, known in the district. Two were in one, unknown in the other. He saw no guns.*⁷⁰⁰

9A-637 Mr Quinn denies giving this information⁷⁰¹ although he acknowledges that other details recorded in the same document are correct. He claims in his BSI statement that in fact this suggestion that there were IRA cars in Glenfada Park North came from the Sunday Times team.

*At the end I recall they wanted to put certain things to me. I don't recall now but having seen their notes, attached as MQ11 (which I did not see at the time) they put it to me that there were IRA cars in Glenfada Park North. There weren't any and I am very upset and concerned that the notes I have seen have wrongly recorded me as saying there were IRA cars in Glenfada Park.*⁷⁰²

9A-638 He similarly told the Tribunal when questioned by Mr Clarke that a series of propositions were put to him by Mr Pringle so that the information about IRA cars must have originated from them.

Q. Do you recall asking to tell them asking under a guarantee of total anonymity?

⁶⁹⁹ Day 398/054/05-06

⁷⁰⁰ AQ11.10

⁷⁰¹ AQ11.26 paragraph46

⁷⁰² AQ11.26 paragraph46

FS7.2129

A. No, I do not. What I recall from that meeting I had with them was that I gave them -- I described what had happened to me. At the end of that they said to me there were certain things they wanted to put to me. They put a series of things to me, one about -- which I do not recall now, but I guess it could have been about IRA cars, but I have no recollection of cars in Glenfada Park at all. They then said that there were nail bombs in Glenfada Park and at that point I said, "Well, there were, but they were taken out of the area pretty quickly", and that is why I mentioned the two boys to them.

Q. Your recollection of the sequence of events is that after they had taken down your story, as it were, they started putting to you a series of things that they had heard, propositions they wanted you to agree or disagree with?

A. Yes.

Q. Can we look at the first one? What they have recorded is this: "Quinn told us the following: "1. There were two 'IRA cars' parked in Glenfada Park. He knows they were IRA men, known in the district. Two were in one, unknown in the other. He saw no guns." As written that seems very specific, an acceptance of two cars with known IRA men in them: two in one and an unknown quantity in the other. Do you recall any conversation on those lines or something along those lines being put to you?

A. No, I have no recollection of any cars in Glenfada Park and I understand that there were cars there, but I have no memory of cars at all.⁷⁰³

9A-639 The Tribunal also heard, however, the evidence of both Peter Pringle and Philip Jacobsen who interviewed Michael Quinn together and were both able to confirm that it would not be their usual practice to put such facts to interviewees. Peter Pringle:

⁷⁰³ Day 169/097/22-099/14

FS 7. 2130

Not in, not in the way that we would normally interview people. We would want them to come up with this answer, this information and then we would match it to others.

Q. Do you recall now whether he simply volunteered the information about there being two IRA cars in Glenfada Park or whether you asked him a question about whether there were or were not?

A. I think I just said that I believe that we would not have prompted him in this -- to make that answer. The unfortunate part about it is that my notebooks do not really help us here, they just say there were two cars sitting there.⁷⁰⁴

Philip Jacobsen

..it was not our practice to lead people that we were interviewing, that essentially we were recording their statements. We asked questions where we felt it would be necessary, but what we were most interested in was getting in the most natural form an individual's recollection of events.⁷⁰⁵

P428

9A-640 It will clearly be for the Tribunal to evaluate the photograph **P428** and the suggestion put us to various witnesses that the man shown moving away from the car parked in the south east corner of Glenfada Park may be carrying a rifle, concealed under a coat or similar covering. It may assist, however, to recall OIRA7's description to Mr Clarke as to how such weapons were usually transported by OIRA gunmen and his suggestion that one rifle on the day may well have been concealed by removing a coat and carrying the weapon under it:

Q. You say that you find it difficult to believe that you would have put the gun down the leg of your trousers to help get it

⁷⁰⁴ Day 190/064/18-065/04

⁷⁰⁵ Day 191/149/12-17

FS7.2131

away and conceal it, but you say you suspect that it was covered with a coat; you had a coat and may have used it to hide the weapon, although you cannot recall if you did or not: "All we were concerned with at the time was getting it out of sight." Is it inherently likely that you or one of the two volunteers tried to hide the gun under a coat and, if so, would be likely to have the coat -- the rifle, the gun down the side of the trousers, underneath the coat?

A. Again, from, from memory, um, I do not think any of us wore -- I certainly did not wear a long coat, um, you know, it would have been, it would have been awkward to try and hide a hunting rifle inside a sports jacket, I mean, part of it was going to be protruding. So what I have said there, it is possible that I or one of us took off our coat, jacket, and put it over the weapon, you know. Again, I am not sure if it was me -- if any of us did, but certainly, I mean, the idea of keeping the weapon out of sight.

Q. If that was done, if a coat was taken off and put around the weapon, would the best way of carrying it in order to conceal it be to have it down at your side?

A. Yes, it would have been, yes.⁷⁰⁶

9A-641 OIRA7's evidence in his BSI statement was that:

I suspect it was covered with a coat. I had a coat and may have used it to hide the weapon.⁷⁰⁷

9A-642 Both OIRA1 and OIRA7 gave evidence to Eversheds which may well connect them with this photograph, evidence from which both are now keen to distance themselves.

9A-643 OIRA 7 had identified himself in his BSI statement as the figure in P428.⁷⁰⁸
When questioned by Mr Clarke, however, the following exchange occurred:

⁷⁰⁶ Day 398/045/02-046/02

⁷⁰⁷ AOIRA7.9 paragraph44

FS 7. 2132

Q. Could we have on the screen P428. Am I right in thinking that you believe that you are the young man with a light-coloured jacket which my red arrow is pointing to?

*A. Um, the identity in this photograph is based on the conversation that I had with Eversheds and this identification is based on the identification made at the barrier in William Street who, this morning I said was not me, so, you know I am saying that as certain as I am that that was not me this morning in William Street, this, then, would not have been me.*⁷⁰⁹

9A-644 Mr Lawson put it to OIRA7 that in fact he was correct in his initial identification of himself and that **P428** does indeed show him in possession of a rifle in just the fashion he had described.

Q. I am not going to take up time, Mr Toohey made the point yesterday, what is in the photograph is there to be seen. I will however give you this opportunity. Will you care to tell the Tribunal two things, that is I suggest you, and you know it, one, what were you carrying?

A. Sorry, I was waiting for the question two. Um, when I was in Glenfada Park I was not carrying anything after the rifle was put in the boot of the car.

Q. That could not be you carrying the rifle, could it?

A. It could not because it is too late, um, the rifle at that point is already in the boot of the car.

Q. Of course you have carried a rifle under a coat before; have you not?

A. Yes.

Q. And certainly that photograph of that individual -- I accept that he is in the distance to some extent -- but that photograph

⁷⁰⁸ AOIRA7.13 paragraph66

⁷⁰⁹ Day 398/076/19-077/04

FS 7. 2133

of that individual, it does look, does it not, as though he may be -- he could be carrying a rifle under a coat, could he not?

A. If that was me and I was carrying a rifle under a coat, it would not be as obvious as that, it would be right down beside me, you would not be able to see it.

Q. Not at all?

A. Not to distinguish it to that level, no.

Q. The second question for you, is this: the person behind that which I suggest is you, who is that?

A. I do not know. I do not know.

Q. That individual in the photograph in the white coat, I suggest is you. I also suggest it is more likely -- although I will be the first to accept, it may be open to some different interpretation -- I suggest that person may well have walked from the car that we see in the corner, do you see, parked not appropriately, if you like, in that corner?

A. Yes.

Q. And is making his way, I suggest, towards the northwest corner of Glenfada Park, that is to say not towards the gap where we see the people still crowding through?

A. I do not know, you know, I am saying that to the best of my knowledge that person is not me so I cannot say where they are going, um, I am also -- this is the first time I have actually seen a photograph with these two cars in it as well, I have not seen this photograph before.⁷¹⁰

9A-645 Mr Lawson questioned OIRA1 on Day 396 and put to him the likeness between the man shown in P428 and an individual whom OIRA1 had circled in AOIRA1.51 and identified to Eversheds in as being "a person who looked

⁷¹⁰ Day 399/062-063

FS 7.2134

as if he might be me".⁷¹¹ OIRA1 seemed keen to distance himself from such identification when questioned by Mr Lawson.⁷¹²

Civilian Evidence of Riflemen in Sector 4

9A-646 The Tribunal has heard from civilian witnesses prepared to admit seeing rifles in the area of Glenfada Park. In respect of those witnesses, and indeed all of those who have found the courage to give similar evidence, the Tribunal will no doubt consider again one of the questions raised by Edwin Glasgow QC in his opening address:

*... the second question is: which of those witnesses is likely to be the more reliable, the one who saw the gunman, or the ten who were close to him but say they did not? The handful of people who admit to being aware of terrorist activity beyond the 5th floor of the Rossville Flats, or the hundreds who say nothing about it at all?*⁷¹³

John Leo Clifford

9A-647 In his NICRA statement John Leo Clifford (**AC66**) said, along with many others, that

*During this action at no time did I see anyone carrying guns other than the army.*⁷¹⁴

When, however, he came to give a statement to this Inquiry, he was prepared to admit the following

As I left Mrs Dunlop's house (in Glenfada Park South) and turned northwards whilst still in the Glenfada Park South

⁷¹¹ **AOIRA1.31 paragraph41**

⁷¹² **Day 396/060/20-062/10**

⁷¹³ **Day 051/040/14**

⁷¹⁴ **AC66.8**

FS7-2135

courtyard, I saw about 40 people being lined up and frisked against the southern gable wall of the eastern block of Glenfada Park North by soldiers who were carrying rifles and batons. I cannot remember what was being said at the time. As I was standing there at approximately the point marked N on the attached map (grid reference I15) a civilian gunman ran from the south west corner of Glenfada Park South in a north easterly direction to the north east corner of Glenfada Park South. He was carrying a .303 rifle and wearing a brown suit. He was aged about 26 to 28. He looked around the north east corner of Glenfada Park South but turned round and then ran back in a south easterly direction. I was with my nephew Kevin at the time and he thought that the gunman was a "stickie" that is a member of the official IRA.⁷¹⁵

9A-648 Mr Clifford has, as the Tribunal is aware, not been able to give evidence due to ill health. His nephew, Kevin has made a statement confirming that he saw what he took to be a "stickie" gunman but placing him in the area of the Bogside Inn rather than the position which his uncle describes.⁷¹⁶ Kevin Clifford has not given oral evidence either.

9A-649 The gunman seen by Mr Clifford was of course in a similar area, at a similar time as the IRA man from the OIRA Creggan section described by Mr Martin. OIRA 7 denied when questioned either seeing the man Mr Clifford describes or being involved in the incident himself.⁷¹⁷

Thomas McGill

9A-650 Thomas McGill (AM230) also saw a gunman in the area although he failed to mention this in his NICRA statement⁷¹⁸ and was prepared to tell Eversheds what he had seen only on condition the information not be used. Indeed his

⁷¹⁵ AC66.4 paragraph26

⁷¹⁶ AC67.2 paragraph12

⁷¹⁷ Day 399/034-035

⁷¹⁸ AM230.8

FS-7. 2136

first BSI statement signed on 16 June 1999 makes no mention of such gunman. A note made by Eversheds records Mr McGill as saying, however, that:

...after the shooting had finished he saw a man with a rifle in Glenfada Park. He was wearing a long khaki/brown coat and had a rifle underneath his coat, which you could see. It was a swallow tail coat. Mr McGill spoke to him that day. The man asked him where he could get a firing point and Mr McGill told him to fuck off. After that the man disappeared. Mr McGill thinks that perhaps he came from one of the flats in Glenfada Park and that he was a member of the Official IRA.⁷¹⁹

9A-651 The Eversheds' note records the reason for Mr McGill's reluctance to release this information as being that

He has to live around here.

9A-652 Indeed while admitting the truth of the information he gave in a supplementary BSI statement signed on 22 January 2001, McGill made some attempt to distance himself from detail which might be thought particularly to point to armed OIRA activity in Glenfada Park North. He says in this statement that in fact he did not know the gunman to be a member of the Official IRA but simply assumed that he was as he understood the Provisional IRA had issued orders not to be near the march.⁷²⁰ He also amends the location he had given for the gunman

The note says that I saw the gunman in Glenfada Park. I now do not think that is correct. I now believe that I was in the Abbey Park area. At the time I was not familiar with the area even though I came from Derry.⁷²¹

⁷¹⁹ AM230.11

⁷²⁰ AM230.9 paragraph 6

⁷²¹ AM230.9 paragraph 7

FS 7. 2137

Mr McGill has since confirmed that Eversheds did in fact record his words correctly.⁷²²

9A-653 It is not clear why Mr McGill's familiarity with the area should have improved in the 18 months which elapsed between his two BSI statements some 29 years after the events in question. Indeed in oral evidence Mr McGill appeared, somewhat strangely, to deny that he had been in Glenfada Park at any time. While he confirmed that he had, as he described in his BSI statement,⁷²³ moved past Gerard McKinney's body in Abbey Park to a position near the rubble barricade, he entirely refuted any suggestion that he had passed through Glenfada Park

Sorry, no, I must have come the outside of Glenfada Park, behind it again. I did not come through Glenfada Park.

Q. You did not come through Glenfada Park?

A. No. You have to understand that.⁷²⁴

9A-654 Mr McGill's insistence on this point appears particularly odd as he confirms he was not familiar with the area⁷²⁵ and he did not in fact recall when questioned, first by Mr Clarke and later by Mr Lawson, what route he did take from Abbey Park to the rubble barricade:

Q. Do you think you went down Abbey Park to Fahan Street West, or can you not recall?

A. I cannot recall.⁷²⁶

...

⁷²² Day 069/172/16-20

⁷²³ AM230.4 paragraph24

⁷²⁴ Day 069/102/07-11

⁷²⁵ Day 069/101/17-19

⁷²⁶ Day 069/102/12-14

FS.7.2138

Q. From Abbey Park you went to where, sir?

A. I do not honestly know.

Q. But you ended up somewhere near the rubble barricade; is that right?

A. Yeah.⁷²⁷

Indeed Mr McGill was later prepared to admit when questioned by Mr Lawson that he is in fact is rather confused about where he was that day

Well, I will be totally honest with you, I was running round in circles like other people that day.⁷²⁸

9A-655 Nor, while again stating his certainty that he saw the gunman in Abbey Park, can Mr McGill give any indication at all as to where he saw him:

Q. Do you know whereabouts in the Abbey Park area you saw him?

A. I have not a clue.

Q. Sorry?

A. I have not a clue, no.⁷²⁹

9A-656 It would appear that the fact that the gunman was not in Glenfada Park appeared to be the one certainty which Mr McGill was able and certainly keen to establish as he told Mr Lawson:

I was not in Glenfada Park, that is for sure.

Q. You were not?

A. I was not in Glenfada Park, no.

⁷²⁷ Day 069/127/24-128/04

⁷²⁸ Day 069/154/14-16

⁷²⁹ Day 069/112/18-22

FS-7-2139

Q. At no stage?

*A. No.*⁷³⁰

9A-657 It was eventually put to Mr McGill by Sir Alan Green QC that he was in fact making a deliberate attempt to distance the gunman he had seen from Glenfada Park:

Mr McGill, are you trying to remove all these incidents from Glenfada Park, for some reason?

*A.No, no reason whatsoever.*⁷³¹

The Tribunal will no doubt consider whether Mr McGill had some reason to wish to relocate his evidence in this manner.

9A-658 Mr McGill also initially told Eversheds that he saw this gunman "after the shooting had finished"⁷³² and repeated in his supplemental statement that "The shooting had ended and there were a lot of people milling around".⁷³³ He repeated in oral evidence that: "Well, I can say the shooting was all over at that time".⁷³⁴ Mr Lawson was able to demonstrate, however, that, if indeed Mr McGill saw the gunman in Abbey Park as he claims, this must have been at a stage when shooting was still occurring as Mr McGill's evidence was that there was still shooting from the Army when he reached the rubble barricade.

Q. So that we have the general picture: you go from Abbey Park where you saw Mr McKinney to the vicinity of the Rossville Flats?

A. Yes.

⁷³⁰ Day 069/156/12-16

⁷³¹ Day 069/173/11

⁷³² AM230.11

⁷³³ AM230.9 paragraph9

⁷³⁴ Day 069/112/23-113/01

FS 7. 2140

Q. Yes?

A. Near enough, yes.

Q. Where there is still some shooting going on, as you have told us?

A. Yeah.

Q. Then you go from there to Free Derry Corner and make your way home via Westland Street?

A. Meenan Park and Westland Street, yeah.

Q. And you do not, of course, go back to Abbey Park, because that is not on the way, is it?

A. No⁷³⁵.

...

Q. The problem, Mr McGill, is this: you say when you saw this man –

A. Yeah.

Q. -- the shooting had finished?

A. Yeah, yeah.

Q. Of course at the time you left Abbey Park, the shooting was going on, was it not, and it continued to go on when you were near to the rubble barricade; that is what you have told us?

A. Yeah, yeah.

Q. Was what you were telling us the truth?

A. Yeah, it is the truth as far as I can recall.

Q. If it is true that you saw a gunman in or near Abbey Park, that would be at a time when the shooting was still going on, would it not?

A. To be totally honest with you, there was no shooting at that time, that is what I recall.

Q. Then the shooting must have resumed, because you have told us it had resumed when you were away from Abbey Park, to which you did not return?

A. I told at the start I could not get any sequence other than what, what I seen that day, but there was no shooting from the gunman.⁷³⁶

9A-659 The sequence of events described by Mr McGill would indicate that there was a gunman with a rifle in either Abbey Park or Glenfada Park North when soldiers were still engaged in the area. It is not clear whether Mr McGill's assumption that the gunman was a member of the Official IRA was correct or not. The Tribunal may well consider whether Mr McGill is in some way motivated to distance the gunman he saw from the Glenfada Park area and/or place the sighting later in the day than was in fact the case. Certainly he was reluctant to allow such facts to be released at all, a matter on which he was questioned by Gerard Elias QC

Q. You have said that, as we have seen before in the statement that you have signed on Monday, but you were saying, notwithstanding that, that the reason that you did not tell NICRA this information was that you "had to live around here". I simply want to ask you: by saying that you have to live around here, do you mean that you feared the consequences of telling the whole story?

A. No, I did not, no.

Q. I am sorry?

⁷³⁶ Day 069/155/01-23

FS 7.2142

A. No.

Q. What did you mean, some social embarrassment?

A. As I said before, I did not want to detract from the norm to what I had seen that day.

Q. I understand that.

A. That is all I can tell you about it, to be honest with you.

Q. What does that part of the note mean, you had to live around here, what did you mean by that?

A. I do not honestly know what I meant by that.⁷³⁷

9A-660 Mr McGill admitted in his supplementary BSI that he wished to withhold evidence in order not to undermine what he believes to be the correct outcome.

The reason why I did not this information to be put in my Eversheds statement is explained in the Eversheds note. However, I also did not want people to use as an excuse to detract from the enormity of what I had seen that day.⁷³⁸

9A-661 He further admitted in evidence to the Tribunal that, at the time he met with Eversheds, he was reluctant to place any faith in the Inquiry to determine the truth of the events of Bloody Sunday and remains so reluctant:

Can I be honest with you, when I made that statement, I just thought it was a whitewash, to some extent –

Q. You thought it was what?

A. A whitewash, and I -- the way it was put down, the people misinterpreted what I said when they put it down in the statement. Although I signed the statement, I did not read the

⁷³⁷ Day 069/165/20-166/14

⁷³⁸ AM230.10 paragraph12

FS 7-2143

statement fully through, it is only when I knew I was coming here that I read the statement detail by detail. People told me that they seen four or five bodies in Glenfada Park.

Q. Are you telling us, Mr McGill, at the time you made the statement you were not taking it seriously?

A. I was taking it serious because I feel sorry for the people who were shot and the innocent people who were killed.

Q. But you thought it was a whitewash so you were not too bothered about whether it was right or wrong?

A. Well, I still think it was, to a certain extent.

Q. You still think it is?

A. Yeah.

Q. You think this is a whitewash?

A. To a certain extent, yeah. Time will tell when it comes to fruition, results⁷³⁹.

9A-662 The Tribunal will no doubt consider whether such Mr McGill's declared attitude continues to detract from the reliability of his evidence.

Noel McCartney

9A-663 Noel McCartney (**M55**), a staff reporter for the Derry Journal, gave a statement to the Widgery Tribunal in which he reported being at the gable end of Glenfada Park North close to the rubble barricade when he saw a young man fall, shot in the stomach, who was brought into the area where Mr McCartney was. Mr McCartney then says:

I thought only one man was hit at the barricade, the young man I had seen fall. I went through Glenfada Park to Fahan Street looking for a first aid man. I then saw a civilian with a

⁷³⁹ Day 069/146/03-147/04

FS.7. 2144

*rifle who appeared at the opening to Rossville Street, who crossed inside Glenfada Park in the direction of Abbey Street.*⁷⁴⁰

9A-664 It is not clear whether Mr McCartney saw this gunman crossing Glenfada Park North or South although the only "opening" onto Rossville Street, as opposed to alleyways, is that at the south east corner of Glenfada Park North close to the rubble barricade. Moreover previous references to "openings" in Mr McCartney's statement are clearly to that area.

9A-665 Mr McCartney is, unsurprisingly, unable to assist further as to the exact location of the gunman in giving his BSI statement. He again describes moving from the rubble barricade to Blucher Street and then says that:

*I think that after reaching Blucher Street I then went to the Lisfannon Park area. It was at some point around this time that I saw a civilian wearing a three quarter length coat holding a rifle in an upright position.*⁷⁴¹

9A-666 In oral evidence, Mr McCartney was able to confirm to Mr Clarke that he saw the gunman when he was on his way to find medical assistance as indeed he stated in his statement to the Widgery Tribunal, beyond that fact he was able to recall little about the gunman's precise location, although he did not feel it was as close to the rubble barricade as the opening between Glenfada Park North and South.⁷⁴²

Q. I am asking you what you would have meant by the expression that was used in 1972: "I saw a civilian with a rifle who appeared at the opening to Rossville Street who crossed inside Glenfada Park to the direction of Abbey Street".

⁷⁴⁰ M55.9 paragraph 7

⁷⁴¹ M55.2 paragraph 7

⁷⁴² Day 157/114/13-21

FS 7.2145

*A. I am not sure, but I do not think it was that location, that is very close to the barricade. I think it was some distance from the barricade, from vague memory, that I saw this person.*⁷⁴³

9A-667 It was suggested to Mr McCartney that the phrasing of his statement suggested he had reached Fahan Street before seeing the gunman:

LORD SAVILLE: Mr Clarke, if you look at 55.9, on the account given then, paragraph 7, the third sentence says: "I then saw a civilian" and the previous sentence says: "I went through Glenfada Park to Fahan Street looking for a first aid man." I read that and whether or not Mr McCartney now can help us with his recollection is that it was only when you had in effect got to or virtually to Fahan Street that you saw this civilian; that would be further south than the arrow on the map Mr Clarke has just shown you?

*A. Yes, that would be my memory.*⁷⁴⁴

9A-668 In fact, it would seem that the use of the word "then" in Mr McCartney's SC statement may be somewhat misleading as it is difficult to see how Mr McCartney could see the man cross Glenfada Park having already reached Fahan Street. Much conjecture followed as to the meaning of Mr McCartney's SR statement but he was unable to assist a great deal further.

MR CLARKE: If we go back to the map at M55.11, one possibility, if your recollection of your route is correct, is that you went through Glenfada Park South to Fahan Street and that the civilian who appeared at the opening to Rossville Street and crossed inside Glenfada Park in the direction of Abbey Street appeared here and went across in that direction; is that possible?

*A. That is possible, but I cannot remember.*⁷⁴⁵

⁷⁴³ Day 157/116/15-23

⁷⁴⁴ Day 157/116/24-117/12

⁷⁴⁵ Day 157/117/13-21

FS-7-2146

MR TOOHEY: Mr McCartney, still to your right: I suppose if you had come into Glenfada Park South and gone down to the southeastern exit, you really would have been going into, what could be described as then going into Rossville -- or an opening to Rossville Street?

A. Yes.

MR TOOHEY: But make of that what you will. That would seem to be the only position in which you could really, having described the route that you took, be speaking about an opening into Rossville Street as opposed to an opening into Fahan Street?

A. Yes, I understand what you are saying.

LORD SAVILLE: Again, back to the Chairman: we must not put words in your mouth or anything like that, but another possibility is that you left the gable end of Glenfada Park North, went through the northeastern entrance into Glenfada Park South -- am I making myself clear to you at the moment -- went across Glenfada Park South and as you did so, saw the rifleman at the southeastern entrance to Glenfada Park South, which would of course lead into Rossville Street. I do not want to put any ideas in your mind, it is your recollection that counts and not our theories, but is that a possibility?

A. Sorry, could you retrace that for me, please?

LORD SAVILLE: Mr Clarke, if you can do it, you can probably do it better than I can.

MR CLARKE: The possibility that is being envisaged, is this: you start off at B, you go into Glenfada Park South, you cross in that direction, which will take you eventually into Fahan Street. (Marked with red arrows - M55.12). But as you pass you see to your left and coming in effect off Rossville Street the man with the rifle coming in there, such that you describe in your contemporaneous statement, him as appearing at the opening to Rossville Street, the only opening into Rossville Street in Glenfada Park South other than the one which you had entered into from the gable end being where that blue arrow is? (Marked with blue arrow - M55.12).

A. Yes, I understand what you are saying. All I can say is that my memory is more of seeing the man between Glenfada Park and Abbey Park, as opposed to that location. My memory would be to come across the first part of the arrow because

there was a wall here, therefore, I think I went to that for safety to cross inside the park to make my way up towards Blucher Street. But my memory at the moment would have been seeing that man between Glenfada Park and Abbey Park.

Q. And Abbey Park. Could we just preserve this image at M55.12 so that we can see what was being suggested. the red being your route and the suggestion having been that you may have seen the rifleman at the blue point, but your recollection now is that he was closer to the area between Glenfada Park South and Abbey Park; is that right?

A. Yes.⁷⁴⁶

9A-669 It is clear that Mr McCartney saw this gunman in the Abbey Park/Glenfada Park area at a time when soldiers were engaged in that area of the Bogside. Mr McCartney is confident that he saw the man on his way to Blucher Street to obtain medical assistance, shortly after seeing Michael Kelly fall.⁷⁴⁷ Certainly having reached Blucher Street and then travelled on to Lisfannon Park Mr McCartney says that "I heard more shooting",⁷⁴⁸ again confirming the early stage at which he saw the man with a rifle. Mr McCartney was able to confirm in his BSI statement that "shooting was still going on"⁷⁴⁹ when he reached Blucher Street.

Rifles – Conclusions

9A-670 While it is impossible to be sure of exact timings and positioning, there is persuasive and cogent evidence, from both well-corroborated press articles and civilian eyewitnesses that there were rifles in and around Glenfada Park North at the time when soldiers were engaged in the area. There are a number

⁷⁴⁶ Day 157/118/22 –121/06

⁷⁴⁷ M55.9 paragraph6

⁷⁴⁸ M55.9 paragraph7

⁷⁴⁹ M55.2 paragraph7

FS 7.2148

of points of correlation between what is known of the movement of those weapons and the accounts given by soldiers of armed men in the area.

Soldier G's Shots into Columbcille Court/Glenfada Park Alleyway

9A-671 The information contained in PIN437 and L210 shows that weapons were moved out of one or more IRA cars in Glenfada Park at a time after troops moved into the Bogside. Those weapons included two .303's, a carbine, a Sten and a .22 automatic.⁷⁵⁰ There is further information before the Tribunal to indicate when and where those weapons were taken.

9A-672 OIRA1 told John Barry that he:

Shouted to everyone to retreat. All did except for one -- who ran up to what OIRA1 swears was the northwest corner of Glenfad, that is the corner towards Wm St and furthest from the flats. OIRA1 says he got up on a balcony ---on the front of C. Court, he said the bloke told him later,---and got in a couple of shots with the .22 automatic.

9A-673 He repeated the account to Gerard Kemp, although without apparently suggesting that this man was acting against orders:

One guy got on to a balcony and fired at the Paras.⁷⁵¹

9A-674 Soldier G in his first RMP statement at 0215 hrs on 31 January 1972 stated that:

We moved further up the street and I saw a gunman positioned behind a wall at the end of an alleyway about fifteen yards

⁷⁵⁰ AOIRA1.1

⁷⁵¹ L210

FS-7-2149

away. I fired two quick rounds....I ran up the alleyway with F into Glenfada Park area. We were followed by two others.⁷⁵²

The position of that gunman as marked on map **B171** shows him at the north west exit to Glenfada Park.

9A-675 Soldier G repeated his evidence in his SA statement:

I saw F start to move forward, so, as it was a short distance to the next cover, I moved with him. I think F might have stopped on the way to cover me and I went to the end of the wall which runs to the alleyway. I refer to the photograph marked "Soldier G". When I got to the end of that wall, just before I got to the opening, someone shouted, "Look out, there's a gunman up there" or words like that.... When I looked round I saw a man dodging in and out of an alleyway...I caught a glimpse of what might have been a weapon. After being warned to look out for a gunman I am satisfied that that is what I saw. From the way he moved and the manner in which he carried the object in his hands I was sure he was a gunman. One of the others had to get across the alleyway and to keep this man's head down I fired two shots at him on the line shown, marked 2. I was aiming at him, though I thought it was unlikely I would hit him, but anyway it served the purpose of keeping his head down.⁷⁵³

9A-676 Soldier G gave the same evidence of a man "dodging about" in this alleyway with "a weapon of some description" to Lord Widgery at B193 A to E. He confirmed, when cross-examined by Mr Read, that it appeared to be a rifle due to "The way he was holding it and the way I caught a quick glimpse of what appeared to be a weapon".⁷⁵⁴ Soldier G was confident he did not hit the man and both his shots had struck the wall.⁷⁵⁵

⁷⁵² **B168-9**

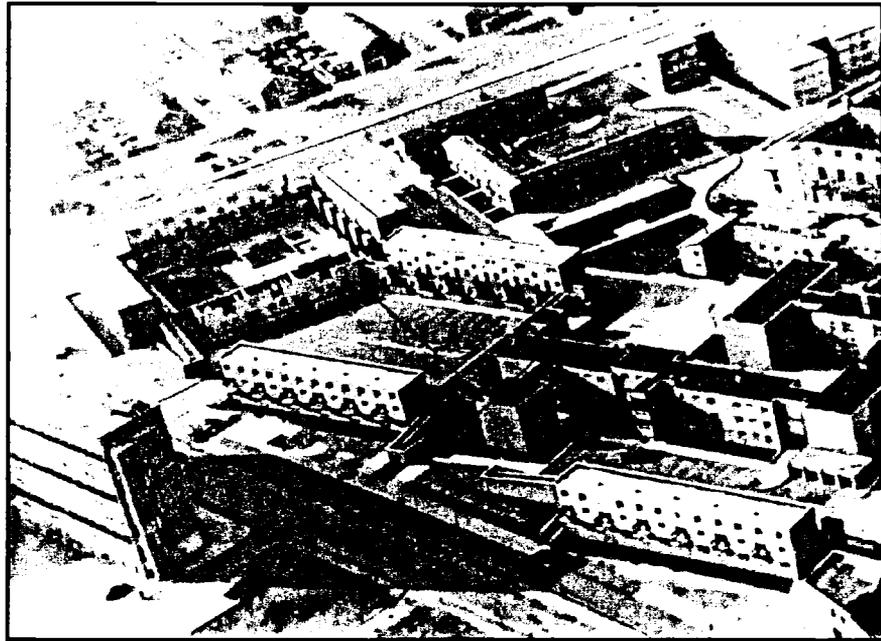
⁷⁵³ **B186**

⁷⁵⁴ **B205 at G**

⁷⁵⁵ **B206 at E**

FS-7-2150

9A-677 There is then a considerable coincidence in the evidence reported in PIN437 and L210 of a rifleman exiting Glenfada Park North via the north west exit to and the evidence of Soldier G that he saw a man with a rifle in just that position.



P11 –Trajectory of Soldier G’s Shot

Rifles Carried in Glenfada Park North

9A-678 The Tribunal also has before it evidence as to what is likely to have happened to the other weapons taken from cars in Glenfada Park.

9A-679 The Tribunal will note the movements of those OIRA members who have admitted being concerned in depositing a rifle in a car parked in Glenfada Park and who, based on the information contained in PIN437, must be assumed to have been involved, with others, in the later movement of weapons out of the area. The time at which these weapons were being moved is also of considerable relevance of course.

FS7-2151

9A-680 It is, first, apparent from the course of events related in PIN437 that the attempt to remove weapons from the car parked in Glenfada Park North was made some time after OIRAI had returned and to secure his rifle in the car as OIRAI "went back to the Glenfada, put the rifle back in the boot of the car and waited rather at a loose end." It is also clear that weapons were removed from the car at a time either after Michael Kelly was shot or, at the earliest, after the Pigs had entered Rossville Street as:

Then he either a) saw Kelly's body, or b) saw the Saracens coming in. From other sources, the latter is the only conceivable one. OIRAI was appalled. Someone shouted to him, and he went round the gable to see. Behold, the Saracens approaching. He sped back into Glenfada and shouted to them to get the car out....

9A-681 Whatever the exact timing of the attempts to remove the weapons there is then some further elapse of time as

There were five or six Stickies around the car, and they couldn't get the thing out in time. OIRAI said to abandon it, and get the arms out of the boot. They did: the arms consisted of a Sten, a carbine, two 303's and a .22 automatic". He toyed with the idea of trying to make a fight of it, but rejected the idea. "The men weren't in position." Shouted to everyone to retreat. All did, except for one.....

9A-682 The Tribunal may well conclude that the activity described occurred in the short but crucial period when members of Anti Tank Platoon were observing movements at the Rubble Barricade and subsequently moving into Glenfada Park North, hence Soldier G's encounter with the rifleman exiting via the north west exit. That scenario is also important when examining the accounts of soldiers who saw rifles at the rubble barricade as set out in Chapter 8 of these submissions.

9A-683 OIRAI, in his accounts to Mr Barry and Mr Kemp, said that, having given the order to move the weapons from the car, he went to a position on the

FS 7. 2152

rubble barricade. While, as PIN437 itself notes, OIRA1 had "very hazy chronology", the sequence of events that he relates is:

PIN 437

He sped back into Glenfada and shouted to them to get the car out... ..

.....There were five or six Stickies around the car, and they couldn't get the thing out in time. OIRA1 said to abandon it, and get the arms out of the boot. They did...

OIRA1 seems to have blown his mind at this point because he relates in great detail how he saw Micky Kelly...a young cousin of his...fall behind the gable. Pressed, he says that what he saw was a crowd around him, a figure in a white shirt, he thinks. But he insists that he then saw, obliquely, three figures standing at the barricade and a burst of automatic... "machine gun"...fire, at which three fell....adding austerely: "Whether they were hit or not I could not say"

L210

The Paras moved up and I told our boys to get their weapons out of their cars....One guy got on to a balcony and fired at the Paras. Someone else fired with the pistol. I was by the barricade in Rossville Street next and saw three civilians go down....

9A-684 While OIRA 7 he has not mentioned it in evidence, it would appear from notes taken by Paul Mahon that OIRA7 was also in the area of the gable end of Glenfada at some stage. Unfortunately, Mr Mahon can no longer assist in further interpretation of those notes:

Q. Can we look at AM19.251, please. If we could expand the top part, please. As I indicated, this is a page from your notebook 3. As I indicated at the beginning of the day, the reference to OIRA 1 should be a reference to OIRA 7. I think I sent to you the name of OIRA 7 a while ago; you still have that name in your mind?

A. Yes.

FS-7. 2153

Q. Help me, please, with some of the handwriting: "Took Joe Mahon's coat off him." What is the next word?

A. "Is pictured at gable end of Glenfada."

Q. Then there is page 194 and 195, "possible sighting in combat jacket." The page 194 and 195, would that be a reference to a volume in part of the Widgery material?

A. I cannot help you there, I cannot be specific on that at all.

Q. Looking at that, what this entry appears to relate to is OIRA 7 being in the area of Glenfada Park and that he could be identified on photographs; is that a possibility?

A. I am sorry, I really do not know who Official IRA 7 is, I have no idea who he is.

Q. The name actually does not ring any bells with you?

A. It does not, no.

Q. So you cannot assist with this entry at all?

A. Not at all, no.⁷⁵⁶

9A-685 It is clear from his response to Mr Rawat's further questioning, however, that he was given this information about OIRA 7:

Q. "OIRA 7 took Joe Mahon's coat off him as pictured at gable end of Glenfada. Page 194 and 195. Possible sighting in combat jacket." That appears to relate to OIRA 7 being in Glenfada Park and one could see OIRA 7, he could be identified on photographs. I am going to send you the name of OIRA 7 once again. Please do not say the name out loud. Do you know that man?

A. No.

Q. You never met him?

⁷⁵⁶ Day 411/127/23-128/23

FS 7. 2154

A. No.

Q. At one time it would be right, would it not, someone gave you that name, because you made a note in your notebook?

A. Did I really; is that what the redaction is –

Q. Yes, that is the name.

A. Right, well, someone must have given me the name, um, certainly, because you seem to have here two members of the Official IRA, who have the same surname.

Q. Can I stop you there for a moment, Mr Mahon. I want to give you a copy page with the redaction removed.

A. Fine. (Handed)

Q. Please do not read it out and please do not comment on the name, but you have there a full name as in a first name and a surname. That is the name of OIRA 7. You have said that the name does not mean anything to you, but the fact –

A. Only the comment that I have just made regarding to two members of the Official IRA who seemed to have the same surname.

Q. The point is, what my question goes to is that that is the name that appears on this page; that is right, is it not?

A. That is correct.

Q. So someone must have given you that name?

A. They must have done.

Q. Someone must have told you about OIRA 7?

A. That is right.

Q. You must have shown someone photographs and that person must have identified OIRA 7 on those photographs?

A. Why do you assume that?

Q. Because of this entry here and this entry here, "is pictured at gable end of Glenfada," could that be a reference to OIRA 7? (Indicating)

FS 7. 2155

A. You are telling me it is, yes.

Q. I am asking you: could that be?

A. It could be, yes.....

...A. Unfortunately, Mr Rawat, I cannot help you at all, I cannot even help you with regard to the individual concerned.

Q. You have told us you cannot remember the individual concerned?

A. That is right.

Q. What I am suggesting to you is that someone must have told you the information you have recorded?

A. I agree with you, absolutely.

Q. Do not give the name, but can you remember who that person was?

A. No idea at all.⁷⁵⁷

9A-686 In examining the evidence of the movements of Official IRA men close to the rubble barricade the Tribunal will no doubt bear in mind the evidence of Soldiers F and INQ0635 as to the rifles which they saw at the rubble barricade while they were positioned at the Kells Walk Wall. Soldier F said in an undated RMP that

I saw three men move from the barricade north west into the area of Glenfada Park flats. One of the men was carrying what looked like a rifle. Myself and G of my Company ran down an alleyway and came into a square.....⁷⁵⁸

Soldier F repeated that evidence in his SA statement:

⁷⁵⁷ Day 412/003/23-006/21

⁷⁵⁸ B129

FS 7 2156

I then saw three men leave the barricade. One was carrying a rifle, and they moved to the right in the direction of Glenfada Park. Myself and G moved round the side of the wall and into GP in order to cut their retreat off.⁷⁵⁹

And to Lord Widgery:

After the man I had shot had fell to the ground three persons, one who was carrying what appeared to be a rifle, left from the barricade moving to the right into GP.⁷⁶⁰

9A-687 INQ0635 also recalled seeing rifles at the barricade saying in his BSI statement that:

...the next thing I remember was seeing three possibly four men move out from the south gable end wall of the eastern block of GPN ...towards the RB...I believe that two possibly three of these men were carrying weapons. I remember clearly seeing the wooden stocks of two weapons.⁷⁶¹

9A-688 Soldier F saw the men who had decamped from the rubble barricade once he entered Glenfada Park North. His undated RMP statement continued:

I saw the three men on the other side of the square about thirty metres away near to 24 Glenfada Park, south west of our position. I shot and hit one man as he attempted to throw an object which looked like a nailbomb. I saw G fire and hit another of the men who was carrying what appeared to be a rifle.⁷⁶²

9A-689 Soldier F explained in further detail to Lord Widgery that:

Q. When you went in there you saw these men inside?

⁷⁵⁹ B137.4-5

⁷⁶⁰ B141 at E

⁷⁶¹ C635.3 paragraph21

⁷⁶² B167.031

FS-7. 2157

A. Yes.

Q. Did you see any man with a rifle at that stage?

A. The person I saw at that stage was the person attempting to throw a nail bomb.....

Q. Did you see any rifle at that stage?

A. At that stage I saw a person with a rifle.

Q. You did see a person with a rifle inside Glenfada Park?

A. Yes.

Q. Where was this person with the rifle that you saw inside Glenfada Park?

A. With the three men in my frontal direction, he was the middle man.

Q. You fired at the man with the nail bomb?

A. Yes.

Q. What about the man with the rifle?

A. G fired at the man with the rifle. Sir.⁷⁶³

9A-690 Soldier G had not seen the man with the rifle while at the rubble barricade but did see him once he and other soldiers had moved into Glenfada Park North.

9A-691 In his first RMP statement taken on 31 January 1972 at 0215 hours he said that:

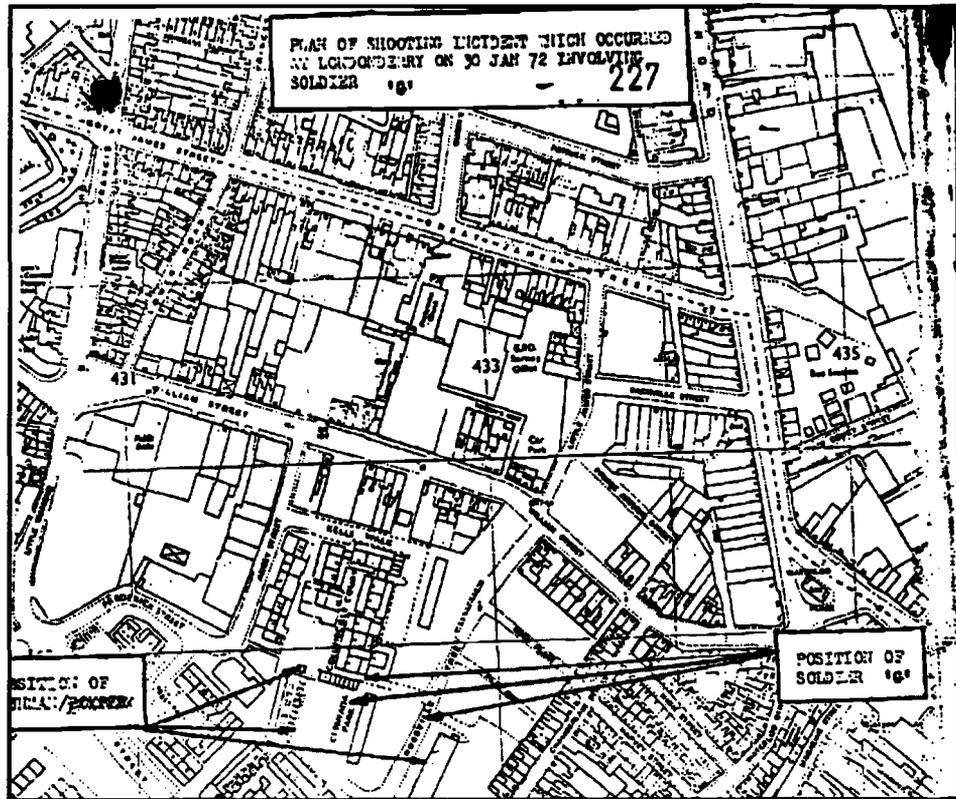
On entering the square I saw two men standing about twenty five metres away, both of them were holding what appeared to be small rifles in their hands. There was a small group of

⁷⁶³ B167.055 at D - B167.056 at C

FS.7.2158

*people standing near to them. I fired three aimed shots at one of the men and I saw him fall to the ground.*⁷⁶⁴

The position of the men Soldier G had seen was marked on a map at **B171**.



B171

⁷⁶⁴ **B169**

FS 7-2159

9A-692 Soldier G described the scene further in his SA statement:

As I got round to the end of the car two men attracted my attention in the opposite corner of Glenfada Park at the end of the line marked 3 on my photograph. These men were armed. I cannot identify their weapons exactly but I think they were short rifles like an M1 carbine. They both had some weapon of this sort. I immediately dropped to one knee and fired three aimed shots at one of the men.⁷⁶⁵

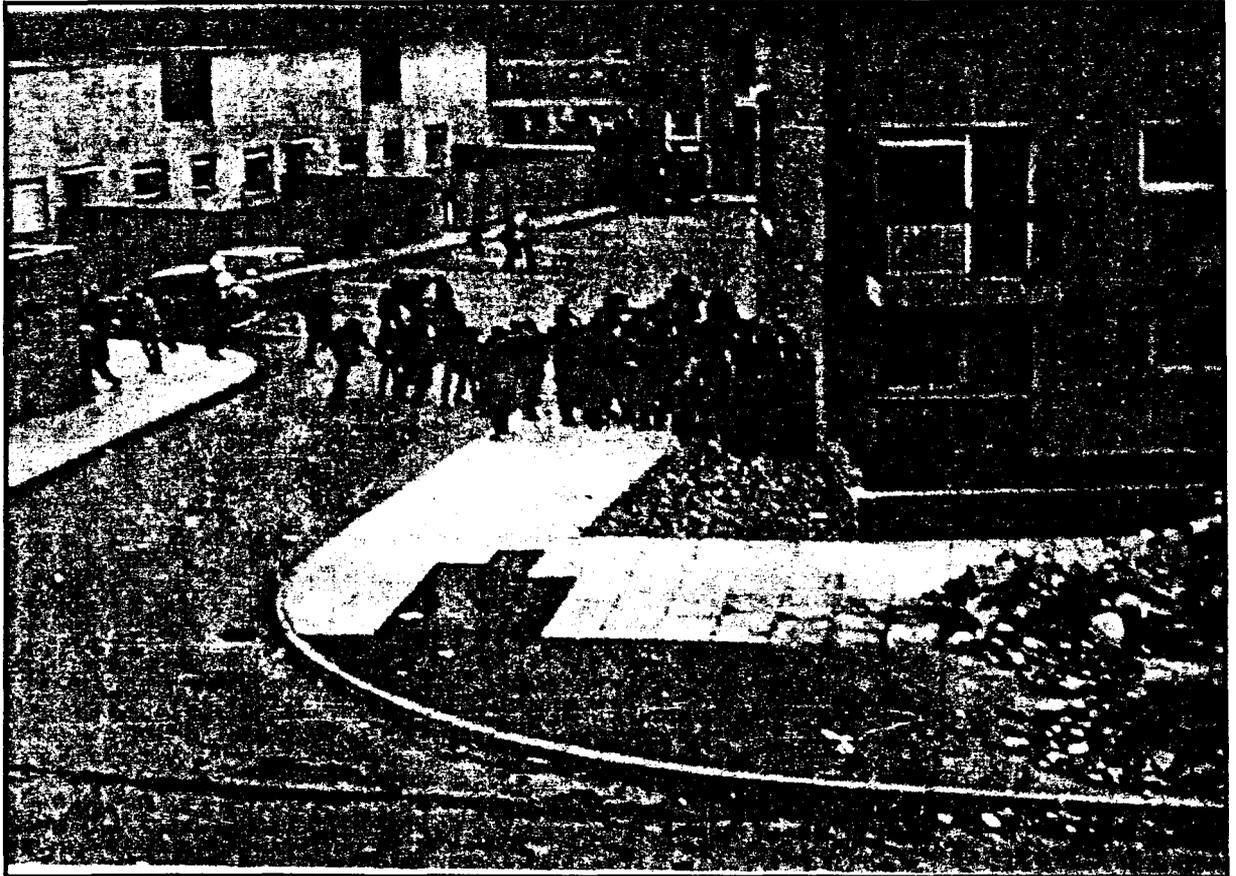
Soldier G repeated his evidence to Lord Widgery in very similar terms.⁷⁶⁶

9A-693 The movement of armed men within Glenfada Park itself at the time that soldiers entered is corroborated by one of the few pieces of available photographic evidence in the area. P428 depicts the scene in Glenfada Park before any casualties have fallen there but shows civilians rushing to exit the area, many via the south west exit. That is the scene described by many civilians shortly before the entrance of soldiers into Glenfada Park North.

⁷⁶⁵ B186.5-6

⁷⁶⁶ B194 at C - B195 at C

FS7-2160



P428

9A-694 In view of their admission that they had been handling weapons that day and the information contained in PIN437 and L210 the Tribunal will no doubt wish to consider the movements of OIRA1 and OIRA7 in Glenfada Park North. OIRA7 reported in his BSI statement being part of the group which rushed for the south west corner as soldiers entered:

Very shortly after I saw the group of people carrying Michael Kelly, the square just erupted with gunfire from behind coming toward us....Everyone started running to the south west

FS7. 2161

exit... There was a big scramble to get through that south western exit.⁷⁶⁷

I therefore made my way dodging the shooting to the entrance at the south western corner of Glenfada Park. There was a wall behind which I could shelter and I ran in right to this wall....⁷⁶⁸

9A-695 While making for the corner, OIRA7 has also reported in his BSI statement being close to Joseph Mahon when he was shot:

Seeing photograph P428 has shocked me. I believe that I can see myself in this photograph. I believe that I am at the point of running towards the southwest exit that is crowded ahead of me. I have a memory of there being shouting and shooting, and I recall glancing over my right shoulder as if to see if I could dodge the bullets, which were coming.... I also note that there is someone close to the fence at the south of the square – to my left. I believe that this is Joe Mahon, who I knew, and who I later became aware was shot there.⁷⁶⁹

9A-696 OIRA7 then doubted when questioned by Mr Lawson that this was in fact him but still believed he had been close to Joseph Mahon when he was shot, either in the same relative position as shown in **P428** or slightly to the North. He explained the position when questioned by Mr Lawson about that photograph:

OIRA7 it looks as if this group of three, including the man you previously thought was you, have been running from the southeast corner of Glenfada Park, in this area, to the southwest, whereas, of course, you had come in from the northeast and come down the centre; is that right?

A. That is correct.

⁷⁶⁷ **AOIRA7.12 paragraph61**

⁷⁶⁸ **AOIRA7.13. paragraphs 67-68**

⁷⁶⁹ **AOIRA7.13 paragraph66**

FS 7-2162

Q. Would you agree that that may be another indication that it cannot be you in the spot marked by the blue arrow that I have put on the screen?

A. The possibility exists that it is me. I am saying that the identification was based on the identification made at barrier 14.

Q. But if-- sorry, go on.

A. You know, if, if I had been on the -- actually in the courtyard itself, um, I might not have appeared in the photograph, but I, I do remember actually seeing a young boy, um, stooped over, you know, assuming that he had been shot.

Q. Sorry, you say you remember seeing a young boy stooped over and you assumed that he had been shot?

A. Yes.

Q. Where did you see a young boy stooped over?

A. Against the fence. My memory of the day is that I saw someone against that fence who was stooped over after, after or in the midst of the shooting and that person I believe to have been Joe Mahon.

Q. What your evidence amounts to is: the person whom you think was Joe Mahon is shown in this photograph in the position from which Joe Mahon was eventually taken?

A. That is correct.

Q. And you recall somebody in that position in a stooped position; is that what you are saying?

A. Yes.

Q. Why did he appear to be stooped, could you tell?

A. I, I assumed he had been shot because, um, the Army had opened fire from inside the square.

Q. Where were you when you saw him in that position?

A. If the person in the photograph that I had previously identified who has got the blue arrow, if that is not me, then I would have been further north than that.

FS 7. 2163

Q. More towards the middle of the –

A. More towards where I left the arrow off on the last photograph.⁷⁷⁰

9A-697 OIRA7 confirmed his understanding that the boy shown in this photograph was Joseph Mahon.

Q. Am I right in thinking that the person whom you had thought was Joe Mahon is the person I am identifying with the yellow arrow?

A. That is correct.⁷⁷¹

9A-698 He then says that, having run to the south west exit in order to take shelter there:

I then remember looking round when I got there and seeing Jim Wray lying on the ground.⁷⁷²

9A-699 OIRA7 was then clearly close to those who were shot in Glenfada Park North and in the area where gunmen were seen by Soldiers F and G. Indeed he was under the impression that a shot had been aimed at him as he ran for the south west exit:

I remember seeing soldiers aiming their weapons. One aimed a deliberate and aimed shot in my direction.⁷⁷³

9A-700 He says he was not aware that OIRA1 was also running for the south west exit:

⁷⁷⁰ Day 398/078/07-079/25

⁷⁷¹ 398/076/19-078/02

⁷⁷² AOIRA7.13 paragraph67-68

⁷⁷³ AOIRA7.12 paragraph62

FS 7. 2164

When I, when I went into the southwest corner of Glenfada Park, there were quite a few people scrambling to get through it, um, I do not -- you know, he may or he may not have been there. If he was there, I did not see him (OIRA 1⁷⁷⁴). This is where a number of the casualties were too.

9A-701 OIRA 1 has confirmed on a number of occasions however that he was also part of the group rushing through the south west exit. He gave Mr Barry the following account:

He says that there was then the buzz that troops were coming up to Glenfada. He ran for it across Glenfada, out to the Abbey Park entrance. He says that there were two or three people in front of him, and he is convinced he was the last person to make it. He says there were five or six behind him. Says the person first behind him was Wray whom he claims to have known....⁷⁷⁵

The Tribunal will note that, this account makes no mention of OIRA1 having left Glenfada Park North between evacuating the car and running for the southwest exit. The Tribunal will therefore wish to consider whether he was still carrying a weapon as he exited via the southwest corner

9A-702 The fact that OIRA1 did exit Glenfada Park immediately in front of James Wray was confirmed by him to Mr Kemp:

We started running. James Wray was shot dead just behind me.⁷⁷⁶

9A-703 OIRA1 has confirmed in his evidence to this inquiry that he did indeed exit in this manner⁷⁷⁷ although he no longer recalls being next to James Wray.⁷⁷⁸

⁷⁷⁴ Day 398/056/20-24

⁷⁷⁵ AOIRA1.2

⁷⁷⁶ L210

⁷⁷⁷ AOIRA1.29 paragraph30-33

FS 7. 2165

9A-704 The Tribunal has now finally learned, at a very late stage indeed, of evidence to confirm that there were armed Official IRA members close to James Wray when he was shot (and, by inference therefore, also close to Joseph Friel and Michael Quinn).

9A-705 Paul Mahon has finally revealed to the Tribunal that:

In relation to matters concerning Glenfada Park, I was told by Liam Wray that many years after Bloody Sunday he was approached by a former member of the Official IRA, who told him that he was sorry about what had happened to his brother, Jim, on Bloody Sunday. He explained that he, and another member of the Official IRA, were exiting Glenfada Park North through the alleyway into Abbey Park, carrying unconcealed weapons. He explained that the crowd rushing towards the exit at the time had held back at the sight of the two armed Official IRA men. The Official IRA man told Liam Wray that they both got through the alleyway into Abbey Park and within seconds of their exit heard the gunfire directed towards that position. I asked Liam Wray if he would provide the identity of this man or if it would be possible for him to speak to me and he said that there would be no possibility of this man speaking to me.⁷⁷⁹

9A-706 Mr Mahon confirmed to the Tribunal that he was given this information by Mr Wray in 1999 but was never told the name of Mr Wray's source:

A. I think it would have been 1999, but I cannot be absolutely definite about that. I remember the location I was in when he told me.

Q. Presumably this conversation with Mr Wray was not in the context of a formal interview?

A. No.

⁷⁷⁸ AOIRA1.34 paragraph71

⁷⁷⁹ AM19.14 paragraph34

FS-7-2166

Q. Did you ever conduct a formal recorded interview with Mr Wray?

A. No.

Q. Did you make a note of the details of this conversation?

A. No.

Q. Was there any reason why you did not make a note of that?

A. There was no -- I might not have had my notebook on me at the time, but it was something I was not going to forget, anyway.

Q. Did you ever identify the Official IRA man who was said to approach Mr Wray?

A. I could guess who it was.

Q. Perhaps a guess is not good enough; but did you ever identify it?

A. In terms of getting --

Q. Did you ever find out who it was?

A. A specific name, you mean?

Q. Yes?

A. No.⁷⁸⁰

9A-707 Mr Wray has of course repudiated this account and denigrated Mr Mahon saying in a statement dated 18th January 2004 that:

I have been asked to make a statement to the Inquiry to comment on certain passages contained in the statement of Paul Mahon at AM19. For the reasons I will return to later, I make this statement with the utmost reluctance.

⁷⁸⁰ Day 411/124/24-127/22

FS 7. 2167

Regarding the apology made by OIRA he says:

What Paul Mahon says in this paragraph is a complete and utter fabrication. I have never been approached by any person, neither civilian or purported current or former member of any paramilitary organisation, apologising to me for being in any way responsible for the murder of my brother and I have never given Paul Mahon any such account.

Mr Wray intimates that Mr Mahon has drawn on the Insight Article published by the Sunday Times team in providing this account to the Tribunal

The only knowledge I have ever had, other than that contained in material generated through this Inquiry about IRA activity in and around Glenfada Park, derives from the Sunday Times article published on 23rd April 1972 (now in the Inquiry material at L211-214). My late father had retained a copy of this article since its publication and had passed on to me in later years. The article makes reference to an Official IRA leader speaking about guns taken from a car in Glenfada Park by men who retreated through the alley into Abbey Park. I have never heard of this story, other than in the Sunday Times account, and I have certainly never spoken to anyone who claimed to be involved in such an episode. I am certain that Mahon and I would have discussed the contents of this article during our many discussions.... I reject in its entirety Paul Mahon's claim that I ever said anything to him of the nature set out in this paragraph. He is either genuinely mistaken or telling a deliberate lie about his recollections of a conversation we had arising out of the Sunday Times article.

9A-708 Mr Mahon rejected in the firmest terms possible any suggestion that he was either mistaken or lying in his account of this conversation with Liam Wray:

Q. Mr Mahon, first of all, are you "genuinely mistaken"?

A. Definitely not.

FS 7. 2168

Q. Are you "telling a deliberate lie"?

*A. I certainly am not.*⁷⁸¹

9A-709 Mr Mahon also dealt with the suggestion that he had drawn the factual basis for Mr Wray's allegedly fictitious comments from the Sunday Times Insight article:

Q. You must be aware of the Sunday Times article; must you not?

A. I am.

Q. Can we go over to the next page again. As Mr Wray points out, reference to guns being taken from a car in Glenfada Park by men retreating through the alleyway into Abbey Park appears in that article; you are aware of that?

A. I am aware of it now that you have told me. What I was recently made aware of through the Inquiry was notes taken by John Barry at the time, right, who was the Sunday Times Insight team editor, and I note that John Barry actually says that two Official IRA men exited from Glenfada Park North into Abbey Park, but he does not say in those notes that they were armed, but it was quite interesting as well, from my point of view, because what he was saying was, as soon as they had exited from Glenfada Park North into Abbey Park, there was immediate gunfire.

Q. But you did not have John Barry's notes at the time you spoke –

A. I did not, I did not no.

Q. It is quite clear that you and Mr Wray are at complete odds over this conversation, as you will appreciate?

A. Oh, there is no doubt at all about -- I have got to say that Mr Wray is lying here; sheer, unadulterated lie, because that

⁷⁸¹ Day 411/130/21-134/06

FS 7. 2169

conversation did take place with me and I can remember the exact location where that conversation took place.

Q. Even though you did not have, for example, John Barry's notes, you would have appreciated at the time that it was quite a controversial piece of evidence; would you not?

A. Oh, indeed. The fact, the existence of guns in Glenfada Park North, my understanding of that, that it was the Sunday Times, um, in their article in April 1972, their long article, that first established a car, I think, in Glenfada Park North with weapons in it.

Q. If we go back to AM19.14, please, and again look at paragraph 34. My questions, Mr Mahon, are directed to your knowledge at the time that this conversation occurred, because if one reads this on its own there are two pieces of information that come from it. One is that that Official IRA man and another member of the Official IRA were carrying unconcealed weapons in Glenfada Park North on Bloody Sunday and that that Official IRA man felt sufficiently guilty that he had to approach Liam Wray. Now, both those pieces of information are quite controversial; would you not agree?

A. Indeed.⁷⁸²

9A-710 The matter was raised again by Lord Gifford:

Q. Or is it what you are remembering is not something that Liam Wray told you about in his source of his, but something that you were discussing with him about the supposed source of the Sunday Times?

A. No, let me be extremely specific: what I have written in my statement with regard to what Liam Wray told me is absolute, total gospel truth.⁷⁸³

⁷⁸² Day 411/134/07-137/05

⁷⁸³ Day 412/120/19-25

FS-7.2170

9A-711 The Tribunal has been given no reason to doubt Mr Mahon's credibility and honesty on this and many other issues and he indeed provided his own defence of his integrity and honesty which the Tribunal will consider:

It would not have been right if I was only interested in the activities of the 1st Battalion of the Parachute Regiment. What sort of researcher would I really be then? Where would my credibility lie as a researcher if I was only interested in one side of the story? I always made it very, very plain to the families that what I wanted, what I wanted was the whole truth, hook, line and sinker, warts and all. That, to many, many people in the north of Ireland is not acceptable.⁷⁸⁴

And later to Lord Gifford

A. Lord Gifford, you can stand there and say what you want and you can call me a liar. Do you think after six years of research I would come here and lie to this Tribunal? I certainly would not lie to this Tribunal at all. I have got too much respect for what this Tribunal is trying to achieve and the justice it is trying to give the people of this city, to come here and lie to it. There is nothing in my statement that is a fabrication and there is nothing in my statement that is a lie and I want you and I want this Tribunal to understand that.⁷⁸⁵

9A-712 Perhaps more tellingly, the Tribunal will recall both Mr Mahon's antipathy towards the Parachute Regiment as a whole and the fact that his motivation for coming forward to this Tribunal was to provide it with his research as to former alleged wrongdoing by the regiment. The Tribunal will also recall what might be described as his eulogy to James Wray on Day 412 ending with the words

He was a top man, a top man, and do you think for one minute that I would come here and try and discredit him or his family

⁷⁸⁴ Day 412/070/07-16

⁷⁸⁵ Day 412/128/19-129/05

FS 7. 2171

*or anyone else connected to him? I have come here and I have told the truth and that is the situation.*⁷⁸⁶

9A-713 The Tribunal may consider that it is inconceivable that Paul Mahon would have gratuitously invented the account of his conversation with Liam Wray as the latter claims.

9A-714 The Tribunal may also recall the evidence of OIRA7 as to his, somewhat inexplicable, account of his feelings of guilt in relation to Joseph Mahon, the boy he believes he was standing close to when he was shot and badly injured:

Q. Was it, do you think, about the time of your being filmed for the purpose of the video or the television programme that was referred to, the 25th anniversary one?

A. It may have been around that time, I am not sure.

Q. Because that, so far as we know, is about the time when Mr Mahon first made mention, having made statements previously, first made mention of seeing Jim Wray shot in about 1997; was that about the time you spoke to him?

A. I cannot recall when I spoke to him. I know at a point a conversation took place in which I mentioned the coat.

Q. And when the coat was mentioned, did you have a conversation about the shooting of Jim Wray?

A. I just think at that point, you know, I, I was still embarrassed to talk to Joe Mahon or any of the other victims of Bloody Sunday about what happened that day.

Q. Embarrassed?

A. Yes.

Q. Why?

⁷⁸⁶ Day 412/132/18-22

FS-7. 2172

A. Because I walked away and they did not.

Q. Right. What, because you had not been shot?

*A. Yes.*⁷⁸⁷

9A-715 Soldiers who opened fire in Glenfada Park have given evidence of firing at men armed with rifles and nail bombs. It is of course the case that shots were fired into the areas where Joseph Mahon and William McKinney fell close to each other and where James Wray fell and Michael Quinn, Joseph Friel and, possibly Danny Gillespie, were all injured, possibly by ricocheting or shoot through rounds. There were Official IRA gunmen, who the evidence shows are likely to have been armed with rifles, in just those positions into which shots were fired and casualties fell. This was not a matter of mere chance. Furthermore, it is not mere chance or foresight which led the soldiers to give evidence in January and February 1972 of seeing rifles in just those positions where, evidence emerging considerably later has shown, rifles were indeed likely to have been present.

9A-IX THERE WERE ADDITIONAL CASUALTIES TO THE KNOWN DEAD AND WOUNDED

9A-716 There is compelling evidence that there were armed men in Glenfada Park North about whom the civilians present have chosen not to tell this Tribunal. There is also evidence that there were additional casualties in the area. Whether or not they included the armed men at which soldiers fired is not likely ever to be known.

9A-717 Michael Quinn saw such an additional casualty. He says he saw a boy standing near to the northwest entrance to Glenfada Park North.

⁷⁸⁷ Day 399/015/15-016/11

FS 7.2173

While I was there the shooting began again, and I saw a young man who was standing opposite me in an alleyway leading into Abbey Park, shot in the leg. Suddenly I heard him scream and saw him collapse to the ground. I did not hear the shot that hit him. He just went down. He was tall, thin, aged about 18 or 19. I saw the hole in his leg with blood coming out of it and it was clear to me that he had been shot.⁷⁸⁸

9A-718 Quinn describes the boy's clothing then goes on to say, "I looked round at the north east corner of GPN where I had seen the two boys earlier because I assumed that that was where the shot had come from. I could see no soldiers there. When I looked back towards the boy, he had gone."⁷⁸⁹

9A-719 As he exited Glenfada Park North Mr Quinn again caught sight of the man he had seen shot in the leg who was alone. Mr Quinn does not know who he was⁷⁹⁰ but is sure that it was not Joseph Friel.⁷⁹¹

9A-720 The significance of an unaccounted for casualty with a leg injury is of course compounded by the comments made by OIRA1 to John Barry that

then went to his mother's house in [REDACTED] to reassure his mother. My note says that he told her not to be anxious -- 'Only wounded in the leg'. But who? My recollection is that he kept going on about Mickey Kelly, a young cousin, who was wounded in the leg. But that is nonsense because Kelly was dead. Could it have been Mickey Doherty? Or was it OIRA himself, the man Quinn says was shot in the leg in Glenfada. OIRA1 did not mention that to me, I am sure.⁷⁹²

9A-721 Others offer some corroboration of the existence of the injured man that Mr Quinn saw. Hugh Duffy (AD156) also "saw or somehow became aware of a

⁷⁸⁸ AQ11.23:20

⁷⁸⁹ AQ11.23:20

⁷⁹⁰ AQ11.24 paragraph26

⁷⁹¹ AQ11.7

FS 7. 2174

man who had been shot in the leg”⁷⁹³ somewhere in the vicinity of Gd McKinney’s body.

9A-722 This casualty may also have been seen by Matthew Connolly (AC76) who reported in a Sunday Times interview seeing, while sheltering at the south west corner of Glenfada Park South looking out to Abbey Park,

*a boy of about 18 lying on the ground outside the houses in AP. I could see that he had jeans on. He was holding his left leg as if it had been shot.*⁷⁹⁴

9A-723 Mr Connolly says in his BSI statement that he saw two men lying between the southwestern corner of Glenfada Park South and Abbey Park. One he believes was Gerard Donaghy The other, who had long curly dark hair, did not appear as badly injured as he was talking to the people around him.⁷⁹⁵

9A-724 Patrick Kelly AK21 describes standing in Abbey Park close to the alleyway into Glenfada Park North when he saw

*a young fella coming towards me in a southerly direction. He was being supported by a couple of people who seemed to be holding him up under his arms and shoulders. He was dragging one leg and favouring the other and I think the people around him were saying “let’s get him into an ambulance”.*⁷⁹⁶

⁷⁹² AOIRA1.1

⁷⁹³ AD156.4 paragraph 22

⁷⁹⁴ AC76.15

⁷⁹⁵ AC76.6 paragraph37

⁷⁹⁶ AK21.6 paragraph18

FS 7. 2175

9A-725 Mr Kelly added in oral evidence that he did not see blood so that it was possible the boy had been hit with a rubber bullet only.⁷⁹⁷ It would seem unlikely that an injury of that nature would require an ambulance, however.

9A-726 Other civilian witnesses give reports of seeing bodies actually lying in Glenfada Park North which cannot be accounted for by any of the known dead or injured.

9A-727 Patrick Kelly AK21, having seen the boy with the leg injury helped out of Glenfada Park North, returned while soldiers were still there and saw a body lying approximately halfway up the western side of the square. When he returns to Glenfada Park North some moments later he sees an additional three bodies, presumably Jim Wray, Joseph Mahon and William McKinney.

9A-728 He describes the first man he saw, however, as

lying close to the pavement outside the western block of Glenfada Park North... I believe he was lying on his side as we could see his face and his feet extending out into the car park".⁷⁹⁸

9A-729 This body was

half on and half off the pavement. The upper body was on the pavement and the lower body was in the car park. He was lying on his side as I could see his face. He was probably in his mid-20's and he had dark hair and dark clothes. He seemed to be dead as he was absolutely still. There was nothing lying around him. We tried to help, although other people in the group with us actually lifted him. I do not remember much about this body although we followed the group of people

⁷⁹⁷ Day 158/099/11

⁷⁹⁸ AK21.7 paragraph20

FS 7.2176

moving him out of the car park and into the alleyway. I did not see what happened to him after this".⁷⁹⁹

9A-730 Mr Kelly is emphatic about the position of this body saying,

Oh, no, no mistake about the position, but who the person was, I am not 100% certain, but the position was right.⁸⁰⁰

and

Oh, no, no, that body was always in the car park as far as I am concerned, because that is the body we went out to take in when the soldiers stopped us. If there had not been no body there and we could not see the others from where we were, then there would have been no reason for us to go there in the first place, do you understand what I mean? It is because we saw that body that we made our way out."⁸⁰¹

9A-731 To the suggestion that **P438** shows no body in the area he describes, Mr Kelly explained that it would in fact be blocked by the wall on the right hand side of what is, in his opinion, a foreshortened view of Glenfada Park North.⁸⁰²

9A-732 Mr Kelly went on to describe helping to move another body from Glenfada Park North which was the nearest of the remaining three to the alleyway (the position of Jim Wray). He described him as very young and wearing jeans, a denim jacket and a white t-shirt.⁸⁰³ He believed this person was dead⁸⁰⁴.

9A-733 The suggestion that there was a fourth body lying in Glenfada Park North is supported by that of Anthony Martin AM24 who said he

⁷⁹⁹ **AK21.8 paragraph24**

⁸⁰⁰ **Day 158/126/41**

⁸⁰¹ **Day 158/145/39**

⁸⁰² **Day 158/146/33**

⁸⁰³ **Day 158/107/13**

⁸⁰⁴ **Day 158/123**

FS 7.2177

had the impression of a fourth body in the square of GPN, but not on the pavement in the South end

9A-734 He said in oral evidence that he believed he saw this fourth body lying to his left as he entered Glenfada Park North via the southwest alley.⁸⁰⁵ He said that he carried William McKinney (and filmed doing so) then went back out for another body at which time he and Danny Gillespie came under fire.⁸⁰⁶ As Mr Mahon was carried out before William McKinney⁸⁰⁷ and Jim Wray at the same time,⁸⁰⁸ this additional body must on his evidence have been a fourth casualty.⁸⁰⁹

9A-735 Joseph Martin Gallagher AG18 said in both his BSI statement⁸¹⁰ and in oral evidence⁸¹¹ that on entering Glenfada Park North he saw a man lying close to the corner of the fences of the northern block of Glenfada Park South, near to the Rossville St entrance. He marked the position of the man at point F on the map at AG18.7.

⁸⁰⁵ Day 176/085/01

⁸⁰⁶ Day 176/086/13

⁸⁰⁷ see McBride at Day 168/026/24

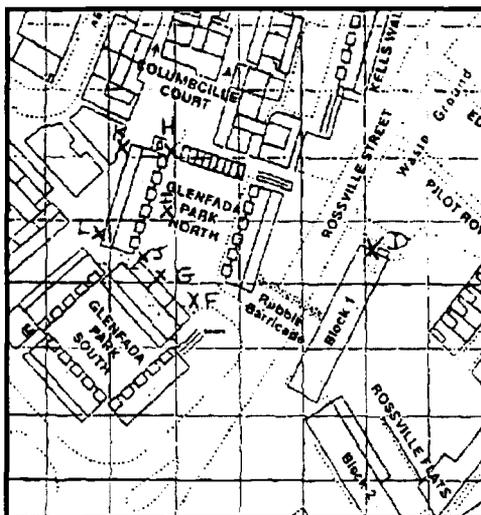
⁸⁰⁸ See P682

⁸⁰⁹ Day 176/129/25

⁸¹⁰ AG18.2 paragraphs 12-13

⁸¹¹ Day 165/010/01

FS7. 2178



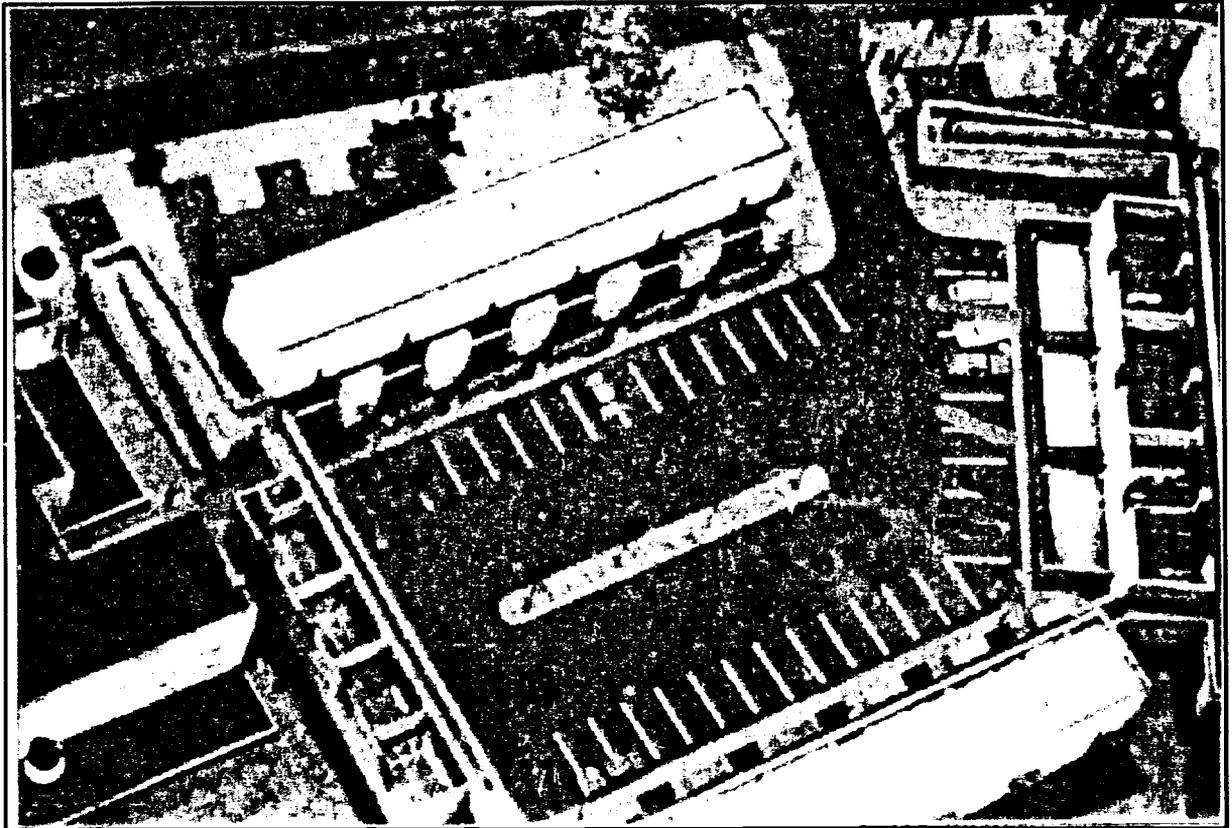
AG18.7

- 9A-736 This would appear from its position to be an unidentified casualty although Mr Gallagher changed his evidence somewhat to suggest that it could have been one of the men shown in P438.⁸¹²
- 9A-737 Greg Doherty (AD 66) also reports in his BSI statement coming across one of four bodies lying along the southern edge of Glenfada Park North.⁸¹³ The position of the bodies is marked on AD66.11.

⁸¹² Day 165/012/23

⁸¹³ AD66.4 paragraph16

FS 7. 2179



AD66.11

9A-738 Mr Doherty said that the two bodies nearest to the southwest exit appeared dead while the third was alive and he helped to carry him into a house.⁸¹⁴ He identifies himself in video 19 carrying this man (William McKinney).⁸¹⁵ He did not approach the fourth body. It was closer to the opening onto Rossville Street some 10-12 feet away from the body of Mr McKinney.⁸¹⁶ He has no idea what happened to the body.⁸¹⁷

⁸¹⁴ AD66.4 paragraphs 18-19

⁸¹⁵ Day 160/151/02

⁸¹⁶ AD66.4 paragraph 17

⁸¹⁷ Day 160/149/10

FS7.2180

9A-739 A body lying in the position described by Mr Gallagher and Mr Doherty would of course correlate with the evidence of Soldier E.

9A-740 Pat Moyne (AM444) also suggests there was a casualty in this area as he says, that, after seeing Jim Wray shot,

*I think a person was being attended to at the south east entrance to GPN and I think there was a crowd around him.*⁸¹⁸

9A-741 Patricia Canning (nee Harkin) AC26 reported in her NICRA statement seeing from her window in the RF

*five bodies lying in Glenfada Park – three on the path and the other two were further in. Some people from an alleyway off GP were trying to pick up one of the bodies but the soldiers were shooting from the corner and they had to retreat”.*⁸¹⁹

9A-742 Questioned by Lord Gifford, Mrs Canning confirmed that she saw three bodies on the footpath inside Glenfada Park North as well as a further two. She was quite sure that they were all in Glenfada Park North.⁸²⁰

9A-743 The notes of Michael Quinn’s interview with the Sunday Times Insight team also include reference to the fact that

He heard that a Provisional IRA man had been shot in the chest in the Glenfada area and that the man had been carrying a gun.

9A-744 Four crosses have been put through those words in the notes, however, and Mr Quinn is emphatic that he has no such recollection now.⁸²¹

⁸¹⁸ AM444.5 paragraph34

⁸¹⁹ AC26.13

⁸²⁰ Day 121/193/10

⁸²¹ AQ11.26 paragraph46

FS 7. 2181

9A-745 Photograph EP 23/11 appears to show a body lying in Glenfada Park North at the time the crowd was tending Kelly which does not correspond with any known dead or injured person.

9A-X SUMMARY

9A-746 The Tribunal is not in a position to form firm conclusions as to the exact events which took place in Glenfada Park North on Bloody Sunday. Understandably in the circumstances of panic and confusion which pertained, the evidence of both civilians and soldiers is inconsistent.

9A-747 It is clear, however, that as well as being extremely confused, key elements of the civilian evidence portray a picture of the soldiers' conduct in Glenfada Park which is demonstrably untrue. It also fails to mention the presence of armed men in the area where they must have been plain for all to see.

9A-748 It is not submitted that those who were killed and injured in Glenfada Park North were armed. However, in considering the conduct of the soldiers who entered the area, the Tribunal should bear in mind that:

9A-749 Those soldiers, who had already witnessed scenes of shooting and seen armed men, came, in Glenfada Park North, upon a scene of chaos and confusion.

9A-750 There is cogent evidence that, at the time they entered, those soldiers encountered men armed with both rifles and nail bombs. The Tribunal will also bear in mind the fact that evidence that such men were indeed present in Glenfada Park North has emerged some 30 years after the event. Soldiers such as Soldier F and Soldier G gave evidence of seeing just such armed men in RMP statements written immediately after Bloody Sunday. No doubt the

FS 7.2182

Tribunal will wish to consider why so many individuals with paramilitary connections were present in Glenfada Park North.⁸²²

9A-751 The Tribunal will also bear in mind the fact that those who were killed and injured in Glenfada Park North were close to those individuals who were armed with either rifles or nail bombs and at whom it is known soldiers fired. The potential for such innocent bystanders to have been hit by soldiers legitimately targeting the armed men close to them is obvious.

⁸²² They include: OIRA1, OIRA2, OIRA7, PIRA1, PIRA 25, Eugene McGillan, Donncha MacFicheallaigh and Gerard Donaghy

FS-7. 2183

CLOSING SUBMISSIONS ON BEHALF OF THE CLIENTS OF

MR ANTHONY LAWTON

VOLUME 8

CHAPTER 10

SECTOR 5

FS 7. 2184

CHAPTER 10

SECTOR 5

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FS 7.2186

CHAPTER 10A

SECTOR 5 - INTRODUCTION

- 10A-1 Soldier F is the only soldier who has admitted firing shots into Sector 5, the area between Block 2 of the Rossville Flats and Joseph Place. He fired two shots at a man firing a pistol in the area around the bottom of the Fahan Street steps.
- 10A-2 There is evidence before the Tribunal which corroborates Soldier F's account. In particular there is evidence of a man with a pistol being heard to fire shortly before F returned fire (Section 10B).
- 10A-3 Two people were killed and at least two people were wounded in Sector 5. Despite the fact that Soldier F believes he hit his target, the gunman, it is possible that one or both of the rounds he fired struck (either directly or indirectly) one or two of the known dead and wounded.
- 10A-4 Soldier F was not, however, responsible for all four shootings. There is evidence that Soldier F was not the only soldier to fire shots into Sector 5 (Section 10C). In the circumstances, it is difficult to link Soldier F with any particular death or wounding in Sector 5.
- 10A-5 The individual circumstances surrounding the shooting of each of the four casualties in Sector 5 are considered in separate sections 10D-F.

FS 7. 2187

CHAPTER 10B

SOLDIER F'S TARGET IN SECTOR 5

10B-1 SOLDIER F'S ACCOUNT IN 1972

10B-1 The following documents record Soldier F's contemporary recollection of the circumstances in which he fired shots in Sector 5:

10B-2 Soldier F's statement taken by Lieutenant Colonel Overbury on 19th February 1972:

Immediately after this [firing at a nail bomber in Glerfada Park] I ran along the Eastern wall of Glerfada Park to the corner. As I did so I heard pistol shots coming from the area of the wall at the far end of the Rossville Flats. I shouted "there's a gunman" and I dropped to one knee and took an aim position. I saw a man near the wall facing in my direction who turned as if to run. I saw he had an object in his hand. He was the only person in the area from which the gun fire had come. The object in his hand was large and black like an automatic pistol. I fired 2 rounds at this man and he fell to the ground. I then saw 20 people, 19 men and one woman standing near me huddled together at the end of the flats in Glerfada Park. I arrested these people with others including G who came up.¹

10B-3 Soldier F's SA statement:

I then asked G to cover me as I heard pistol shots in the direction of Rossville Flats. I approached the south-east corner of Glerfada Park. I got down on one knee. I observed a man with a pistol at the far end of the Rossville Flats. I think he was wearing darkish clothes. He had a black object which looked like a pistol in his hand. I then shouted to G "There's a gunman down here" and then took two aimed shots and he fell to the ground. He was in a half-crouching position moving to the right as I shot him.

I then observed in the position where I was about twenty people (19 men and 1 woman) huddled against the side of a wall at the south

¹ B135 paragraph 3

*end of the western block of Glerfada Park. I shouted to G to assist me in arresting these people. We then ushered them back through the rear of Glerfada Park into Columbcille Court and I saw soldiers taking them off.*²

10B-4 Solider F's oral evidence to the Widgery Tribunal:

(1) In answer to questions from Mr. Gibbens:

Q. What happened next?

A. Next thing happened I heard pistol shots from the direction of Rossville Flats. I told G to cover me while I went up to investigate.

Q. Where did you go?

A. I went up to this corner.

Q. You went to the south-east corner?

A. Yes

LORD WIDGERY: Before we leave there, your Corporal (whom we call E) has told me that he was also in the Glerfada Park compound or courtyard. You did not see him at all?

A. No.

Mr. GIBBENS: You went to the south-east corner and what happened there?

A. On reaching the south-east corner I got down on one knee and I observed in the direction where the pistol shots were coming from. I saw a man with a pistol firing on the wall here.

Q. The far end at the back of the Rossville Flats southern block by the wall there?

A. Yes.

Q. How was he dressed?

A. He was wearing darkish clothing.

Q. What was he doing?

² B138 paragraphs 6 and 7

A. He had a pistol in his hand and as he saw me he attempted to turn. I then fired two aimed shots and the man fell to the ground.

LORD WIDGERY: You are going too fast: I have him with a pistol in his hand and you observe him. What does he do?

A. He about turns as though to move to the right. As he did so I shouted to G "There's a gunman down here." I then took two aimed shots and the man fell to the ground.

MR. GIBBENS: When you say he turned as if to move to the right, which way was he facing in the first place?

A. In the first place he was facing the front and looking at me.

Q: So he would have turned as if to move to the right, which way was he facing in the first place?

A. He was turning as if to come in this direction.

Q. To his left but to your right?

A. To my right.

Q. Down past Joseph Place. When you aimed at him what was his position?

A. A half turn to the right, a crouching position.

Q. A half turn to your right?

A. Yes, in a crouching position.

Q. When you fired, did you hit him?

A. Yes.

Q. What did he do?

A. He fell to the ground.

Q. Then did you notice anything?

A. After I had fired at the man, in the position where I was there was a group of about 20 people, 19 men and one woman, huddled together at the side of the wall.

Q. You had fired past them had you?

A. Yes.

Q. And what happened about them?

FS 7.2190

A. I then shouted to G "There are some rioters here" and asked him to assist me in arresting these people.

Q. Did these people come out at all before you arrested them and move away from the gable end?

A. No.

Q. Did you then arrest them?

A. We then arrested them and ushered them to the rear of Glerfada Park courtyard into the alleyway here.³

(2) In answer to questions from Mr. McSparran:

Q. Did you leave the rifle there [in GPN] for somebody else to come along and pick it up? Was it not important to get that rifle into your custody?

A. At the time I heard pistol shots from the direction of Rossville Flats. I then said to G to cover me while I investigated.

Q. You turned your attention from in here, and did you go right out again the way you came?

A. No, sir. I went along the side of the wall to that corner, there, and that is when I observed the gunman.

Q. You observed a gunman away down here?

A. Yes.

Q. And fired at him?

A. Yes.

Q. At that stage the rifle should just have been lying across the courtyard from you?

A. Yes.

Q. And you did not bother to go in to pick it up?

A. I was too interested in the pistol shots.

³ B143 at A

Q. You were not interested in somebody coming along and picking up that rifle and shooting you when you were diverting your attention to the man with the pistol?

A. That was the idea of having G to cover me.

Q. Did G go over to get the rifle?

A. I do not know, sir....

Q. So far as the pistol shots are concerned, when you looked across there and before you fired down there in this direction, did you know there was a telephone box in there?

A. No, sir.

Q. You did not?

A. No, sir.

Q. To get out, of course, to a position where you would have a line of fire of fire down here, you would have to come beyond the line of this building here?

A. No, sir.

Q. Where did you come to?

A. I was on the corner, exactly on the corner.

Q. Did you come around this corner? Just tell me what corner you mean.

A. That corner, there.

Q. You came round this corner?

A. Yes, I observed ---

Q. You did not see a telephone box there?

A. No.

Q. Could you see people sheltering there?

A. No, I was purely interested in this man with the pistol.

Q. You did not see people in there. Did you see people about the entrance of the Rossville Flats?

A. No, sir.

Q. You did not see people standing about the door?

FS 7. 2192

A. No, sir.

Q. You did not see the door of the Rossville Flats, then? You were in this position and there was nothing you noticed around this corner or just around the corner in the recess?

A. No, sir.

Q. Would you have a look at photographs 12 and 13? (Documents handed to the witness). At the time you fired had an Army vehicle come down to the barricade or not?

A. Not to my knowledge.

Q. You did not see any vehicle?

A. No, sir.

Q. If you look at photograph no. 12, you see the two bodies there?

A. Yes.

Q. Do you see the flats in the distance there?

A. Yes.

Q. Those are the flats that you had come up alongside, on the basis of your evidence. When you fired across that line, as you did, you did not see any people there?

A. No.

Q. There were no bodies lying there?

A. I cannot remember, sir.

Q. You cannot remember. That is the kind of thing one would remember if it happened?

A. My attention was solely on observing this gunman.

Q. Observing the gunman, that was your line of sight across this area here I am talking about.

A. Yes.

Q. Will you turn to the next photograph: that shows a more general view of the area of the corner with the telephone box and there are obviously a number of people sheltering there?

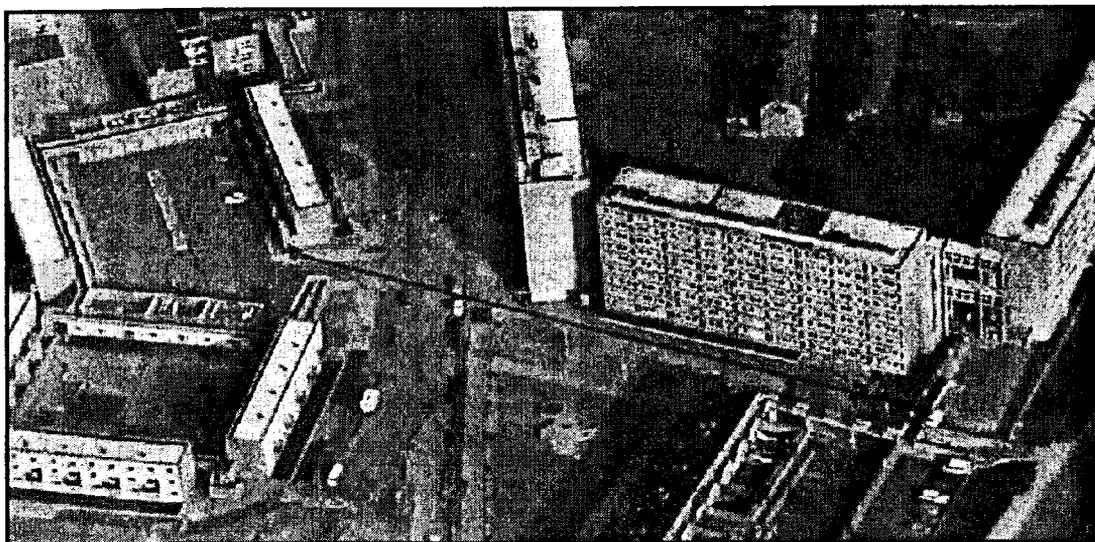
A. Yes.

Q. You did not see any of them?

FS 7-2193

A. No. ⁴

10B-5 A photograph was marked with the trajectory line of Soldier F's shots for the purposes of the Widgery Tribunal: ⁵



10B-II SOLDIER F'S EVIDENCE TO THE PRESENT TRIBUNAL

10B-6 Soldier F no longer has any recollection of the circumstances in which he fired shots into Sector 5:

I do not now recall seeing "a man with a pistol at the far end of the Rossville Flats". I do not now recall firing two aimed shots at this man or in this direction.⁶

10B-7 His oral evidence to this Tribunal was to the effect that he would only have fired if he was justified in doing so. He maintained that his evidence to the Widgery Tribunal, that he targeted a man with a pistol, was true.⁷

⁴ B159 at D

⁵ B165 (also at P8)

⁶ B167.008 paragraph 46(g)

⁷ Soldier F gave this evidence at various, for example Day 376/111/19; Day 376/117/16; Day 376/141/15; Day 376/176/10

FS 7. 2194

SOLDIER F'S CURRENT RECOLLECTION

- 10B-8 Due to the passage of time, Soldier F no longer has any recollection of the circumstances in which he fired shots on Bloody Sunday.
- 10B-9 He gave his statement to this Tribunal 28 years after Bloody Sunday.⁸

The allegation that Soldier F lied about his memory loss

- 10B-10 It is important to bear in mind that the question of whether Soldier F lied in 1972 is an entirely separate from the question of whether he lied to the Tribunal about the state of his memory.
- 10B-11 The allegation that he was lying about his memory loss was made repeatedly to Soldier F in the witness box. It was made purely on the basis that he allegedly has a motive to lie; that he benefits in some way by pretending that he cannot now remember anything about the circumstances of his shots.
- 10B-12 However, in view of all the documents that set out Soldier F's contemporary recollection of the events, the fact that he no longer recalls the circumstances of his shooting has little practical consequence. If his current recollection were consistent with his recollection in 1972 it would add little; if it were different, it is likely that his 1972 evidence would be regarded as the more reliable. It is, therefore, difficult to see any advantage to Soldier F in feigning a loss of memory.
- 10B-13 Further, the allegation levelled at Soldier F was simply an assertion: there is no evidence that Soldier F was lying about his loss of memory and, in fact, there is nothing extraordinary about his not now having a memory of the events of the day. On the contrary, numerous BSI witnesses, many of whom were not called, have candidly said that their memories of Bloody Sunday are now almost completely blank. There is nothing to suggest that their memories have been

⁸ B167.008

eroded away by anything but the passage of time. Countless others may not have come forward to give a statement for the same reason.

10B-14 The examples below plainly illustrate that there is no universal standard: some people retain memories better than others; some retain no memory at all, or wholly false memories, in the same circumstances as others retain relatively good and accurate ones.

10B-15 Ken Murphy was 17 years old on Bloody Sunday.⁹ He witnessed a number of events in Glenfada Park, including a person being shot. He was able to recount the events in detail when he gave a statement to NICRA the day after Bloody Sunday.¹⁰

10B-16 When he gave a statement to the Tribunal in the year 2000,¹¹ he said that he could not recall any of these events:

1. ...I knew Michael Kelly very well. He was the same age as me and I had known him since he was a child.

2. I can remember being on the march and it was a bright cold day. In particular I remember being on Southway and speaking to Michael Kelly. I cannot remember exactly what we were talking about but it was something to do with an advert that was around for Coca-Cola at the time. The advert said that Coca-Cola would bring you alive or something like that and I was joking with him about it.

3. Other than this I have no recollection of the rest of the day. I know that I was in number 13 Glenfada Park. The house is marked with an A (...) on the attached map. I do not remember getting in there or who was in there with me. I ended up living in the flat a couple of years later. I can remember that the main window looked into the car park area.

⁹ AM457.3 paragraph 1

¹⁰ AM457.4

¹¹ AM457.2

FS 7.2196

4. I went to the flat a couple of weeks ago and stood outside for 20 minutes or so trying to recall what I had seen on Bloody Sunday. I am afraid it was a total blank.

5. I gave a statement in 1972 about what I saw on Bloody Sunday, and this is attached. Now I can remember absolutely nothing about what is described in this statement, nor giving the statement itself. However, if I said it at the time then it was true. ¹²

10B-17 There is no reason to suppose that Mr. Murphy lost his memory other than through a natural process of atrophy. Yet he recalls nothing of the events he described in his NICRA statement; his memory of the day is virtually blank apart from an inconsequential discussion he had with Michael Kelly.

10B-18 Similarly, John Begley has suffered a complete memory loss. He was about 35 years old on Bloody Sunday. He made a statement on 23rd February 1972 recording what he had seen from the rubble barricade.¹³ Thirty years later, he was unable to recall anything at all.¹⁴

10B-19 Noreen Donnelly was 25 years old at the time of Bloody Sunday.¹⁵ She gave a statement to NICRA, recording a number of events that she witnessed.¹⁶ In her statement to the Tribunal she said:

I'm afraid I have very little memory of events on Bloody Sunday and given that I made a statement at the time, which I attach as Appendix 1, I see little point in going over this old ground. The detail in my original statement will obviously be so much better than anything I could remember today, even though I can't recall any of the events recorded in it. The problem is that these events took place 30 years ago. That combined with the fact that everyone in Derry has seen television footage from Bloody Sunday for years and years means it is, in my view, useless to try and remember anything independently now. I'm very suspicious of long term

¹² AM457.3

¹³ AB30.6

¹⁴ AB30.5

¹⁵ AD127.2 paragraph 1

¹⁶ AD127.1

FS 7. 2197

*memory anyway because I know it can play tricks. I do feel guilty that I can't remember more but I have tried and I simply can't.*¹⁷

10B-20 Ms. Donnelly's further comments suggest that there is nothing extraordinary about Soldier F's memory loss:

*I am totally amazed at people who say they can remember it all. I know a terrible thing like this affects people's memory in different ways and sometimes you block things out but, quite honestly, after thirty years I am surprised anyone can remember anything.*¹⁸

10B-21 Perpetua Gray, née O'Neill, was 15 years old at the time of Bloody Sunday. She was able to recount the events she witnessed in Barrack Street in some detail in a NICRA statement.¹⁹ Brenda Doherty was there too, and she describes Mrs Gray talking to the soldier manning barrier 20.²⁰ However, Mrs Gray's memory of all of this is now completely blank:

9. As I have said, I know I ended up in a house in Barrack Street but I don't remember anything about coming out of the house or being with Brenda Doherty or seeing any soldiers. Brenda says in her statement at Appendix 2 that I talked to a soldier. I have no recollection of this but it sounds like the sort of thing I would do. I was certainly bold in those days. I don't remember the incident referred to the statement at Appendix 1 involving an injured man or the man being searched or the flash of the gun in the soldier's hand. All I have is a very clear memory that I had defied my father in the first place [by going on the march] and I had to get home before he did and even if I did get home in one piece I would never be able to tell anyone where I'd been.

10. My husband has said to me that in the 24 years we've been married, not once can he remember that day ever being mentioned between us.... When he heard about the statements that mentioned my name he said to me "How could you have forgotten this?" I agree with him - if all that happened how is it I don't remember it?

¹⁷ AD127.2 paragraph 2

¹⁸ AD127.3 paragraph 9

¹⁹ AO63.1

²⁰ AO63.6 paragraph 1

FS 7-2198

*It feels as though these are somebody else's recollections, not mine.*²¹

10B-22 There appears to be little to explain this loss of memory, although she does say that her mother died a couple of years before Bloody Sunday and that there are many things she doesn't remember while she was grieving for her mother.²²

10B-23 Margaret Gallagher has suffered an almost complete loss of memory which she was unable to explain. She gave a NICRA statement the day after Bloody Sunday – when she was 20 years old - which records that she witnessed two people being shot, probably Jack Duddy and Bernard McGuigan. In her statement to this Tribunal, she said:

5. It never occurred to me that anyone would want to talk to me about Bloody Sunday until some fella came to find me. I was actually at my brother's house when he called and he said that I had made a statement already and therefore I should come and give evidence to the new inquiry. At first I was so convinced I hadn't made a statement I said to him that they must have the wrong person....

*7. I really would like to help the new inquiry and I can understand why, having seen the attached statement, people might think that I have some interesting recollections of the day. However, this statement just doesn't register with me at all.*²³

10B-24 At the time of Bloody Sunday, Frank Campbell was 37 years old.²⁴ When he gave his statement in 2001, he remembered so little about what happened that day that he was reluctant to accept the detailed account he had given in a NICRA statement in 1972:

16. I have been shown a copy of a statement made by a Frank Campbell on 31 January 1972, attached as Appendix 2. I don't remember giving a statement after Bloody Sunday. However, although I am not sure of the house number, the address on the

²¹ AO63.3

²² AO63.2 paragraph 2

²³ AD83.2

²⁴ AC137.6 paragraph 1

FS 7. 2199

statement is my correct address for that time. As I have said I don't remember who I was with that day. The part about the soldier hitting someone with the butt of a rifle is familiar to me but I can't remember it now. Where it refers to a square in the statement, I would have been referring to the Rossville Flats car park. I don't remember being hit by a Saracen myself. Maybe there is a misprint in the statement and it should say that the Saracen hit a girl as opposed to me.

17. At the time of Bloody Sunday there was only my sister and I living in our house. I don't remember taking Alana Burke into any house. I don't remember seeing anybody being shot that day. In particular, I don't remember seeing anyone being shot next to the Rubble Barricade with his hands in the air. Neither do I remember seeing a young boy being shot in the leg. I can't explain why all this appears in the statement with my name on it but I think it is unlikely that I would have remembered seeing somebody being shot. I don't remember seeing the old man referred to in the statement. I was aware that Knights of Malta were on the march. I therefore wouldn't have gone to look for a doctor as is stated. I heard rubber bullets being fired at the army barricade in Rossville Street but not in the Rossville Flats car park.²⁵

10B-25 The NICRA statement was clearly provided by Mr. Campbell. There is a transcript of a tape recording made by Kathleen Keville which closely matches the contents of the statement that Mr. Campbell no longer recalls making.²⁶ It appears that the statement was typed up from that recording, albeit that the NICRA statement suggests that Mr. Campbell had been hit by a Saracen when this is not clear from the tape recording. The tape recording begins with a voice of a man describing himself as a full-time youth worker. That is what Mr. Campbell says he did at the time.²⁷

10B-26 Mr. Campbell couldn't make sense of the fact that the statement appeared to be his when he could recall so little of its contents. Edmund Lawson QC suggested to him that the contents of the NICRA statement were either untrue, or he had lost his recollection of the events the statement suggested he had witnessed:

²⁵ AC137.8

²⁶ Compare the tape transcript at X2.33.37 to the NICRA statement at AC137.1

²⁷ AC137.6

FS 7.2200

Q. ...I think it is fair to say either you have no recollection of or it simply did not happen?

A. Yeah.

Q. Is that a fair summary?

*A. To the best of my knowledge, yes, or unless I have had a complete blackout since then -- I just do not know.*²⁸

10B-27 Donald Cudmore is another example of a witness whose memory is blank. He made a detailed statement shortly after Bloody Sunday. It records that he was on duty in the area of Great James Street where he witnessed the rioting there. He witnessed a number of events: the use of baton rounds and gas, hearing low velocity shots and seeing Paratroopers deploy through the barriers.²⁹

10B-28 Mr. Cudmore has no memory of this at all:

*I can see by reading a statement which I made at the time, that I was on duty in Great James Street on the day of the march. I can recall coming back to Londonderry from Belfast on the morning of the march. There was mammoth traffic jams because the Army had set up road blocks and I was concerned that I would be late starting work. However, apart from this, I have no recollection of what happened on the afternoon of the march. Although my statement shows that I was on duty in the City Centre that afternoon, I have no memory of being there to police the march.... I have no memory of seeing the Civil Rights march, and I honestly have no recollection of what I heard and saw that afternoon.*³⁰

10B-29 Despite interviewing six of the Bloody Sunday injured in the weeks that followed, his memory is now completely blank about this too.³¹

10B-30 He says nothing in his statement to suggest that his memory loss has been accelerated by anything other than the passage of time.

²⁸ Day 121/026/18

²⁹ JC26.11

³⁰ JC26.5

³¹ JC26.7 paragraph 13

FS 7.2201

10B-31 There are countless examples of witnesses who, during the course of their evidence, were presented with evidence confirming that they had done something which, thirty years later, they could not remember doing.

10B-32 Nell McCafferty wrote an article published in the Irish Times on 1st February 1972 which recorded the fact that she had examined some bullet holes in a wall.³² When the article was read out to her in the witness box, she described herself as being stunned about not being able to recall the events it described:

"... Several times since 4.15 pm on Sunday afternoon my memory has gone blank. Others confirm the experience. Did I really see a Paratrooper shoot at a girl with a Red Cross uniform? Like everyone else I went back to look. On the wall of the courtyard where I sought shelter in a house, there are two deep holes (reminders of the bullets that missed). Like doubting Thomas, I put my fingers into them and checked the diagonal line between the holes, the girl's position in the middle of the square and the Paratrooper's position at the far corner." Do you have any recollection now of doing that?

A. No, I, I read that in the files last week and was amazed, yeah, and went back again this morning to look at the holes.

Q. Did you see the holes that you may have been talking about?

A. I saw lots of holes. Yeah, the holes, yeah, I did. A lot of them were above the windows and some below -- this morning, yes. But that stuns me that paragraph, did I really do that? Well, I must have done it, or I would not have written it.³³

10B-33 The evidence of Patrick Moyne demonstrates how the passage of thirty years can sometimes have a dramatic effect a person's memory. Mr. Moyne now has no recollection of helping to carry the body of Michael Kelly. Photograph P642 shows that he did:

³² L117

³³ Day 169/044/77

FS 7.2202



10B-34 The photograph was shown to Mr. Moyne in the witness box and he identified himself in the picture:

Q. The next photograph, please, P642. Do you recognise yourself or anyone else in that picture?

A. Yeah, I am in there at the front; Jim Wray is there in the hat and

Q. Are you the person in the jacket and tie on the left-hand side?

A. Yeah.

Q. Jim Wray is the man we see on the right?

*A. Yeah.*³⁴

10B-35 However, Mr. Moyne could not remember helping to carry the body:

³⁴ Day 162/32/09

FS 7.2203

Q. Looking at that photograph, do you have any recollection of helping to carry --

A. No.

Q. A body?

A. No.

Q. Does that photograph help you to remember what it was that you did when you first went into Glerfada Park?

A. As I said, my recollection is quite hazy there, but it is in the photograph, it must'a happened.³⁵

10B-36 In 1972, Mr. Moyne had been able to tell the Sunday Times Insight team where the body was taken.³⁶ Curiously, Mr. Moyne could remember the name of the journalist he spoke to:

Q. Do you remember speaking in 1972 to a journalist from the Sunday Times?

A. Peter Pringle.

Q. Have you seen the notes taken by the Sunday Times journalist, it may have been Peter Pringle, at the time?

A. No.

Q. Could we have those on the screen, please, as AM444.8. What he has written is:

"Pat Moyne, pictured in the Irish Times picture carrying the Kelly body [that is the picture you have just seen taken by a photographer called Ciaran Donnelly] across Glerfada Park. Says that he believes that the body was put down at the entrance to the alley leading into Abbey Park when firing started in Glerfada. It was not until there was a lull in the firing that the body was taken into number 8 Abbey Park."

Does that bring back any memories at all?

A. No, I took no body into Abbey Park.³⁷

³⁵ Day 162/32/18

³⁶ AM44.8

PS 7.2204

10B-37 There are other instances of people not recalling that they helped to carry a body when there is photographic evidence of it. For example, John Friel could not remember helping to carry the body of Hugh Gilmore:

Q. The last matter I want to ask you about is this: can we have AF33.11 on the screen? This is a picture, that is attached to your statement, of your carrying somebody's body. Is that Hugh Gilmore's body or is it somebody else's?

A. I was told it was Hugh Gilmore's body, but I cannot recollect at all. I cannot remember that at all. ³⁸

10B-38 John McIntyre witnessed the rioting at barrier 14. Now his memory of this is completely blank:

Q. ... We have heard a lot of evidence and seen quite a lot of news footage of a great deal of activity at the barrier, stone-throwing after negotiations with the soldiers had failed; the use of water cannon; the firing of rubber bullets; and the appearance of people behind a corrugated shield being fired at by rubber bullets hitting the shield. Do you have no recollection of any of that?

A. Yes, I really reported this earlier on.

Q. Sorry?

A. I really reported this to one of the clerks earlier on, that I said, after paragraph 9 -- sorry, just give me a minute to read this. Yes, between paragraphs 10 and 11, there was a riot, which I already told the clerk this morning, I wished to change. I was told you would ask me this at the start of the hearing.

Q. I have not been told that you wanted to make that change. Was there anything else in your statement that you wanted to change?

A. The only reason I wanted to change that is because I seen footage on the television of a riot, but when I made this statement I could not remember the riot.

Q. It had just completely passed from your memory, had it?

A. Yes. ³⁹

³⁷ Day 168/035/12

³⁸ Day 076/040/13

10B-39 These are just a few of the examples of witnesses who have experienced total or partial memory loss over the last thirty years. They show that there is nothing extraordinary about Soldier F's failure to recollect the circumstances in which he fired his shots.

The nature of Soldier F's recollection

10B-40 It may be said against Soldier F that the loss of memory in his case is surprising because it relates to ostensibly memorable events in which he was closely involved. There is, however, no evidence, expert or otherwise, to support that contention. The experience of those civilians whose evidence is considered above, (and against whom no-one has alleged dishonesty), and experience of life, shows that this assumption may be unsafe and unfair.

10B-41 There is no reason to suppose that Soldier F's memory must have remained intact over three decades. In fact, the nature of his memory loss suggests that it occurred through an entirely natural process of atrophy. Not only is Soldier F unable to recall any of the facts which help his case,⁴⁰ an examination of what he appears to be able to recall about the day suggests that his memory has almost completely deteriorated.

10B-42 Having heard so many witnesses give evidence, the Tribunal - and counsel who have appeared before it - have become used to judging whether a witness has an accurate memory or not. Often witnesses - who have generally been oblivious to the factual matrix into which their evidence might fit - remained unaware that those listening to them knew their recollections to be false.

10B-43 Looking at Soldier F's statement, it is evident that his ability to recall events over a long period of time is generally poor. For example, his memory of his deployment:

³⁹ Day 092/146/20

⁴⁰ See for example: B167.006 paragraph 42(e)-(n)

FS 7.2206

I recall that we were deployed at first light. I recall being in a road, near to or in our vehicles, but do not recall anything more about how I got there or the location itself. The next thing I recall is hearing gunfire.... I heard Major Loden inform Colonel Wi.ford by radio that we were "taking fire", or "under fire"; I cannot recall the exact words used. The response from Colonel Wi.ford came a few seconds later. I could hear it over the radio set. He said "Go, go go!" The next thing I recall is going on foot through a barbed wire army barrier that had been pulled to one side to allow us to pass through. I recall this being in semi-darkness at the break of day. ⁴¹

- 10B-44 He is mistaken in his belief that the arrest operation began at day-break, that he went through a military barbed wire barrier on foot and that he was in a position to hear messages sent over the Battalion Net. These are 'false memories'. It is, however, difficult to envisage any reason why Soldier F should wish to pretend that he has a false memory of any of these matters.
- 10B-45 Although the process by which true memories become supplanted by false memories over time is not transparent, it is sometimes possible to infer where the source of the confusion lies.
- 10B-46 For example, Soldier F deployed with the rest of the battalion from Palace Barracks at day-break. This might be the source of his confusion; it is possible that his memory of this event is no longer distinct from his memory of the launch of the arrest operation.
- 10B-47 The true provenance of his 'memory' that he deployed on foot through a barrier might be the video footage of soldiers from C Company of 1 PARA deploying through barrier 14, or it might be a memory of his own deployment on foot through a barrier on a day other than Bloody Sunday.
- 10B-48 Although it has the appearance of still being intact, Soldier F's memory of the launch of the arrest operation has in fact deteriorated almost completely; it has

⁴¹ B167.003 paragraphs 20-23

R 7.2207

been supplanted in his mind by a false image, albeit one that he honestly believes to be true.

- 10B-49 Nearly every aspect of his memory of Bloody Sunday has deteriorated over the last thirty years. Soldier F's BSI statement illustrates how the effect of the passage of time on his memory has been indiscriminate and pervasive.⁴²

Conclusion

- 10B-50 It appears that there has been a presumption against Soldier F: that he faked his memory loss because it was in his own interests to do so.

- 10B-51 There is no evidence to support this presumption. It has been made purely on the basis of an imputed motive. In fact, his memory loss is not of any advantage to him.

- 10B-52 There is nothing exceptional or extraordinary about Soldier F's memory loss. Many other witnesses have suffered similar memory loss.

- 10B-53 Soldier F's memory loss is entirely genuine. The evidence suggests it has deteriorated through a natural process of atrophy over nearly thirty years.

10B-III CORROBORATION OF SOLDIER F'S ACCOUNT

- 10B-54 There is reliable evidence to corroborate Soldier F's account of firing at pistolman in Sector 5.

THE EVIDENCE OF LIEUTENANT 227

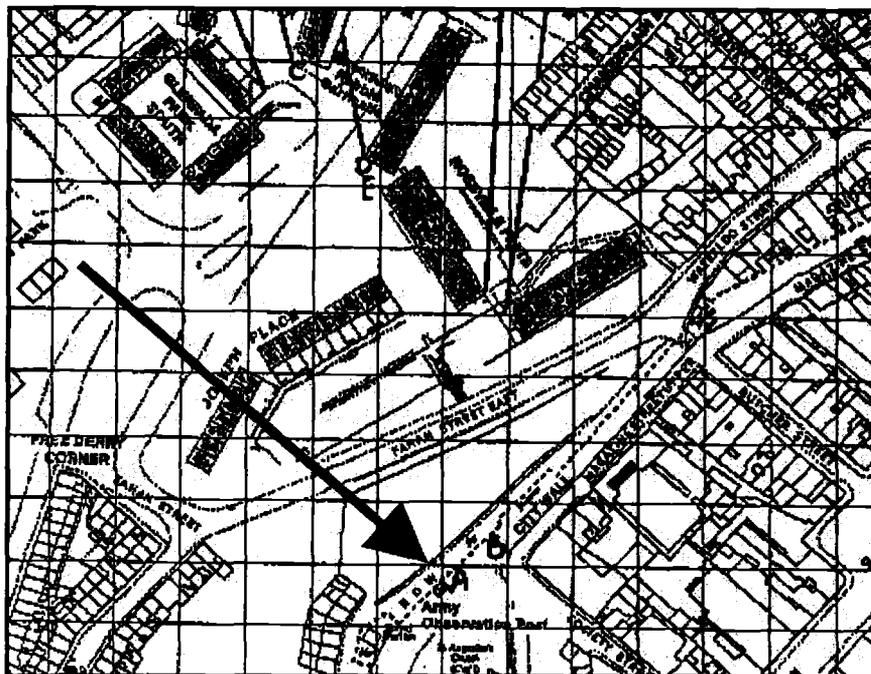
- 10B-55 Lieutenant 227 was a Troop Commander in the 22nd LAD RA.⁴³ He was in charge of Charlie OP on the day. He took up a position just to the north of the permanent

⁴² See in particular **B167.002 paragraphs 18 to 38**

⁴³ **B2204.001 paragraph 2**

K 7. 2208

Sanger and was kneeling down, observing the Bogside through a parapet. He marked his location at point 'A' on the map attached to his statement: ⁴⁴



10B-56 From his position, Lieutenant 227 saw a soldier in Glenfada Park North fire two shots along the south side of Block 2 of the Rossville Flats.

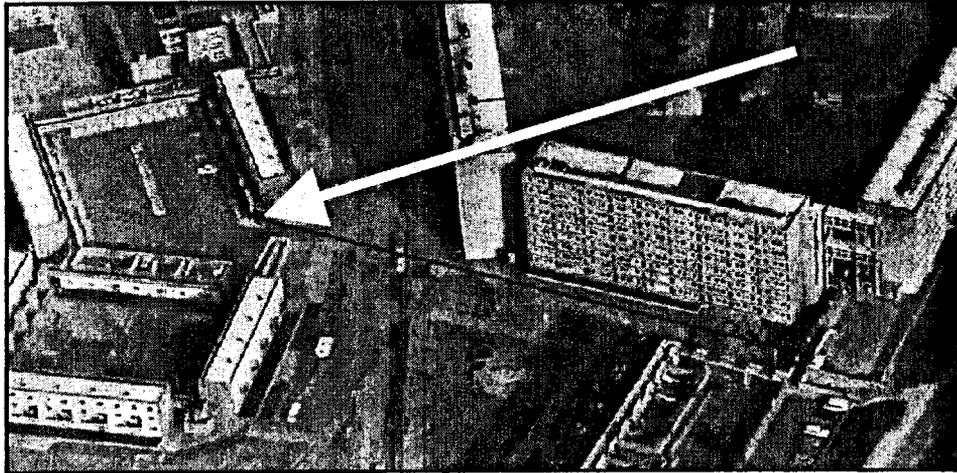
The identification of the soldier that Lieutenant 227 saw fire

10B-57 Lieutenant 227 has not been able to provide a description of the soldier who fired. The best he could say is that the soldier who fired was a member of 1 PARA, and that he was "blacked up". ⁴⁵ It is, however, likely that the soldier he witnessed firing was Soldier F. The consistency between their respective accounts is striking in nearly all key respects:

⁴⁴ B2204.002 paragraph 7; the map can be found at B2204.032

⁴⁵ B2204.005 paragraph 24

FS 7.2209



10B-60 He confirmed to the Widgery Tribunal that the line marked on the photograph represented the line of the shots he fired:

[Mr. Gibbens:] Would you have a look at these photographs....

Q. Is this the line of shooting when you fired from the south-east gable of Gleifada Park?

A. Yes.⁴⁸

10B-61 It is reasonable to infer that the photograph above was the one to which Mr. Gibbens referred when he asked Soldier F the question; what it depicts is consistent with what Soldier F said about these shots in his evidence to the Widgery Tribunal.⁴⁹

2. The direction in which the soldier aimed his shots

10B-62 Lieutenant 227 gave this description of the direction in which the soldier aimed his shots:

⁴⁸ B167.046 at BD

⁴⁹ B143 at AB

As 7.2211

I could not say exactly where he was aiming, but his rifle seemed to be aimed parallel with Block 2 of the Rossville Flats towards the walls. ⁵⁰

10B-63 He could not, however, see along the entire length of the soldier's line of sight:

From my position, I could not see the end of Block 2 nearest me. From the right side of my OP I could see halfway down the steps at the base of Block 2.... Part of this Para's line of sight was therefore dead ground to me. ⁵¹

10B-64 This corresponds with Soldier F's description of aiming at a pistolman in the "area of the wall at the far end of the Rossville Flats."⁵² Similarly, it corresponds with the line of fire marked on the trajectory photograph at paragraph 10B-59.

3. The number of shots the soldier fired

10B-65 Lieutenant 227 said that the soldier he saw fired two shots.⁵³

10B-66 This corresponds with the number of shots Soldier F fired in the direction of the Fahan Street steps.⁵⁴

4. The posture of the soldier as he fired

10B-67 Lieutenant 227 described the action of the soldier in the following way in his statement to the present Tribunal:

The para I had noticed first took cover by a lamp post and knelt down. He was facing south east and seemed to be looking towards Block 2 of the Rossville Flats. I have a very clear memory of him kneeling next to a lamp post. The lamp post was on his left-hand

⁵⁰ B2204.005 paragraph 24

⁵¹ B2204.005 paragraph 25

⁵² B135

⁵³ See first RMP at B2186.2; second RMP at B2185; SA statement at B2189 paragraph 8; evidence to Widgery Tribunal at B2196 at E; BSI statement at B2204.005 paragraph 24; evidence to this Tribunal Day 371/150/04 - 371/151/09

⁵⁴ B135; B138 paragraph 6

FS 7. 2212

*side, positioned between him and the eastern block of Glerfada Park North.*⁵⁵

10B-68 He told the Tribunal he still had a distinct memory of this:

Q. ... The Para that you describe who emerged from behind the eastern block of Glerfada Park and then took up a position, do you still remember him taking up a kneeling position?

*A. Distinctly, yes, sir.*⁵⁶

10B-69 This is the same posture Soldier F described adopting in a statement taken by Lieutenant Colonel Overbury on 19th February 1972:

*I shouted, "there's a gunman" and I dropped to one knee and took an aim position.*⁵⁷

10B-70 Soldier F gave the same account of getting down on one knee in his SA statement,⁵⁸ and on oath before the Widgery Tribunal.⁵⁹

5. The location of the pistolman

10B-71 It is important to note that Lieutenant 227 only heard the pistol shots; he did not see them being fired.⁶⁰

10B-72 In 1972, he judged the approximate location from which he heard the pistol shots being fired as "in the area of the Rossville Flats."⁶¹

10B-73 From what he could see of the direction in which the soldier fired his shots, Lieutenant 227 believed that the pistolman was in the area of ground that was out

⁵⁵ **B2204.005 paragraph 23**

⁵⁶ **Day 371/146/17**

⁵⁷ **B135 paragraph 3**

⁵⁸ **B138 paragraph 6**

⁵⁹ **B143 at B**

⁶⁰ **Day 371/171/15-17**

⁶¹ **B2195 at AB**

FI 7.2213

of his view. He gave this answer to the Widgery Tribunal when Mr. McSparran asked him where the soldier's shots were directed:

Q. Where was that [shooting] directed?

A. From what I could see, at the man with the rifle to my low and to my right. ⁶²

10B-74 Lieutenant 227 said in his BSI statement that he believed that the word "rifle" must be a typographical error on the Widgery transcript.⁶³ It is most likely that he had said "pistol", otherwise counsel who appeared before the Widgery Tribunal would have picked up on it, which they did not.⁶⁴

10B-75 During his evidence to this Tribunal, he was asked what he meant by "to my low and to my right". He marked the area to which he believes he was referring on a map that was shown to him, using a yellow arrow.⁶⁵ (This was saved with the reference B2204.036 – it cannot be inserted here because it has never been served on the Interested Parties in *Lasefiche* form.)

10B-76 Soldier F described the location where he saw the man with the pistol as follows:

As I did so I heard pistol shots coming from the area of the wall at the far end of the Rossville Flats. ⁶⁶

10B-77 The proximity of the locations each of them marked independently of one another is noteworthy, especially bearing in mind that Lieutenant 227 had pinpointed the spot by hearing the sound of the pistol shots.

⁶² B2200 at BC

⁶³ B2204.010 paragraph 58; Day 371/173

⁶⁴ B2200 at C

⁶⁵ Day 371/175 and B2204.036

⁶⁶ B135

FS 7. 2214

6. The soldier fired in response to a number of pistol shots

10B-78 Lieutenant 227 told the Widgery Tribunal that the soldier fired in response to a number of pistol shots:

Q. When you heard the pistol shots from Rossville Flats, did you see any counteraction taken?

A. Yes, I did.

Q. What was that?

A. A soldier kneeling on the corner at Glerfada Park fired two definite shots.⁶⁷

10B-79 He commented on this aspect of his testimony to the Widgery Tribunal in his BSI statement as follows:

Page 43, paragraph E – I have described hearing the pistol shots and have been asked whether any counter action had been taken. I then describe seeing the para kneel at the south gable end of Glerfada Park North and fire two definite shots. As I have explained with reference to my RMP statement, I am no longer certain that these two incidents were actually linked and it may be that I put the two together in my mind at the time.⁶⁸

10B-80 This, however, is unlikely: in each of Lieutenant 227's three contemporaneous statements, it is clear that he witnessed the soldier fire in response to the pistol shots. In his first RMP he said:

At this point I heard two or three pistol shots being fired from the area of Rossville Flats. The soldier in Glerfada Park then fired two rounds towards Rossville flats...⁶⁹

10B-81 In his second RMP statement he said:

⁶⁷ **B2195 at E**

⁶⁸ **B2204.010 paragraph 54**

⁶⁹ **B2186.2**

FS 7. 2215

At this time, I heard two or three pistol shots being fired from the area of Rossville Flats. The shots were fired in rapid succession. The soldier kneeling at the corner of Block 1 Glerfada Park then fired two aimed shots towards Rossville Flats.⁷⁰

10B-82 His SA statement suggests the same sequence:

I then heard two or three rapid pistol shots from the area of Rossville Flats. The kneeling soldier fired two deliberate shots....⁷¹

10B-83 Lieutenant 227 confirmed to this Tribunal his belief that his contemporary accounts would be more accurate than his current recollection because of the period of time that has passed since Bloody Sunday. Mr. Mansfield summarized the position and the witness agreed:

Q. You indicated earlier on, and you have maintained the position, that because of the difficulties of the, as it were the time that has passed, you wish to stand by your 1972 written accounts; you have said that on more than one occasion?

A. That is correct, sir.⁷²

10B-84 Lieutenant 227's account is consistent with Soldier F's account of firing the two shots at the pistolman after he had heard him fire.⁷³

The significance of the evidence of Lieutenant 227

10B-85 Lieutenant 227 is the only witness whose evidence identifies Soldier F as the soldier who killed Bernard McGuigan. No other witness has given evidence to the Tribunal which:

- (1) clearly identifies Soldier F, and

⁷⁰ B2185

⁷¹ B2189 paragraph 8

⁷² Day 371/200/16

⁷³ B135; B138 paragraph 6

- (2) suggests that Bernard McGuigan fell at the same moment that the soldier fired.

10B-86 The fact that Lieutenant 227 saw Mr. McGuigan fall as the soldier fired is apparent from his contemporary accounts:

- (1) In the statement he gave on 1st February 1972, Lieutenant 227 said:

The soldier in Glerfada Park then fired two rounds towards Rossville Flats and I saw a man fall at the corner of Block 1 of the flats. ⁷⁴

- (2) The next day, he made a second statement in which he said:

The soldier kneeling at the corner of Block 1 Glerfada Park then fired two aimed shots towards Rossville Flats. I saw him do this and I also saw a man on the corner of block 1 Rossville Flats fall to the ground. ⁷⁵

- (3) Later in that statement he alluded to the identification of the man who fell to the ground as Bernard McGuigan:

A small group of people round the body produced a white Civil Rights Banner and draped it across the body of the man I had seen shot. ⁷⁶

- (4) In his SA statement, he identified the man who fell as Bernard McGuigan from the photographs of his body lying where it fell:

I have seen photographs EP25/17 and EP25/18 and identify the foreground figure as the man I saw fall. ⁷⁷

- (5) At the time Lieutenant 227 gave his BSI statement, his recollection was that he did not in fact see the man fall.⁷⁸ But when he came to give evidence to

⁷⁴ B2186.2 and B2186.3

⁷⁵ B2185

⁷⁶ B2186

⁷⁷ B2189 paragraph 8

⁷⁸ B2204.005 paragraph 24 and B2204.008 paragraph 42

FS 7. 2217

the Tribunal, he made it clear that he wished to correct what he had said in his BSI statement:

Q. ... I think there is one matter you wish to deal with in relation to seeing the man fall; is that right?

A. Yes, that is correct, sir.

Q. Could you tell us what that is?

A. Yes, I have looked at my original Royal Military Police and at the statement I have made for the Inquiry and both in paragraphs 24 and in paragraph 42, I say that, in 24 "I do not know if I actually saw the person fall" and in paragraph 42 I go on to describe seeing a man fall "I definitely did not see either of the men fall", I wish to stand by my Royal Military Police statement that I made in 1972 which says that I did, sir.⁷⁹

Lieutenant 227's evidence of a man firing a pistol

10B-87 The evidence of Lieutenant 227 is equally significant because he corroborates Soldier F's contemporary accounts of firing at a man who had fired a pistol only moments before.

10B-88 It would be irrational and perverse to rely upon Lieutenant 227's evidence to conclude that Soldier F shot Bernard McGuigan but to ignore his evidence about the pistol shots.

The reliability of Lieutenant 227

10B-89 The Tribunal will have noted that Lieutenant 227 appeared transparently honest in the witness box.

10B-90 He appeared to have no objective other than to tell truth. This is evidenced by the fact that he gave evidence that was contrary to the interests of other soldiers. Not only did he implicitly suggest that the soldier he observed firing from Glenfada Park North killed a civilian, but he also observed that he did not see any firearms

⁷⁹ Day 371/112

near the man. In fact he said this of both the civilians he saw lying on the ground in a statement he gave to the RMP:

*I did not see any firearms with or near either man.*⁸⁰

10B-91 If his aim had been to protect other soldiers, it might be thought extremely unlikely that he would have mentioned this at all.

10B-92 He demonstrated his scrupulous fairness to the Tribunal on several occasions, most notably when Ms. Quinlivan suggested to him that his purpose was to protect 1 PARA:

Q. Can I suggest to you, Soldier 227, that when you went to make your statement that really your purpose in making the Royal Military Police statement was to provide support to the Parachute Regiment?

A. None whatsoever.

Q. That is why you state in your statement that "I can definitely state the first shots fired were not from an SLR" it was to emphasise that the Parachute Regiment had come under fire and not civilians?

A. I was making an honest statement on what I believed I heard and saw.

Q. The absence of the 108 shots that were fired by members of the Parachute Regiment, either you are confused about the sound or that was a deliberate omission on your part to minimise the role that the Parachute Regiment played on that day?

A. I think what I said was based on the questions I was asked.

Q. When you gave your second RMP statement, that is the typed version, if I could take you to 2184 the bottom of that page you state: "I heard the sound of a nail bomb exploding followed by what sounded like three aimed shots from an SLR."

A. Yes.

Q. I think you have acknowledged yourself that the use of the term "aimed shots" is quite an unusual one?

⁸⁰ **B2185**

FS 7.2219

A. Correct.

Q. Can I suggest to you the reason you used the term like that was to suggest that the conduct of the Parachute Regiment was controlled and was appropriate to the situation they met and that this was part of the whole process of trying to effectively protect the Parachute Regiment?

A. At no time when I was giving my statements was it suggested to me that I should actually say specific things in order to protect anybody.

Q. I am not suggesting it was suggested to you. I am suggesting that when you went along to make a statement, that in your mind you were partly there to protect your colleagues?

A. None whatsoever.

Q. How on earth could you have described shots that you did not see from an SLR as aimed shots?

A. As I have already said, "deliberate" would have been a better word.

Q. There is no way you could have described them as aimed shots, is there?

A. I know, I agree. ⁸¹

THE MAN FIRING A PISTOL NEAR THE FAHAN STREET STEPS

The location in context

- 10B-93 Soldier F identified a man firing a pistol just to the south of the gap between Blocks 2 and 3. Any evidence of civilians carrying a pistol in this area is relevant to the question of whether it is likely that a pistol was fired in the area of the Fahan Street steps as Soldier F alleged. It demonstrates that 'gunmen were in the area.'
- 10B-94 It is important to bear in mind that the gap between Blocks 2 and 3 was a thoroughfare for people leaving the Rossville Flats car park through the south-

FS 7.2220

eastern exit. Once Mortar Platoon had advanced, it is likely to have been the preferred exit route for any civilian gunman present in the Rossville Flats car park: this route presented the quickest access to the cover of the alleyway behind Joseph Place, which in turn provided a relatively sheltered passage into St. Columb's Wells.

- 10B-95 The alternative of exiting the car park through the gap between Blocks 1 and 2 would have been less appealing to anyone armed as it did not provide a safe escape route out of the Bogside. Choosing the gap between Blocks 1 and 2 would have meant being exposed to soldiers on the City Walls on the south side of the gap, whereas emerging through the gap between Blocks 2 and 3 would have the advantage of remaining out of sight of the troops deployed on the City Walls.
- 10B-96 The Tribunal already knows this was the route that OIRA 4, who has admitted being armed with a pistol, used to exit the car park of the Rossville Flats.⁸² However, he may not have been the only person who was armed with a pistol to pass through that exit: any man armed with a pistol in the Rossville Flats car park is more likely than not to have used the same route.
- 10B-97 The possibility that OIRA 4 may not have been the only man armed with a pistol caught in the funnel-effect of the Rossville Flats car park when Mortar Platoon advanced is dealt with generally in Chapter 7D. Furthermore, there is evidence of something suspicious, possibly a pistol, being moved surreptitiously towards the gap between Blocks 2 and 3, and apparent activity in or close to the gap causing alarm to those who were among the last to use it as an exit from the car park. (See 7D-VII above.)

⁸¹ Day 371/186

⁸² AOIRA 4.19 paragraph 24

FS 7.2221

The identity of the man with the pistol

10B-98 OIRA 4 says he was carrying a .32 calibre pistol.⁸³ The account he gave in his BSI statement was that he wanted to escape through the car park at the back of Joseph Place:

*I just wanted to get away as quickly as possible and I kept on going (southwards) down through the car park at the back of Joseph Place and away.*⁸⁴

10B-99 Is it merely a coincidence that a Sunday Times document places a man with a pistol of the same calibre in "the lane behind Joseph Place"?⁸⁵

officials/ 4
A different car then returned to collect this Official and drove him back to the Craggan.

The following incidents are hard to place timewise but are authenticated by staff officers.

1. An official fired and was wounded in the leg somewhere near Haking Bishop St early in the march. This is almost certainly Mary Holland's man. We are getting more details.
2. An Official fired two .32 pistol shots from the lane behind Joseph Place up at the Walker O.P. It was hopelessly out of range but the man was infuriated and frustrated; it was also risky, since he was in full view of the walls, and the lane was crowded with panicky people.

10B-100 The overwhelming probability is that this information is reliable. There is no dispute that it originally came from Reg Tester, the Command Staff Quartermaster

⁸³ AOIRA 4.5 paragraph 22

⁸⁴ AOIRA 4.19 paragraph 25

FS 7.2222

of the Official IRA, who gave it to the Sunday Times on 15th March 1972. Both Peter Pringle and Philip Jacobson told the Tribunal that he was the source.⁸⁶ (Mr. Pringle said that Mr. Tester had agreed to release them from a duty not to disclose his identity.)⁸⁷ Mr. Tester did not dispute the veracity of the information, or that he had provided it to the Sunday Times.⁸⁸

10B-101 It may be that the man who fired the .32 calibre pistol from behind Joseph Place may not have been OIRA 4. There is no evidence before the Tribunal to indicate whether .32 calibre pistols were less common than .38 or .45 pistols. The value of the information contained in the Sunday Times note is that it suggests one of two alternative scenarios:

- (1) If it was OIRA 4 who fired the shots from behind Joseph Place, then he plainly did fire his pistol again after leaving the Rossville Flats car park, contrary to what he claimed in his BSI statement.
- (2) If it was not OIRA 4, then there was another member of the IRA using that or another pistol in Sector 5.

10B-102 Of the members of the Official IRA who gave evidence, not one of them chose to assist the Tribunal in its search for the truth about the identity of the man who fired a pistol from behind Joseph Place. It is unlikely that they were unaware of the significance of this evidence revealing which of the scenarios above is the correct one. Either OIRA 4 has lied to the Tribunal about not firing his pistol on a second occasion or there was another gunman in the area.

10B-103 Whoever the gunman was who fired a pistol from behind Joseph Place, it is important to consider the context of his location. The gunman who fired the shots from the alleyway behind Joseph Place is much more likely to have been

⁸⁵ S37

⁸⁶ For Peter Pringle's assertion: Day 190/093/08; for Philip Jacobson's assertion: Day 191/112/15-19

⁸⁷ Day 190/017/03-13

⁸⁸ Day 414/063/12-24

FS 7.2223

travelling down it from north to south. If he had begun his journey from the south, it is unlikely that he would have gone as far as the alleyway as this would have meant crossing Fahan Street East and exposing himself to soldiers on the City Walls who were obviously there to look out for gunmen. It would have been safer and more expedient, if he wanted to shoot at soldiers on the City Walls, to do so from the derelict houses within St. Columb's Wells.

10B-104 There is no reason to doubt OIRA 4's evidence that he crossed the very area in which Soldier F identified a man with a pistol. OIRA 4 was, on his own admission, armed with a .32 calibre pistol at the time. When it comes to the question of the presence of gunmen in the relevant area, the only issue that cannot be resolved on the information that OIRA 4 revealed to the Tribunal is whether another man also crossed the same area while armed with a .32 calibre pistol before firing it from the back of Joseph Place.

Is it safe to conclude that no pistol shots were fired?

10B-105 Soldier F's case that he shot at a man firing a pistol is not dependent on the Tribunal finding that an unknown person was shot and wounded in this vicinity. Soldier F may have missed the gunman he fired at. His contemporary evidence is that he saw the pistol man fall, but this does not necessarily mean that he had been hit by a bullet; it is common for people to 'hit the deck' when they are being shot at.

10B-106 If the gunman was hit, it is most likely that he was taken down to St. Columb's Wells through the alleyway behind Joseph Place. There is very strong evidence to support the fact that a number of unidentified casualties were put in cars in this area. (See the submissions we made jointly with Mr. Robert Aitken.) Several witnesses in this area clearly spoke with less compunction about the number of casualties they saw as they were completely unaware of the circumstances in which they had been shot.

10B-107 The majority of civilian witnesses who were aware of the unidentified individual who fired a pistol from behind Joseph Place never disclosed it to the Tribunal.

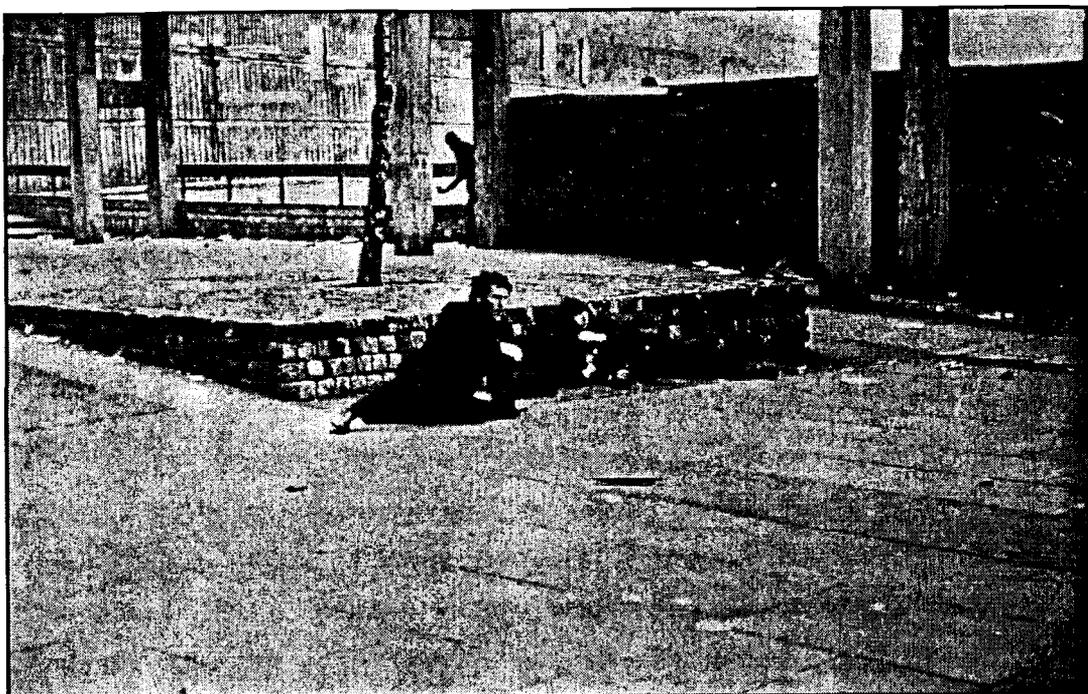
FS 7.2224

This is hardly surprising. In fact, there are other suspicious facts in Sector 5 which have been met by similar silence.

10B-108 For example, no-one has owned up to laying the lead-soiled scarf over the body of Bernard McGuigan. The quantity of lead on the scarf is consistent with it having been used to wrap up a recently fired pistol.⁸⁹

10B-109 Similarly, no-one has ever disclosed what it was that the small group, using the ambulance as cover from soldiers further north on Rossville Street, were passing surreptitiously between each other when they were caught on film soon after most of the shooting had taken place.⁹⁰

10B-110 Also, nobody admits to knowing anything about the figure in the background in photograph P323:



⁸⁹ Dr. Lloyd agreed with Dr. Martin's opinion that this was a possible source of the lead that was found on the scarf: Day 227/047/22 - 048/04

⁹⁰ Video 1 at about 330

FS 7.2225

10B-111 In any event, two civilian witnesses appear to have been aware of the fact that there was a pistolman in the area between Block 2 and Joseph Place. One of them sought to withdraw his evidence on the unconvincing basis that he had only mentioned it to impress his friends. Kevin Martin said in a statement dated 31st January 1972:

*I then ran down beside the shop side of the flats. It was then that I heard the shots, I think I know gun fire well enough to recognise SLRs. I seen one IRA man with a pistol, he opened fire. I must stress that this was after the army opened fire.*⁹¹

10B-112 In his BSI statement he gave another flimsy explanation for giving a false statement at the time:

*I wanted to make the point that even if there had been a guy with a "short" about, it would have been ridiculous for him to take on the Paras and even if he did try to, he only shot after they shot first. I wanted to emphasis how stupid it would have been for any civilian to take the Paras on, but, in fact, I was well off side and I saw nothing of this.*⁹²

10B-113 Edwin Glasgow QC had this exchange with Mr. Martin:

Q. You say "it was total fabrication," but I wonder whether you do yourself justice. As a result of the conversation that you had had with your young friends, you certainly believed that a gunman had been seen in the area?

A. Yes.

Q. So you were not telling a lie; in your words, you were embellishing it, on your recollection, by saying that you had seen something which you had not yourself seen?

A. Absolutely.

Q. I want to be clear about this: did you believe at the time when you wrote that statement out that the things that you were putting in it, the important things like the gunman and the man falling beside you, were true even though you had not yourself seen them?

⁹¹ AM25.1

⁹² AM25.6 paragraph 21

FS 7.2226

A. Oh yes.

Q. Oh yes.

A. Yes.

Q. And you are quite sure in your own mind -- I am not asking for their names -- but at least some of the bunch of young people who you were with were telling you that there had been a gunman in the area where you were prepared to go along with it and say you had seen one?

A. Um, I am not exactly sure what you mean by "the area". By "the area" I would understand the Bogside, not particularly in the area of lower Glerfada Park.

Q. The crucial area is not Glerfada Park, is it, because you will recall Mr Rawat again helped you with this. You were talking about, whichever entrance you had gone through, having been in the area by the shops, behind the central block?

A. Yes.

Q. And you had no reason to lie -- I do not mean lie, you had no reason to embellish that; had you?

A. No.

Q. So the Tribunal could fairly confidently work on the assumption that that was a truthful and accurate account as to at least where you had been?

A. Yes.⁹³

10B-114 PIRA 25 also gave evidence which supports the fact that a man armed with a gun was in the gap between Blocks 2 and 3. In his BSI statement he said he saw the muzzle of a gun appear round the south eastern corner of Block 2 from his position in front of the shops.⁹⁴

10B-115 When he gave oral evidence to the Tribunal, PIRA 25 said he could not identify what type of weapon it was:

⁹³ Day 420/199/15

⁹⁴ AG17.3 paragraph 18

FS 7.2227

MR GLASGOW: The last matter, may we go back, please, to AG17.3, this is the last paragraph on the page, paragraph 18. May I ask you one more question about that: when you saw the people coming out towards you round the corner of Block 2 from the car park, you recall seeing the muzzle of a rifle?

A. Yes.

Q. How much of it did you see?

A. Not a lot, just a bit from the top and the muzzle on the rifle.

Q. Could you see enough to be able to identify the type of rifle?

A. No, I am sorry.

Q. Really all you could say is that it was the end of a gun –

A. Yes.

Q. – of some kind?

A. (Witness nodding)

Q. And you did not see who was holding that gun?

A. No, just heard a voice saying "move out", "move on", just.

Q. Are you absolutely certain on oath that you saw, on Bloody Sunday, a gun sticking out round the corner of Block 2 where you saw the people coming?

A. Yes, I could say I did.

Q. You are certain?

A. Yes, I am certain, yes.⁹⁵

10B-116 In view of the fact that any civilians who had been ordered through the gap between Blocks 2 and 3 by a soldier with a rifle would undoubtedly have told the Tribunal about this, the fact that no-one has mentioned it makes it more likely that the person holding the gun was a civilian, not a soldier.

⁹⁵ Day 424/141/03

FS 7. 2228

10B-117 This ties in with evidence from Patrick Moore of a “known Republican who seemed to be quite used to being under fire and did not have the same look of fear as everybody else” directing people through the gap between Blocks 2 and 3.⁹⁶ Mr. Moore specifically said in his BSI statement: “The person who I recognised as a Republican told us to keep moving...” Like other witnesses, however, he later tried to retract his suggestion that there was a “known Republican” in the area. He gave an inconsistent and rather unlikely explanation for his retraction in answer to questions from Christopher Clarke QC:

Q. You say that taking cover with you behind the wall was a known republican who seemed to be quite used to being under fire and did not quite have the same look of fear as anyone else; is that right?

A. That is the correction I made, there was a person there who took command of things and just seemed to be able to control and help people.

Q. Was he a known republican or not?

A. Well, when I asked who the person was who helped us, nobody seemed to know just somebody said "I think he is a republican", that is basically where that description come from.

Q. Do you know who he is; do you know his name?

A. No, I do not believe I ever knew it.

Q. He told you to keep your heads down; is that right?

A. He kept us calm and helped us get out of there.⁹⁷

10B-118 Despite the reticence of civilian witnesses to say anything that would lend support to the fact that a gunman passed through the area between Block 2 and Joseph Place, there is no doubt that at least one pistolman did pass through this area. In the context of all the evidence the Tribunal has heard from and about the Official IRA, it is difficult to believe that any member of the organisation armed with a

⁹⁶ AM417.5 paragraphs 26-28

⁹⁷ Day 098/040/23

pistol on Bloody Sunday would not have exploited an opportunity to fire at soldiers if one arose.

10B-119 The location in which Soldier F identified a man with a pistol was hidden from soldiers deployed on the City Walls. It was also an ideal location from which to escape into the cover of the alleyway behind Joseph Place, and from there, if necessary, into the safety of St. Columb's Wells.

10B-120 The fact that the Official IRA have been so determined to obstruct the Tribunal's search for the truth about the identity of the man whom Reg Tester admitted had fired a pistol behind Joseph Place suggests something in itself. Some among their number must know who it was and, more importantly, whether he made use of his pistol in the area between Block 2 of the Rossville Flats and Joseph Place. The fact that he fired a couple of shots at the City Walls is plainly not what is controversial about his identity.

10B-121 In the circumstances, the Tribunal should draw the following inference: the reason the identity of this gunman has been kept secret is because it supports the truthfulness of Soldier F's account that the reason he fired into the area between Block 2 of the Rossville Flats and Joseph place was because there was man firing a pistol in that location.

10B-IV CONCLUSION

10B-122 Soldier F faces allegations that he fired the shots that killed Bernard McGuigan and Patrick Doherty. These specific allegations are dealt with in later sections. However, the basic reason for Soldier F's shots into Sector 5 is very relevant to the question of his responsibility for what happened. In fact, the question of whether Soldier F was firing at a man with a pistol is central to the Tribunal's search for the truth about events in Sector 5.

10B-123 The evidence of Lieutenant 227, who appears to have seen Soldier F fire the relevant shots, establishes that Soldier F's explanation that he was firing at a man firing a pistol between Block 2 and Joseph Place is reliable and true.

FS 7. 2230

10B-124 Moreover, there is independent evidence that one – or possibly two – members of the Official IRA passed through the area between Block 2 and Joseph Place while armed with a pistol. It is unlikely that this is nothing more than a coincidence.

10B-125 The Official IRA has refused to provide the Tribunal, even confidentially, with any information about the identity of the gunman who subsequently fired a number of shots from behind Joseph Place, yet it is well known that these shots missed their intended target. The Official IRA's desire to keep his identity secret is likely to be important for other reasons. The identity of that gunman is, most notably, relevant to the question of whether it is likely that a pistol was fired in the area between Block 2 and Joseph Place as Soldier F alleged.

FS 7.2231

CHAPTER 10C

SHOOTING FROM GLENFADA PARK NORTH

10C-I INTRODUCTION

- 10C-1 On day 38 of his Opening Speech, Christopher Clarke QC drew the Tribunal's attention to a conundrum relating to Sector 5:

The Tribunal will have noticed, quite apart from the fact that the number of dead and wounded in this sector appears to be four, that there are more shootings to be accounted for than can be accounted for by two bullets. Also, there is a sizable body of evidence to the effect that there was more than two shots fired from westerly direction towards the area where Patrick Doherty was. ¹

- 10C-2 In 1972 Soldier F admitted firing two shots into Sector 5. Since then it has been assumed that he was responsible for killing Bernard McGuigan and Patrick Doherty. It is unlikely, however, that Soldier F was the only soldier to fire into Sector 5. As set out below, there is evidence that at least one other soldier fired into Sector 5.

10C-II OTHER SOLDIERS IN GLENFADA PARK FIRING INTO SECTOR 5

- 10C-3 Michael Mansfield QC recognised in his Opening Speech that Soldier F's admission that he fired two shots in Sector 5 did not mean that other soldiers in Glenfada Park North did not also fire shots into the same area:

Whoever fired that shot -- and we say it has to be one of those soldiers, we say almost certainly F or someone with F in Glenfada Park North because, as you know, the only soldier that accepts, that does not mean to say there are not others from that area, who admits any trajectory anywhere near this position is F. ²

¹ Day 038/067/01

² Day 050/123/18

10C-4 The identity of the other soldier(s) who fired into Sector 5 is unclear because, unlike Soldier F, none has accounted for these shots. Lord Gifford, however, hypothesised that Soldier G fired shots alongside Soldier F:

Private G also fired shots before he entered Glenfada Park North. He fired in Glenfada Park and he then went through to Abbey Park and shot Gerald Donaghy, again the bullet matches the rifle, and Gerard McKinney. He then rejoined Lance Corporal F at the gable end of Glenfada Park, from where we know that at least two soldiers were firing.³

10C-5 It is not clear, on the face of the available evidence, whether two soldiers in Glenfada Park North ever fired shots across Rossville Street *simultaneously* with one another. In fact, the evidence shows that remarkably few witnesses saw *any* soldiers in Glenfada Park North firing into the area to the south of Block 2.

10C-6 A significant handful of witnesses, however, did at one time see two or more soldiers kneeling in the main entrance to Glenfada Park North and pointing their rifles across Rossville Street in the general direction of where the deceased and injured in Sector 5 were shot, although they did not actually see them fire.

TWO OR MORE SOLDIERS IN KNEELING POSITIONS IN THE ENTRANCE TO GLENFADA PARK NORTH POINTING THEIR RIFLES ACROSS ROSSVILLE STREET

10C-7 PIRA 25 said in his BSI statement that he saw three soldiers in the entrance to Glenfada Park North. He believed they had been firing shots into the area between Block 2 of the Rossville Flats and Joseph Place:

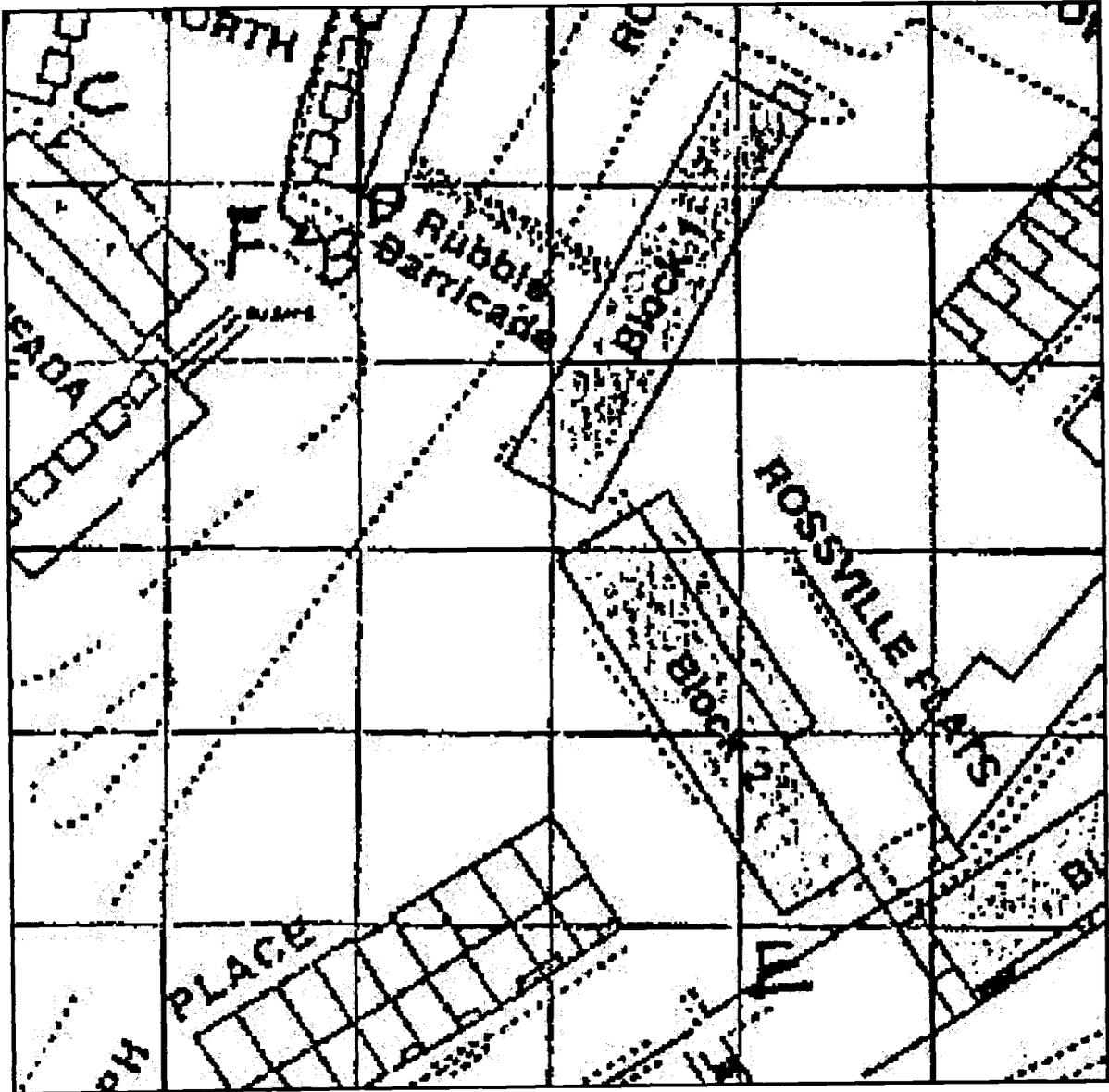
I heard two or three sharp cracks of gunfire and I saw shots hitting a wall ahead of me at the point I marked E on the attached map (grid reference L19). I threw myself back, close up against the façade of Block 2 and looked north-west towards Glenfada Park North. I saw three soldiers kneeling, out in the open in the approximate position I have marked F on the attached map (grid reference I15). I have also marked their positions on the attached photograph, marked A. I saw their uniforms and their helmets, but I

³ Day 049/137/19

FS 7.2233

*did not actually see them fire their weapons, although I was sure at the time that the man who was hit had been shot by the three soldiers. As soon as I saw the soldiers they lowered their r.fles from the aim position, (butts of the r.fles at their soldiers) and got up and moved away.*⁴

10C-8 The map which PIRA 25 marked and attached to his statement appears at AG17.16:



⁴ AG17.7 paragraph 14

PS 7. 2234

10C-9 The photograph he marked which appears at AG17.9:



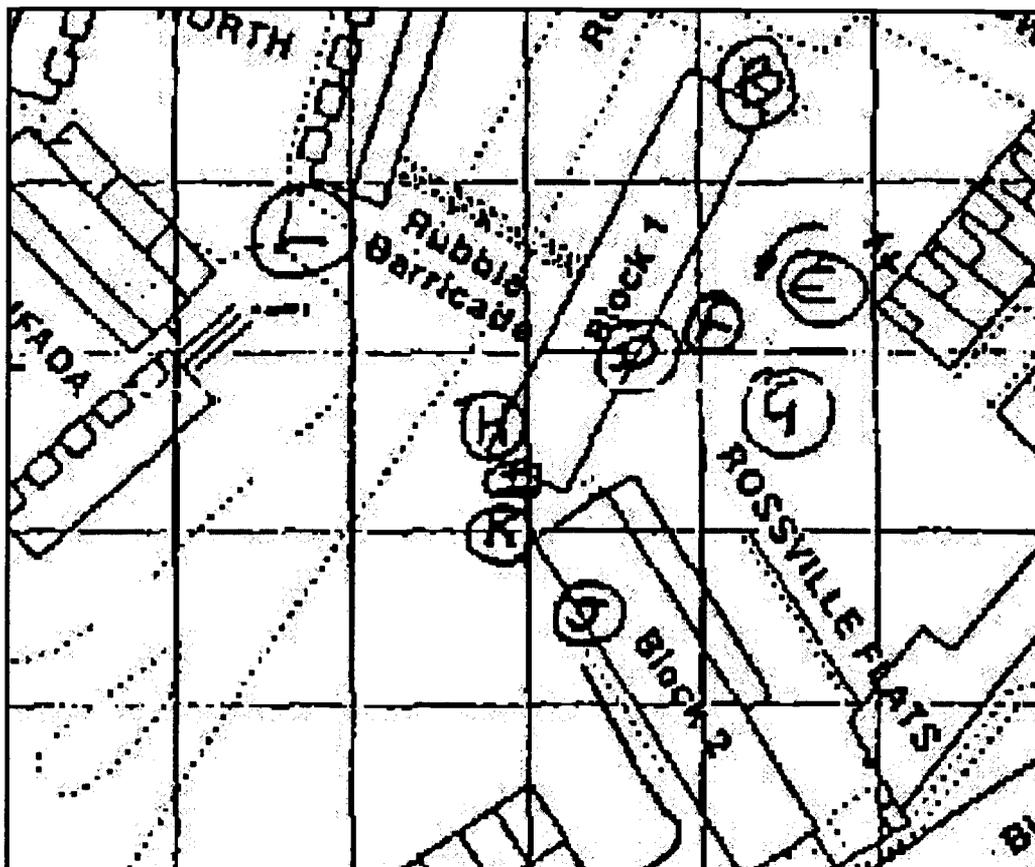
10C-10 PIRA 25 confirmed this evidence on oath to the Tribunal.⁵ He was not challenged on it.

10C-11 Hugh Barbour appears to have seen the same three soldiers in a kneeling position. He saw them at point L as he looked towards Glenfada Park North from his position at point J.⁶

⁵ Day 424/121-122

⁶ For Mr. Barbour's location: AB10.5 paragraph 26; for the soldiers: AB10.5 paragraph 29

FJ 7.2235



10C-12 Mr. Barbour gave an account in his BSI statement of seeing the soldiers having just witnessed Bernard McGuigan fall to the ground:

I have a recollection of seeing three or four soldiers coming out of the gap between Glerfada Park North and Glerfada Park South, on to Rossville Street, at the point marked L on the attached map (grid reference L15). They took up kneeling positions and put their rifles to their shoulders. I was convinced that they were going to shoot at me and the other people who were with me. I tried to take cover at the veranda poles..... When I saw those soldiers I decided to make a run for it towards Joseph's Place. I could now hear intense shooting from the Glerfada Park Area.⁷

10C-13 He told the Tribunal that he believed the soldiers had come from inside Glenfada Park North.⁸ He confirmed on oath that his impression was that the soldiers were

⁷ AB10.5 paragraphs 29 and 31

⁸ Day 088/076/01-04

aiming their rifles in his direction, i.e., between Block 2 of the Rossville Flats and Joseph Place.⁹

10C-14 Joseph Nicholas gave an account in his BSI statement of seeing two of the soldiers in squatting positions:

I could still hear shooting so I started to crawl through the gap between Blocks 2 and 3. I made my way as far as the south east corner of Block 2 where I stood up again. As I looked round the corner towards Glerfada Park South, I saw two soldiers standing at the north eastern corner of Glerfada Park South at about point I (grid reference I15). I remember that one of them was black. They were both in a firing position facing towards me. They appeared to be squatting down. I did not see them fire any shots [emphasis added].¹⁰

10C-15 Counsel to the Tribunal asked him to clarify what he meant by "squatting down":

Q. ... You say that they appeared to be squatting down. What exactly do you mean by that? Squatting in what sense?

A. I mean kneeling.¹¹

10C-16 Mr. Nicholas mentioned these soldiers in a statement he made on 2nd February 1972, suggesting that they fired shots towards Patrick Walsh as he went out to Patrick Doherty:

Because of firing aimed in his direction from the two soldiers at the entrance to Glerfada Park he was unable to get Mr. Doherty to the safety of the alleyway at Joseph Place.¹²

10C-17 Similarly, he gave this account to Philip Jacobson of the Sunday Times in the weeks after Bloody Sunday:

... in the centre of glerfadda [sic] Nicholas saw two paras. One was kneeling, the other sort of squatting, both with rifles at their

⁹ Day 088/087/04-06

¹⁰ AN17.4 paragraph 18

¹¹ Day 078/022/04

¹² AN17.17 paragraph 2

MS 7.2237

*soldiers, both were aiming directly up the gcp, making Doherty right in their line of possible fire.*¹³

10C-18 He told the Tribunal that he recalled seeing a number of rounds hit the retaining wall that runs parallel to, and below, Fahan Street East, both before and after the point at which he believed Patrick Doherty was hit.¹⁴

A VOLLEY OF SHOTS FIRED INTO SECTOR 5 WHICH HAS NOT BEEN ACCOUNTED FOR

10C-19 There is also evidence to suggest that there were two volleys of shots fired into Sector 5 separated by a gap in time. Brian Doherty witnessed at least two volleys of such gunfire. He was with a group of people, including the injured Michael Bradley, in a shop beneath Block 2 of the Rossville Flats.¹⁵ He said he thought it was "Barr's shop."¹⁶ The location of Molly Barr's shop is easy to identify as it can be seen in photograph **P320**: it is the second shop from the west on the ground floor of Block 2:



¹³ AN17.20 from line 13; Mr. Nicholas said he recalled giving the account: Day 078/047/15

¹⁴ Day 078/034/16-24

¹⁵ AD57.5 paragraphs 34 and 35

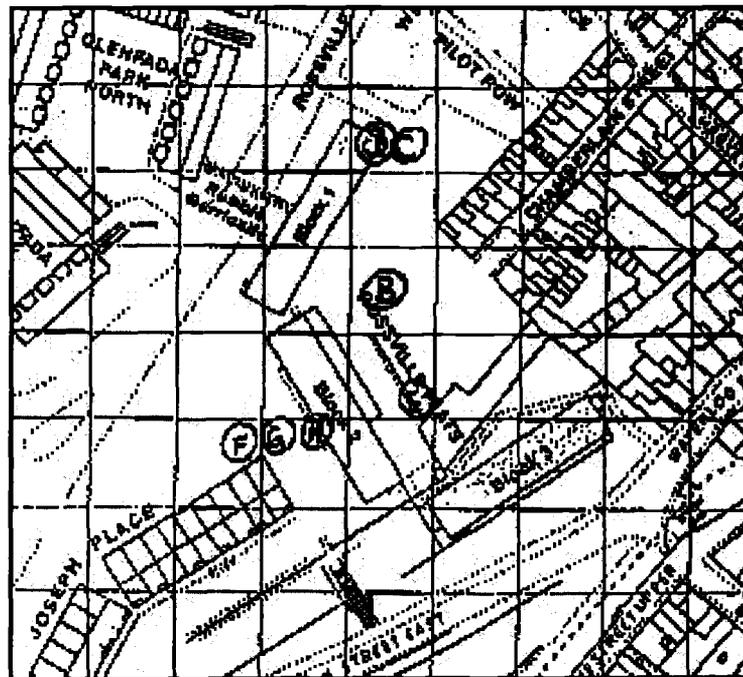
¹⁶ Day 149/057/20

A 7.2238

10C-20 He said that he had heard bursts of shooting fired in volleys while he and others carried Michael Bradley into the shop. He spent four or five minutes in the shop.¹⁷ Then he decided to try to make a run for it:

I decided to leave the shop and run to Free Derry Corner. I seem to remember that a group of other people had the same idea, and when there was a lull in the firing we all ran together towards Free Derry Corner. I instinctively felt there would be safety in numbers and I ran with these people. We had not got very far when another volley of shots rang out. By the sound of them, these shots seemed to be coming from our west, perhaps from the area around Glensfada Park. I cannot be more precise than that. We all realised that we were exposed where we were and we dropped to the ground. The position where we were when we did this is marked with an F on the attached map. We began crawling back towards Block 2, but had only got a few yards when another volley of shots rang out. The position where we were when this volley of shots occurred is marked with a G on the attached map.¹⁸

10C-21 The relevant part of the map attached to his statement is shown below:¹⁹



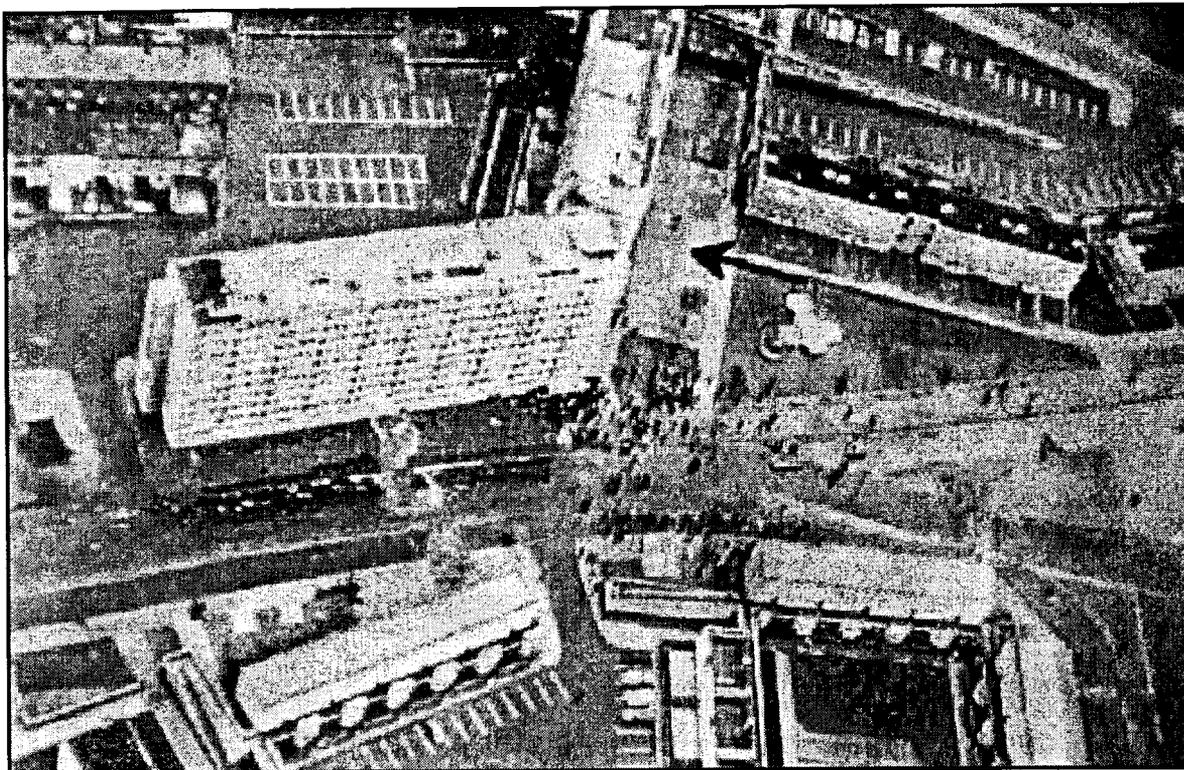
¹⁷ AD57.5 paragraph 35 and 36

¹⁸ AD57.5 paragraphs 37 to 39

¹⁹ AD57.11

FS 7.2239

10C-22 Mr. Doherty said he believed that both volleys of shots came from the direction of Glenfada Park.²⁰ He said that he could see the impact of two or three of the bullets on the pavement, and he indicated where they landed when he gave oral evidence to the Tribunal:²¹



10C-23 It is possible that this occurred before Bernard McGuigan and Patrick Doherty were shot because this witness did not see any bodies lying in the positions in which they died, although of course it is possible that he simply failed to notice them.²²

²⁰ AD57.6 paragraph 40

²¹ Day 149/056/23 – he marked the spot with a blue arrow: saved at AD57.13

²² Day 149/055/12 - 149/056/05

FS 7-2240

10C-24 Mr. Doherty confirmed this evidence on oath without being challenged about it.²³ None of the Interested Parties asked him any questions at all.²⁴

10C-25 There is a certain amount of eyewitness testimony that supports the fact that a volley of shots, quite distinct from the shots fired by Soldier F, was fired into Sector 5.

10C-26 The soldier whom Denis Bradley saw firing one such volley into Sector 5 was almost certainly not Soldier F:

A few minutes later a British soldier arrived at the corner of the gable nearest the car park in Glerfada Park. He was followed by four or five other British soldiers. One of the soldiers ordered myself and the other people who were against the gable to move in the direction of William Street, along Glerfada Park with our hands on our heads. Before I could do as this soldier told me another soldier grabbed me and pushed me off the pavement along the perimeter of Glerfada Park. When I recovered my balance I found myself beside another soldier who fired between 4 and 7 shots from his rifle, which he was holding at hip level. The gun was aimed slightly above the horizontal in the direction of Free Derry Corner. I grabbed his arm and asked him to stop firing, but he shrugged me off.²⁵

10C-27 His BSI statement records more detail, however, and makes a distinction between the first soldier to come around the corner into view and the one who fired the shots across Rossville Street:

30. The next memory I have is of Paratroopers coming round to the gable end wall at the corner of GPN from a northerly direction... The first soldier round was surprised to see us, or that was my impression. He raised his gun, pointed it at me and shouted to us to move on into the car park of Glerfada Park North. I didn't think I was going to be shot... I went towards the soldier to speak to him. He said to me 'hands up'. My next memory is of people being moved up into Glerfada Park North and I was still trying to speak to the soldier...

²³ Day 149/054/11 - 149/058/03

²⁴ Day 149/149/05

²⁵ H1.42

H 7.2241

31. I remember that around this point another soldier started firing from the hip or waist in a southerly direction from the entrance to the Glerfada Park car park at the east...²⁶

10C-28 This distinction between the first soldier to come around the corner and the one who fired the shots across Rossville Street also appears in one of Mr. Bradley's contemporary accounts. In the very similar account he gave to a Sunday Times journalist not long after Bloody Sunday, he described the soldier who fired as "another soldier who had just moved up" after the other soldiers had started moving the arrestees northwards.²⁷

10C-29 During his oral evidence, Mr. Bradley marked the location of the soldier on the Virtual Reality model. Christopher Clarke QC, summarised what the arrows meant:

Q. The arrows show -- the mauve arrow is where the people have been, the turquoise arrow is the route the soldiers came down, the green arrow is where the people were being taken by the soldiers back up into Glerfada Park North, the light blue arrow is approximately where the soldier was and the dark blue arrow is the direction into which he moved; is that right?

A. That is roughly correct. There is an assumption, by the way, because I could not have seen and did not see where the soldiers came from, but they came from that direction. I am not saying they came up that particular street.²⁸

²⁶ H1.12 paragraphs 30 and 31

²⁷ H1.32 and H1.33

²⁸ Day 140/137/19

H 7. 2242



10C-30 This evidence is confusing. First, if the turquoise arrow is meant to describe the route the soldiers came down, then there is no “light blue” arrow to indicate where the soldier was. It is possible that when Christopher Clarke said “light blue arrow” he meant to say “little blue arrow” or it may be that he simply forgot that the turquoise arrow – which could also be described as light blue – had already been used to denote the direction in which the soldiers came. Secondly, the reference to the dark blue arrow describing the direction in which the soldier moved is ambiguous because there are two “dark blue arrows”. If it is the bigger of the two which is meant to denote the direction in which the soldier moved, it appears to be pointing in the very direction from which he had come. It may be that this arrow was mistakenly put on the screen back to front. Nor is it clear where the soldier was when he actually fired.

10C-31 It is unlikely that Mr. Bradley’s evidence about the location from which the soldier fired is clear enough to be of any assistance to the Tribunal except insofar

FS 7. 2243

as it appears to indicate that he fired from a location approximately where Soldier F fired from.

10C-32 The soldier Mr. Bradley saw was not, however, Soldier F:

I remember at around this point another soldier started firing from the hip or waist in a southerly direction from the entrance to the GPN car park at the east. I remember being horrified. He was certainly not kneeling or with his gun up to his eye line and seemed to be firing from the side, probably two handed, but I am not sure about that. I remember grabbing onto him, he pushed me and I slipped off the pavement and fell and stumbled to the ground. I was to his right as he shot. I told him to stop shooting. I remember a pram ramp south of where I was standing at the gable wall and that there were people there over towards that ramp. I didn't think he was firing at them specifically but I remember thinking I wouldn't have wanted to be there.

My impression is that Lord Widgery interpreted what I said about this soldier to mean that he firing towards Free Derry Corner. He was certainly firing in a southerly direction and that is what I meant. I don't think he was firing at Free Derry Corner but generally in a southerly direction. My memory is not of him shooting across the road to the front of the Rossville flats (in the direction of the television [sic] kiosk), but to the south. He might have shot across the road to the front of the flats but I don't think he did. Again, the Widgery Inquiry seemed to be leading me to say that this soldier's shots, which were between 6 and 8 in number, might have been those that killed, for example, Barney McGuigan. Whilst not impossible, my impression of the manner of the firing is that this highly unlikely. The soldier was moving around and swaggering, but the general body position was not in that direction. My fear was for the people I could see either on the ramp or through the ramp. The soldier was just shooting, not particularly at anyone. The angle of fire seemed to me to be slightly over people's heads. I didn't think the soldier had lost his head. I didn't think he was going to shoot me. He didn't say anything to me. One of the other soldiers told me to get along. [Emphasis added.]²⁹

10C-33 The highlighted passages illustrate the important differences between Mr. Bradley's account and Soldier F's actions as corroborated by Soldier 227. Soldier 227 was not challenged by any of the Interested Parties in relation to his account

FS 7.2244

of the soldier he saw firing. In fact, his evidence was relied upon by Michael Mansfield QC to put to Soldier F that he was seen to shoot Bernard McGuigan.³⁰

10C-34 Mr. Bradley's evidence is totally inconsistent with that account of Soldier F's actions:

- (1) Lieutenant 227 said the soldier "took cover by a lamp post and knelt down."³¹ Every account that Lieutenant 227 has given consistently stated this fact.³² Counsel to the Tribunal asked 227 whether he could still remember the soldier kneeling down to fire, and he was never challenged on his answer:

The Para that you describe who emerged from behind the eastern block of Glerfada Park and then took up a position, do you still remember him taking up a kneeling position?

*A. Distinctly, yes, sir.*³³

- (2) Mr. Bradley said that the soldier fired from the hip.³⁴ Lieutenant 227 has consistently described the soldier he saw fire as holding the gun to his shoulder.³⁵ He was never challenged on this.
- (3) Lieutenant 227 has consistently described the soldier he saw fire in the direction of the Rossville Flats and not in the direction of Free Derry Corner as Mr. Bradley suggested.³⁶ It was never suggested to 227 that he was wrong about this.

²⁹ H1.1.3 paragraphs 31 and 32

³⁰ Day 376/124-127

³¹ B2204.005 paragraph 23

³² B2186.2; B2185; B2189 paragraph 7; B2195 at E

³³ Day 371/146/17

³⁴ Day 140/137/15

³⁵ B2196 at A; B2204.005 paragraph 24;

³⁶ B2186.2; B2185; B2189 paragraph 8; B2195 at F; B2204.005 paragraph 24

FS 7. 2245

- (4) Mr. Bradley described the soldier as "spraying" the bullets he fired without aiming properly.³⁷ Lieutenant 227 suggested that the soldier he saw fire took aim with each shot he fired.³⁸ This is how he described it in his statement to the Tribunal, without any challenge:

*I could see that he took aim quite carefully and I then saw him fire two shots. He paused after the first shot to re-aim before shooting a second time.*³⁹

- (5) Mr. Bradley has given various descriptions of the number of shots that he saw the soldier fire, but the number has always been between four and eight. Whereas the soldier whom Lieutenant 227 saw fired two shots.⁴⁰ It was never suggested to Lieutenant 227 that the soldier he saw fired more than two shots.

- (6) Although Mr. Bradley suggested that the soldier he saw fire was not the first to come around the corner of the gable wall, the soldier Lieutenant 227 saw fire was the first one to come around the corner:

*The next thing I remember is looking into Glerfada Park North. I was not looking through my telescopic sight at this point. My attention was caught by a soldier who I believe was a member of the Parachute Regiment. He appeared from behind the eastern block of Glerfada Park and took up a position at the south west corner of the eastern block. There were some civilians behind him. Two other paras came into my line of vision directly behind him.... The para I had noticed first took cover by a lamp post and knelt down.*⁴¹

10C-35 Mr. Bradley said he physically tried to stop the soldier firing. He described it in this way in his statement of 22nd February 1972:

³⁷ Day 140/141/01

³⁸ B2185; B2189 paragraph 8; B2195 at EF;

³⁹ B2204.005 paragraph 24

⁴⁰ B2186.2; B2185; B2189 paragraph 8; B2195 at F; B2204.005 paragraph 24

⁴¹ B2204.005 paragraph 23

FS 7. 2246

*I grabbed his arm and asked him to stop firing, but he shrugged me
cf. ⁴²*

10C-36 He confirmed that he could still remember this when he was asked about it by Edwin Glasgow QC:

Q. Your recollection is that you physically handled him, to use a neutral word?

A. Yes, yes.

Q. You actually got hold of him?

A. Yes.

Q. Do you think it is possible time has played tricks with your memory over that, or is that a clear recollection?

A. It is one of the clearest recollections I have, but memory is memory. ⁴³

10C-37 The only characteristic of this soldier that Mr. Bradley was able to describe was that his face was blackened.⁴⁴

10C-38 The only common feature of their respective accounts is that both Mr. Bradley and Lieutenant 227 describe a soldier firing out of Glenfada Park North from a similar location around the time the arrestees were being taken away. If Mr. Bradley's account is capable of proving anything above and beyond that basic fact, it should be borne in mind that there is no evidence to suggest that the soldier he described is more likely to have been Soldier F than any other member of Anti Tank Platoon who entered Glenfada Park North.

10C-39 Other evidence also indicates that the soldier Mr. Bradley saw was not Soldier F. George Irwin was behind the same gable wall and he believed that he and Fr. Bradley, as he then was, were the last in the line of arrestees. He has not provided

⁴² H1.42

⁴³ Day 140/238/23

⁴⁴ Day 140/143/01

AS 7.2247

a statement to the Tribunal and the only record of an account given by him is a NICRA statement, which is undated. In it he said:

*The Army then came around our wall, at our backs, from the Glerfada Car Park. Three soldiers told us to move into the car park where we saw another five or so soldiers. I and Fr. Bradley were probably the last of the line and as I moved into the car park, past the first soldier who came from the car park, a tall soldier, he fired at least three shots from the hip. From the direction that the gun was pointing, I think he had three possible targets – the fallen man behind the small barricade, the fallen youth by the flats or the door of the flats.*⁴⁵

10C-40 The reference to a tall soldier must necessarily exclude Soldier F: he could never be described as tall. A photograph of Soldier F proves his height, presumably with his boots on, to have been about 5'6".⁴⁶

10C-41 Relative to other members of Anti Tank Platoon who entered Glenfada Park, Soldier F was among the shortest. He confirmed this in answer to questions from Lord Gifford:

Q. ... You were a short man; were you not?

A. I still am.

Q. Shorter than G?

A. Yes.

Q. Shorter than E?

A. Probably the same height.

Q. And considerably shorter than H?

*A. Yes.*⁴⁷

⁴⁵ AI4.2

⁴⁶ ARR5.1

⁴⁷ Day 376/159/15

FJ 7.2248

10C-42 An anonymous witness who wished to be known by the cipher RM2 also described seeing a "tall" soldier standing near the entrance to Glenfada Park North and firing from the hip into Sector 5.

28. We edged [from the area of the telephone box] slowly along the shops of Block 2, moving in a south easterly direction. We had got about a quarter of the way along the block, at point L on the attached map (grid reference K17), when I turned around and saw a paratrooper on the opposite side of Rossville Street, at the entrance to the Glenfada Park North car park at point M on the attached Map (grid reference I16). I think he had come south down Rossville Street because at the time I had a clear view of the entrance way to Glenfada Park North, and my impression was that he had not come from there. The soldier continued to walk slowly southwards down Rossville Street; he was quite brazen about the way he was walking and was not up against a wall. The soldier, who seemed to be right handed, was holding his gun by his midriff and turning his head from side to side, looking around. He was tall and looked confident. He had a red beret on, so I could tell he was a para. He had a white face with no camouflage on. I do not think the sleeves of his jacket were rolled up. As I saw him, at point M, there were no people standing behind him at the gable end of the eastern block of Glenfada Park North.

*29. The soldier saw and looked at us. He lowered his gun to his hip and casually fired two shots in our general direction. The shots appeared to go high and I do not think they would have hit anyone. It was as if the soldier was saying "here I am", merely making his presence known. After he had fired the two shots, the soldier walked backwards, north up Rossville Street, out of my line of sight. I was very frightened when I saw him as he had the opportunity to shoot us. Until then I didn't think that the army knew there were people to the south of Blocks 1 and 2 of the Rossville Flats, and now they knew people were there they might come after us. We therefore started moving quicker in a south easterly direction along Block 2. As we walked along by the shops we tried to get into them for cover. I remember banging on the door of Barr's but it was locked. As we walked along there we tried to stay as close to the shops as possible. I looked across to the flats at Joseph Place and people there were shouting at us, words like "don't move, don't run across here, they're still shooting" [emphasis added].*⁴⁸

⁴⁸ AK42.12 paragraph 28-29

M 7.2249

10C-45 RM2 had the impression that the direction in which the soldier fired was towards the northern block of Joseph Place.⁵³ The shots were close enough for him to be concerned.⁵⁴ He was adamant that the soldier fired, and he was adamant that the soldier fired from the hip.⁵⁵

10C-46 Although RM2 had described the soldier as tall, he was not asked how tall. It seems unlikely, however, that he would have described a man who was about 5'6" as tall.

10C-III CONCLUSION

10C-47 Soldier F admitted firing two shots into Sector 5 from a kneeling position near a lamp post on the southwest corner of the eastern block of Glenfada Park North.

10C-48 If the Tribunal finds that the aggregate number of shots fired by Anti Tank Platoon into Sector 5 exceeded two, the question will arise as to who fired them.

10C-49 The Tribunal will, given its general approach, be unwilling to conclude that no other soldier fired into Sector 5 simply on the basis that no other soldier admitted to doing so. Also, there is no evidential basis for a conclusion that Soldier F must be responsible for each and every shot fired into Sector 5 - however many - simply because he admitted firing two shots into that Sector.

10C-50 Distinguishing one member of Anti Tank Platoon from another has proved a virtually impossible task for both civilian and military eyewitnesses. The testimony of some witnesses nevertheless suggests that at least one volley of shots was fired from the main entrance to Glenfada Park North across Rossville Street by a soldier who has never owned up to it. The evidence does not suggest, however, that it was Soldier F.

⁵³ Day 424/051/16-24

⁵⁴ Day 424/073/05-19

⁵⁵ Day 424/049/1-15

FS 7.2251

CHAPTER 10D

BERNARD MCGUIGAN

10D-1 DID SOLDIER F SHOOT BERNARD MCGUIGAN?

10D-1 The assertion that Soldier F shot Bernard McGuigan is supported by the fact that he admitted in 1972 that he fired two shots in a line of trajectory which passed very close to the location in which Bernard McGuigan was shot.

10D-2 Moreover, Lieutenant 227 gave evidence that he saw a man near the southern end of Block 1 of the Rossville Flats fall at the same moment a soldier kneeling by the lamp post in the south eastern corner of Glenfada Park North fired into Sector 5. Lieutenant 227's description of the manner in which that soldier fired is consistent with Soldier F's own description of how he fired. (That evidence is set out in section 10B-III, above.)

10D-3 Other evidence, however, is not as persuasive as some may suggest.

SOLDIER F'S 'ADMISSION' IN THE WITNESS BOX

10D-4 Soldier F was questioned by Michael Mansfield QC on behalf of the family of Bernard McGuigan on day 376. He made an equivocal admission that he must have been the soldier who fired the shot that killed Bernard McGuigan. When assessing Soldier F's apparent concession, it is important to bear in mind that he is a man who has no current recollection of the events of the day: he is not, therefore, honestly able to say whether any particular version of the events of the day is true or not – he cannot honestly deny the truth of a particular account any more than he can advance a positive case based upon his present recollection. An agreement by such a witness that a particular version of events could be true is, therefore, evidentially valueless.

10D-5 Mr. Mansfield based his allegation upon the evidence of Lieutenant 227 and, ostensibly, the evidence of Geraldine McBride, née Richmond. Lieutenant 227 is the only witness – military or civilian – whose evidence is capable of identifying

FS 7. 2252

Soldier F as the soldier who fired at the moment Bernard McGuigan fell to the ground.

10D-6 It is necessary to look carefully at what Soldier F was told about the case against him. This is how Mr. Mansfield described the evidence against him, and because of its importance, it is set out in full:

Q. Right. So that is where you were, in a kneeling position.

A. Yes.

Q. According to you.

A. Yes.

Q. In that position you were seen by a number of soldiers; did you realise that?

A. No.

Q. Up on the walls, that is beyond the Rossville Flats, there were observation points; did you know that?

A. No.

Q. And those observation points were manned, not by paratroopers, but in the main by members of the Light Air Defence Regiment. You did not know that, obviously?

A. I did not.

Q. I am not going to go through them all, there are a number of them, but one in particular gives a graphic description of what I suggest is you firing because you are the only one on that corner in a kneeling position, so it has to be you; do you follow?

A. I do.

Q. This is an officer; he is known as 227, in the Light Air Defence Regiment. Before I tell you what he says, you better as it were be shown the view that he says he has of the corner and so on. Could we have 2204.033. This is roughly the view, nothing can replicate it precisely, that he had from the walls, where you can see the end of Block 1. You can see Block 2 and you can see the corner of Glerfada Park that we have just been talking about, with the lamp post. Can you see it?

A. Yes.

FS 7. 2253

Q. That is roughly the view: 2204.034 is a photograph closer; this time there is an armoured personnel carrier which is there, which I appreciate was not there when you were there. In the distance is that same lamp post with two people standing by it; all right?

A. Yes.

Q. In the foreground is the same body that you have been shown before, of Barney McGuigan. Again, he has identified these photographs. Finally, 2204.035. This is a photograph and I would like -- I am sorry to put figures to you -- you to bear in mind this figure is also known as EP25.17, and I have to come back to that, but this photograph he, 227, also identified. That is the general scenario. I take it, therefore, that you had never been shown what he said about these incidents at the time.

A. That is correct.

Q. He said it many times and he repeated it here last week. He is an officer. He was in charge of the observation post. Could we have 2189, please, paragraph 8. I am going to read it to you because it may be you have not seen it before: "I then heard two or three rapid pistol shots from the area of the Rossville Flats. The kneeling soldier [that is, I suggest, you because he has already described that] fired two deliberate shots towards my right and downwards [he is up on the walls] aimed I believe in the direction of the near end of Block 1. As he did this I saw a man falling. He was a few paces out from the end of Block 1 where a small group of people were gathered. I have seen EP25/17 [that is the photograph I have just shown you, all right] and EP25/18 [that is another one in the same series] and identify the foreground figure as the man I saw fall. I should add that the Pig appearing in the photographs was not there when the Paratrooper fired. I saw nothing in the hands of the man who fell." That is a very clear description; is it not?

A. Yes.

Q. By someone, of officer rank, whose job it was to observe that day and nothing else much; do you follow?

A. I do.

Q. And he is not alone. This is not just civilians, but other soldiers who saw the kneeling paratrooper fire in this way. So bear that in mind. He gave evidence at Widgery, just so there is no doubt at all, can we have one passage, 2196, please. This is what he told Lord Widgery at letter A onwards, please:

"Question: When he fired [he is talking about you again] how many shots did he fire?

"Answer: Two shots, sir.

FS 7. 2254

"Question: When he fired those two shots, did you see any man who may have been his target?"

"Answer: Yes, sir, I did."

"Question: Where was that man?"

"Answer: By the bottom end of Block 1."

"Question: Was that near the telephone kiosk?"

"Answer: Yes."

"Question: What did you see?"

"Answer: I saw a man fall, sir."

"Question: Did a small group of people gather?"

"Answer: They stood away there as soon as he was hit."

"Question: Would you look at EP25?"

Then I will not trouble you to the rest because he goes on to the same photographs again and he identifies the man in the photograph, in the foreground, Barney McGuigan, as being shot by the kneeling soldier, whose name he obviously did not know, but it was you. I am not for the moment going to trouble you with other soldiers who saw a very similar scene, I want to switch, if I may, to the civilians, for this purpose a series of photographs, please. [Emphasis added].¹

10D-7 The suggestion that there were other military witnesses who saw a soldier in F's location shoot Bernard McGuigan is incorrect. Mr. Mansfield could only have been referring to Gunner 030, Sergeant 040 and Gunner 134: they were the only soldiers who have ever said that they saw a soldier in Glenfada Park North fire shots into the area south of the Rossville Flats. They were all members of the 22 LAD RA and were deployed on the City Walls, as Mr. Mansfield described.

10D-8 However, each of their accounts is quite different from what Lieutenant 227 described seeing from his location on the City Walls. There are a number of

¹ Day 376/123/22

FS 7.2255

important distinctions, and these make the evidence of Lieutenant 227 unique. Pre-eminent among them is the fact that not one of the other soldiers has ever suggested that Bernard McGuigan – or a man in his location – fell at the same moment that a soldier in Glenfada Park North fired.

10D-9 Gunner 030 saw a soldier fire one shot from a different location in Glenfada Park. By the time he gave evidence to the Tribunal, he could not remember seeing the soldier aiming his SLR into Sector 5.² However, when the events must have been fresher in his mind, Gunner 030 gave this evidence to the Widgery Tribunal when he was questioned by Mr. McSparran on behalf of the families of the dead and injured:

Q. Until you saw the paratrooper in Glenfada Park --- Just point out where you saw him, please.

A. He came running in and he stopped about there because there was a car park in Glenfada Park and it was about the first or second tree up.

Q. That paratrooper was the one who fired down towards the bottom, the back of the flats?

A. Yes sir.

Q. Where you say you heard pistol shots from?

A. Yes sir.

Q. Just let me have the pointer, please. Your evidence is that this paratrooper fired from where? Just you alter the position of the pointer if you feel it necessary to do so?

A. It was about there, the middle. The car park ran down there.

Q. And he got right down on one knee and fired past the telephone kiosk down to this direction?

A. Yes sir.

Q. A paratrooper [i.e. Soldier F] has given evidence to my Lord about firing down in that direction and he has told my Lord about

² Day 366/122/04-11

peering round this corner here, you see, and then going round from there and firing from about this position. Do you understand?

A. Yes sir.

Q. Did you see anyone firing from this position?

A. No sir.

Q. It could not be the same person?

A. No sir.

Q. You have no doubt about all that?

*A. Yes.*³

10D-10 According to Gunner 030's contemporary statements, a body fitting the description of Bernard McGuigan's had already been shot dead by the time the soldier in Glenfada Park North had come into view.⁴ It is therefore unlikely that Mr. Mansfield had Gunner 030 in mind when he told Soldier F that other witnesses had seen a soldier fire in the way that Lieutenant 227 described.

10D-11 Sergeant 040 was not called to give oral evidence to this Tribunal. He said in his BSI statement that he could not remember seeing or hearing a soldier in Glenfada Park North firing his weapon.⁵ His RMP and SA statements suggest that he witnessed a soldier in Glenfada Park North fire a single shot which hit a man who was some distance from Bernard McGuigan's location.⁶ It is unclear whether Mr. Mansfield had Sergeant 040 in mind: if so, the soldier he described firing a shot from Glenfada Park North was not responsible for shooting Bernard McGuigan.

10D-12 Gunner 134's evidence similarly lends no support to any suggestion that the soldier he described firing into Sector 5 was responsible for the shooting of

³ **B1612.027 at G**

⁴ RMP statement: **B1612.011 paragraphs 2 and 4**; SA statement: **B1612.018 paragraph 4**

⁵ **B1661.005 paragraph 30**

⁶ See in particular **B1661.022 paragraph 3** and **B1661.024 paragraph 2**

FS 7.2257

Bernard McGuigan. The account he gave in his BSI statement was of a soldier shooting a man who could not easily be confused with Bernard McGuigan:

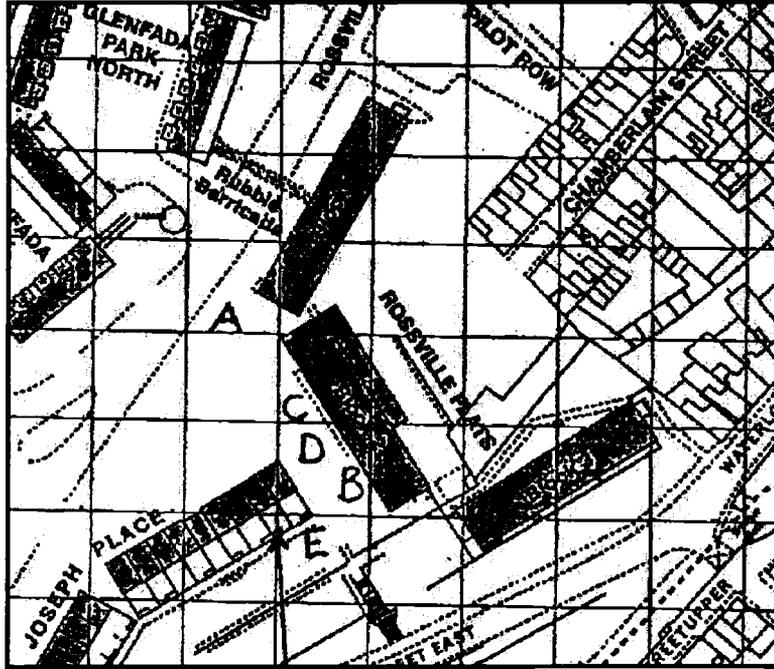
I saw a man running along and parallel to the south side of Block 2 of the Rossville flats towards my location from a northwest to southeast direction. The first time I saw him he was at the far west end of the Rossville flats. The man was not sprinting, he was just jogging. Attached to this statement as Appendix 4 is a map on which I have marked with an 'A' the position in which I first saw the man. He was wearing a knee length dark coat. I cannot describe him further. I do not know how old the man was. He did not appear to be carrying a weapon in his hands and I did not see a weapon anywhere else on him.

The next thing I saw was a soldier from the Parachute Regiment. I have marked the approximate place where I saw him with a circle on the attached map at Appendix 4. He was easily identifiable by his Denison smock and his dome shaped hat. He knelt down by a lamp post. The paratrooper I was watching definitely fired because I heard a shot and could see the smoke coming from the barrel of his gun. When I first saw him he was in an aiming position and then he lowered the gun in the way a soldier would after he had fired his weapon. I looked back towards the man in the long coat. He had fallen onto the floor face down and was still facing towards me. He had travelled two thirds of the length of the Rossville flats before I looked back and saw him lying on the ground. I have marked the approximate place where he fell with a 'B' on the map.⁷

10D-13 The map which Gunner 134 marked with position of the soldier (a circle) and the location where he saw the man shot (B) is reproduced below:

⁷ B1831.003 paragraphs 18-19

FS 7.2258



10D-14 The accounts Gunner 134 gave in his RMP and SA statements were much the same.⁸

10D-15 As none of these witnesses saw a soldier in the location that Lieutenant 227 described fire two shots at a man any where near Bernard McGuigan's location, it was not accurate to suggest that Lieutenant 227's account is supported by what they said. The evidence of Lieutenant 227 is unique in implicating Soldier F in the shooting of Bernard McGuigan: only he suggested that Bernard McGuigan – or a man in his location – fell at the same moment that a soldier in Glenfada Park North fired.

10D-16 Soldier F, as a result of the matters put to him must have believed, quite wrongly, that there were a number of other witnesses whose evidence was that a soldier in his location shot Bernard McGuigan. As a consequence, Soldier F was put under considerable pressure to concede that it would be unreasonable for him to deny

⁸ First RMP: B1823 lines 10-13; Second RMP: B1826 lines 7-17; SA statement: B1829 paragraphs 5-7

PS 7.2259

that he had shot Bernard McGuigan, notwithstanding that he has no recollection of the event.

10D-17 Soldier F's position was not helped by the selective nature of Mr. Mansfield's appraisal of the evidence against him. In fact, the very witness whom Mr. Mansfield chose to exemplify what he claimed other witnesses had said, had actually provided some corroboration for Soldier F's account that he fired two shots at a man located between Block 2 of the Rossville Flats and Joseph Place who had just fired a pistol. In fact, immediately above the part of Lieutenant 227's evidence to the Widgery Tribunal which Mr. Mansfield put to Soldier F appears the following testimony:

Q. When you heard the pistol shots from the Rossville Flats did you see any counter-action taken?

A. Yes, I did.

Q. What was that?

A. A soldier kneeling on the corner at Glerfada Park fired two definite shots....

Q. In which direction did he fire?

A. Down to my low and right.

Q. Parallel with the coloured block of Rossville Flats?

A. Yes.

Q. Did you see what he was firing at?

A. No, sir, I did not.⁹

10D-18 It was only a week before Mr. Mansfield asked questions of Soldier F that Lieutenant 227 had said in the witness box that "down to my low right" was a

⁹ B2195 at EF

EG 7.2260

reference to the area between Block 2 and Joseph Place which was obscured from his view.¹⁰

- 10D-19 Having begun his cross-examination of Soldier F by overstating the strength of the military evidence against him, Mr. Mansfield pursued a line of questioning which had no discernible forensic value. He “switched to the civilian evidence” apparently so as to suggest that their evidence would also corroborate that of Lieutenant 227:

*I am not for the moment going to trouble you with other soldiers who saw a very similar scene, I want to switch, if I may, to the civilians, for this purpose a series of photographs, please.*¹¹

- 10D-20 Mr. Mansfield did not, however, show Soldier F any civilian evidence that linked him to the shooting of Bernard McGuigan. Instead, he took Soldier F to the evidence of a single civilian witness, Geraldine McBride, née Richmond.

- 10D-21 He asked Soldier F to read quietly to himself the following paragraph from the her BSI statement:¹²

*I remember hearing two distinct shots. After the first one Mr. McGuigan turned back towards us and, although I cannot be certain, I think he turned his whole body and not just his face. I did not see the bullet hit anything, I just heard it. The second shot hit him and blew his head up like a tomato exploding. I saw his eye come out. I did not see the back of his head.*¹³

- 10D-22 However, he did not show Soldier F the passage two paragraphs further on, which would have revealed that Mrs. McBride was aware that shots had been fired “... from the south east towards Rossville Street...”, evidence that is consistent with Soldier F’s own account that pistol shots were fired from that direction.¹⁴

¹⁰ Day 371/174/15 – 371/175/15; marked up image appears at B2204.036

¹¹ Day 376/127/22

¹² Day 376/130/24

¹³ AM45.18 paragraph 26

¹⁴ AM45.19 paragraph 28

FS 7.2261

10D-23 Mr. Mansfield's choice of Mrs. McBride's account as the only example of civilian corroboration of Lieutenant 227's evidence is surprising as Mrs. McBride did not actually see who it was who shot Bernard McGuigan. Yet Soldier F had earlier been told that both civilians and soldiers saw him shoot Bernard McGuigan:

*And he [Lieutenant 227] is not alone. This is not just civilians, but other soldiers who saw the kneeling paratrooper fire in this way. So bear that in mind.*¹⁵

10D-24 When, however, Soldier F had finished reading the passage that was shown to him, Mr. Mansfield asked only one question, the purpose of which plainly had more to do with its intended effect on the witness than with assisting the Tribunal:

Q. You will accept, I think, that the injury suffered by this man who had no more than a handkerchief in his hand, was truly horrific; was it not?

*A. Yes.*¹⁶

10D-25 Mr. Mansfield's next showed Soldier F a photograph of Bernard McGuigan's horrific injuries, after which he put his allegation in the following way:

Q. ... I am going to ask you because, as you fully recognise and have been informed many times, it is virtually the last occasion this family can expect from you, at least a recognition of what you have done; are you prepared to make that recognition?

A. As I have said in my previous statements, the person I shot from that corner had a pistol in his hand; that was it.

Q. If you have noticed, I have not relied on a memory that does not exist; you do not have a memory, do you; do you?

A. If you say so.

Q. No, you have said so.

A. At that particular time I have no recollection of it, that is correct.

¹⁵ Day 376/126/21

¹⁶ Day 376/131/03

FS 7.2262

Q. If you have no recollection, there is no way that you can stand here today and suggest you did not shoot this man, Mr McGuigan, is there?

A. No.

Q. Would you, for the benefit of his wife, who is here, and his six children, finally accept and recognise -- we will come to whether you meant to do it in a moment, but that is what you did; are you happy to or are you prepared to at least accept that?

*A. Yes.*¹⁷

10D-26 Soldier F accepted that, without any recollection of the events of the day, he was not in a position to deny that he fired the shot that killed Mr. McGuigan. Soldier F's answer to the subsequent question was predicated on that basis and is therefore of limited, if any, probative value.

10D-27 Soldier F continued to assert that he had only targeted a man with a pistol:

Q. I say on behalf of the family they are grateful that you have done that, but you do recognise that if you shoot an unarmed man in the back, that is murder; is it not?

A. As far as I was concerned, as I say in my statement, the man had a pistol.

Q. But not this man, you see, no-one suggested this man had a pistol. If you shoot a man who is unarmed only with a handkerchief in the back of the head, it is murder; is it not?

*A. I said I fired on a person who had a pistol.*¹⁸

10D-28 Soldier F repeated this assertion when the allegation was put him again by counsel to the Tribunal:

Q. Secondly, you have accepted, in answering questions from Mr Manfield behind me, that you shot Barry McGuigan [sic], whose photograph, in a pool of blood, you have seen; do you remember that?

¹⁷ Day 376/131/17

¹⁸ Day 376/141/06

FS 7. 2263

A. Yes.

... Q. What is alleged in relation to each of those four people is that you shot them without justification, that is to say, that you murdered them; do you follow?

A. I follow, it is not correct, but I follow, yes.

Q. And you say that it is not correct, because?

A. Because, as I refer to my statements, the people I shot were either petrol bombers or a person who had a weapon.¹⁹

10D-29 Soldier F has not averred that Bernard McGuigan was armed with a pistol; he has merely averred that the man he *targeted* was armed with a pistol.

10D-30 His contemporaneous accounts suggest that the man he targeted was near the bottom of the Fahan Street steps.

THE FORENSIC EVIDENCE

10D-31 There is no forensic evidence which supports the assertion that it was Soldier F who shot Bernard McGuigan. The forensic evidence in relation to the bullet wound does no more than establish that Bernard McGuigan could not have been facing the rifle that fired the shot at the moment he was hit. The entry wound was on the left side of the head 8 cm behind the ear. The exit was in the right lower eyelid.²⁰

10D-32 Dr. Shepherd and Mr. O'Callaghan gave the Tribunal their opinion about the appropriate inferences that could be drawn from the track of the bullet:

Assuming the Normal Anatomical Position the track is from behind and forward. However, the greater mobility of the head means that these angles must be treated with greater care than normal as this mobility means that the head may not have been facing the same direction as the other parts of the body when he was shot. However,

¹⁹ Day 376/175/17

²⁰ E2.0046 paragraph 7.9.1

FS 7. 2264

it is clear that Bernard McGuigan could not have been facing the rifle that fired the shot. ²¹

10D-33 In view of the conflicting eyewitness testimony about the direction Bernard McGuigan was facing at the moment he was shot, the fact that he could not have been facing the rifle that fired the shot is of limited value in determining who shot him.

THE EYEWITNESS TESTIMONY

10D-34 There were 40 civilian witnesses who either saw or were in a position to see the shooting of Bernard McGuigan. The majority of them were located very near to where Bernard McGuigan was shot at the southern end of Block 1 of the Rossville Flats. Others were in other areas such as in or around Joseph Place or on Rossville Street or in Glenfada Park North.

Witnesses at the southern end of Block 1

10D-35 Counsel to the Inquiry identified the witnesses in the vicinity of the telephone box at the southern end of Block 1 during his opening.²²

- | | | |
|-----|--------------------|------|
| (1) | Canney, Sean | AC24 |
| (2) | Carlin, Frank | AC33 |
| (3) | Davies, John | AD8 |
| (4) | Gallagher, Bernard | AG3 |
| (5) | Harrigan, Thomas | AH39 |
| (6) | Kelly, Hugh | AK9 |

²¹ E2.0048

²² Day 038/074/07

H 7.2265

- | | |
|---------------------------------------|-------|
| (7) Kelly, Patrick | AK21 |
| (8) RM2 | AK42 |
| (9) McBride, Geraldine (née Richmond) | AM45 |
| (10) McCool, Brian | AM133 |
| (11) McDaid, Sean | AM175 |
| (12) MacDermott, John (known as Sean) | AM4 |
| (13) McFadden, Barney | AM210 |
| (14) McLaughlin, Paul | AM350 |
| (15) Melaugh, Edmund | AM398 |
| (16) Mellon, Frankie | AM399 |
| (17) Moore, Joseph Earnest | AM413 |
| (18) Rooney, Michael | AR28 |
| (19) Rowe, James | AR29 |
| (20) Sheerin, Sheila (née Duffy) | AS45 |

10D-36 A number of further witnesses have since said they were in the vicinity of the telephone box at the relevant time, making a total of 28:

- | | |
|-----------------------|-------|
| (1) Barbour, Hugh | AB10 |
| (2) Harkin, Anthony | AH11 |
| (3) McCallion, Sean | AM492 |
| (4) McCusker, Michael | AM160 |

FS 7-2266

- | | |
|-------------------|-------|
| (5) McGee, Sean | AM226 |
| (6) McLoone, Noel | AM359 |
| (7) Millar, Noel | AM477 |
| (8) Nash, John | AN6 |

Witnesses who observed the shooting of Bernard McGuigan from other locations

10D-37 A further 12 relevant witnesses placed themselves in the vicinity of the Threepenny Bits, Joseph Place or Glenfada Park:

- | | |
|--------------------------|-------|
| (1) Bradley, Eugene | AB113 |
| (2) Brown, Kathleen | AB94 |
| (3) Cooper, Ivan | KC12 |
| (4) Deane, Gerard | AD17 |
| (5) Doherty, Joseph | AD76 |
| (6) Doherty, Susan | AD105 |
| (7) Duddy, Malachy | AD151 |
| (8) Duffy, John | AD160 |
| (9) Flood, James | AF23 |
| (10) Hutton, John | AH105 |
| (11) McDaid, Thomas | AM176 |
| (12) McGlinchey, Patrick | AM247 |

10D-38 The evidence of all 40 witnesses falls into one of six categories:

PS 7.2267

- (1) Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot by a soldier situated in Glenfada Park North.
- (2) Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot by a soldier situated on the City Walls.
- (3) Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot by a soldier situated further north up Rossville Street.
- (4) Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot through the gap between Blocks 1 and 2.
- (5) Witnesses whose evidence is not clear or is silent on the issue of the source of the shot that killed Bernard McGuigan.
- (6) Witnesses who give other evidence.

10D-39 The evidence of these witnesses is analysed in turn:

Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot by a soldier situated in Glenfada Park North.

10D-40 Sean Canney (also known as John James Canney) had the impression that Bernard McGuigan was hit by a single shot fired from Glenfada Park:

*It seemed to me that the man was hit by a single shot fired from across Rossville Street from the direction of Glenfada Park, although there had been some intermittent shooting, prior to him being shot.*²³

10D-41 Mr. Canney confirmed, in answer to questions from counsel to the Tribunal, that it was no more than an impression that the shot was fired from Glenfada Park North:

Q. When you say in relation to the man we know to be Bernard McGuigan that it seems to you that he was shot by a single shot

²³ AC24.8 paragraph 44

FS 7.2268

fired from the direction of Glenfada Park, what was it that caused you to think that that was the case?

A. At the time that was my impression, that he had been shot from across the street, um, from no other area.

Q. It was simply an impression, was it?

*A. Yeah.*²⁴

10D-42 In fact, Mr. Canney did not see any soldiers in Glenfada Park at that stage:

Q. When you stood, as you did, at or near to that telephone box, you were not actually aware of any soldiers?

A. At that point, no.

Q. You could not see any?

A. Correct.

Q. And more particularly you were not aware of and did not see any soldiers across the road from you, that is across Rossville Street, near to the entrance into Glenfada Park?

A. Not at that point.

Q. It was just across the road, was it not?

A. It was.

Q. So although you told us of your impression that Mr McGuigan had been shot from across the road, across Rossville Street, you did not see any soldier there?

A. I did not see, I did not see him, I did not see the soldier shoot him. I could not imagine at that time where else he could have been shot from.

Q. But there was, as far as you were aware, no soldier across there?

A. I did not see any soldiers at that time.

Q. That would have been a few feet away from you, would it not?

²⁴ Day 093/116/12

FS 7.2269

A. It is 60, 80 feet.²⁵

10D-43 Later on, after an ambulance had arrived, Mr. Canney saw six or seven soldiers in the area he described as the alleyway between Glenfada Park North and Glenfada Park South.²⁶ He described these soldiers as "just standing there... really doing nothing else."²⁷

10D-44 Noel Millar was not aware of the source of the shot that killed Bernard McGuigan, but he formed the impression that it came from the direction of Glenfada Park North because he saw Mr. McGuigan's eyelid on the gable end of Block 2:

Most of the people at the phone box were older people. I was the youngest there. I was very scared and I did not know what was going to happen, I could see people in the distance towards Free Derry Corner. They were standing and looking north in amazement. I felt lost. I thought I was going to be mowed down. I saw a man who was in a tizzy. He was going this way and that and then he fell. He fell at about the point marked A on the attached map (grid reference J16). I remember he was wearing a white shirt, black trousers and a black coat and that he had a bald head. Although I did not really see it happen I later found out he was shot in the head. He had been standing more or less with his back to Rossville Street about ten or eleven feet out from the phone box. I formed the opinion later that he must have been shot from Glenfada Park because his eyelid and eye lash became stuck on the gable end wall of Block 2. That would make sense if he was shot from Glenfada Park. I was sure that the army was in Glenfada Park because I could hear shots coming from there. From where I was taking cover I could also see soldiers running across the gap between Glenfada Park North and Glenfada Park South and taking cover at the points I have marked B and C on the attached map (grid reference I15). Others were just standing in the gap. There were about 10 soldiers all together and they were facing towards me. Some were moving, running and shouting and they had rifles in their arms at chest level. I did not see any of them shooting. They wore uniforms and helmets. I could also see civilians in the area

²⁵ Day 093/142/01

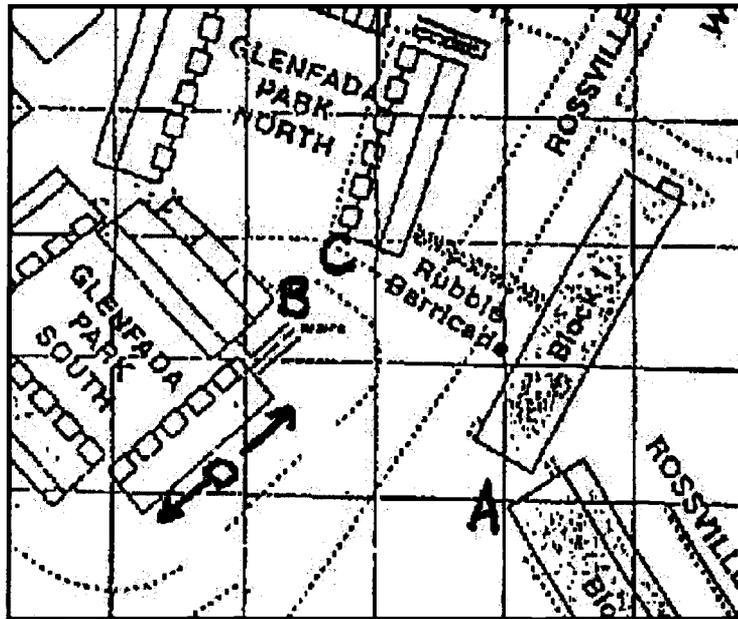
²⁶ AC24.9 at paragraph 54

²⁷ Day 093/123/07

FS 7. 2270

marked D on the attached map. I realised later that people were shot there as well.

10D-45 The relevant part of Mr. Millar's map is produced below: ²⁸



10D-46 Joseph Moore believed he saw Bernard McGuigan as he was shot:

As we were all huddling against the wall, one man ran out towards Joseph Place. I later discovered this man was Barney McGuigan. He was standing very close to me and he moved from behind or beside me. I think he was to my left hand side. I felt the movement as he ran out from the wall towards Joseph Place. I called out to him something to the effect of "where do you think you're going?" He was running out and was probably about eight feet away from me when he was hit. He was facing towards Joseph Place and I could see the side of his face come off although I cannot remember which side. Part of his face exploded in a whole mess of blood. He fell down onto his back. He must have died immediately, before he hit the ground. ²⁹

²⁸ AM477.5

²⁹ AM413.4 paragraph 20

FS 7.2271

10D-47 Mr. Moore confirmed this account when he gave oral evidence to the Tribunal, but added no more detail. ³⁰

10D-48 He said in his statement to the Tribunal that he had the impression that Mr. McGuigan had been shot from Glenfada Park:

I do not know where he was shot from but at the time I got the impression that he was shot from the Glenfada Park area because he had been hit in the back of his head. I do not recall hearing one particular shot before he was hit and fell to the ground. ³¹

10D-49 Mr. Moore confirmed during his oral evidence that he could not tell which particular shot hit Mr. McGuigan:

Q. But you do not recall a particular shot before he was hit?

A. No, there was quite a lot of shooting at that time, you know. ³²

10D-50 According to Mr. Moore, he could hear the sound of shots coming from further north up Rossville Street and in Glenfada Park:

Q. Can you help us, you said there was quite a lot of shooting at this time. When you were standing at the end of block 1 and when Bernard McGuigan was there, you could hear shooting at that stage, could you?

A. Yes.

Q. Where did it seem to be coming from?

A. I would say somewhere behind me or at the side of me. It would be hard to say, you know, there was quite a lot of shooting, just after I got through into — when I got through the entrance between the two flats, you know. ³³

³⁰ Day 089/137/18 – 089/138/19

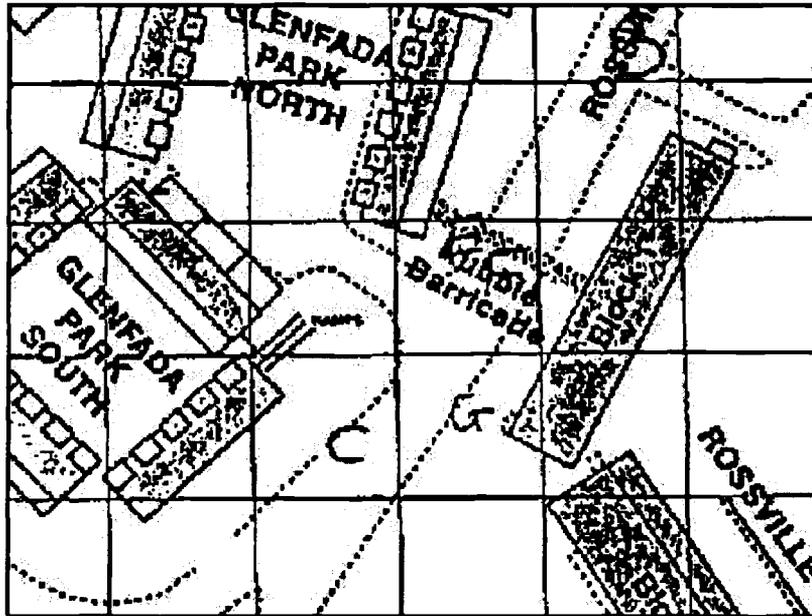
³¹ AM413.5 paragraph 21

³² Day 089/139/08

³³ Day 089/139/16

PS 7.2272

10D-51 Gerard Deane was standing in Rossville Street at point C³⁴ when he observed Bernard McGuigan being shot while at point G.³⁵



10D-52 Mr. Deane's BSI statement shows that he plainly believed that Mr. McGuigan was shot in a location where he was exposed to soldiers whom Mr. Deane could see at Kells Walk:

I do not know where he came from but, while everyone else was lying down taking cover, he was walking towards the Rubble Barricade (in a northerly direction). He walked slowly with his head down and his right arm in the air, waving a white handkerchief at the soldiers that were still visible at the south gable end of Kells Walk. Suddenly I heard a single crack of gun fire. I saw the man's head jerk (I think from left to right) and something appeared to hit the south gable end wall of Block 1 of the Rossville Flats. He had been shot. I had quite a clear view of this since I was only 10 feet or so away.³⁶

10D-53 However, Mr. Deane said in the next paragraph of his statement that he believed that Mr. McGuigan had been shot from "the Glenfada Park area":

³⁴ AD17.2 paragraph 10

³⁵ AD17.3 paragraph 16; the map appears at AD17.8

³⁶ AD17.3 paragraph 17

PS 7.2273

*The man fell to the ground, landing partly on his side and partly on his back but ending up lying on his back. He appeared to have been shot in the head but I did not see the wound from where I was lying. I believe that he was shot from the Glenfada Park area.*³⁷

10D-54 The person who took his BSI statement does not appear to have asked Mr. Deane why he believed that Mr. McGuigan was shot from the area of Glenfada Park. Moreover, his statement doesn't state clearly whether he saw any soldiers in Glenfada Park. The fact that the statement is silent on this point would suggest that Mr. Deane did not. Bearing in mind his location, it would be surprising if Mr. Deane remained unaware of an SLR being fired so near to him. Mr. Deane was not, however, called to give oral evidence.

10D-55 John Hutton believed he saw Hugh Gilmore and Bernard McGuigan shot by the same soldier situated in Glenfada Park North. Mr. Hutton was in a house in the northern block of Joseph Place, although it is unclear whether it was the most northerly house or the third or fourth one down.³⁸ His evidence to the Tribunal was that he was with his friend, Samuel Kelly, throughout the events of Bloody Sunday.³⁹

10D-56 On the face of it, Mr. Hutton is an important witness because he claims to have seen the soldier who shot Bernard McGuigan. However, a closer scrutiny of his various accounts shows that he is not a wholly reliable witness.

10D-57 Mr. Hutton gave a statement to John Doherty, a solicitor acting for the families of the dead before the Widgery Tribunal, on 25th February 1972. The impression given by the statement is that Mr. Hutton was trying to piece together an account from different sources. It may be that during the three and half weeks before he gave the statement his memory became contaminated: he describes seeing some things that plainly did not happen:

³⁷ AD17.3 paragraph 18

³⁸ Day 185/028/4-13

³⁹ Day 185/033/5-9

FS 7.2274

The shooting stopped a few seconds later and I went to the window of the living room and looked out. I noticed about thirty people huddling against the gable wall at the entrance to the car park at Glerfada Park. Then three soldiers came round the corner of the gable wall from the direction of the car park. They motioned to the crowd of people to put their hands on their heads and it appeared as if they were placing them under arrest. As the crowd was being marched down Rossville Street two soldiers came and took up position at the car park end of the gable wall. I then noticed a young man with fair hair and wearing blue denim jeans and jacket put his hands in the air. He had handkerchief [sic] in his right hand and was waving it. He walked out from near the telephone kiosk at the gable wall of the western block of flats and went towards Glerfada Park. He had only walked about four or five paces when I noticed one of the two soldiers I have mentioned get down on one knee, bring the rifle to the aiming position at his shoulder and fire towards the young man. The young man turned and fell on his back with his head facing down Rossville Street towards William Street. I then noticed a middle aged man, whom I recognised as Bernard McGuigan, come out from behind the telephone kiosk. He was wearing a blue anorak. He was in a crouched position with his hands waving in the air. There appeared to be a handkerchief or rag in his right hand and he was waving this. He started walking towards the body of the young man who had been shot. He was about five or six yards from the body when the soldier I had seen shoot earlier at the young man fired again and McGuigan twisted and fell with his head facing up towards Free Derry Corner. The two soldiers stayed in their positions at Glerfada Park for about five minutes.⁴⁰

10D-58 Hugh Gilmore was wearing blue denim jeans.⁴¹ Mr. Hutton is likely to have seen his body dressed in that way when he made his way over to the vicinity of the telephone box when the shooting had stopped.⁴² Other than that, it is unclear how Mr. Hutton pieced together in his mind an artificial account of seeing a young man in denim shot by a soldier situated in Glenfada Park North.

10D-59 Mr. Hutton's account of the shooting of Bernard McGuigan is that he was shot by the same soldier who had moments before shot the young man in denim. In his

⁴⁰ AH105.8-9

⁴¹ D0163

⁴² AH105.3 paragraph 12; Day 185/051/13-18

NI 7.2275

1972 statement, Mr. Hutton said there were two soldiers, one of whom fired both shots:

As the crowd was being marched down Rossville Street two soldiers came and took up position at the car park end of the gable wall....

...when the soldier I had seen shoot earlier at the young man fired again and McGuigan twisted and fell with his head facing up towards Free Derry Corner.⁴³

10D-60 However, when Mr. Hutton gave his BSI statement on 12th February 2000, he made no mention of the young man in denim. Nor did he mention the second soldier:

8. My attention was then caught by a wee soldier sticking his head out around the corner at the south western corner of the east block of Gleifada Park North, marked point J (grid reference I14). He peeped his head around the corner, then withdrew.

9. Suddenly this small soldier moved out from the corner, about three feet, got down onto his right knee, raised his rifle and fired a shot towards the gap between Block 2 of the Rossville Flats and the northern end of Joseph Place. He then withdrew. I remember crying out to the people in the living room that he was shooting.

10. I continued looking through the window. A minute or two later I saw Barney McGuigan move out from cover by the telephone box at the southern gable end of Block 1. He was hunching over, keeping his head down, and waving a white hankie with his right hand. He stepped out in a south west direction towards point K on the attached map (grid reference J16/17). He only took two or three steps and I saw the same wee soldier look out again, step out about three feet from the corner of the eastern block of Gleifada Park North, go down on his right knee and shoot his rifle. Barney McGuigan seemed to be hit in the right side of the head and the force of the bullet spun him so that he was facing towards me (south east) and he then fell down onto his back. He spun anti-clockwise through about 90 degrees and fell with his head pointing towards where I was.

11. I don't know where Barney McGuigan was going or what he intended to do. He was just showing himself and gesturing with a

⁴³ AH105.9

AJ 7. 2276

*white hankie. The soldier then disappeared and I did not see him again. He was only about 50 or 60 yards away from me, but I could not say from that distance what he looked like, only that he was very small. I think he was wearing a tin helmet.*⁴⁴

10D-61 Such description as he was able to provide of the soldier will not assist the Tribunal in identifying which soldier fired.

10D-62 Mr. Hutton's account about the number of soldiers present when a shot was fired changed several times when he gave evidence on 29th January 2002. First, he told the Tribunal in answer to questions from Mr. Roxburgh that there was only ever one soldier:

Q. When he looked out that first time when you first saw him, do you remember whether there were any civilians in the area of the gable end where the soldier was?

A. There were civilians before he, before he was -- before he put his head round, there was civilians arrested on that gable end.

Q. Were the civilians who had been arrested still there when he looked round the corner or had they been taken away?

A. Taken away.

Q. When you looked out round that corner for the first time, do you remember whether there were any other soldiers anywhere near him?

A. No.

Q. Do you mean no, you do not remember or no, there were not any other soldiers?

A. No, when he went out to shoot he was on his own.

Q. Completely on his own, was he?

*A. Yes.*⁴⁵

⁴⁴ AH105.2-3

⁴⁵ Day 185/035/25

FS 7. 2277

10D-63 When Mr. Roxburgh returned to the question, Mr. Hutton said that there were in fact two soldiers, and that they both disappeared before only one reappeared. Mr. Hutton said he never saw the second one again:

Q. Let us get this straight. First of all you see two soldiers?

A. Yeah.

Q. Do both of them come out from behind the wall?

A. Yeah, and go back in again.

Q. Both go back behind the wall?

A. Yes.

Q. And then one of them comes out?

A. Yes.

Q. And the one who comes out is the small soldier?

A. Yes, yes.

Q. And he fires a shot?

A. Yes.

Q. When he comes out to fire the shot, did you see the other soldier at all?

A. No.

Q. Or was he out of your view?

A. I never seen him again.⁴⁶

10D-64 Mr. Roxburgh asked a third time and Mr. Hutton's account changed again:

Q. On this account it would appear that the soldier who shot Mr McGuigan was with another soldier because you say at the end of the passage I have just read out: "The two soldiers stayed in their positions at Glerfada Park for about five minutes. Do you think that may be the position, that there were in fact two soldiers at or

⁴⁶ Day 185/044/4-21

PS 7.2278

near the gable end of Glerfada Park at the time when Mr McGuigan was shot?

A. No, the second soldier came out after Mr McGuigan was shot, came out and the two of them stood there.

Q. What did he do when he came out?

A. They just stood and looked over just, the two of them. ⁴⁷

10D-65 When Mr. Hutton was asked questions by Mr. Mansfield, the veracity of his evidence was further undermined by the fact that he maintained that Bernard McGuigan had looked directly at the soldier who shot him:

Q. But exactly which way he was looking at the point at which he was shot?

A. At the soldier.

Q. I just -

A. At Glerfada.

Q. What I want to ask you is whether in fact you may be mistaken, that he was actually looking at the soldier as opposed to looking back to where he had come, do you follow?

A. Yes.

Q. Do you think you may be mistaken about that and that is why you thought he was shot on the right instead of the left?

A. It could be, but I am not quite sure, but I know he stood and looked at the soldier, you know. ⁴⁸

10D-66 Although the Inquiry attempted to trace Samuel Kelly - Mr. Hutton's friend who remained with him throughout - it appears to have failed as no statement from Mr. Kelly has been forthcoming.

⁴⁷ Day 185/052/21

⁴⁸ Day 185/056/01

FS 7.2279

think he saw the soldier. I put my hands up to my face and cried "Jesus, he's dead!" I remember the soldier was quite small and had a beret on his head, I cannot recall the colour.

12. Hugh Gilmore fell at the gable end of Block 1 of the Rossville Flats. He went down on to his front between points 2 and 3 on the map with his head facing northwards towards Rossville Street at an angle, and his feet were facing towards Joseph Place. After Hugh Gilmore was shot, I heard more firing.

13. Within a matter of seconds I saw another man at point 5 marked on the map (grid reference J18) come out from behind one of the Threepenny Bits and walk towards where Hugh Gilmore lay. The man was wearing a raincoat, in a fawn colour, which was open. I don't remember him having anything on his neck. I would say he was in his thirties. He had hair, but not a lot at the front. He got up and held a white hankie up in the air, waving it, looking across at the soldier at point 4 at Glerfada Park, as if to say "hold your fire!" He walked towards the gable end of Block 1 of the flats.

14. I saw the same soldier who had shot Hugh Gilmore shoot this man. Again, the soldier came out from behind the south gable end wall of Glerfada Park North, raised his rifle with a single arm and shot the man. It was a single shot. I saw smoke come from the gun. I saw the man fall front ways. The place I saw him fall is marked at point 6 on the map (grid reference J17). I did not know who the man was at the time but have learned since Bloody Sunday that it was Barney McGuigan.⁵¹

10D-69 Mrs. Brown did not remember giving the contemporary statement that had her name and address on it. However, she accepted that her signature appeared on the hand-written version of the statement:

Q. Could we go back to the statement that you appear to have made in 1972 and could we have AB94.10 on the screen, please? I think it is right, is it not, Mrs Brown, you do not recall making this statement?

A. I do not recall making this statement at all.

Q. I know you have been shown a handwritten version of the statement?

A. That is right.

⁵¹ AB94.7-8; the photograph Mrs. Brown marked with an 'X' went missing: Day 144/098/9-17

Q. And it appears to have been signed by you; is that right?

A. Well, it looks like my signature, but I do not remember ever signing that. ⁵²

10D-70 The relevant part the contemporary statement reads as follows:

Looking out of the window I saw a man coming out from the alley between the flats towards the market. He staggered and fell. He rolled over twice. A man ran towards the fallen man to help him. I didn't know what direction he came from. A soldier took aim from Glenfada Park and fired two shots at the man running. He then fired another shot at the man on the ground to finish him c.f. 20-30 people were in Glenfada taking shelter from bullets and the soldiers came to arrest them. ⁵³

10D-71 It is not difficult to conceive of the processes by which Mrs. Brown's recollection has changed and developed over the years. However, it is impossible to conceive of how, without any contamination, her recollection could have actually improved over nearly three decades. It is obvious that Mrs. Brown, like Mr. Hutton, has reported to the Tribunal her own *ex post facto* analysis of what she *thinks* happened.

10D-72 It is always possible that she did see a soldier fire from Glenfada Park North, and that she has been unable to stop herself putting her own gloss on what she suspects that soldier did. However, her evidence that the soldier in Glenfada Park fired from the hip while standing erect suggests either that she did not actually witness the event of Soldier F firing or she witnessed another soldier firing into shots into Sector 5.

⁵² Day 144/111/10

⁵³ AB94.15

PS 7.2282

Witnesses who *believe* or had the *impression* that Bernard McGuigan was shot by a soldier situated on the City Walls.

10D-73 Barney McFadden was amongst the group by the telephone box when Bernard McGuigan was shot.⁵⁴ He was, however, not looking at Mr. McGuigan when he was shot.⁵⁵ His *ex post facto* analysis was that Bernard McGuigan had been shot from the City Walls:

*Although I did not know it at the time, I later discovered that the Army had been positioned further North in Rossville Street. I do not believe that the soldiers in Rossville Street could have seen him to shoot him from where he was standing. I believe therefore that he was shot from the City Walls.*⁵⁶

10D-74 Mr. McFadden was not called to give evidence to this Tribunal.

10D-75 Sean McGee was not called to give evidence. Nor, for some reason, did he sign his BSI statement.⁵⁷ In any event, it is clear from his statement that his impression was that Bernard McGuigan was shot from the City Walls:

I can visualise him leaving the area where I was though I cannot remember whether he was walking slowly or moving more quickly. I cannot remember whether he had his hands up or indeed whether he was holding a hanky. He did not make it more than three steps however. He was looking in the direction of the two men and I was looking at him ahead of me, but a little to my left. I saw him shot. I saw part of his head leaving his skull and he fell where he was hit. He fell in the direction away from where I was sitting and I could see the right side of his head had been blown away. I now know this was Barney McGuigan.

*My instant impression was that he had been shot from the City Walls. I think I got that impression because everybody looked up there but I did not see anything specific. I did not hear the specific shot that killed Barney.*⁵⁸

⁵⁴ AM210.2 paragraph 11

⁵⁵ AM210.3 paragraph 14

⁵⁶ AM210.3 paragraph 16

⁵⁷ AM226.4

⁵⁸ AM226.6 paragraphs 16-17

10D-76 Some witnesses who believed at the time that Bernard McGuigan was shot from the City Walls ended up changing their minds before they gave evidence to this Tribunal. Geraldine McBride, née Richmond, said this about the source of the shots in her BSI statement:

At the time I thought Mr McGuigan had been shot from the direction of the City Walls towards Rossville Street. I knew there was shooting from the right, from the Glerfada Park area across Rossville Street, because I heard and saw the bullets. However, the bullets were bouncing and ricocheting all over and some were coming from the opposite direction, i.e. from the south east towards Rossville Street. I thought he had been shot from the direction of the walls because of the direction his head was facing when he was shot. However, I now think he was shot from the direction of the Saracen parked on Rossville Street shown on the photograph at attachment 4.⁵⁹

10D-77 Mrs. McBride confirmed to the Tribunal that she never actually saw a soldier or a vehicle on Rossville Street:

Q. The only question I have to ask you is: you heard vehicles, did you ever see a vehicle yourself in that position?

A. No.

Q. Or a soldier in that position?

A. No.

Q. This photograph, the bottom half of it obviously shows Barney McGuigan after he has been shot, and you have already described how that occurred. Plainly from what you are saying, would this be fair, he could have been shot by a soldier in the position of the photograph, but you cannot be sure; is that right?

A. Yes.⁶⁰

10D-78 Counsel to the Tribunal asked Mrs. McBride why she had changed her mind about the source of the shot that killed Bernard McGuigan:

⁵⁹ AM45.19 paragraph 28

⁶⁰ Day 146/039/15

B 7. 2284

MR CLARKE: Could we have back on the screen P814 photograph number. You told us you thought at the time Mr McGuigan had been shot from the direction of walls, but you now think he was shot from the direction of the Saracen that we can see in this photograph. My question to you is: is there anything in particular that has caused you to change your mind?

*A. I thought he had been shot from the walls because of the directions of the bullets, you know. But when he, when he fell, you know, when the bullet hit him, you know, his whole body moved round, you know, so now that I am older I think that he was shot from there, but I cannot be certain either.*⁶¹

10D-79 Her evidence is unlikely to assist the Tribunal in determining the source of the gunshot that killed Bernard McGuigan.

10D-80 Paul McLaughlin is the man who appears in many of the photographs of the group by the telephone box wearing a Knight of Malta cap.⁶² He seems to have acquired an inaccurate recollection of seeing Mr. McGuigan falling to the ground:

*I did not actually see him shot. I just remember seeing him fall. My memory is of him falling flat on his face, although I have seen photos of him lying on his back. I do not know whether this was because he was turned over or whether he rolled as he fell.*⁶³

10D-81 Unlike other witnesses,⁶⁴ Mr. McLaughlin did not see Bernard McGuigan turn around to look at the group by the telephone box moments before he was shot:

*I definitely did not see him turn round and am sure that when he was shot and fell, he was facing south east towards the injured man lying by Joseph Place.*⁶⁵

10D-82 On the basis that he believed Bernard McGuigan was facing south east when he was shot, Mr. McLaughlin changed his original opinion that Mr. McGuigan had

⁶¹ Day 146/027/03

⁶² Day 176/015/11; see for example the photographs at P815 – P820

⁶³ AM350.16 paragraph 34

⁶⁴ For example, Geraldine McBride

⁶⁵ AM350.16 paragraph 34

AS 7-2285

been shot from the City Walls when he discovered that the bullet had entered the back of the head:

I had always assumed that Bernard McGuigan was shot in the front of the head. Because of the direction in which he was facing and walking, I had calculated that he must have been shot from the area of the City Walls, above the steps which lead onto the different levels at the back of Joseph Place. I have now been informed that he was shot in the back of the head and that the bullet exited through his eye. If this is the case, then I would guess that Bernard McGuigan was shot from the west side of Rossville Street, although it would be impossible to say exactly where from. ⁶⁶

10D-83 Mr. McLaughlin told the Tribunal that his impression was that the shooting came from all directions.⁶⁷ He was fair in his view of the inability of any lay person to discern the precise source of the gunfire:

In my view, it would have been impossible for any lay person to indicate which way the shots were being fired, unless they had specifically seen the soldiers who fired them. ⁶⁸

10D-84 Mr. McLaughlin in any event ventured the opinion that the shooting came from one of three possible directions: Glenfada Park, Rossville Street, or the City Walls.⁶⁹

10D-85 Malachy Duddy observed Bernard McGuigan from a garden in front of the most northerly house in Joseph Place.⁷⁰ He saw Mr. McGuigan heading out towards an injured person who was lying near a junction box a few yards southwest of Mr. McGuigan's location. Mr. Duddy also saw Bernard McGuigan's body after he had been shot, but he did not witness the actual shooting:

I then looked back towards the direction from which I had just come and I saw a man walking out from the gable end of Block 1. This man was carrying a handkerchief and he seemed to be making

⁶⁶ AM350.16 paragraph 38

⁶⁷ Day 176/012/19

⁶⁸ AM350.14 paragraph 21

⁶⁹ Day 176/022/13 – 176/023/08

⁷⁰ AD151.3 paragraph 12

*his way towards another man who was lying on the ground on top of something which looked to me like a junction box. The man who was lying on the ground was not dead because he was moving. I thought that the man with the handkerchief must be going to give assistance to the man who was lying on the ground. I saw the man with the handkerchief walk about five or six metres from the gable end of Block 1. Then I must have looked away and when I looked back I saw the man with the handkerchief lying on the ground. I did not actually see the man with the handkerchief shot nor did I see him fall because I was keeping my head down. I just remember that one minute I saw him walking and then when I looked again I saw him on the ground. The man with the handkerchief was about 40 to 50 years of age and was wearing a raincoat or long coat of some sort. I believe around four or five shots were fired at the time the man fell. I did not try to go over to him and I did not see his injuries. I later found out that this man was Barney McGuigan.*⁷¹

10D-86 He wasn't really able to assist the Tribunal in determining the source of the shot that hit Mr. McGuigan. He was asked these question by Christopher Clarke QC:

Q. ... Were you able to tell where those shots appeared to have come from?

A. I believe myself they came from the Derry Walls. They could have come from elsewhere.

Q. Is there any particular reason why you believe that?

*A. Well, from the position he was shot it either came from the Derry Walls or across Rossville Street.*⁷²

10D-87 John Coyle, who appeared on behalf of the McGuigan family, asked Mr. Duddy if he saw any soldiers in Glenfada Park North at the time Mr. McGuigan was shot, he did not:

Q. Did you notice anything in Glenfada Park North?

A. No.

Q. Did you see any military present there at that time?

⁷¹ AD151.3 paragraph 13

⁷² Day 081/137/16

FS 7. 2287

A. No, I was just concerned with the immediate area there where I was at Joseph Place and the gable of the flats, you know. ⁷³

Witnesses who believe or had the impression that Bernard McGuigan was shot by a soldier situated further north up Rossville Street.

10D-88 Eugene Bradley was arrested at the southern end of the eastern block of Glenfada Park North. His account is important because he believes he was standing in that location when Bernard McGuigan was shot:

17. The next thing I recall was the paras appearing behind me at point F as I looked out towards Rossville Street and the Rubble Barricade. I was grabbed by the scruff of the neck by a short and stocky para and told to put my hands on top of my head. The soldier had a Scottish accent. He was carrying a baton. He did not have a rifle. I think there were two or three paras who collected the seven or eight men sheltering at point F. They turned us round and began to march us north through the car park of Glenfada Park North back towards the north east entrance

18. Just as I was being arrested, I noticed Barney McGuigan walking out from the gap between Blocks 1 and 2 of the Rossville Flats. He was waving a hanky in his hand.

19. I was turned round by the Scottish para and told not to look round again but to walk north along Glenfada Park North to the north east entrance. However, I heard another shot and turned round to where Barney McGuigan had been standing to see him lying on the ground, clearly having been killed. It was my impression that the shot had come from the area of Kells Walk further north along Rossville Street. ⁷⁴

10D-89 Counsel to the Inquiry asked him why he had that impression:

Q. Your impression was that the shot had come from Kells Walk; why was that?

A. The sound of the bullet or whatever -- the rifle or whatever, it just sounded from that direction.

Q. The sound [came] from that direction?

⁷³ Day 081/149/06

⁷⁴ AB113.3 paragraphs 17-19

FS 7.2288

*A. Yeah.*⁷⁵

10D-90 Mr. Bradley confirmed that he did not hear any shots fired from very close to him:

Q. While you were in that area did you hear any shots being fired closer to you than that?

A. Yes, shortly before we went down towards the, what-do-you-call-it, the pram ramp again, there is a few Paras came up past us and shortly after that, there was two or three shots fired after that.

Q. Before this happened, just as you were being arrested and you saw Mr McGuigan shot, did you hear any shots, at that stage, being fired close to you?

A. Just the one or two, and that was it until we got round that corner.

Q. Where did the one or two come from?

*A. That I am not sure. I assume it was the direction at the start of where we went up in the back of Kells Walk, in the general direction of William Street.*⁷⁶

10D-91 If an SLR rifle was fired a few feet away from Mr. Bradley, he would have been aware of it.

10D-92 Frank Carlin also believed that Mr. McGuigan was shot from the northern end of Rossville Street:

*Although I do not know where the shot came from, it seemed to me it was obvious that it came from Rossville Street. This is because Barney McGuigan was facing in that direction when he was shot.*⁷⁷

10D-93 He suggested in a tape recorded account he gave to Kathleen Keville on the evening of Bloody Sunday that Mr. McGuigan was thrown back about four feet by the force of the shot:

⁷⁵ Day 169/176/02

⁷⁶ Day 169/176/08

⁷⁷ AC33.3 paragraph 13

FS 7. 2289

*The next thing I seen was – shot – shots rang out the next thing – head was practically blew off and he was knocked about four feet back, dead as a door. That's what I seen. The shots definitely came from the corner at William Street end because he was facing that when it happened.*⁷⁸

10D-94 This witness was not called to give oral evidence to the Tribunal.

10D-95 James Rowe told the Tribunal that Bernard McGuigan was heading towards the rubble barricade when he was shot:

*I saw Barney take two or three steps towards Rossville Street from his position beside the telephone kiosk. As he moved, he held out above his head a white handkerchief which he waved. He turned to face in the direction of the Rubble Barricade and I assumed that he was going out to the bodies which I had heard were lying on it but could not actually see. At that moment I heard the crack of a high velocity shot and saw Barney's head hit by a bullet. He fell onto his back with his head facing Free Derry Corner, and his feet facing William Street. I did not see who fired the shot but I formed the impression, from the sound of the shot, that it was fired along Rossville Street by one of the soldiers who I assumed were positioned on Rossville Street to the north of the Rubble Barricade.*⁷⁹

10D-96 He remained firm in his recollection that Bernard McGuigan was heading towards the rubble barricade when he was shot:

Q. You describe him then as turning to face in the direction of the rubble barricade at which moment you heard the crack of a high velocity shot and saw his head hit by a bullet?

A. That is true.

Q. We have had some evidence from a number of people whose recollection is that Barney McGuigan moved out from this position, but instead of turning to face in the direction of the barricade, he was either facing towards Joseph Place or, according to one witness, facing back in to the car park of the Rossville Flats. How clear a memory do you have of his turning to face in the direction of the rubble barricade?

⁷⁸ AC33.8

⁷⁹ AR29.3 paragraph 10

PS 7. 2290

A. Well, to my recollection, that is the way I remember it, you know.

Q. You describe him as turning to face in that direction; when he moved out, in which direction do you recall him to have been walking?

A. I think he was walking out towards the barricade.

Q. You say that you saw his head hit by a bullet and he fell on his back with his head facing towards Free Derry Corner and his feet facing William Street. You say that you formed the impression that it was fired along Rossville Street by one of the soldiers. Are you aware where the entry wound was to Barry McGuigan?

A. No, I could not say for definite.

Q. We know now from the medical evidence that he was struck by a bullet that entered the left side of his head and exited through his right eye, in which case at the moment that he was shot his back must have been, or the back of his head must have been towards the bullet. If we look at your map at AR29.5, your recollection as I understand it is that he was going in the direction of and facing towards the rubble barricade; is that right?

A. That is right, yes.

Q. If he was going in that direction, and was shot in the back of the head, I think it would follow that if he was shot from soldiers in Rossville Street, he would have to have turned at some stage, would he not?

A. Well, if you say he was hit in the back of the head, he would have had to turn.⁸⁰

10D-97 Mr. Rowe never in fact saw any soldiers while he was in the vicinity of the telephone box.⁸¹ He agreed with Mr. Mansfield's summary of his evidence:

Q. My final question is: really all you can say about the shot that killed him was that your impression was that it had come from Rossville Road?

A. From Rossville Street, yes.

⁸⁰ Day 091/153/08

⁸¹ Day 091/155/19

FS 7.2291

Q. So sorry, Rossville Street?

A. Rossville Street.

Q. But you are not able to say whereabouts on the street it came?

*A. No.*⁸²

Witnesses who believe or had the impression that Bernard McGuigan was shot through the gap between Blocks 1 and 2 of the Rossville Flats.

10D-98 Hugh Barbour said in his BSI statement that he saw Bernard McGuigan being shot. His impression was that he was shot by a soldier in the Rossville Flats car park through the gap between Blocks 1 and 2. His account begins at the point where he decided to leave the area of the telephone box:

There were shcps along the south side cf Block 2 cf the Rossville Flats so I decided to try and hide in one cf those. I remember dashing from the gable end cf Block 1 across the gap to Block 2 because I was still cfraid that I might be shot by a soldier in the Rossville Flats car park. There was a general grocers shcp close to the western end cf Block 2 called Molly Barrs; it was known locally as Molly McGuires. I tried the door cf this shcp but it was locked and I could not get in... I stayed where I was, just under the veranda on the south side cf Block 2 at the point marked J... It was then that I saw Barney McGuigan shot. I have a very clear recollection cf Mr McGuigan standing in the gap between Block 1 and Block 2, at the point marked K.... He was very animated, standing up waving arms. I think he was holding and waving a white handkerchief but I may have this memory confused with pictures that I have seen cf Father Daly doing the same. Mr McGuigan was shouting to somebody through the gap who I couldn't see. He was shouting "Please, please help – don't shoot me". I cannot remember his exact words but I remember the pleading tone in his voice. He was showing himself in clear view and was not trying to hide. He had nothing in his hand except for the handkerchief and was wearing a coat that came just below his waist. I do not remember him wearing a scarf. He was perhaps three yards away from me to the north-west. I have a very animated

⁸² Day 091/169/16

FS 7.2292

*vision of him standing there. It seemed to me that Mr McGuigan was shot in the face*⁸³

10D-99 Mr. Barbour, when he was asked about it by counsel to the Tribunal, confirmed on oath that he believed Bernard McGuigan was shot as he looked through the gap between Blocks 1 and 2:

Q. You describe having a clear recollection of his standing in the gap between block 1 and block 2, very animated and waving his arms; is that right?

A. Yes.

Q. And he may have had a white handkerchief and you describe him as shouting to somebody through the gap, "please, please help - don't shoot me". When you say that he was shouting to somebody through the gap, do you mean by that that he appeared to be facing towards somebody who was in the car park?

A. Can you repeat that?

Q. Yes. What you say there is that: "Mr McGuigan was shouting to somebody through the gap who I could not see, shouting 'Please, please help - don't shoot me.'" Which gap is that?

A. The gap between the two blocks of flats at the, the telephone box area.

Q. So there appeared to be somebody the other side of the gap, did there?

A. Well, um, I am only assuming there were soldiers there, but, he appeared to be shouting to someone.

Q. Did you see which way he was facing when he was shouting?

*A. He was facing into the car park, into the car park direction.*⁸⁴

10D-100 Patrick McGlinchey observed the shooting of Bernard McGuigan from behind (to the south of) the Threepenny Bits.⁸⁵ Although Mr. McGlinchey quite clearly told the Tribunal that he did not see the soldier who shot Bernard McGuigan, the

⁸³ AB10.4 paragraphs 26-28

⁸⁴ Day 088/072/14

FJ 7. 2293

account he gave in his BSI statement suggests that he was shot by a soldier in the Rossville Flats car park through the gap between Blocks 1 and 2:

*My attention then turned to a group of about four or five men who were standing around the gable end wall at the south of Block 1 of the Rossville Flats. All of them, except one, who I now know to be Bernard McGuigan, were keeping down. Mr McGuigan was standing up. He had his back to me and seemed to be facing through the gap between Blocks 1 and 2 of the Rossville Flats. He was waving a white handkerchief, which I think he was holding in his right hand. There is no way this could have been mistaken for a gun or a bomb. I remember the hanky hung straight down because there was no wind at all. I could not see his face. He was wearing a half-length dark coat. I do not remember whether he was wearing a scarf. He said two or three times "Don't Shoot". I could see it very clearly. I heard a bang. Mr McGuigan crumpled and fell sideways. I knew he had been shot.*⁸⁶

10D-101 Counsel to the Tribunal asked Mr. McGlinchey some supplementary questions about this aspect of his evidence. Perhaps, strictly speaking, Mr. McGlinchey's evidence should come under the category of witnesses who believed that Bernard McGuigan had been shot from the City Walls because it emerged during his oral evidence that, at the time, he believed Bernard McGuigan *could only* have been shot from the City Walls:

Q. ... Do you remember seeing Mr McGuigan moving at all in the moments before he was shot or was he standing still?

A. He, he was standing, to me it was that he felt the biggest danger was through the gap, that is the impression I got and that is where he was sort of waving, waving -- well, he had his hand out with the handkerchief, but he, he was basically stationary, he just was maybe taking a step or two, to my recollection.

Q. Are you sure that he was facing away from you?

A. Well, he was sideways and his back more or less to me. I was behind him.

⁸⁵ AM247.7 paragraph 12

⁸⁶ AM247.7 paragraph 14

FS 7.2294

Q. Was his back pointing towards you or his side, do you remember?

A. To me what I seen was his side more so, you know what I mean. It is difficult to say if -- he was not directly, you know, his full back towards me, it was, it was sort of ha.f and ha.f.

Q. Can you remember which side of him it was, his right side or his left side that was turned towards you?

A. His right side.

Q. Did you see who had shot him?

A. No.

Q. Did you see any soldiers in that area?

A. No.

Q. Or on the other side of Rossville Street from where Mr McGuigan fell?

A. No, I was keeping pretty much down, you know what I mean, you were looking over from time to time. I initially believed that the only place he could have been shot from was the Derry Walls.⁸⁷

10D-102 It is to be noted that, from his position to the south of the Threepenny Bits, Mr. McGlinchey would have been in a prime position to have seen any soldiers firing shots from the vicinity of the southern gable of the eastern block of Glenfada Park North.

Witnesses whose evidence is not clear or is silent on the issue of the source of the shot that killed Bernard McGuigan.

10D-103 John Davies was not able to identify the source of the shot that killed Bernard McGuigan:

There was shooting going on at this stage but I cannot recall the specific shot that hit him.⁸⁸

⁸⁷ Day 388/080/09

⁸⁸ AD8.3 paragraph 15

FS 7.2295

10D-104 Mr. Davis said that he could not tell where the shooting that he could hear was coming from.⁸⁹ Counsel to the Tribunal asked Mr. Davies if he saw any soldiers while he was near the telephone kiosk. Mr. Davies replied that he did not.⁹⁰

10D-105 Mr. Mansfield raised the possibility that Bernard McGuigan had been shot by a soldier from Mortar Platoon who accompanied the Pig to collect the bodies from the rubble barricade. But Mr. Davies was unable to assist: the soldier would have been out of his view:

Q. Can we go back to P813, please, which you have seen today? P813 is the first of the sequence you have been shown this morning. We know where you are on this photograph, but if you home in on the Pig, which is in the distance on the other side of Rossville Street, if we have that. There is, although it may not be able to discern, there is a soldier there outside the Pig towards the front corner of that Pig. I will just put an arrow to where that is. I certainly do not ask you to speculate, but from where you were crouched down by the telephone kiosk -- and only you can say really -- would you have been able to see somebody on the other side on that corner from where you were on the gable wall?

A. No.

Q. If there were soldiers on that corner, one or more of them who shot the fatal shot, you would not have known that it came from there, would you?

*A. No.*⁹¹

10D-106 Frankie Mellon attended to Hugh Gilmore as he lay dying.⁹² He was not aware that Bernard McGuigan had been shot until he saw his body lying on the ground:

Q. ... Do you now remember seeing Mr McGuigan being shot?

A. No, I did not see Mr McGuigan being shot. The only time I knew that he had been shot was when I left the body of Hugh Gilmore

⁸⁹ AD8.2 paragraph 12

⁹⁰ Day 172/027/08

⁹¹ Day 172/042/21

⁹² AM399.11 paragraph 18

FS 7. 2296

*and went to beside the phone box and I looked out, that is when I saw he was dead. I did not actually see him being shot.*⁹³

10D-107 He was not able to help the Tribunal as to where the shot had come from:

*By the time I got to the telephone box at the south gable end of Block 1 the shooting had built up to a crescendo and seemed to be coming from all directions. I could not tell from which direction it came because it was echoing around the flats although I remember thinking that it was from Rossville Street towards Free Derry Corner. I think this is because I had seen vehicles and soldiers on Rossville Street. I do not know whether there was any shooting from the City Walls. I could not see the Walls from where I was standing.*⁹⁴

10D-108 Mr. Mellon's oral evidence to the Tribunal was consistent with this impression, although he added that it was possible that the sound of shots being fired was also emanating from the Rossville Flats car park:

Q. Can you tell us the direction from which that shooting was coming?

A. I actually felt it was coming from north, towards the rubble barricade. I thought the shooting was coming at us from across somewhere down there; that was my feeling at the time and that, the reason for that was because Barney McGuigan was facing that way as well and he was waving the white hanky at the people on that side, that is why I thought it was coming from there plus it sounded as if it was coming from there as well.

Q. Were you conscious of the sound of any shots that might have come from a different direction?

A. No, I was not, no.

Q. Any possibility of any shots being fired within the Rossville Flats car park on the other side of you?

A. Yeah, that is a possibility because there was a lot of shooting at one point, so it could be coming from anywhere given the fact it could be echoing. I do not know, I was preoccupied at that time. It took me a few minutes or a few seconds or whatever to realise the

⁹³ Day 151/157/18

⁹⁴ AM399.12 paragraph 24

FS 7-2297

*extent of the shooting because I was a bit occupied with Hugh Gilmore.*⁹⁵

10D-109 He said that while he was near the telephone box he saw a soldier in Glenfada Park North:

*When I had been at the telephone box for only a few minutes, I remember looking to my right towards Glenfada Park. I saw a man running in Glenfada Park North and a soldier down on one knee, screaming at the man to stop. The soldier had his rifle on his shoulder. The man had dirty fair hair and was young, thin and athletic looking. I cannot recall any details of his clothes. I did not see the soldier shoot the man but I saw a shot hit him in the back. He clutched his stomach. A chunk came out of the wall in front of him. I do not know the positions of the soldier or the man because I only saw this out of the corner of my eye. I do, however, know that it was south of the Rubble Barricade and the soldier was aiming somewhere into Glenfada Park North. I have some recollection of seeing an alley way: I think it may have been the south west corner of Glenfada Park North but I cannot be certain.*⁹⁶

10D-110 However, his recollection was that he saw this soldier after Bernard McGuigan had been shot:

Q. ... First of all, Mr Mellon, do you remember whether that was before or after you saw Mr McGuigan dead?

*A. It would have to be in my recollection after Mr McGuigan, I saw that.*⁹⁷

10D-111 Sean MacDermott helped Hugh Gilmore around the south west corner of Block 1.⁹⁸ At some point while he attended to Mr. Gilmore, he noticed Bernard McGuigan in the crowd by the telephone box.⁹⁹ Mr. MacDermott was focusing all of his attention on Mr. Gilmore; he was not taking in very much of what people were doing around him.¹⁰⁰ He did not see Mr. McGuigan move out from the

⁹⁵ Day 151/156/14

⁹⁶ AM399.12 paragraph 27

⁹⁷ Day 151/165/13

⁹⁸ AM4.4 paragraph 19

⁹⁹ AM4.4 paragraph 21

¹⁰⁰ AM4.4 paragraph 21

FS 7.2298

wall.¹⁰¹ He only realised Mr. McGuigan had been shot after seeing his dead body.¹⁰²

*Until I saw him, I had not been aware that anyone else had been shot. Whilst I had been attending to Hugh Gilmore, I was oblivious to everything else that was happening around me. I had not even heard any gunfire.*¹⁰³

10D-112 Mr. Clarke asked him about this:

Q. Do you have any recollection of where the shots were coming from?

*A. No.*¹⁰⁴

10D-113 Mr. MacDermott's evidence does not help to resolve the question of who shot Bernard McGuigan.

10D-114 Bernard Gallagher did not see any soldiers while he crouched down against the wall, although he suggested in his statement to the Tribunal that someone else in the group was aware of soldiers firing shots from Glenfada Park North:

*I ran to the middle of the south gable wall where I crouched down against the wall (at point that is marked with an "E" on the attached map at grid reference J16) near the telephone box. I heard someone calling out that the shooting was coming from the direction of Glenfada Park North. However, at no time did I look around the corner of the south gable wall toward Glenfada Park North to see what was happening. A short while later (it could have been seconds or minutes), I remember someone else saying that the army was coming through Glenfada Park North. I remember thinking that if I got in tight with my back against the south gable wall then I would be protected from shooting from that direction. So, that is what I did.*¹⁰⁵

¹⁰¹ Day 144/061/22 – 114/062/07

¹⁰² AM4.4 paragraph 22

¹⁰³ AM4.5 paragraph 24

¹⁰⁴ Day 144/062/13

¹⁰⁵ AG3.3 paragraph 17

AS 7.2299

10D-115 Although Mr. Gallagher went on to describe seeing Bernard McGuigan shot, his statement is completely silent on the issue of the location of the individual who shot him.¹⁰⁶ He was not called to give oral evidence to the Tribunal.

10D-116 If someone in the group was aware of soldiers in Glenfada Park at the point when Bernard McGuigan was shot, it is not clear who that was. However, in a contemporary NICRA statement, which Mr. Gallagher accepted he had given,¹⁰⁷ he suggested that it was a first aid man who told the group that the Army was approaching:

*There was about seven of us jammed in that corner. The first aid man told us to get back in tight against the wall because he saw the army coming up the other side of Rossville Street. We were still all jammed in that corner when Barney McGuigan took three or four steps out in front of us and fell. I heard a distinctive single shot and he fell dead.*¹⁰⁸

10D-117 The statement records that he was told that the Army was coming up the other side of Rossville Street. Mr. Gallagher's recollection that he was told that the Army was firing shots from Glenfada Park may, therefore, be inaccurate.

10D-118 The "first aid man" is very probably a reference to the Knight of Malta, Paul McLaughlin.¹⁰⁹ His evidence accords with Mr. Gallagher's contemporary account:

*I do not recall seeing any soldiers at Glenfada Park North or the Rubble Barricade. I think I was aware that they were at the north end of Rossville Street, but at that point I had not idea how far into the Bogside they had come.*¹¹⁰

10D-119 Michael Rooney was 13 years old on Bloody Sunday.¹¹¹ He says that he and a few others crammed themselves into the gap between the telephone box and a

¹⁰⁶ AG3.4 paragraph 21

¹⁰⁷ AG3.5 paragraph 33

¹⁰⁸ AG3.10

¹⁰⁹ Day 176/015/11

¹¹⁰ AM350.14 paragraph 23

¹¹¹ AR28.1 paragraph 1

FS 7.2300

“transformer house” just to the east of the telephone box.¹¹² He believes that he saw Bernard McGuigan in his vicinity for a few seconds:

Q. Do you remember him being there at the time that they were pointing towards somebody who had been shot?

A. I mind seeing Barney in the vicinity, that was all, for a few seconds, that was all.

Q. Do you remember what he was doing?

A. No.

Q. Do you remember seeing him at the time that people were pointing out a body round the corner of the flats?

A. He was there, that is all I know. He was in the vicinity. I would not ... it is a very small area, you know.

Q. Was he there when you first arrived at the telephone box to take cover?

A. No, I did not see him then....

Q. Was he standing still or was he moving when you saw him?

A. All I mind, I seen his face, that is all.¹¹³

10D-120 Mr. Rooney did not see Mr. McGuigan shot:

The next thing I remember is hearing another series of shots ring out. I covered instinctively. I looked up when the shooting was over. Bernard McGuigan was lying where he had stood at point N. He had been shot in the head. There was a pool of blood already forming around his head.¹¹⁴

10D-121 He only discovered it was Mr. McGuigan some hours later:

Q. Then you saw him lying on the ground?

A. I seen a body lying on the ground; I did not know it was Barney then.

¹¹² AR28.4 paragraph 13

¹¹³ Day 174/107/15

¹¹⁴ AR28.4 paragraph 16

FS 7.2301

Q. When did you know that it was?

A. That night, the night-time or the next day even, something like that. ¹¹⁵

10D-122 Counsel to the Tribunal asked Mr. Rooney about the source of the gunfire that he heard when Mr. McGuigan was shot:

Q. Do you have any idea of the direction from which those shots were coming?

A. From the same area, the same direction, Rossville Street; everything to me seemed to come from there.

Q. Do you have a recollection of there being two distinct bursts of shooting?

A. Yeah, there was, aye, there was a lull for a while and then it started again.

Q. Is this the second burst of shooting that you are describing here?

A. I would not know, no. No, I think that was the first, it was before the lull. There was a lull after that.

Q. At the moments immediately surrounding Bernard McGuigan being shot, do you have any idea of the number of shots that were fired?

A. 10, 20, just that. ¹¹⁶

10D-123 Edmund Melaugh arrived in the vicinity of the telephone box having come through the gap between Blocks 1 and 2 from the Rossville Flats car park. ¹¹⁷ At the time he gave his statement to this Tribunal, his recollection was that he saw the body of Bernard McGuigan already lying on the ground when he arrived near the telephone box. ¹¹⁸ During his oral evidence, Mr. Melaugh told the Tribunal that

¹¹⁵ Day 174/109/19

¹¹⁶ Day 174/109/01

¹¹⁷ AM398.10 paragraphs 15 and 16

¹¹⁸ AM398.10 paragraph 16

FS 7.2302

he believed this account could be wrong. He said he could not be sure when he first saw Bernard McGuigan's body:

Q. And in paragraph 16 you say that as you came out of the alleyway you stopped near the telephone box, and you think it was then that you first saw a man whom you now know to be Barney McGuigan?

A. I think -- at the time I thought it was then that I seen him because I had seen him actually twice. I had seen him once when he was not covered up with a banner or something and then the next time I seen him, he had a banner on his -- covering his head.

Q. When did you see him for the first time uncovered?

A. I am not sure. I think now it had to be after, after Paddy Doherty was shot, but I am not terribly sure on it.

Q. If you can think now of coming through that alleyway, do you remember seeing anybody lying on the ground?

*A. No.*¹¹⁹

10D-124 After taking him through the remainder of his evidence, counsel to the Tribunal came back to the issue and attempted to clarify when Mr. Melaugh had first seen the body of Bernard McGuigan:

Q. You have now taken us through the sequence of events when you saw Mr Doherty shot and eventually went out to help him. Can you remember now when the first time was that you saw Mr McGuigan?

A. Not with any clear certainty, no. I think that after coming out I had been wandering around here. I remember seeing Father Mulvey waving a handkerchief down near an ambulance and I cannot remember when exactly I seen Barney McGuigan. I know I seen him twice, I seen him without his face being covered and then I seen him with his face being covered, but I cannot remember when they were.

Q. Do you think that the first time you saw him was in fact after the shooting was over and you had come out to help Mr Doherty?

¹¹⁹ Day 170/109/14

FJ 7.2303

A. *Quite possibly, yes.* ¹²⁰

10D-125 The significance of the timing of it was that when Mr. Melaugh was in the vicinity of the telephone box is that while he was there he believes he saw a soldier in Glenfada Park North drop to a kneeling position and fire shots into Sector 5:

Then, from where I was standing at the south end gable of Block 1, I could see soldiers advancing into the Glenfada Park North courtyard. There were not many, maybe four or five. They all had rifles and were shooting across the Glenfada Park North courtyard in the direction of Glenfada Park South. I then saw one soldier drop and kneel near to the centre of the Glenfada Park North courtyard (at point J marked at grid I14) and start shooting towards the hexagonal flowerbed and the south gable end of Block 1 where we were standing. ¹²¹

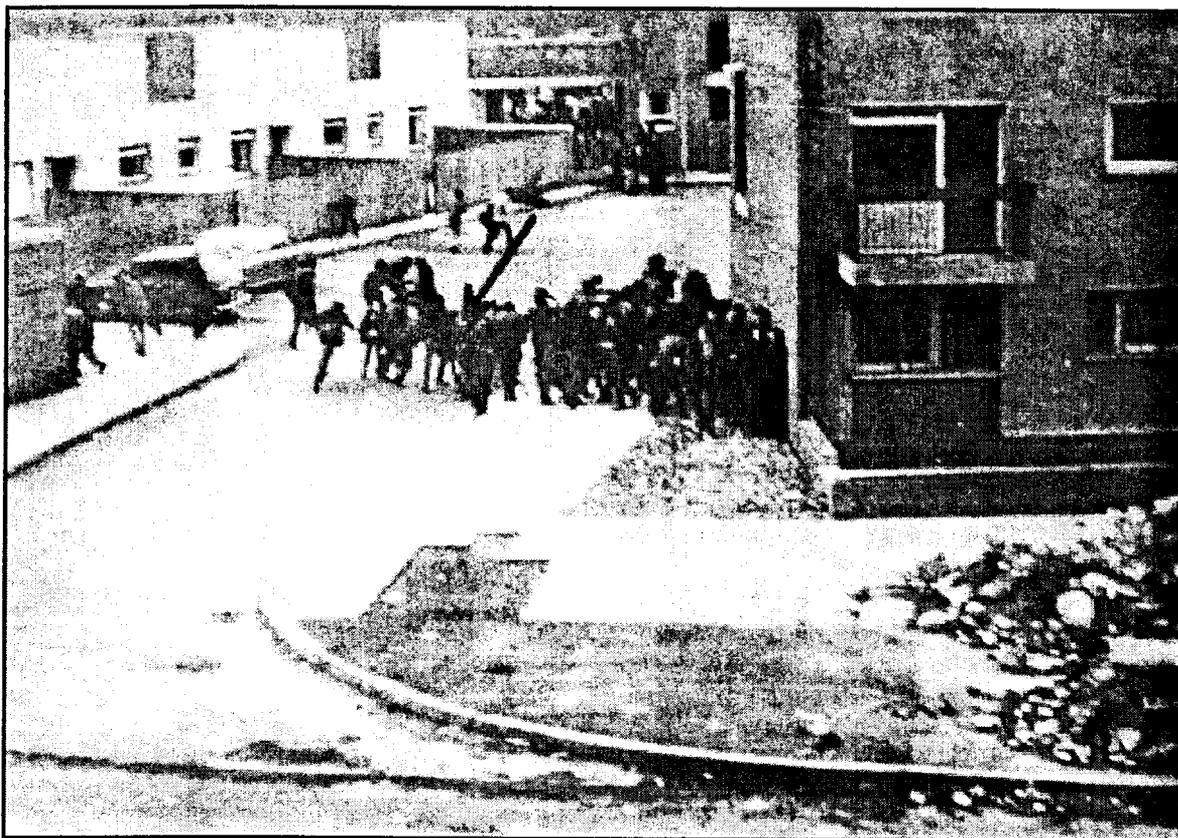
10D-126 During his oral evidence, Mr. Melaugh marked a photograph with a purple arrow to show the location of the soldier he saw in a kneeling position: ¹²²

¹²⁰ Day 170/129/05

¹²¹ AM398.11 paragraph 20 - 21

¹²² Day 170/116/04-07

FS 7.2304



10D-127 On the same photograph, he marked a green arrow to show the position of a number of other soldiers on the southern perimeter of the Glenfada Park North courtyard.¹²³ It is, however, unlikely that Bernard McGuigan was shot at this point: it is virtually inconceivable that Mr. Melaugh would not have noticed his body on the ground before heading off towards the alleyway behind Joseph Place.

10D-128 It is noteworthy that neither of Mr. Melaugh's contemporary statements records that he ever went near the area of the telephone box or that he saw the body of Bernard McGuigan. Both statements deal solely with what he witnessed from the alleyway behind Joseph Place.¹²⁴ Furthermore, Mr. Melaugh had no recollection of a young woman "having hysterics" near the telephone box - although he said he

¹²³ Day 170/117/10-13

¹²⁴ AM398.19; AM398.22

FS 7.2305

did know Geraldine McBride at the time.¹²⁵ Nor did he have any memory of seeing the body of Hugh Gilmore.¹²⁶

10D-129 Hugh Kelly joined the group by the telephone box having come through the gap between Blocks 1 and 2.¹²⁷ He probably arrived after Bernard McGuigan had been shot:

Did you ever see -- presumably you did not see a group of people which included Bernard McGuigan still alive, did you?

*A. No, not that I remember.*¹²⁸

10D-130 In any event, he only became aware of Mr. McGuigan after he had been shot.¹²⁹

10D-131 Several other witnesses similarly arrived too late to assist the Tribunal in its task of identifying who shot Bernard McGuigan.

10D-132 Patrick Kelly arrived in the area after Bernard McGuigan had been shot.¹³⁰

10D-133 RM2 appears to have left the area before Bernard McGuigan was shot. The only casualty he saw was Hugh Gilmore.¹³¹

10D-134 Brian McCool was also amongst the group by the telephone box.¹³² Mr. McCool was not called to give oral evidence to the Tribunal. He stated in both his NICRA and BSI statements that he became aware of Bernard McGuigan's body after he had been shot; he did not witness him move out from the rest of the group.¹³³ He made no reference to the source of the shot that killed him.

¹²⁵ Day 170/140/03 - 09

¹²⁶ Day 170/111/02 - 10

¹²⁷ AK9.2 paragraphs 12-14

¹²⁸ Day 072/194/23

¹²⁹ AK9.3 paragraph 18

¹³⁰ AK21.5 paragraph 11

¹³¹ AK42.13 paragraph 32

¹³² AM133.3 paragraph 21

¹³³ AM133.4 paragraph 24; AM133.10

FS 7.2306

10D-135 Shelia Sheerin, née Duffy, gave a short statement to the Tribunal saying that she saw Mr. McGuigan go out from the wall at the southern end of Block 1 and that she could recall seeing his body lying on the ground.¹³⁴ She provided no evidence that might assist the Tribunal in determining the source of the shot that killed Mr. McGuigan. She was not called to give oral evidence.

10D-136 Anthony Harkin was also at the southern end of Block 1.¹³⁵ He witnessed Bernard McGuigan wander out towards Rossville Street, but did not actually see him shot. He was unable to discern the source of the shot that hit him:

The next thing I noticed was a man who had been standing in the area close to the telephone box near me. He appeared to be middle aged and I think he was wearing a tweed overcoat which was buttoned up. The man was stooped over slightly and he walked out west from the telephone box waving a hanky. Other people in the group around me began to shout for him to come back, but he kept going. I believe he got as far as the point marked M on the attached map (grid reference J16). As he walked out I heard a couple of shots ring out. I have no idea where they came from the north, on Rossville Street, or the west from Glerfada Park North. I believe I must have taken my eyes off the man just before the shots rang out, because I did not see him actually shot. However, the people in the crowd around me suddenly shouted "Jesus, he's shot". When I looked back, I saw that he had slumped to the ground. He appeared to have his head right down on the floor and was on his knees. However, his body was not stiff, but seemed to be in a crumpled heap. I do not recall seeing any blood, but at that point, I knew I needed to get away from the area.¹³⁶

10D-137 Mr. Harkin was not able to assist the Tribunal further about the source of the shot that hit Bernard McGuigan when he gave evidence.¹³⁷

10D-138 So too, Sean McCallion:

Our plan had been to get away by running down towards Joseph Place, but it was not safe to go out. I can remember, however, that

¹³⁴ AS45.2 paragraph 6

¹³⁵ AH11.4 paragraph 24

¹³⁶ AH11.5 paragraph 26

¹³⁷ See for example, when he was questioned by counsel to the Tribunal at Day 077/031-036

FX 7.2307

*there was one man who was more in the cpen than us. He was balding and in his 40's and cf medium build. He was wearing trousers and a coat. I did not see him do anything or have anything in his hands. I think he went out to help someone, but I do not know that as a fact. He got shot. I did not think at the time about where he had been shot from. Pecple were saying that they were shooting from the Walls, and it could have come from there or from a westerly direction. I certainly did hear shots coming from the city Walls at some stage.*¹³⁸

10D-139 Counsel to the Tribunal asked him several questions in the hope of eliciting more evidence about the source of the shot, but he was unable to help any further.¹³⁹

10D-140 Michael McCusker was another witness who was near the telephone box at the southern end of Block 1 who had no idea from where Bernard McGuigan was shot:

*A man standing beside me, to my left, I think, took about two steps away from the wall. He had his hands in the air. I cannot recall cf they were empty. I do not recall seeing him with a handkerchief in his hand. He then fell forward with his head towards Free Derry Corner, at the point marked 3 on the map. He was lying half over on his right side. I initially thought he had tripped over but when I saw the amount cf blood coming out cf his head, I realised he had been shot. I did not see who fired the shot nor do I know where it came from. There was nothing anyone could do to help him. Then man was in his late 40s and I now know that he was Bernard McGuigan.*¹⁴⁰

10D-141 When Mr. McCusker was called to give evidence he was not asked any questions about the source of the shot that killed Bernard McGuigan.

10D-142 John Nash was another who was unable to help the Tribunal about the source of the shot that killed Mr. McGuigan. This is the account he gave in his BSI statement:

¹³⁸ AM492.2 paragraph 12

¹³⁹ Day 147/160-162

¹⁴⁰ AM160.3 paragraph 13

FS 7. 2308

*As I was pushed through the other side of the Rossville Flats by the force of the crowd, I saw a man fall. I later found out it was Bernard or Barney McGuigan. I can't say which way he was facing or from where he was shot, I saw it all very quickly. Someone then shouted "Hit the deck they're firing from the walls". At this stage, I kept low and tried to get in close to Joseph's Place so that if the firing was coming from there I would be safe. I didn't look back again.*¹⁴¹

10D-143 He later retracted this account in the witness box:

Q. In paragraph 13 you are recorded as saying as drafted: "As I was pushed through the other side of the flats by the force of the crowd, I saw a man fall. I later found out that it was Bernard or Barney McGuigan." I think your present recollection is that this is not in fact Barney McGuigan that you are referring to in this paragraph?

*A. That is correct. The only memory that I have is actually of hearing a warning and someone shout, basically, "hit the deck" and I seen a person fall.*¹⁴²

10D-144 James Flood was in the northern-most house in Joseph Place.¹⁴³ This is the account he gave in his BSI statement:

I then saw a man whom I recognised as Barney McGuigan standing at the corner of the southern gable end of Block 1 of the Rossville Flats. I have marked the position on the attached map at E (grid reference J16). He was standing with his back to me, close in to the wall, facing towards the Rubble Barricade. One or two people were trying to prevent Barney McGuigan from going out but there was a lull in the shooting and I think that convinced him that it was safe to step out. I think he was going to the aid of someone who was lying on the Rubble Barricade, although I cannot remember seeing a body on the Rubble Barricade. He stepped out from behind the corner, still facing towards the Rubble Barricade and as soon as he did so he was shot. I saw him fall. After he was shot people who were also sheltering at the southern gable end of Block 1 of the

¹⁴¹ AN6.2 paragraph 13

¹⁴² Day 097/079/06

¹⁴³ AF23.1 paragraph 4; see the map at AF23.9

FS 7.2309

*Rossville Flats tried to pull him back in behind the gable end wall.
They pulled him a short distance.*¹⁴⁴

10D-145 When counsel to the Tribunal asked him if he had any idea at all about the direction from which Bernard McGuigan was shot, Mr. Flood was unable to help:

Q. Do you have any idea at all of the direction from which he was shot?

*A. I do not know. I do not know who fired the shot, I am being honest with you about that, but I know he was shot.*¹⁴⁵

10D-146 When Soldier F fired two shots into Sector 5, he would have been within view of Mr. Flood, yet Mr. Flood appears not to have seen this happen.

Witnesses who give other evidence

10D-147 Joseph Doherty was looking through the letter box of one of the two most southerly houses in the northern block of Joseph Place.¹⁴⁶ He told the Tribunal that he believed he witnessed Bernard McGuigan being shot by a soldier who was located within the area defined as grid reference G17 on the map attached to his BSI statement.¹⁴⁷ The relevant part of the map is reproduced below with grid reference G17 high-lighted in yellow:

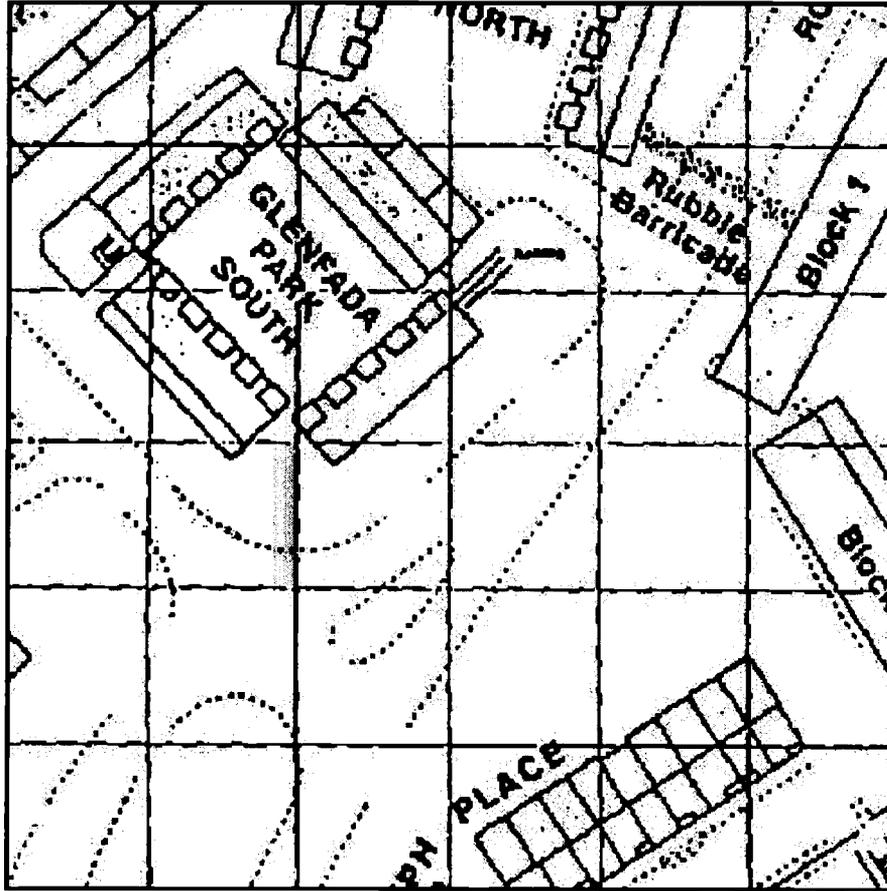
¹⁴⁴ AF23.2 paragraph 6

¹⁴⁵ Day 172/120/04

¹⁴⁶ AD76.2 paragraphs 18-19

¹⁴⁷ AD76.4 paragraph 27

75-7.2310



10D-148 Mr. Doherty's account in 1972 was that the soldier fired from the entrance to Glenfada Park North. However, when he gave evidence to the Tribunal on oath, Mr. Doherty remained firm in his belief that the soldier fired from the corner of Rosville Street and the Old Bog Road. Counsel to the Tribunal asked Mr. Doherty how sure he was:

Q. You are obviously doing your best, Mr Doherty, to recall what you saw through that letterbox in 1972. Are you really sure in your own mind today that the soldiers were down at that corner as opposed to being somewhere in the area of this entrance of Rosville Street into Glenfada Park North?

*A. Oh, I am quite sure there was two soldiers at where I am stating they were and one left and one remained.*¹⁴⁸

¹⁴⁸ Day 138/150/07

FS 7.2311

10D-149 He was not to be moved:

Q. So do you think you are wrong about the soldier being in an alleyway at all?

A. As I said, this is my recollection now and what I say now is the soldier to my mind was at the corner to Fahan Street West, to which I believe you can get access to from Glerfada Park.

*LORD SAVILLE: Ms McDermott, Mr Roxburgh has had a go, you have had a go, I am not sure you are going to change what Mr Doherty believes he saw on the day.*¹⁴⁹

10D-150 Thomas Harrigan arrived in the area at the southern end of Block 1 having come through the gap between Blocks 1 and 2.¹⁵⁰ While he was there he saw two people shot:

*The next thing I heard more shooting and as I heard the shooting, I saw two people to my left (the west) close to the telephone kiosk, fall.*¹⁵¹

10D-151 This evidence is consistent with a statement he gave on 4th February 1972:

*Two civilians in the back of the flats were unarmed and yet they were shot and I saw them fall. I did not know who these people were, but even in the confusion I saw that they were unarmed.*¹⁵²

10D-152 By the time he gave his statement to this Tribunal, Mr. Harrigan had formed the belief that one of the men was Bernard McGuigan,¹⁵³ and the other Hugh Gilmore.¹⁵⁴ Mr. Harrigan has probably identified the bodies correctly, although his evidence about the locations in which they fell is inconsistent with the more

¹⁴⁹ Day 138/168/13

¹⁵⁰ AH39.4 paragraphs 21-22

¹⁵¹ AH39.4 paragraph 23

¹⁵² AH39.7

¹⁵³ AH29.5 paragraph 25

¹⁵⁴ AH39.4 paragraph 24

FS 7.2312

reliable photographic evidence.¹⁵⁵ Nor could he recall the body he identified as Bernard McGuigan being surrounded by a pool of blood.¹⁵⁶

10D-153 If the man he identified as Bernard McGuigan was in fact someone else, his true identity remains unknown.

10D-154 Mr Harrigan was unable to say what either of the men was doing when they were shot.¹⁵⁷ But he was able to give significant evidence about the source of the gunfire:

The only other thing which happened whilst I was standing close to the telephone box was that Mr. Devlin (his family nickname at the time was "Ding") was hit in the temple by masonry which flew off the south gable end of Block 1. This occurred just before the other two men fell. I believe Mr. Devlin was standing in the alleyway between Blocks 1 and 2 behind the telephone box looking out at me, at point Z on the attached map (grid reference J/K16). I am not sure which direction the bullet which hit Block 1 came from but I think he was hit in the temple at the same time as I heard the bullets fired and saw the two men fall.¹⁵⁸

10D-155 During his oral evidence, he marked on a photograph the point where the bullet hit the wall with two small purple arrows a few feet above the telephone box:¹⁵⁹

¹⁵⁵ AH39.12; Day 170/168/15 – 170/169/09

¹⁵⁶ Day 170/171/16 – 170/172/15

¹⁵⁷ AH39.4 paragraph 23

¹⁵⁸ AH39.5 paragraph 26

¹⁵⁹ AH39.12

FS 7.2313



10D-156 He confirmed that he actually saw a piece of masonry come off the wall and hit Mr. Devlin on the head:

Q. Could you see whereabouts the masonry had come from?

A. I believe the masonry came from round about here, above the telephone box (marked with a purple arrow). I can only assume that is where it came from because it is roughly where he was standing in line with that particular particle of concrete.

Q. But you saw a bit of masonry actually come off the --

A. Yes --

Q. The cladding and come some way down and hit Mr Devlin on the head?

A. That is right, yes, yes.¹⁶⁰

¹⁶⁰ Day 170/170/06

FS 7.2314

10D-157 It was an event he mentioned in an account he gave to Kathleen Keville soon after Bloody Sunday.¹⁶¹ The transcript of that account records that two or three people were hit by the falling masonry.¹⁶²

Q. "About four shots rung above my head at this point. Two or three people were hit with masonry coming off the wall, one of them had his head cut, I thought he was hit with one of the rifle ... bullet. I found out later that he was not." That is presumably a reference to Mr Devlin; is it?

A. I would assume it is, yes.

Q. You appear to have recalled more than one person was hit with masonry coming off the wall; is it possible that was so?

A. It is a possibility, although I do not remember it. Mr Devlin is the only one sits out in my mind about that.¹⁶³

10D-158 Sean MacDermott saw a bullet hit the same wall at around the time that Bernard McGuigan was shot.¹⁶⁴ Using a photograph, he pointed to the approximate location of where the bullet hit the wall. Lord Saville described it as "a position about eight feet up on the wall above Mr. Hugh Gilmore's body."¹⁶⁵

10D-159 Mr. Harrigan marked his own location at the time as point H on the map attached to his BSI statement.¹⁶⁶

¹⁶¹ Day 170/177/07

¹⁶² AH39.10

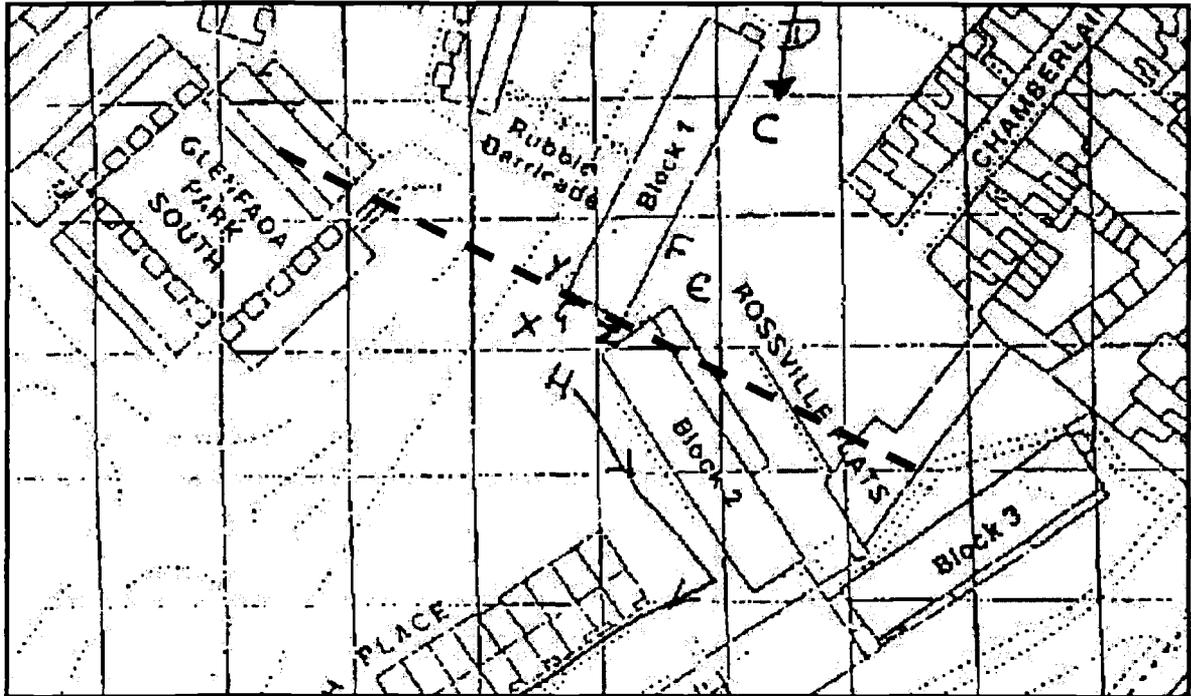
¹⁶³ Day 170/179/18

¹⁶⁴ AM4.5 paragraph 26; Day 144/063/18 – 24

¹⁶⁵ Day 144/092/24 – 144/093/01

¹⁶⁶ AH39.4 paragraph 23; the map can be found at AH39.9

FS 7.2315



10D-160 The round that hit the wall was very probably fired from a location to the south of the dashed line marked on the map. It could not, therefore, have been fired from Soldier F's position by the lamp post near the southern end of the eastern block of Glenfada Park North. If Soldier F had fired while Mr. Harrigan was standing at point H, Mr. Harrigan would probably have noticed it.

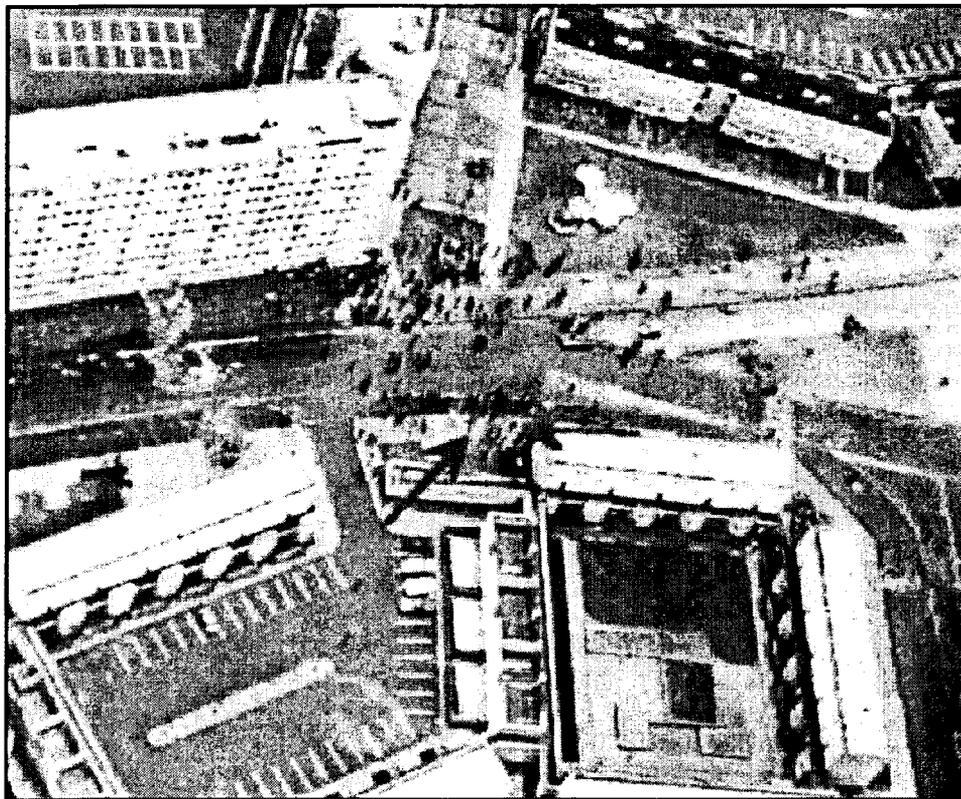
10D-161 Susan Doherty believes that she saw the soldier who shot Bernard McGuigan. She was situated in the vicinity of the stairs about half way along the northern block of Joseph Place and was looking out towards Rossville Street and Joseph Place.¹⁶⁷

I saw the soldier who shot Barney McGuigan. He was walking up Rossville Street away from Free Derry Corner at the northern end of Glenfada Park South in the area of grid reference H16. At about point 10 on the attached map (grid references I15 and I16) the soldier stopped, turned towards the man I now know to be Barney McGuigan (who was at about point 9 - grid reference J16), dropped onto one knee and fired across Rossville Street at him. The soldier had a clear view of Barney McGuigan. He then calmly

¹⁶⁷ AD105.2 paragraphs 12-13; the map appears at AD105.6; also see Day 170/09

stood up and continued walking as if nothing had happened. I do not recall hearing the shot. There were hysterical people in Joseph Place. I do remember seeing the recoil of the rifle as he fired. This shooting sticks in my head because of the way that the soldier did it. It seemed so cold blooded. I remember it clearly because it bothered me that he had done that. I think that the soldier was wearing a beret. For some reason that is in my mind but I cannot be totally sure. He had no other protection on his head. He was wearing normal gear, green khakis, like the others. He was a stockily built soldier with a round face. I cannot remember whether his face was blackened. I did not see colours that day, only black and white. After the shooting, the soldier just got up and walked away.¹⁶⁸

10D-162 Counsel to the Tribunal asked Mrs. Doherty to use a red arrow to point out where the soldier was positioned when he shot Bernard McGuigan.¹⁶⁹ The photograph is reproduced below, (the red arrow is the one on the left):



¹⁶⁸ AD105.4 paragraphs 22-23

¹⁶⁹ Day 170/023; the marked-up photograph appears at AD105.8

FS 7.2317

10D-163 The location she marked is consistent with the spot she marked on the map attached to her BSI statement.¹⁷⁰

10D-164 Mrs. Doherty said that she witnessed this event *after* the arrestees had been taken away from the gable wall at the southern end of the eastern block of Glenfada Park North:

LORD SAVILLE: When you saw the soldier firing the shot, how close was he to the people who had been rounded up by the other soldiers?

A. They had already gone round.

LORD SAVILLE: They had already gone round?

A. Yes. LORD SAVILLE: Was he on his own, this soldier?

A. Yes. LORD SAVILLE: No civilians around that you remember seeing?

*A. No.*¹⁷¹

10D-165 Thomas McDaid lived at 11 Joseph Place, which is the second most northerly house in Joseph Place.¹⁷² His account was that Bernard McGuigan was shot as he made his way towards Rossville Street:

George and I stood on a bed and looked out of a small high window in the room, north, towards Block 2 of the Rossville Flats. I saw a group of approximately 10 people at the north western corner of Block 2 at point B on the attached map. Some people in the group were lying on the ground. My attention was immediately drawn to Barney McGuigan who was standing among the crowd at B. He was a very tall man and stood out. I think his right hand was raised; he seemed to be holding something white in his hand and trying to get attention. I assumed he was holding a handkerchief. He was the only one from the group moving forward. He took approximately 15 to 20 quick steps in a north west direction from point B towards Rossville Street. He was bent forward and kept his

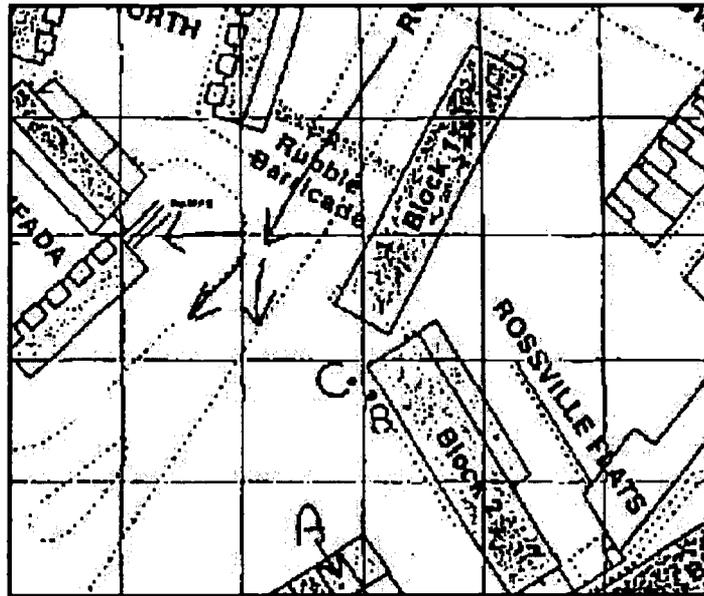
¹⁷⁰ AD105.6; she marked the location with the number 10: AD105.4 paragraph 22

¹⁷¹ Day 170/027/07

¹⁷² Day 185/061/16-20

head low. I had no idea what he was doing. I could still hear the crackling noise at this time. He didn't get very far before he suddenly fell forward, face down, at point C on the attached map. He fell forward, face down, at point C on the attached map. He fell forward in the direction he had been moving. People started to scream. I assumed that Barney had been shot because I had realised by that time that the crackling sound was gun fire. I had heard live gun fire in the Bogside before. At this time, I could also see people running into the Glenfada Park North car park.¹⁷³

10D-166 The relevant part of the map he marked appears below:¹⁷⁴



10D-167 The arrows on the map mark the routes of three soldiers he saw heading south down Rossville Street, initially in a V-shaped formation, shortly after Bernard McGuigan had been shot.¹⁷⁵ Mr. McDaid saw no other soldiers.¹⁷⁶ It should be noted that Mr. McDaid said he saw people running into the Glenfada Park North car park at the time Mr. McGuigan was shot, yet he was not aware of a soldier in that location firing a weapon into Sector 5; see the last sentence of the extract from his BSI statement above.

¹⁷³ AM176.1 paragraph 4

¹⁷⁴ AM176.3

¹⁷⁵ AM176.2 paragraph 5

¹⁷⁶ Day 185/066/304

FS 7.2319

10D-168 Noel McLoone gave a unique account of Bernard McGuigan being shot by a soldier who was only a few feet away. His evidence was that the soldier had come around the south-western corner of Block 1:

As I reached the gap between Blocks 1 and 2 near the telephone kiosk on the south side of Block 1, I noticed a man in front of me. I did not pay much attention to him. He was walking slowly, quite warily in the same direction as me. He had no weapons in his hands. I cannot recall whether I saw only his back or whether I also saw the side of him. I did not recognise him. He was about three yards in front of me, to my left.... A soldier then appeared at the south western corner of Block 1. I had not seen him before and so do not think he had crossed over Rossville Street towards the Rossville Flats. I did not notice much about his appearance because as soon as he saw us, he lifted his rifle to his shoulder and aimed it, as far as I was concerned, at me. The man who I had seen in front of me put his hands up in the air and, at the same moment, I ducked as I thought the soldier was about to shoot me. I heard a very loud "bang", almost as if it was right in my ear. I immediately fell to the ground with my arms over my head. I did not see which way the other man was facing as the shot was fired, as I was already aiming for the ground. I heard the man fall very close to me. Although I did not see the soldier shoot the man, it was my clear impression that it must have been him. When I looked up, I saw the body of the man who had fallen.¹⁷⁷

10D-169 Mr. McLoone's evidence was that the soldier was standing upright.¹⁷⁸ Counsel to the Tribunal pressed Mr. McLoone about the location of the soldier he had seen; Mr. McLoone remained firm:

Q. Is it really your evidence that the soldier was there?

A. There was a soldier appeared at that corner, he was only there briefly.

Q. Can you say how far away from the actual corner of the building he was?

A. Um, I would, I would put him right at the corner.

Q. Actually standing right next to the corner of the building?

¹⁷⁷ AM359.3 paragraph 16-18

¹⁷⁸ Day 175/163/14

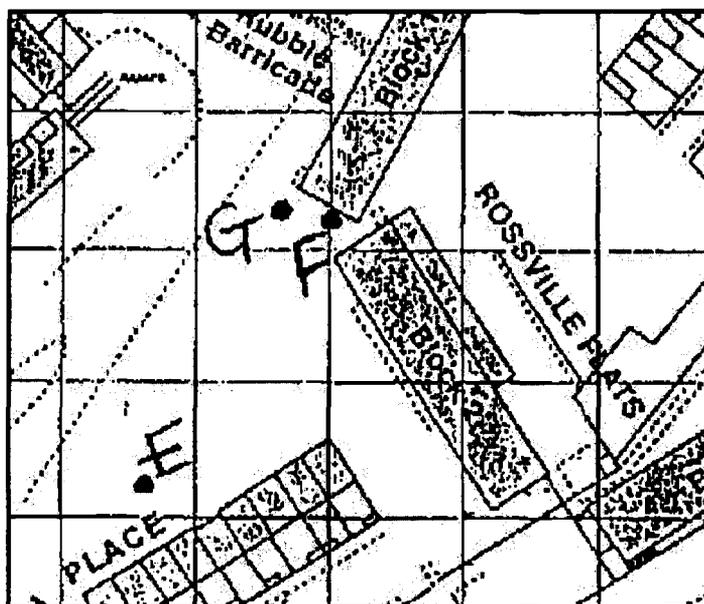
A. That is what I would say, yeah, or very, very close to it.

Q. Is there any possibility that your memory is mistaken about that and that in fact the soldier was somewhere over on this side of the street, that is the west side near the entrance to Glerfada Park North?

*A. No, there was a soldier at the corner and he must have been only there briefly because when I lifted my head again, he was gone.*¹⁷⁹

10D-170 Mr. McLoone's contemporary account is consistent with this evidence.¹⁸⁰

10D-171 Ivan Cooper's evidence suggests that Bernard McGuigan was heading out towards Rossville Street and that he was shot after he had exposed himself to soldiers whom Mr. Cooper had seen in the area of Kells Walk.¹⁸¹ Mr. Cooper marked a map with the letter E to show his own location, and the letter F to show Mr. McGuigan's location:¹⁸²



10D-172 Mr. Cooper described Bernard McGuigan as being shot when he reached letter G:

¹⁷⁹ Day 175/147/19

¹⁸⁰ Day 175/166-167

¹⁸¹ KC12.6 paragraph 55

¹⁸² KC12.6 paragraph 53; the map appears at KC12.64

FS 7.2321

*I believe that there were soldiers around Kells Walk and in the area of the waste ground to the east of Rossville Street but cannot recall whether I could actually see the soldiers at this stage. My eyes were totally fixed on Barney. Barney had only taken a few steps and, as he came out into the open, at about point G (grid reference J16), I think that I then heard the same cracking noise as I had heard earlier of a shot being fired. The scene which I saw seemed to be in slow motion, and the few seconds which this scene lasted were telescoped. Barney just folded up. He crumpled and fell down on his side, I think it was his right side, like a bag rolling off a lorry. He fell towards the wall at the south end of Block 1.*¹⁸³

10D-173 Mr. Cooper told the Tribunal, however, that he could not connect the soldiers he had seen with the shooting of Mr. McGuigan.¹⁸⁴ Perhaps all that can really be gleaned from Mr. Cooper's evidence is that Mr. McGuigan did not appear to him to have been shot from Glenfada Park North:

Q. You know where the entrance to Glenfada Park North is; do you not?

A. Yes, I do, yes.

Q. That was in your vision; was it not?

A. Glenfada Park, yes. Yes, it was, yes.

Q. Was there a soldier standing near to the entrance to Glenfada Park North in a shooting position?

*A. There could have been, but I did not see him shooting Barney McGuigan.*¹⁸⁵

10D-174 Sean McDaid could not say where the shooting was coming from:

*I was in the area for about 10 minutes, near to the outbuilding at Block 1, at about the point marked E on the attached map (grid reference K16) before the shooting intensified. There was then chaos and commotion. The sounds of the shooting seemed to be all around me.*¹⁸⁶

¹⁸³ KC12.6 paragraphs 55-56

¹⁸⁴ Day 419/053/19-21

¹⁸⁵ Day 420/060/21

¹⁸⁶ AM174.3 paragraph 15

FS 7.2322

10D-175 He gave his opinion about the source of the shot that killed Bernard McGuigan:

I didn't hear the particular shot that killed Barney McGuigan. There were lots of shots at that time. I think the shot may have come from the Glenfada Park area across Rossville Street as I had seen soldiers at Glenfada Park prior to that. I originally thought that the shot came from the walls because I thought that he had been shot in the back of the head. However, I cannot be certain where it came from. At the time he was shot I think he was facing towards Glenfada Park looking across Rossville Street. [Emphasis added].¹⁸⁷

10D-176 If Mr. McGuigan "was facing towards Glenfada Park looking across Rossville Street" at the moment he was shot, this would exclude Glenfada Park as the source of a shot which entered the back of his head. As noted above, Dr. Shepherd and Mr. O'Callaghan stated: "... it is clear that Bernard McGuigan could not have been facing the rifle that fired the shot."¹⁸⁸

10D-177 The soldiers Mr. McDaid had seen earlier in Glenfada Park were, according to him, on the balconies of the Glenfada Park flats.¹⁸⁹ He could not recall seeing any soldiers at ground level:

Q. Did you see any soldiers at ground level as well as the soldiers on the balconies or was it just the soldiers on the balconies?

A. The soldiers on the balconies definitely caught my eye because they were so obvious. I did not really -- I cannot recall seeing any soldiers at ground level.¹⁹⁰

10D-178 John Duffy believed that he saw Bernard McGuigan heading towards an injured person at the rubble barricade when he was shot:

The man lying at the Rubble Barricade before the man walked out to him was all clumped over. I was looking at him from about 200 yards away and he was on my side of the barricade. The man who walked out towards him with his hands up and got shot was, I

¹⁸⁷ AM174.3 paragraph 17

¹⁸⁸ E2.0048

¹⁸⁹ AM174.3 paragraph 13

¹⁹⁰ Day 172/046/13

FS 7. 2323

*thought, in his fifties but then I was 14 and everyone looked old to me. The shot I heard as the man crossed with his hands up sounded like the other shots and I knew it was live ammunition. I shouted at the people behind Block 2, something like "they're after murdering that man" and for some reason I remember I did not say "shot". I think now that the man I saw shot was Mr McGuigan. I did not know who he was at the time but I found out later. The way he fell his head was turned a different way from his torso. I will always remember looking at the body and seeing his blood was so thick and black and thinking "how can there be so much blood in a man?" I think he was wearing an anorak but I really only remember the colour of his blood.*¹⁹¹

10D-179 However, when Mr. Duffy was called to give oral evidence, he told the Tribunal that he wished to qualify his BSI statement because he had not actually seen Bernard McGuigan shot:

Q. In paragraph 17 I think you want to add the qualification to the paragraph to the effect that you saw Mr McGuigan as you were leaving the area, but did not see him shot?

*A. Correct.*¹⁹²

CONCLUSION

10D-180 The eyewitness testimony is inconsistent, confused and unreliable. Many witnesses have given evidence that is incompatible with the case that Soldier F shot Bernard McGuigan.

10D-181 The only witness whose evidence is capable of identifying Soldier F as the soldier who shot Bernard McGuigan is Lieutenant 227. This is because his account of what he saw the soldier do corresponds with Soldier F's own account of what he did. (That evidence is set out in section 10B-III, above.)

10D-182 The possibility still remains that Bernard McGuigan was shot by a soldier whom Lieutenant 227 did not see: all Lieutenant 227 said was the man fell to the ground

¹⁹¹ AD160.3 paragraph 16-17

¹⁹² Day 080/126/09

FS 7.2324

at the same time the soldier fired. The fact that soldiers were firing simultaneously or nearly simultaneously with one another pervades the civilian eyewitness testimony.

10D-183 The possibility that Bernard McGuigan was shot by another soldier cannot be safely excluded. First, a significant number of the eyewitnesses gave evidence that Mr. McGuigan was shot from a location which suggests it is unlikely that it was Soldier F who was responsible. Secondly, it would be unsafe to conclude that Soldier F was the only soldier to fire into Sector 5.

10D-184 If Lieutenant 227's evidence is relied on to establish that it was Soldier F who shot Bernard McGuigan, equal weight should be given to his evidence that, just before he saw the soldier fire, he heard the sound of pistol shots coming from the same location where Soldier F saw a man firing a pistol.

FS 7.2325

CHAPTER 10 E

PATRICK DOHERTY

10E-I INTRODUCTION

10E-1 Soldier F did not fire the bullet that killed Patrick Doherty: the pathology of Patrick Doherty's gunshot wound makes it very unlikely that he was shot from Glenfada Park North as he made his way from the gap between Blocks 2 and 3 to the alleyway behind Joseph Place.

10E-2 Soldier F fired only two shots into Sector 5, one immediately after the other. It is therefore very unlikely that he shot Bernard McGuigan *and* Patrick Doherty. If one of the two shots which Soldier F fired into Sector 5 killed Bernard McGuigan, then the other shot could not have hit Patrick Doherty because Patrick Doherty was shot some time before Bernard McGuigan was shot.

10E-II THE ORIENTATION OF PATRICK DOHERTY'S BODY AS HE CRAWLED TOWARDS THE ALLEYWAY BEHIND JOSEPH PLACE

INTRODUCTION

10E-3 The fact that the track of the bullet wound which killed Patrick Doherty is inconsistent with him having been shot from Glenfada Park North has, it seems, always been appreciated by those representing his family. In their first opening statement, drafted by Eilis McDermott QC and Philip Magee, the following paragraph appears:

The difficult factual issue relating to Mr. Doherty is if he was shot from the Glenfada Park direction as Lord Widgery found and as some civilian witnesses e.g. Donna Harkin AH13 believe, how can the position of the entry wound be explained given the position of his body in the photographs? A similar problem arises if he was

FS 7. 2326

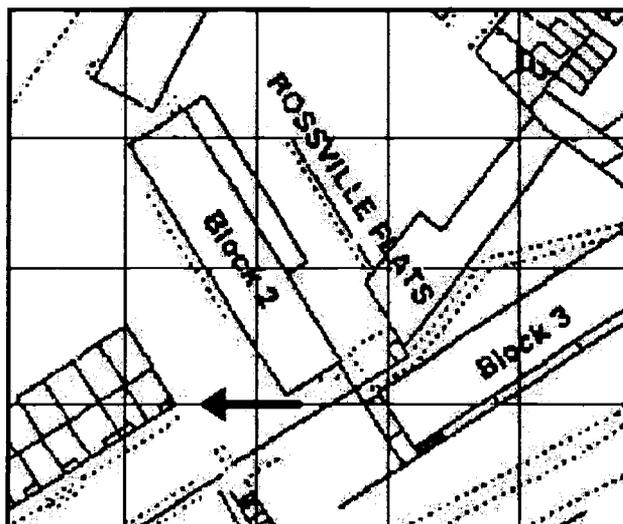
shot from the walls as Edward Dillon AD45 believes, the angle of entry of the bullet may make a shot from the walls rather unlikely.¹

10E-4 Similarly, in their second Opening Statement, drafted by Michael Topolski, it says:

It has always proved difficult in the case of Patrick Doherty to correspond the Medical Evidence with any potential firing position thus it is difficult to identify with any precision the identity of the firer. We will await to see how the evidence unfolds in this regard.²

THE PHOTOGRAPHIC EVIDENCE

10E-5 Although the photographs do not depict *precisely* where Patrick Doherty was when he stopped crawling, they are the best evidence the Tribunal has to determine where he stopped before he was turned over. They provide good evidence of the fact that he was heading towards the alleyway behind Joseph Place. If the location he was in *after* he was turned onto his back is marked on a Q8 map, the photographs suggest it was in the spot which is marked with the arrow below:



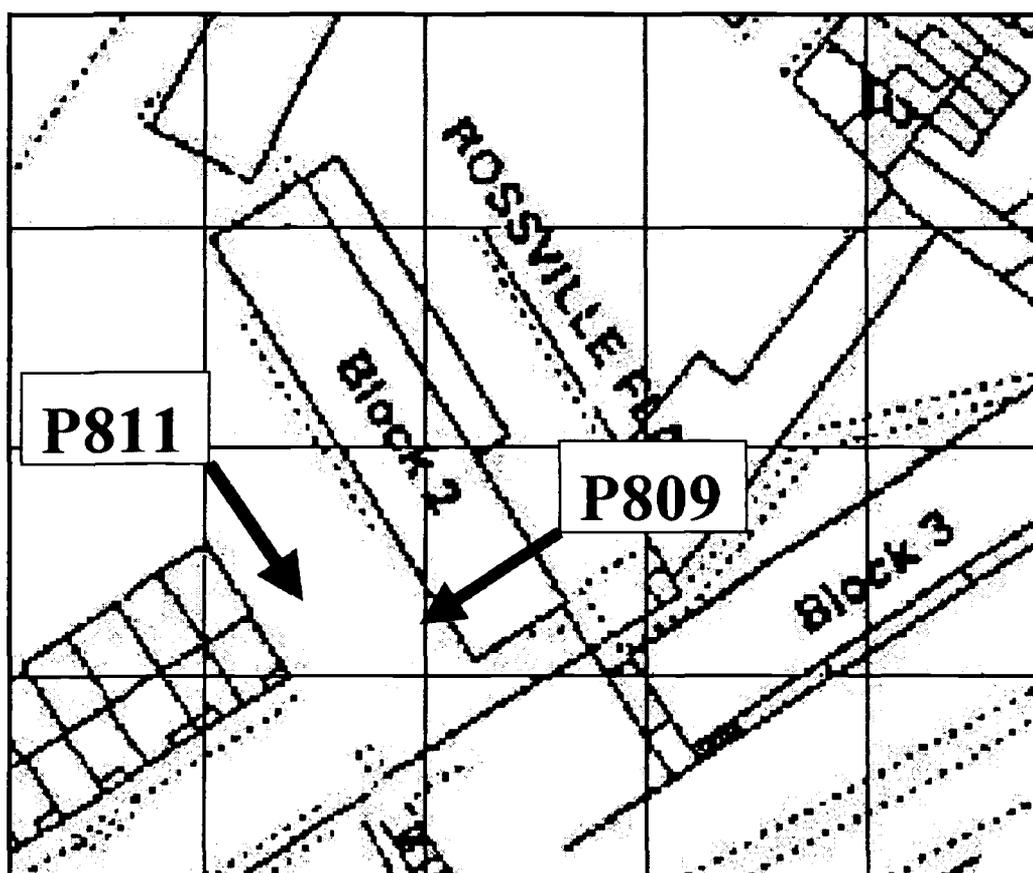
¹ OS6.7 paragraph 3

² OS6.15 paragraph 14

FS 7.2327

10E-6 A number of photographs taken by Gilles Peress and Fulvio Grimaldi show where Patrick Doherty's body was after he stopped crawling. The foreshortening effect of the photographs can give a misleading impression of the precise location of his body. However, the photographs which appear at P809 and P811 make it possible to determine the location with some precision.

10E-7 Mr. Peress pointed his camera almost precisely to the south west when he took the photograph at P809. He took P811 while facing almost precisely to the south east. These photographs enable the location to be pin-pointed on two axes:



10E-8 Photograph P809 shows that Patrick Doherty's body was positioned directly opposite the entrance to the alleyway behind Joseph Place:

FS 7-2328



FS 7. 2329

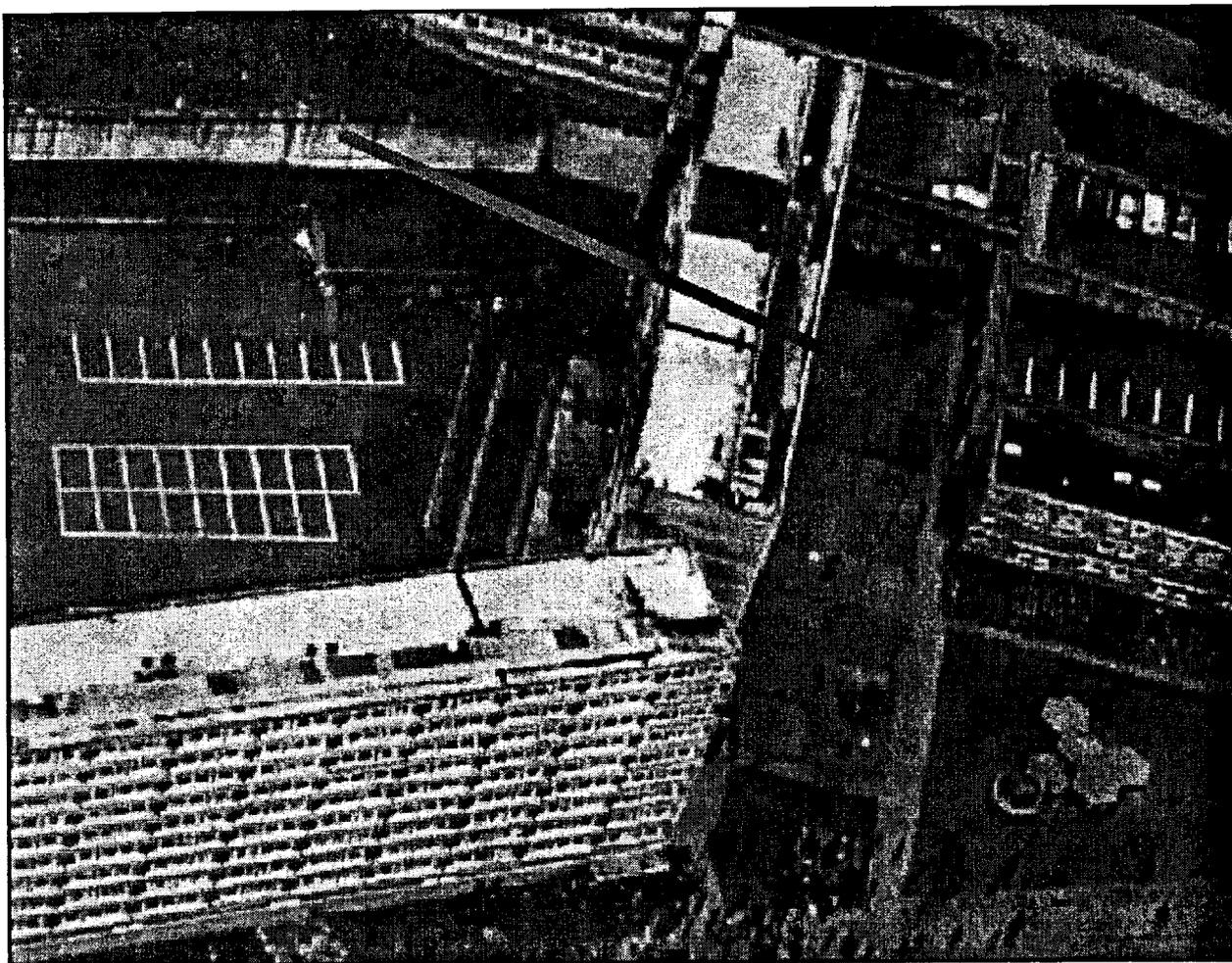
10E-9 Photograph P811 appears below. It shows that Patrick Doherty's head was positioned on the line described by the row of trees which ran parallel to Block 2



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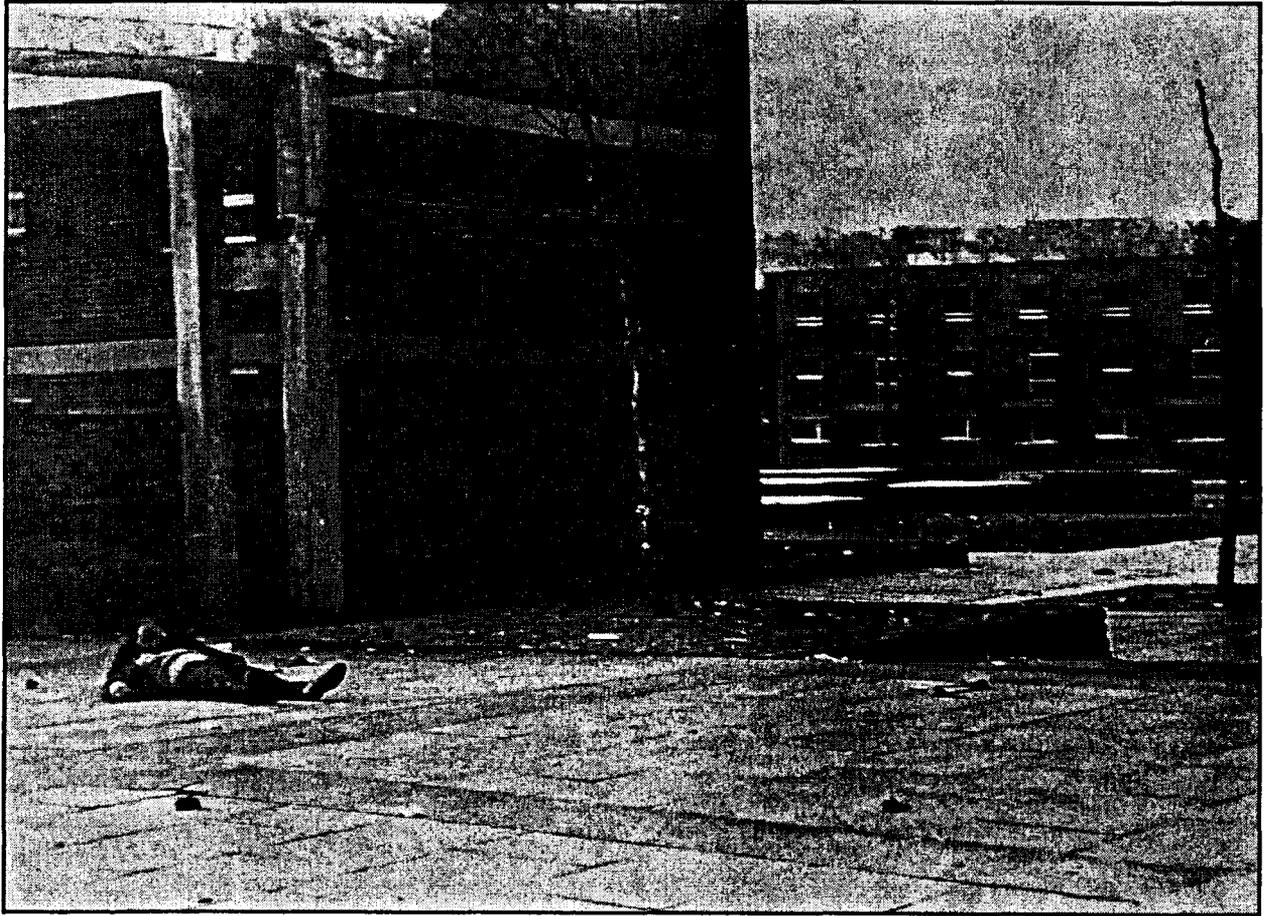
X 144

10E-10 The aerial photograph below shows how the paved area between the Rossville Flats and Joseph Place had a pattern of large squares on it. It appears from these photographs, and others taken by Gilles Peress, that Patrick Doherty's body was approximately in the middle of the square marked with an arrow:



10E-11 The fact that his body was located inside this square is particularly clear from a photograph taken by Fulvio Grimaldi at EP26/17:

FS 7. 2331



10E-12 All of the photographs of Patrick Doherty in Sector 5 were taken *after* he had been turned over. None show Patrick Doherty lying on his front.

10E-13 Patrick Walsh told the Sunday Times soon after Bloody Sunday that he had found Patrick Doherty lying on his front and that he had turned him over onto his back:

Then Walsh saw the body of a man lying on his face just about halfway across the space between the passageway [between Blocks 2 and 3] and where he was [at the entrance to alleyway behind Joseph Place]. He thought the man was still alive, there were slight movements and he was groaning from time to time. Walsh shouted "are you all right mate" but got no answer: he crawled out to him and turned the man onto his back.³

³ AW5.36

PS 7.2332

10E-14 It is very likely that Patrick Doherty was turned onto his back before Gilles Peress came through the gap between Blocks 2 and 3 from the Rossville Flats car park. Mr. Peress believed that he started taking the photographs of Patrick Doherty and Patrick Walsh as soon as he came through the gap:

LORD SAVILLE: Again, the Chairman, Mr Peress, it may also be a difficult question: you come through that passageway, you see the scene depicted in the first two photographs on your strip; do you have any idea of the time sequence; did you see that and take the photographs straightaway or did you spend some time doing something else, or –

A. No, no, straightaway.

LORD SAVILLE: You come through, you see the scene, you take the photograph?

A. That is correct.

LORD SAVILLE: We are talking there of seconds, are we? A. The act of shooting the picture, yes, it is seconds.

LORD SAVILLE: The act of coming through, seeing the body and Mr Walsh and taking the pictures?

A. Yes, it was immediate, we are talking about seconds.

MR RAWAT: So the images depict the scene that you came upon when you went through that alleyway; is that right?

A. Yes.⁴

10E-15 Mr. Peress believed that he took the sequence of photographs south of Block 2 about a minute or more after completing the sequence of photographs he took in the south eastern corner of the car park:

Q. ... I am now probably going to ask you a question that may be almost impossible for you to answer, but are you able to assist us at all as to the time gap between these two images [P801 and P802]?

⁴ Day 213/036/04

FS 7.2333

*A. I am trying to figure out a range. (Pause) I cannot be any more precise than something like between 1 and a few minutes.*⁵

10E-16 Joe Nicholas believes that he went to find Mr. Peress after witnessing Patrick Doherty collapse onto his face and stop moving. He recalls that he asked Mr. Peress to follow him and take a photograph of Patrick Doherty.⁶ Counsel to the Tribunal asked Mr. Nicholas whether he thought it was possible that Patrick Doherty was turned over during his temporary absence:

Q. ... By the time these photographs are taken [by Mr. Peress], as we can see from them, Patrick Doherty is lying on his back. Did you see how he came to be lying on his back having previously, as you have described, fallen on his face?

A. No.

Q. If we go back to paragraphs 23 to 25 on AN17.5, you describe how you went back through the gap between blocks 2 and 3 to where you had seen the photographer in the car park and spoke to him and he came and followed you back to the position you had previously been at and began to take photographs of Paddy Doherty and Paddy Walsh, which we have seen?

A. Yeah.

Q. I wonder whether it may have been the case -- tell me if it is not -- that when you first saw Patrick Walsh going out to Patrick Doherty, Patrick Doherty was still on his face and was turned by Paddy Walsh when you had gone back to get the photographer?

A. Yes, that might have happened.

Q. That may have happened?

*A. Yeah.*⁷

10E-17 The evidence of Mr. Nicholas was never put to Mr. Peress for his comment, but it corroborates the fact that there was a delay between the point when Patrick Doherty stopped moving and the arrival of Mr. Peress with his camera.

⁵ Day 213/028/20

⁶ AN17.5 paragraphs 21 and 23

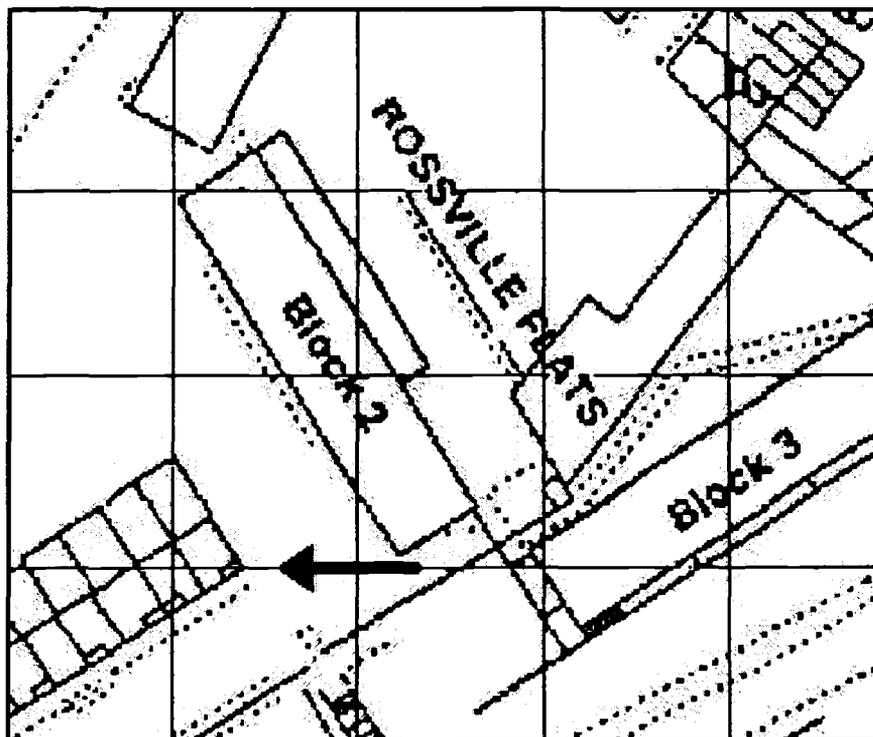
⁷ Day 078/029/25

10E-18 Moreover, Mr. Doherty had clearly been turned onto his back by the time Mr. Peress started taking photographs of him. As a result, there is no photographic record of the precise location at which he came to rest before he was turned onto his back.

THE EYEWITNESS TESTIMONY

10E-19 The majority of the many witnesses who saw Patrick Doherty did so after he had been turned onto his back. Their recollections of the position and orientation of Patrick Doherty's body generally accord with what the photographs show. Some recall his body – lying on its back – in positions inconsistent with what the photographs determine beyond doubt. In these cases, their evidence is superseded by the much more reliable photographic evidence.

10E-20 The witnesses who observed Patrick Doherty at an earlier stage overwhelmingly agree that as he emerged from the gap between Blocks 2 and 3 he was heading towards the alleyway behind Joseph Place. The arrow marked on the map below represents the most likely route that Patrick Doherty would have taken, which is consistent with the location at which he came to rest: he was moving almost precisely from east to west.



FS7. 2335

10E-21 Mr. Nicholas noted the orientation of Patrick Doherty's body before he was turned onto his back:

I could see that he was lying with his head pointing west, towards the alleyway behind Joseph Place and his feet pointing towards me.⁸

10E-22 Mr. Nicholas was standing at the south eastern corner of Block 2 at the time.⁹ He confirmed, when he was asked questions by Edmund Lawson QC, that Patrick Doherty had been crawling west from the gap between Blocks 2 and 3 towards the entrance to the alleyway behind Joseph Place:

Q. He, Mr Doherty, was, as you have described to us, crawling -- I think now we are familiar with it without having any other photographs -- crawling from that gap between blocks 2 and 3, across where that line is shown?

A. (Witness nodding).

Q. Towards the west side or towards Joseph Place, yes?

A. Yes.

Q. So he, Mr Doherty, would have been side on to the soldiers who were at Glerfada Park North or South?

A. That is right, yeah.

Q. Is that right?

A. Yeah.

Q. If anything perhaps his head slightly more towards them, yes?

A. Yes.

Q. Than his feet, his feet towards the gap, right?

A. Uh-huh.¹⁰

⁸ AN17.5 paragraph 21

⁹ AN17.4 paragraph 18

¹⁰ Day 078/055/06

FS-7.2336

10E-23 Mr. Nicholas also confirmed that Patrick Doherty never changed the direction in which he faced:

Q. He at no stage presented his or had his rear or his buttocks towards the soldiers who were at Glerfada Park North or South, did he?

A. (Witness nodding).

Q. That is right, is it?

A. Yeah.¹¹

10E-24 Mr. Nicholas accepted the way Lord Saville summarised his evidence as follows:

LORD SAVILLE: ... your recollection is that Patrick Doherty crawled in more or less a straight line from the passageway between blocks 2 and 3 towards, directly towards the alleyway behind Joseph Place?

A. Yes, that is right.¹²

10E-25 Edmund Melaugh saw Patrick Doherty as he, Mr Melaugh, helped a wounded man down the alleyway behind Joseph Place.¹³ After passing the wounded man onto some other people he returned to the entrance to the alleyway. He described in his BSI statement what he witnessed as he crouched down in the mouth of the alleyway:

Paddy Doherty called out that he had been shot. He was crawling and calling for someone to come and help him. The other man and I were crouched down in the shelter of the low wall at the northwest end of the alleyway. We could not go out as the shooting was continuing and we thought that we would be shot if we left the cover of the wall. I and the other man told Paddy Doherty to lie still and not move. We thought that we would make himself a target to be shot again if he kept crawling. I remember that he was crawling facing towards the alleyway where we were with his feet nearest to Block 2 of the Rossville Flats. He was much further away from the Joseph Place alleyway than the other two wounded men

¹¹ Day 078/056/018

¹² Day 078/060/03

¹³ AM398.5 paragraph 28

FS 7-2337

*had been. At the time I assumed that he had been shot some time while he was making his way through the gap between Block 2 and Block 3 of the Rossville Flats towards the Joseph Place alleyway. I did not see Paddy Doherty come out of the gap between Block 2 and Block 3. I only saw him when he was crawling on the ground. I did not see him actually being shot. When I first saw him I gained the impression he was crawling to avoid the shooting.*¹⁴

10E-26 As Mr. Melaugh was actually inside the mouth of the alleyway, he was well placed to observe that Patrick Doherty was "crawling facing towards the alleyway...." Counsel appearing on behalf of Mr. Doherty's family sought to establish more precisely the direction *from* which Mr. Doherty was crawling. Mr. Melaugh asserted that his feet were pointing to the gap between Blocks 2 and 3. This was apparently not the answer Ms. McDermott wanted and so she pressed the witness to accept that Mr. Doherty had in fact come from a position further west along Block 2. Mr. Melaugh remained adamant that his feet were pointing towards the gap between Blocks 2 and 3:

MS McDERMOTT: Mr Melaugh, I represent the family of Paddy Doherty. I have just a few questions for you, please. The first is that you remember in your statement that you said that you remember seeing Mr Doherty crawling, facing towards the alleyway where you were with his feet nearest to Block 2 of the Rossville Flats?

A. Yes.

Q. Would you say that his feet were pointed in the direction of the flats as opposed to the direction of the gap between Blocks 2 and 3?

A. I would say it was the gap.

Q. You say now that at the time you assumed he had been shot while making his way through the gap?

A. Yes.

Q. But you have been referred in the last few moments to your 1972 statement. Do you recall that in that you said: "I saw another man crawling along the ground from the flats towards the lane"? Do you think –

¹⁴ AM398.5 paragraph 29

A. Where is that; which paragraph is that in?

Q. Do you have it in front of you, Mr Melaugh; it is in the second paragraph, just over halfway down?

LORD SAVILLE: AM398.19.

MS McDERMOTT: If that might be put on the screen, the middle paragraph; do you see the sentence beginning: "We were in front of the man dragging him when I saw another man crawling along the ground from the flats –

A. Yes.

Q. -- towards the lane"? I wonder whether that might not mean that at the time your impression was that he was coming from the direction of the flats?

A. No, I believed he was coming from the, the gap in the flats, you can just move that down a bit.

Q. You had run over from the flats yourself, is that not right, from, from the shops?

A. Yes, I had run, I had run across the front of the shops and then crossed, and then crossed over.

Q. But you thought he was coming from a different direction?

A. I thought he was coming from -- I thought he was coming from that gap that you can see between 4 and 7.¹⁵

10E-27 Having witnessed Patrick Doherty attempting to crawl from the gap between Blocks 2 and 3 towards the alleyway behind Joseph Place, Mr. Melaugh then saw him being turned onto his back.¹⁶ It was then that Mr. Doherty was photographed by Mr. Grimaldi and Mr. Peress.

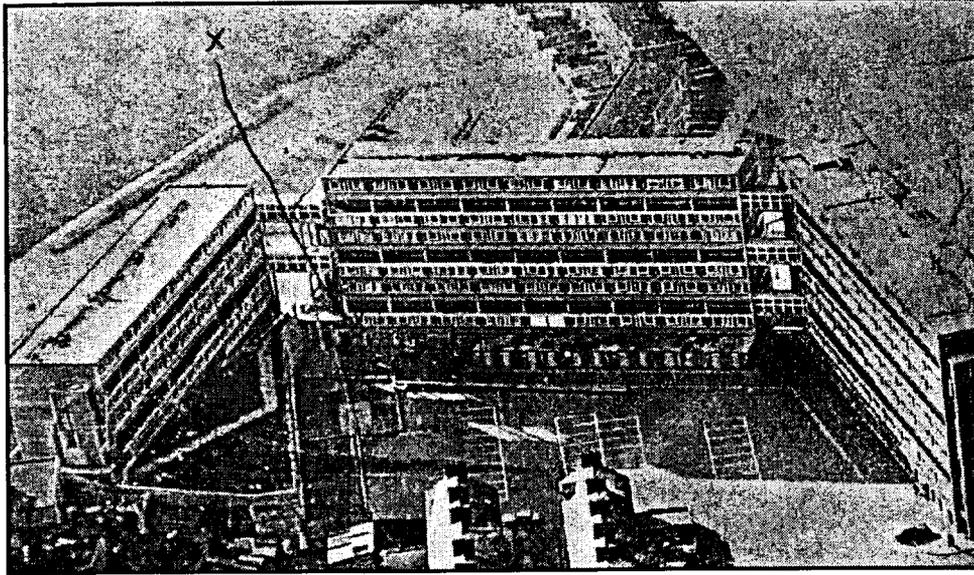
10E-28 Jean Marie McGeehan marked the location of the flat in which she lived at the time of Bloody Sunday on a photograph attached to her BSI statement:¹⁷

¹⁵ Day 170/131/19 – 170/133/16; the reference to the gap between 4 and 7 is a reference to the gap between Blocks 2 and 3 – see the map Mr. Melaugh drew on his NICRA statement at AM398.19

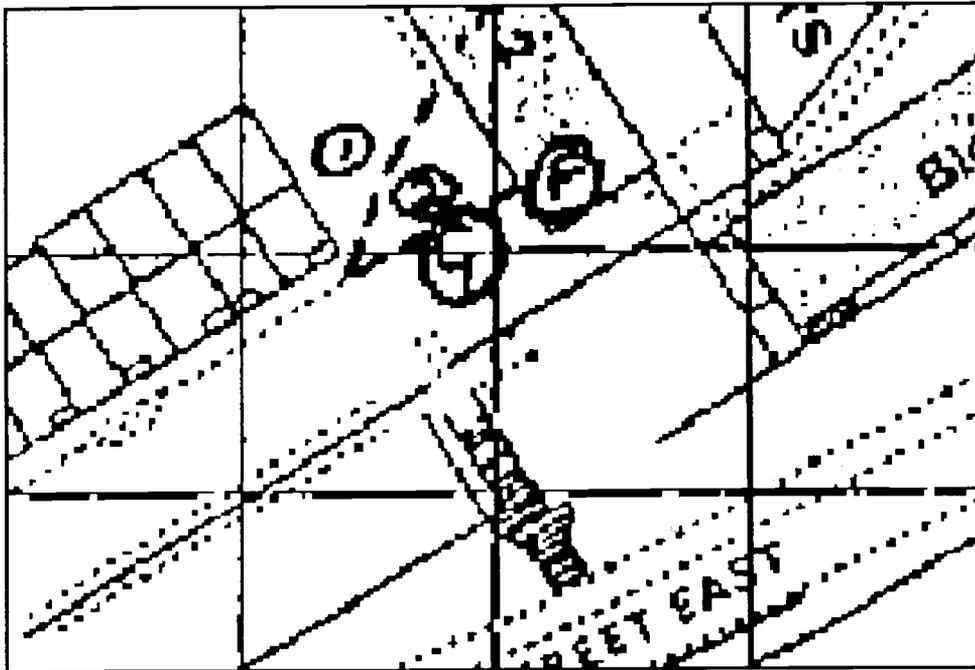
¹⁶ AM398.5 paragraph 31

¹⁷ AM228.1 paragraph 1; the photograph she marked appears at AM228.6

FS 7.2339



10E-29 At some stage Mrs. McGeehan moved to a window overlooking Joseph Place.¹⁸
This window was evidently very close to the eastern edge of Block 2. Mrs. McGeehan marked her position as 'F' on the map attached to her statement:¹⁹



¹⁸ AM228.3 paragraph 13

¹⁹ AM228.9

FS 7.2340

10E-30 The dashed lines on her map, marked 1 and 2, represent the routes taken by two injured men into the alleyway behind Joseph Place.²⁰

10E-31 Mrs. McGeehan also identified a third man she saw as Patrick Doherty.²¹ The description that she gave in her BSI is quoted in full. It is a remarkably clear account of the last stages of Patrick Doherty's life:

17. I saw the third man just as the second man got to the alleyway at Joseph Place. He was crawling on his belly from the gap between Blocks 2 and 3 of the Rossville Flats towards the alleyway at the back of Joseph Place. He was nearly flat on the ground and was using his arms in front of him to drag himself along. His arms were not straight out in front of him but were bent. He was moving slowly towards the alleyway. When I saw him I assumed he was dragging himself that way because he had seen what happened to the second man. I cannot remember thinking he was hurt or injured.

18. The man got to about the point marked G on the attached map when he suddenly stopped. He was about halfway between Block 2 and the alleyway. I thought that he had stopped because he was afraid of the gunfire. The gunfire I had first heard when I was in the bedroom overlooking the Rossville Flats car park was still going on when I saw this third man. I think by this time there was still a fair amount of shooting but it seemed to be more single shots than rapid continuous fire. I could not say which direction the shooting came from because of the echo. I assumed that it was from Rossville Street from where the Army vehicles were.

19. I carried on watching the man for a short time because he was so still. I was worried that he might get shot. I do not know how long I watched him. As I watched him, the colour seemed to drain from his face. He was lying diagonally with his feet towards the gap between Blocks 2 and 3 and his head towards the alleyway of Joseph Place. He was lying on his front with his legs behind him and his arms bent in front of him in the position he had been in when he was dragging himself along. His face was turned towards Rossville Street.

20. I then saw another man appear from the back of the alleyway behind Joseph Place and start moving very slowly towards the man

²⁰ AM228.3 paragraphs 15 and 16.

²¹ AM228.5 paragraph 27

lying on the ground at point E. This man was on his hands and knees crawling very slowly. My uncle opened the window and shouted out to him to be careful and watch himself because there was shooting. As he crawled along he was looking all around him but not really looking in any one particular direction. He kept stopping and starting and it took him quite a while to reach the man lying at point B. At the time he reached him I think the gunfire had stopped.

21. He turned the man over. I do not know whether he intended to turn him over or whether he went to take his pulse and turned him over as he was examining him, but he did end up lying face up. I do not have any recollection of what either man looked like apart from the fact that I think the one who had been shot was an oldish man, but I was only 12 years old at the time. I definitely think he was older than the first two men I had seen.

22. The next thing I remember is seeing a man walk out from the gap between Blocks 2 and 3 of the Rossville Flats towards where the two men were. This man had a camera around his neck which he held in his left hand. He held a white hanky in his other hand. He faced towards Rossville Street, waving the hanky and holding the camera up as though the Army would know he was a photographer and not to shoot. I did not hear him say anything. By that time the shooting had stopped.

23. I also remember seeing a man in a grey uniform come out from the alleyway behind Joseph Place and go towards the man who had been shot. I assumed that he was a Red Cross man as he was wearing a light grey uniform [Emphasis added].²²

10E-32 During her oral evidence, Mrs. McGeehan confirmed, in an answer to a question from counsel to the Tribunal, her recollection was that Patrick Doherty came from a point to the east of her window.²³

10E-33 Eilis McDermott QC attempted to persuade Mrs. McGeehan that her that Mr. Doherty had in fact come from the direction of the shops further towards Rossville Street. However, Mrs. McGeehan did not accept this.²⁴

²² AM228.3-4 paragraphs 17-23

²³ Day 171/080/13 - 15

²⁴ Day 171/095/8-24

FS 7. 2342

10E-34 When Mrs. McGeehan gave her BSI statement, her clear recollection was that when she saw Patrick Doherty crawling towards the alleyway behind Joseph Place, his feet were pointing towards the gap between Blocks 2 and 3.²⁵

10E-35 Derrik Tucker was also observing from a flat in Block 2 of the Rossville Flats. His impression was that Patrick Doherty was crawling from the gap between Blocks 2 and 3 towards the alleyway behind Joseph Place:

*As the courtyard cleared of people, the family moved to the other side of the flat to see what was happening. Almost immediately my attention was drawn to a man who was crawling from the direction of the alleyway between Blocks 2 and 3 of the flats towards the north east corner of the maisonettes at Joseph Place.*²⁶

10E-36 Counsel to the Tribunal asked him where Mr. Doherty was when he first saw him:

Q. May we have a look at the map attached to your statement, AT15.21. The man, as I understand it, was coming out of this alleyway there; is that right, or appeared to have done?

A. Yeah.

Q. You of course would not be able to see him?

A. That is right.

Q. Until he had come round the block?

A. Yes.

Q. When you saw him, was he approximately at the position that you have marked as D, that is to say equidistant between block 2 and the alleyway behind Joseph Place, or did you see him at some other position first?

*A. Slightly previous to having arrived there, it would have been a matter of feet before.*²⁷

²⁵ AM228.4 paragraph 19

²⁶ AT15.4 paragraph 26

²⁷ Day 099/017/11

FS 7. 2343

10E-37 Although he seemed to agree with a suggestion made by counsel who appeared on behalf of Mr. Doherty's family that he could not really say where Mr. Doherty had come from, he confirmed that when he first saw him, Mr. Doherty was in between the entrance to the alleyway behind Joseph Place and the gap between Blocks 2 and 3:

10E-38 It is beyond question that Patrick Doherty came through the gap between Blocks 2 and 3. The photographs taken by Gilles Peress which show Patrick Doherty in the south eastern corner of the Rossville Flats car park heading towards the gap between Blocks 2 and 3 establish that Patrick Doherty arrived in Sector 5 through that gap.

10E-39 The eyewitness testimony as a whole supports this, with a few exceptions. The few witnesses who believe that Patrick Doherty made his way in a south-easterly direction along the shop fronts of Block 2 before turning right to head across the open ground to the alleyway behind Joseph Place are almost certainly mistaken: no eyewitnesses saw Patrick Doherty head in a north-westerly direction along the front of Block 2 at any stage.

THE PATHOLOGY OF THE BULLET WOUND

10E-40 Dr. Carson carried out an autopsy on Patrick Doherty's body on 31st January 1972, at 10.00 pm.²⁸ He found that death was due to a single gunshot wound of the trunk.²⁹ The bullet went straight through Patrick Doherty's body and was not recovered. As a result, the type of bullet has not been identified. Although it could have been a 7.62 calibre bullet, it could also have been a bullet of another calibre.³⁰

10E-41 In their *Report on the Pathology and Ballistic Evidence Following the Bloody Sunday Shootings*, Dr. Shepherd and Mr. O'Callaghan stated that, as part of the

²⁸ D0395

²⁹ D0400 paragraph 2

FS 7.2344

general procedures for the examination of gunshot fatalities, a full internal post mortem examination pays particular attention to the track(s) of the bullet(s).³¹ In the case of Patrick Doherty, it is clear that Dr. Carson took particular note of the location of the entry and exit wounds, and the track of the bullet. His report states:

*The bullet had entered the right buttock and penetrated the right ilio-sacral joint, entering the abdominal cavity. It had then lacerated the aorta and the inferior vena cava, the two main blood vessels in the abdomen, and torn the colon and the bowel attachments. Then it had lacerated the diaphragm and entered the left chest cavity, lacerating the lower outer part of the left lung before fracturing the 8th and 9th left ribs and leaving the body through the left side of the chest, well below and somewhat in front of the armpit.*³²

10E-42 The location of the entrance wound was described by Dr. Carson as follows:

*Right buttock: A circular entrance wound, 7 mm diameter, centred 20 cm. behind the anterior superior iliac spine and 13 cm from the mid-line of the back.*³³

10E-43 The location of the exit wound was described as:

*Chest: an elliptical exit wound, 5 cm x 3 cm. on the left side, centred 10 cm below the nipple and 5 cm behind it.*³⁴

10E-44 Dr. Carson noted that:

*The two wounds were connected by a track through the body which passed from back to front, upwards at an angle of 45° to the horizontal plane, and from right to left at an angle of 33° to the coronal plane.*³⁵

10E-45 There is no note, record or other evidence to suggest that the bullet altered its course midway through Patrick Doherty's body.

³⁰ D0400 paragraph 4; Day 230/054/23 – 230/055/24

³¹ E2.0016 paragraph 5.1

³² D0400 paragraph 2

³³ D0396 paragraph 3

³⁴ D0396 paragraph 2

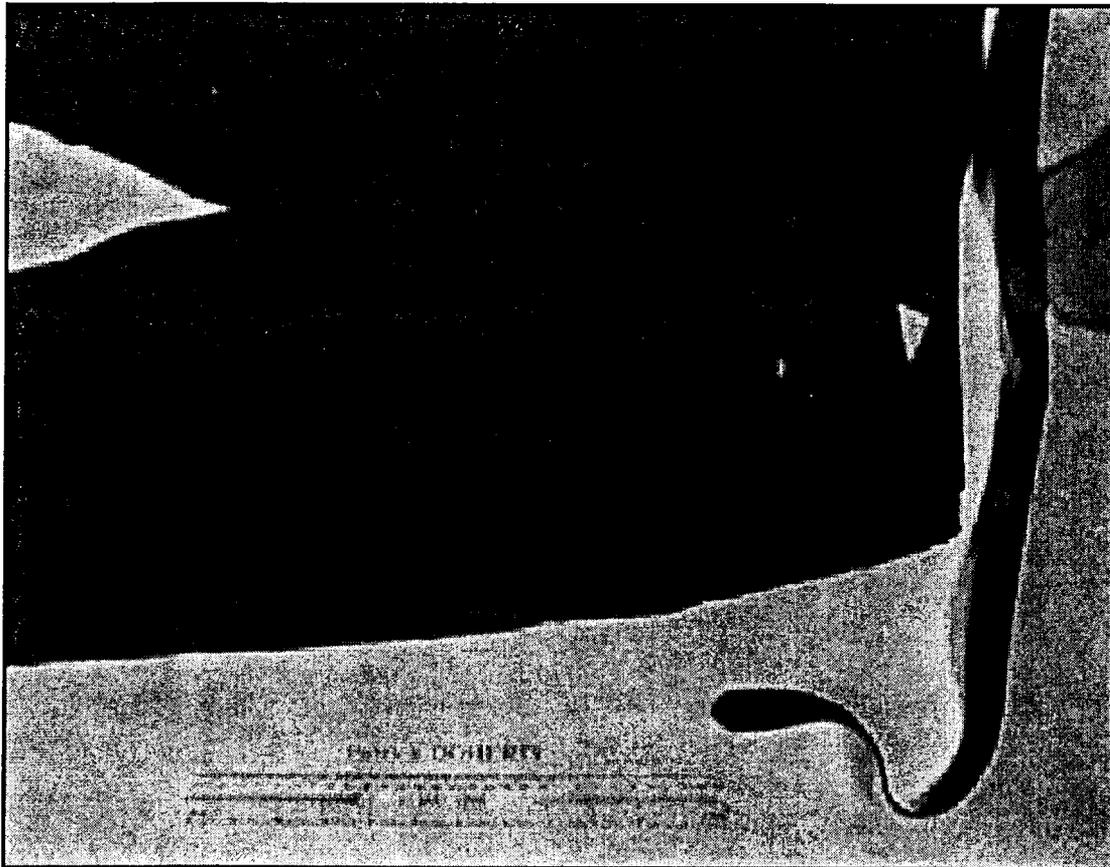
³⁵ D0396 paragraph 4

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10E-46 Dr. Shepherd and Mr. O'Callaghan reviewed all the contemporary material: Dr. Carson's report, his notes and the post mortem photographs. They were also able to examine the clothes Patrick Doherty had been wearing at the time he was shot. They found:

*There was an entry hole in the right rear of the waistband of the trousers directly above the back pocket. The bullet clipped the leather belt but left a clearly visible bullet wipe around the lower part of the hole. The bullet then passed through the T-shirt and underpants.*³⁶

10E-47 The entrance hole in the trousers and the belt can be seen in the photograph at F6.17:



³⁶ E2.0056 paragraph 7.12.2

FS 7.2346

10E-48 It was on the basis of their examination of this material that Dr. Shepherd and Mr. O'Callaghan formed their opinion on the direction from which Patrick Doherty had been shot:

In our opinion the pattern of the damage to the clothing and the pattern of the injury to the body are all consistent with Patrick Doherty being shot from behind while bending forward on all fours. ³⁷

10E-49 It is clear from the track of the bullet that Patrick Doherty was not necessarily shot *directly* from behind. The evidence of the bullet track suggests that the firer was approximately 33° to the right of the centre line, or coronal plane.³⁸

10E-50 Given this, it is certainly very unlikely that the firer was any more than 45° to the right of the coronal plane. This is supported by the opinion of Dr. Vincent Di Maio, who assessed the original autopsy notes and photographs on behalf of the Tribunal at the request of Anthony Lawton's Team.

10E-51 Dr. Di Maio's opinion was that, if Patrick Doherty was on his hands and knees at the time he was shot, then the source of the shot: ³⁹

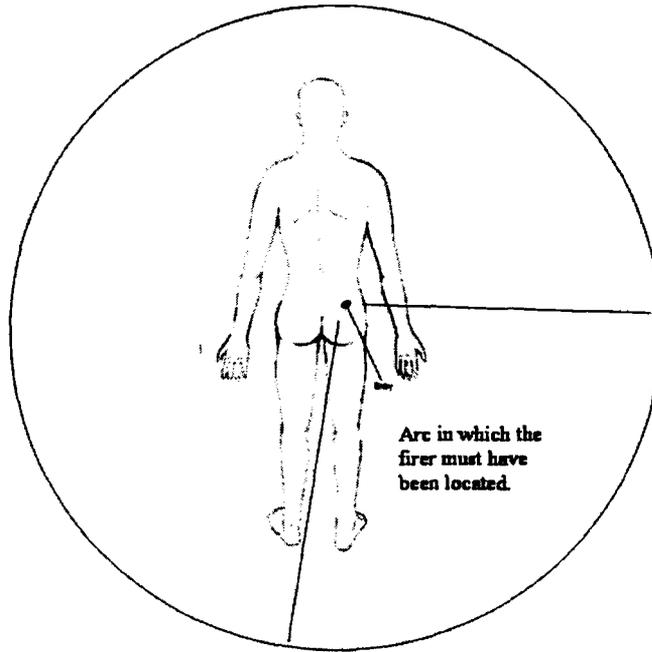
- (1) Had to be behind and to the right of Mr. Doherty in the 90° arc depicted in the diagram below; and,
- (2) Was most probably at 45° to Mr. Doherty's spine.

³⁷ E2.0057 paragraph 7.12.3

³⁸ D0396 paragraph 4

³⁹ E29.9

PS 7.2347



10E-52 The Tribunal's own forensic pathologist, Dr. Richard Shepherd, has confirmed his agreement with Dr. Di Maio's opinion:

There appears to be no significant difference between this opinion and the opinion we expressed in our report (E2.0057):

"In our opinion the pattern of damage to the clothing and the pattern of the injury to the body are all consistent with Patrick Doherty being shot from behind while bending forward on all fours."

Dr. Di Maio has defined more closely the words 'from behind' and I would happily accept this refinement of our opinion and agree the shooter was most probably behind and within the 90° arc from 3 o'clock to 6 o'clock.⁴⁰

10E-53 Finally, it is important to bear in mind that Dr. Shepherd and Mr. O'Callaghan were unable to determine the nature of the weapon that caused the injury to Mr. Doherty. It is possible that he was not hit by a round fired from an SLR.⁴¹

⁴⁰ E29.11

⁴¹ E19.4

FS 7. 2348

CONCLUSION

10E-54 The evidence overwhelmingly suggests that when Mr. Doherty emerged from the gap between Blocks 2 and 3, he headed for the alleyway behind Joseph Place. He is most likely to have taken a direct route and would have been travelling due west. In other words, his buttocks would have been pointing east.

10E-55 Apart from a few witnesses who suggested that Mr. Doherty began crawling towards the alleyway behind Joseph Place from a point nearer to Rossville Street, there is no evidence to suggest that Mr. Doherty's buttocks were pointing towards Glenfada Park North at any stage.

10E-56 It is very unlikely, therefore, that Mr Doherty was shot by Soldier F.

10E-III THE GAP IN TIME BETWEEN THE SHOOTINGS OF PATRICK DOHERTY AND BERNARD MCGUIGAN

INTRODUCTION

10E-57 Soldier F fired only two shots into Sector 5, one immediately after the other. It is therefore very unlikely that he shot Bernard McGuigan *and* Patrick Doherty. If one of the two shots which Soldier F fired into Sector 5 killed Bernard McGuigan, then the other shot could not have hit Patrick Doherty because Patrick Doherty was shot some time before Bernard McGuigan was shot.

10E-58 Soldier F's contemporary accounts record the fact that he fired two shots into Sector 5.⁴² If the Tribunal were to conclude that more than two shots were fired into Sector 5 (which, given the number of casualties, is likely), there is no evidence that Soldier F was responsible for firing more than two shots.

10E-59 Soldier F's shots were fired one after the other, with only a short pause between them. Lieutenant 227 gave the following account in his BSI statement:

⁴² B135 paragraph 3; B138 paragraph 6; B143 at D

FS 7. 2349

*The Para kneeling by the lamppost then raised his rifle to his shoulder at which point I could tell that he was a right-handed man. I could not say exactly where he was aiming, but his rifle seemed to be aimed parallel with Block 2 of the Rossville Flats towards the walls. I could see that he took aim quite carefully and I then saw him fire two shots. He paused after the first shot to re-aim before shooting a second time. As he fired each shot I could see the rifle buck slightly and a very small amount of smoke emit from the muzzle. I had not seen what he was aiming at but once I saw him fire I looked around and I saw somebody lying near the telephone box.*⁴³

10E-60 Counsel to the Tribunal asked Lieutenant 227 to quantify how much time elapsed between the two shots:

Q. ... Can I pause there, can you assist at all with how much time elapsed between the first shot and the second shot?

A. Only from my own experience of firing deliberate shots, so it is anywhere between one and two seconds.

Q. Essentially however much time it takes to re-aim before shooting a second time?

*A. Correct, sir.*⁴⁴

10E-61 The eyewitness testimony establishes that the two known deceased in Sector 5 were not shot at the same time. Patrick Doherty was shot before Bernard McGuigan and the time between their respective shootings was considerably longer than one or two seconds.

BERNARD MCGUIGAN WENT TO THE AID OF PATRICK DOHERTY

10E-62 The shooting of Bernard McGuigan as he embarked on an attempt to assist the injured Patrick Doherty is an enduring image of Bloody Sunday. In his Opening Submissions, Arthur Harvey QC described what Bloody Sunday evokes in the minds of the local population:

⁴³ B2204.005, paragraph 24

⁴⁴ Day 371/151/05

FS 7.2350

... [T]he image of Patrick Doherty lying behind Rossville flats, with his eyes being closed by Leo Day from the Knights of Malta. It is the image, both visual and vocal, of Geraldine Richmond, cowering behind block 1 of the Rossville flats, between the entrance and the telephone box, having witnessed the prone body of Hugh Gilmore, who struggled round the corner to die, and then witnessed Barney McGuigan, compelled by the inner voice of his own humanity to go out to the attendance of Patrick Doherty, who did not want to die alone.⁴⁵

10E-63 Michael Topolski QC, on behalf of Mr. Doherty's family, suggested to Simon Winchester that the true sequence of events was almost beyond doubt:

Q. I can help you with the sequence of events. What we do know almost beyond doubt is that Barney McGuigan was shot as he walked in the direction of probably the prone body of Patrick Doherty. So that body would have been on the ground first, do you follow?

*A. I do.*⁴⁶

10E-64 The case for the family of Bernard McGuigan has always been put on the basis that Bernard McGuigan was shot just as he started to walk towards Patrick Doherty. In his Opening Submissions, Michael Mansfield QC suggested that Bernard McGuigan's purpose in leaving the cover of the southern gable wall of Block 1 was to render assistance to Patrick Doherty:

There are a number of statements which deal with what happened. We have put some of them into the bundle. Geraldine McBride, who was then known as Geraldine Richmond, and you have seen her on various photographs, there is a description which is worth just referring to. It is supported by others at AM45.5. At the top, paragraph 22, she is dealing with the death and the shooting of Hugh Gilmore. Later she goes to a point near the end of block 1 and the Rossville flats which she has marked on a plan. Paragraph 24: "Whilst we were huddled together I heard a man's voice calling 'I do not want to die alone -- somebody help me'." It is suggested that is Doherty round the corner in the direction of the walls, effectively on Fahan Street East and the steps: "I could also hear him whining and saying 'God help me'. The whining would stop and

⁴⁵ Day 043/034/25

⁴⁶ Day 116/091/15

AS 7.2351

then start up again. I think the calling was coming from the Fahan Street East and the Fahan steps area. I think from what I heard later that the man was Patrick Doherty. I wanted to go out to help him but I could not move, I was too scared." As you will know she was in a bit of a state because of what she had already seen: "We all huddled together tighter. The man was obviously in pain although we could not see him. All I could see was Hugh Gilmore's body. By the time I heard the man calling he had already been shot. "25. Barney McGuigan, one of the men huddled at the wall with me, was a community man and was generally looked up to. After a short time (although I do not know how long) Mr McGuigan said that he could not stand the sound of the man calling any longer and that if he went out waving a white hanky, they would not shoot at him. We tried to dissuade him from going out. We told him they would shoot him. However, he was brave and he stepped away from us holding the white hanky in his hand. Although I cannot be certain I think he held it in his left hand. He walked out slowly sideways ...".⁴⁷

10E-65 In paragraph 26 of her BSI statement, Mrs. McBride said:

I remember hearing two distinct shots. After the first one Mr McGuigan turned back towards us, and although I cannot be certain I think he turned his whole body and not just his face. I did not see the bullet hit anything, I just heard it. The second shot hit him ...⁴⁸

10E-66 She confirmed this was her recollection in answer to a question from Christopher Clarke QC:

Q. You describe in paragraph 26 hearing two distinct shots, after the first of which Mr McGuigan turned back towards you. You think he turned his whole body and the second shot hit him and blew his head up. You are quite sure, are you, that it was the second and not the first shot? A. It was the second shot.⁴⁹

10E-67 Mrs. McBride said that she believed Mr. McGuigan was responding to cries for help coming from the other end of Block 2:

⁴⁷ Day 050/120/25 – 050/122/15

⁴⁸ AM45.18 paragraph 26

⁴⁹ Day 146/025/25

FS 7. 2352

.... Before I do that, can I ask you about this -- we have dealt with Mr Gilmore -- were you aware of where someone else was who was crying for help; could you see them or could you only hear them?

A. We could only hear them.

Q. You have indicated that you thought it was coming from the Fahan steps area?

A. Yes.

Q. I will come back to that in the photograph in a moment. When Barney McGuigan walked out, away from the wall, looking at photograph 310, did he walk in the direction of the photographer or did he walk slightly towards his left, in other words the right of this photograph, or slightly towards his right, that is the left of this photograph, or can you not remember?

A. He would have walked out from where I was, was the right, you know, he would --

Q. Could you mark this photograph. I am sorry to ask you to do this. Could you mark the sort of direction in which he walked, as you remember it?

A. (Marked with blue arrow - AM45.15).⁵⁰

10E-68 In fact it was saved as AM45.39:



⁵⁰ Day 146/033/20

FS 7-2353

10E-69 Mrs. McBride gave the same account in her NICRA and SA statements, when the events of Bloody Sunday were still fresh in her mind.⁵¹

10E-70 A number of other eyewitnesses gave similar accounts of Mr. McGuigan going out to assist somebody who was calling for help.⁵² The fact that it was Patrick Doherty who was calling out is supported by Donna Harkin who was able to see him clearly from her flat in Block 2 of the Rossville Flats.⁵³ She said in her BSI statement that she "could hear Mr. Doherty calling out saying that he did not want to be alone and that he needed help."⁵⁴

10E-71 Other evidence establishes that Patrick Doherty remained alive for some time after he had been shot. For example, Francis Duddy believed Patrick Doherty was still alive after he had been turned onto his back:

*We made our way between the exit of Block 2 and Block 3 of the Rossville Flats and as I emerged on to the south side of the Rossville Flats, I noticed a man lying on his back at about position K (grid reference K18). He looked to me like he was taking his last breath and I realised he had been shot. I went over to him and gave him mouth to mouth resuscitation....*⁵⁵

10E-72 Mr. Duddy then described in his BSI statement how he searched Patrick Doherty and found some rubber bullets and a card with his name on it.⁵⁶ He believed Patrick Doherty died soon after this:

*I then remember Paddy Doherty taking his last gasp of breath and I cannot remember if I could feel a pulse in his neck or not. I think he then died, but other people arrived to help.*⁵⁷

⁵¹ NICRA: AM45.25; SA statement: AM45.24 paragraph 7

⁵² For example, Michael McCusker: AM160.3 paragraph 13; Paul McLaughlin: AM350.5 paragraphs 31-34

⁵³ Day 171/113/01-21; the image showing the arrow pointing to her flat was saved as AH13.25

⁵⁴ AH13.21 paragraph 39

⁵⁵ AD144.13 paragraph 21

⁵⁶ AD144.13 paragraph 21

⁵⁷ AD144.13 paragraph 24.

FS 7.2354

10E-73 Mr. Duddy's evidence suggests that he arrived after Patrick Walsh had already turned Mr. Doherty over.⁵⁸ Counsel to the Tribunal sought to clarify whether Mr. Duddy was aware of anyone else on the scene at the point he arrived:

Q. You describe going over to him and giving him mouth-to-mouth resuscitation and rolling him over and seeing a bullet hole in his back in the upper lung area. I would like to show you a photograph: may we have P717? We know that at some stage the person we know to be Paddy Doherty was lying on his back in this position and there was a man crawling close to him. When you came through the gap between blocks 2 and 3, did you see any scene like that or were there more people around? A. I think there was one, there was one person there, yeah.

Q. When you first arrived you think there was one person there? Yeah, there was one person there.⁵⁹

10E-74 Another witness, also called Patrick Doherty, gave similar evidence:

The next thing I remember was hearing the voice of Molly Barr, who I knew, in Chamberlain Street. She came and joined me along with a photographer who I think may have been foreign. Both of them were waving white handkerchiefs. At some stage, we walked between Blocks 2 and 3 of the Rossville Flats and out onto the south side of the Rossville Flats. It was there that I saw the body of the man I now know to be Patrick Doherty. He was lying in the position I have marked I on the map (grid reference K18). I think we must have been amongst the first people to see him, as there were only two people with him at the time – a woman was praying in his ear. He was still alive, although he was very white. [Emphasis added]⁶⁰

10E-75 During his oral evidence, Mr. Doherty said he "presumed it was a woman" who was praying in Patrick Doherty's ear, but the person's head was down low and he could not see.⁶¹

⁵⁸ AD144.13 paragraph 21

⁵⁹ Day 089/083/12

⁶⁰ AD96.4 paragraph 20 – There is no statement from a "Molly Barr"

⁶¹ Day 085/022/01 – 04

FS 7.2355

10E-76 The suggestion that Patrick Doherty was still alive at this stage is supported by what Mr. Doherty said in the statement he gave on 1st February 1972. It records that there were two bodies lying south of the Rossville Flats, but only one was dead.⁶² In his BSI statement Mr. Doherty identified the two bodies he saw lying south of the Rossville Flats as Patrick Doherty and Bernard McGuigan, the latter, he said, "was obviously dead".⁶³

10E-77 It is clear that Mr. Doherty arrived *after* the stage when Patrick Walsh crawled out to Patrick Doherty:

Q. You then make your way through the exit between blocks 2 and 3. Do you wait in that alleyway between blocks 2 and 3 for any length of time? A. No, by the time we walked round was -- I just followed Molly Barr and with whoever was along with her.

Q. The reason I ask you is because you said in paragraph 20 of your statement to this Tribunal that you thought you must have been amongst the first people to see Patrick Doherty. What you did not see, is this right, is anybody crawling out to his body?

A. No, that would have been -- we came round, we were walking round and there was people standing here in front of me and then we just looked and seen Patrick Doherty (indicating). So there was two people at him already by the time I seen him.⁶⁴

10E-78 Certainly, at the time Father O'Gara reached Patrick Doherty, he was still alive.⁶⁵

OTHER EVIDENCE ALSO SUGGESTS PATRICK DOHERTY WAS SHOT SIGNIFICANTLY MORE THAN A FEW SECONDS BEFORE BERNARD MCGUIGAN

10E-79 Other evidence also clearly demonstrates that, after Patrick Doherty was shot, there was a gap in time of significantly more than one or two seconds before Bernard McGuigan was shot.

⁶² AD96.6

⁶³ AD96.4 paragraph 21

⁶⁴ Day 085/033/21

⁶⁵ H19.6 paragraph 2

FS 7.2356

10E-80 Fulvio Grimaldi saw Bernard McGuigan fall to the ground after Patrick Doherty had been already been shot. Mr. Grimaldi came through the gap between Blocks 2 and 3 from the Rossville Flats car park and immediately saw the body of Patrick Doherty lying on the ground in front of him, with his head pointing towards Joseph Place. Mr. Grimaldi's recollection was that, by this stage, Patrick Doherty had been turned onto his back.⁶⁶

10E-81 Mr. Grimaldi described in his BSI statement what he saw next:

I then saw a man, to my right, moving towards the body [cf Patrick Doherty]. He moved out diagonally from the area cf the shops at the bottom cf Block 2 cf the Rossville Flats. I think he took three to four steps diagonally towards Doherty. He was walking carefully and after a couple cf steps I saw he was hesitant. His head jerked back, his face whipped round to the left, his body spun around and he collapsed. He was looking towards the body cf Patrick Doherty when he was shot. The man fell in [a] position parallel to Patrick Doherty, also on his back. His right eye had been shot out and there was a hole where is eye should have been. I have since found out that the man's name was Barney McGuigan. I was not ware cf hearing the actual shot that hit him. There was shooting generally going on in this area at the time.⁶⁷

10E-82 Whatever might be said about Mr. Grimaldi's obvious prejudice against the British State generally, and specifically the British Army at the time of Bloody Sunday, and the probability that he lied about a number of issues, such as the source of the bullets he presented to the Widgery Tribunal and his denial that he was aware that he had photographed Father Daly's Gunman, it appears that he had no reason to lie to the Tribunal about witnessing Bernard McGuigan fall to the ground.

10E-83 In his SR statement, made for the purposes of the Widgery Tribunal on 26th February 1972, Mr. Grimaldi also said that he witnessed Mr. McGuigan fall to the ground *after* seeing Mr. Doherty's body on the ground:

⁶⁶ M34.62 paragraph 62

⁶⁷ M34.63 paragraph 63

FS 7. 2357

*The other side of the building I saw a body I now know to be Doherty's. Further down, in front of the telephone box, I saw out the corner of my eye a man spin round and fall. I now know this was Barney McGuigan. I then took photographs. Doherty was dying. I saw no blood. I photographed McGuigan. I then saw a body (Hugh Gilmore) at the corner.*⁶⁸

10E-84 Mr. Grimaldi gave the same account when he gave oral evidence to the Widgery Tribunal. First, when he was being questioned by Mr. Stocker he said:

*As I was passing through the passage [between Blocks 2 and 3] two bullets hit the pillar of the passage and I managed to get through. The first thing I saw was Doherty dying and then McGuigan standing and falling.*⁶⁹

10E-85 Mr. Grimaldi told the Tribunal that he believed that the first photograph he took of Patrick Doherty is the one that appears at EP26/19.⁷⁰ This photograph was clearly taken after Mr. Doherty had been turned onto his back:



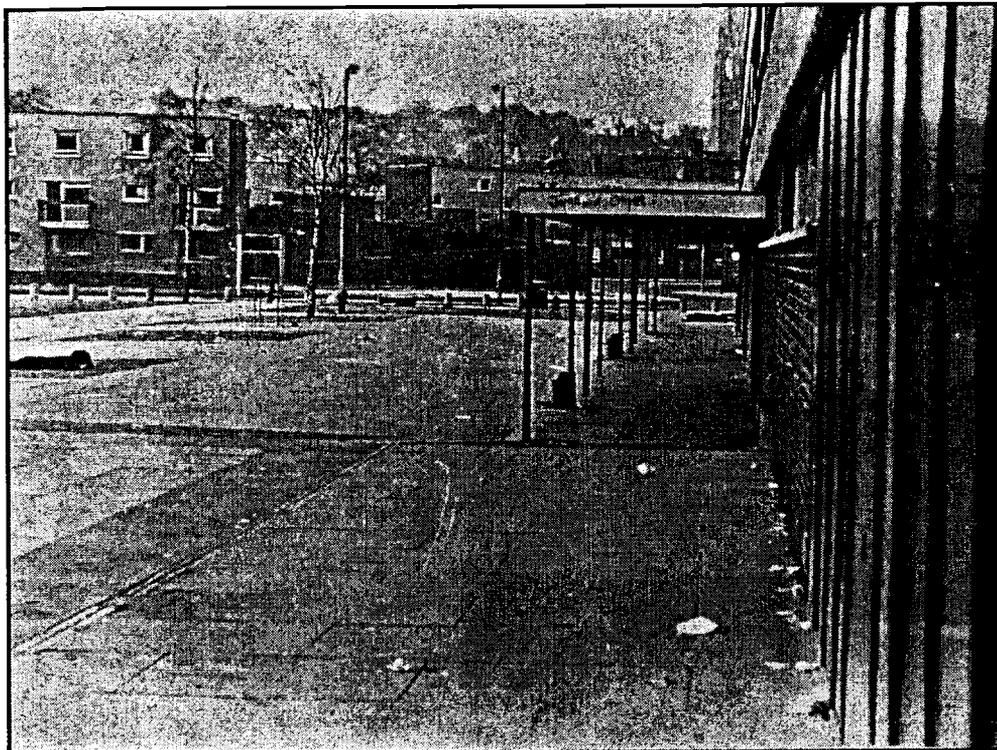
⁶⁸ M34.2 paragraph 7

⁶⁹ M34.46 at G

⁷⁰ Day 131/058/18 - 25

FS 7.2358

10E-86 The first photograph Mr. Grimaldi took of Bernard McGuigan, apparently just after he had been shot, is probably the one that appears at EP26/18 (and at P318):



10E-87 Referring to the photograph above, Christopher Clarke QC asked Mr. Grimaldi if he was conscious of having taken a photograph of Bernard McGuigan from his position at the entrance to the gap between Blocks 2 and 3, i.e., before he moved forward to approach the body of Patrick Doherty:

Q. Are you conscious of having taken a photograph of Barney McGuigan from this spot?

A. Yes, because it was more or less at the same -- very few seconds after I noticed, coming round, Patrick Doherty on the ground, the man crawling towards him, pumping air into him and then I noticed this movement and the collapse and the fall of this man, Barney McGuigan.

10E-88 Mr. Grimaldi's evidence suggests that the shooting of Patrick Doherty preceded the shooting of Bernard McGuigan by at least enough time for him to observe Patrick Walsh tending to the fatally wounded Patrick Doherty. Perhaps more

FS 7.2309

significantly, by the time Mr. Grimaldi had arrived through the gap between Blocks 2 and 3, Patrick Doherty had already been turned onto his back.⁷¹

CONCLUSION

10E-89 If one of the two shots which Soldier F fired from the lamp post at the south eastern corner of Glenfada Park North hit Bernard McGuigan, then it is extremely unlikely that the other shot hit Patrick Doherty.

10E-90 It would follow that the shot which hit Mr. Doherty has not been accounted for by a soldier in Glenfada Park North. However, this is not surprising, bearing in mind that the forensic evidence suggests that, if Mr. Doherty was shot by a soldier, it is very unlikely that the soldier was situated in Glenfada Park North.

⁷¹ M34.62 paragraph 62

FS 7.2360

CHAPTER 10F

THE WOUNDED IN SECTOR 5

10F-I INTRODUCTION

10F-1 Patrick Campbell and Daniel McGowan were both shot in the area to the south of the Rossville Flats. It is probable that they were shot from Glenfada Park North. In each case there is no evidence which identifies the soldier responsible.

10F-2 It is not envisaged that any of the Interested Parties, having regard to all the evidence, will seek to persuade the Tribunal that either Mr. Campbell or Mr. McGowan was shot from the City Walls.

10F-3 The soldiers deployed on the part of the City Walls which overlooked the area between Joseph Place and Block 2 of the Rossville Flats were all from 53 Battery, 22 LAD RA. Soldier 210 was the Battery Sergeant Major and was ultimately in charge of the supply and re-supply of ammunition for the whole Battery.¹ His evidence, which was mentioned twice in counsel to the Tribunal's opening speech,² was never challenged. It confirms that no rounds were expended by anyone within 53 Battery.³

10F-II PATRICK CAMPBELL

10F-4 There are basically two relevant issues: the location of Patrick Campbell when he was shot, and the timing of his shooting.

THE LOCATION OF MR. CAMPBELL WHEN HE WAS SHOT

10F-5 Christopher Clarke QC said in his opening:

¹ B2135.001 paragraphs 14-16

² Day 026/107/11; Day 041/044/22

³ RMP statement: B2133; BSI statement: B2135.002 paragraph 19

FS 7.2361

*The only direct account of the wounding of Patrick Campbell, in the sense of eyewitness accounts, appears in the statement of Patrick Campbell himself. I have no reason to doubt the broad accuracy of what he says about the circumstances in which he was shot.*⁴

10F-6 Interestingly, there was a witness who believed that he had seen Mr. Campbell being shot. James Joseph Quinn said in his BSI statement that he saw Mr. Campbell shot on Fahan Street East, near the entrance to the car park south of Joseph Place.⁵

10F-7 However, if it was in fact Mr. Campbell that he saw in that location, it was almost certainly after Mr. Campbell had been shot.⁶ Indeed, when Mr. Quinn gave oral evidence, he accepted that he may not have seen Mr. Campbell actually being shot.⁷

10F-8 Mr. Quinn's evidence about the location in which Mr. Campbell was shot is not corroborated by Mr. Campbell's own description of where he was at the time. The Tribunal is in possession of the two principal accounts given by Mr. Campbell in the weeks after he was shot. It wasn't possible for this Tribunal to take a fresh statement from him as he died in the mid-1980s.⁸

10F-9 Mr. Campbell gave the first of these accounts in a statement taken by Detective Sergeant Cudmore on 7th February 1972.

I stood for some time beyond the wee barricade, which is outside the Rossville High flats looking down towards William Street, where they were throwing the gas. The Army tanks then came into Rossville Street and the soldiers jumped out and at this I turned and ran towards the gable end of the High Rossville Flats. I stood there for a few minutes and I then ran across the waste ground towards Free Derry Corner. I then felt like a thud in my lower back and fell

⁴ Day 037/094/08

⁵ AQ10.7 paragraphs 36-37; see the map he marked with the location at AQ10.8

⁶ AH11.6 paragraphs 32 and 33

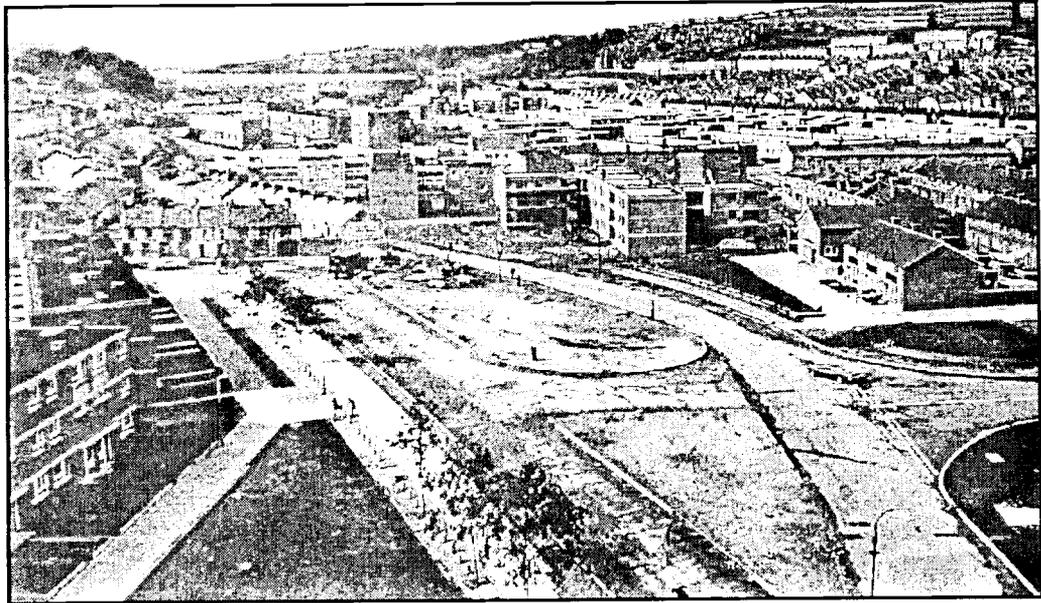
⁷ Day 179/094/13

⁸ AC14.5 paragraph 28

FS 7.2362

*onto my knees. I put my hand to my hip and I saw there was blood on it. I then put my hand up and called that I was shot. Some men then came and took me into a house near Free Derry Corner, and I was kept waiting there for a car to take me to hospital.*⁹

10F-10 It is not clear what he meant by “the waste ground”. The relevant area is shown in a photograph that appears to have been taken from the Rossville Flats:¹⁰



10F-11 Fortunately, Mr. Campbell’s second account is more precise. The Sunday Times still had this note of an account he gave them on 1st March 1972 :

*I moved along Rossville Street and crossed the barricade outside the flats and stood there. As I looked back down Rossville Street I saw the Saracens coming in. I saw soldiers jumping out and when the shooting began I made a dive for cover behind a small gable near the telephone box. From there I could see soldiers milling about in Gler fadda [sic] park. I then made a dash for Joseph Place and was shot in the back (the wound is in the spine). After that he remembers virtually nothing (he is a deeply inarticulate man) he knows he was carried into a house, he thinks in Columbs Wells or Joseph Place.*¹¹

⁹ ED27.7

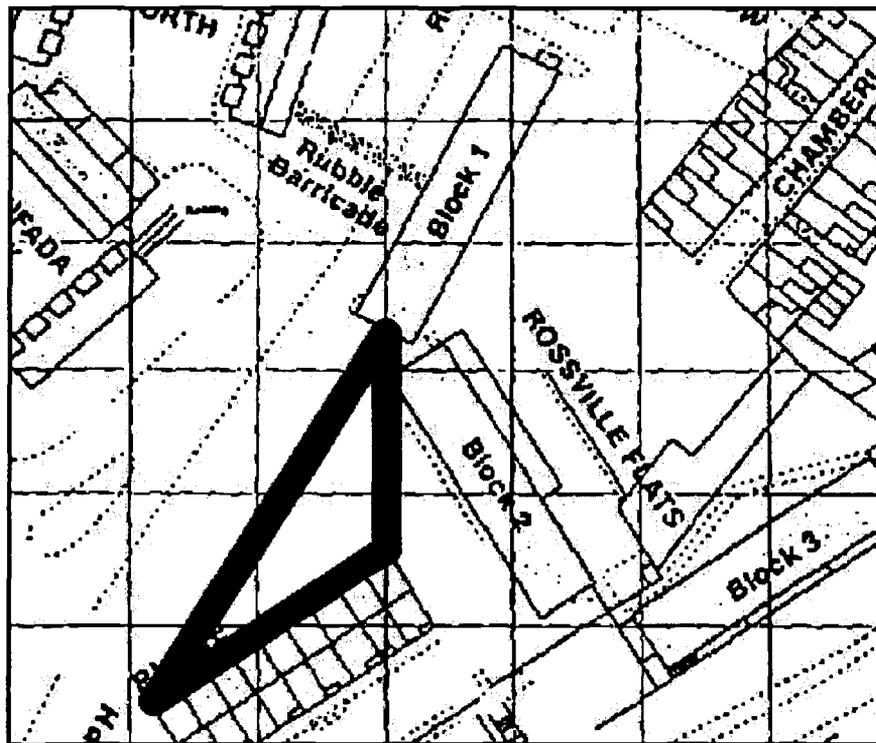
¹⁰ P330 provided by the Imperial War Museum, undated.

¹¹ AC19.1

FS 7.2363

10F-12 This account is consistent with the one he gave to the police three weeks earlier insofar as it records that he spent some time at the gable end of Block 1 of the Rossville Flats and that this was the starting point for his journey south. However, he was shot while on his way to Joseph Place, not Free Derry Corner. This is not necessarily a contradiction. From his starting point at the southern end of Block 1, Joseph Place would have been in a broadly similar direction to that of Free Derry Corner.

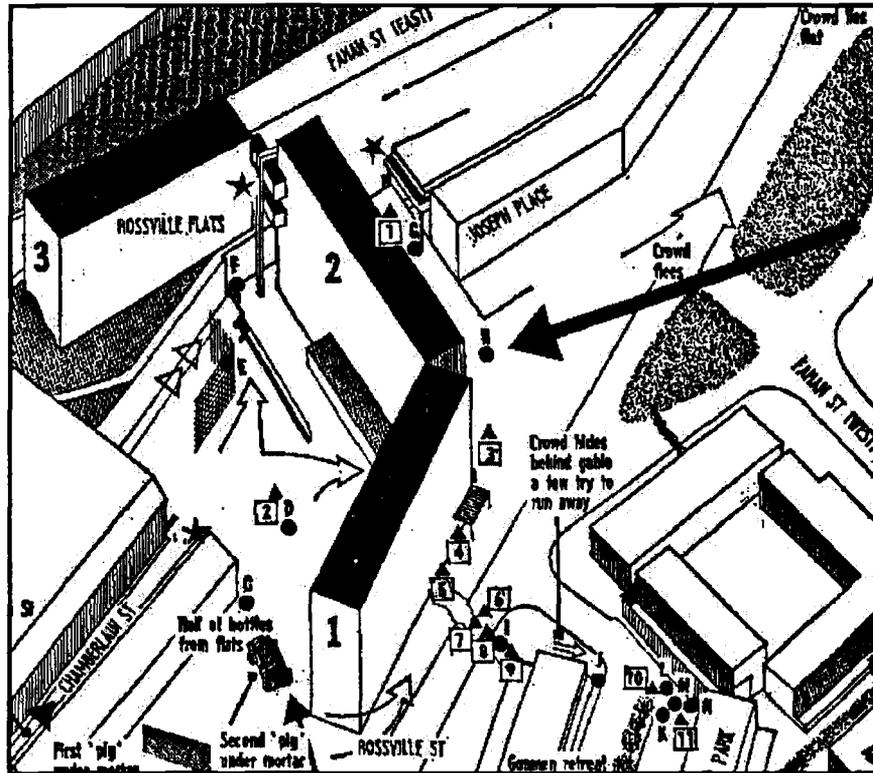
10F-13 Although the Sunday Times note does not state whether he had reached Joseph Place before he was hit, its construction suggests that the bullet struck him while en route to Joseph Place. If this is right, it would appear that he was most probably shot somewhere within the triangle marked on the map below:



10F-14 Mr. Campbell may have given a more precise description of the location to the Sunday Times which wasn't recorded in their note. They published a map with

FS 7.2364

their article of 23rd April 1972 and the location in which he was shot was marked with the letter H: ¹²



WHEN WAS PATRICK CAMPBELL SHOT?

10F-15 There is no reason to doubt Mr. Campbell's account of seeing soldiers in Glenfada Park North while he was at the southern end of Block 1:

As I looked back down Rossville Street I saw the Saracens coming in. I saw soldiers jumping out and when the shooting began I made a dive for cover behind a small gable near the telephone box. From there I could see soldiers milling about in Glenfadda [sic] park. I then made a dash for Joseph Place and was shot in the back... [emphasis added]. ¹³

10F-16 This indicates that he must have been shot *after* soldiers had deployed into Glenfada Park North.

¹² L212

FS 7. 2365

10F-17 It seems almost certain that he was shot before Daniel McGowan, as the evidence dealt with below illustrates.

10F-III DANIEL MCGOWAN

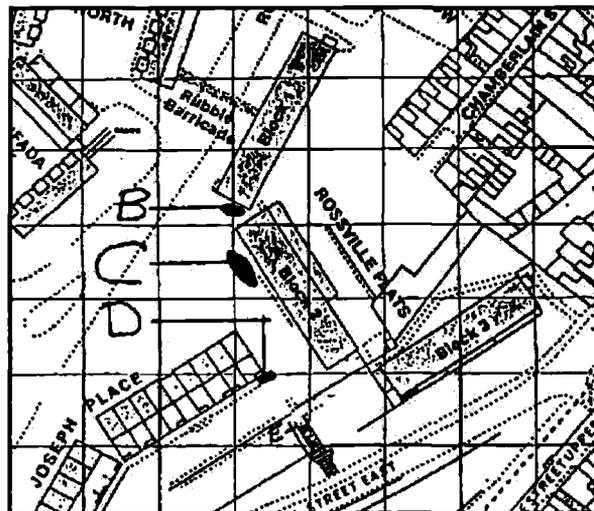
10F-18 Similar issues of location and timing are relevant to the shooting of Daniel McGowan.

THE ASSISTANCE MR. MCGOWAN PROVIDED TO MR. CAMPBELL

10F-19 Mr. McGowan described in his BSI statement where he first saw Mr. Campbell:

It was then that I saw Patrick Campbell, whom I knew, walking like a man who had a few bottles in him. When I first saw him, Paddy was in the area to the south of Block 2 of the Rossville Flats by the shops which were on its ground floor. This area is marked C on the map. Paddy was leaning against the wall of the shops, as if to prevent himself from falling, and was staggering in a south easterly direction towards Joseph Place. In my view he had emerged from the gap between Blocks 1 and 2 of the Rossville Flats.¹⁴

10F-20 The relevant part of the map attached to his BSI statement is reproduced below:¹⁵



¹³ AC19.1

¹⁴ AM255.2 paragraph 10

¹⁵ AM255.9

FS 7.2366

10F-21 Having realised that Mr. Campbell was injured, Mr. McGowan helped him to the alleyway behind Joseph Place:

I went over to Paddy and helped him to the alleyway to the east of Joseph Place, the entrance to which is marked D on the map. I only realised he had been hit when he saw me and said "I am shot, I am shot." I could not see where he had been hit as he was wearing a heavy coat.... The alleyway to which I helped Paddy is formed by the gap between the wall on the southern side of the houses in Joseph Place and a retaining wall for the steep banking that leads up to the City Walls. It was packed with men, women and children taking cover from the shooting. It was so packed that it was difficult for me and Paddy to fit in. I realised that I could not take Paddy much further (as he weighed some 15 stone) so I left him in the care of some people in the alleyway at the point D on the map.¹⁶

10F-22 Mr. McGowan went on, in the next paragraph of his BSI statement, to give an account of how he was then shot. There is no reason to doubt the sequence of events as he described it. If Mr. McGowan was shot after Mr. Campbell, it follows that he too was shot after soldiers in Mortar Platoon had deployed into Glenfada Park North.

THE LOCATION OF MR. MCGOWAN WHEN HE WAS SHOT

10F-23 Mr. McGowan appears to have given different accounts of where he was situated when he was shot. His SC statement, dated 28th February 1972, which was made for the purposes of the Widgery Tribunal, suggests he was shot at the top of the Joseph Place alleyway:

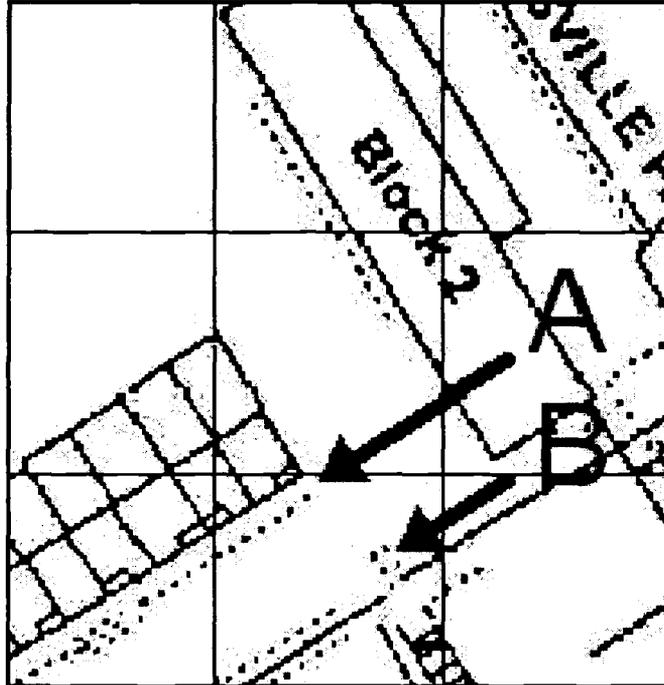
I ran over and caught [Patrick Campbell] by the arm and helped him along towards the rear of the houses on Joseph's Place. Just as I had pushed him round the corner of the rear of the houses my right leg folded underneath me and I realised that I was shot. I went unconscious for a very short while. When I came to, I dragged

¹⁶ AM255.2 paragraphs 11 and 12

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*myself round the corner of the houses and proceeded along for about 15 yards.*¹⁷

10F-24 This account suggests that Mr. McGowan was shot at point A:



10F-25 In his BSI statement on the other hand, Mr. McGowan appears to suggest he was closer to point B:

*[Having left Mr. Campbell in the care of people in the Joseph Place alleyway...] I then decided to make my way up another set of steps which lead from the entrance of the alleyway to Fahan Street East.... I was on the very first step at the bottom of these steps when I was shot. I have marked the position as "E" on the map. My recollection is that as I headed from the alleyway to the steps, there was a lot of shooting going on.*¹⁸

10F-26 It is possible that Mr. McGowan was confused when he gave his BSI statement. He appears to have been under the impression that the entrance to the alleyway behind Joseph Place was right next to the bottom of the steps leading up to Fahan

¹⁷ AM255.5

¹⁸ AM255.2 paragraphs 12-13

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Street East. Two sentences in his BSI statement are clues which suggest this was the case:

*The alleyway to which I helped Paddy is formed by the gap between the wall on the southern side of the houses in Joseph Place and a retaining wall for the steep banking which leads up to the City Walls.... I then decided to make my way up another set of steps which lead from the entrance of the alleyway to Fahan Street East, and which are shown on the map at grid references K/L19/20.*¹⁹

10F-27 If Mr. McGowan was labouring under this misapprehension, it would explain the apparent discrepancy between the account he gave to the Widgery Tribunal and the account he gave to this Tribunal. However, his BSI statement also contains sentences which suggest that he was aware that the Fahan Street steps and the entrance to the alleyway behind Joseph Place were not right next to each other.²⁰

10F-28 This apparent inconsistency in his BSI statement was never clarified in oral examination as Mr. McGowan was too ill to be called (and is now deceased). However, whether he was shot at the entrance to the alleyway behind Joseph Place or at the bottom of the steps leading up to Fahan Street East, he is most likely to have been shot from the direction of Glenfada Park North.

10F-IV CONCLUSION

10F-29 The evidence suggests that Patrick Campbell and Daniel McGowan were both shot in the area to the south of the Rossville Flats. In that location they would have been within sight of any soldiers in Glenfada Park North or on Rossville Street south of the rubble barricade.

10F-30 The shots which hit Mr. Campbell and Mr. McGowan were probably fired by a soldier situated in Glenfada Park North. If Bernard McGuigan was also shot by a soldier in Glenfada Park North, then it follows that not all the shots that were fired from that location have been accounted for.

¹⁹ AM255.2 paragraph 12 (contains both sentences)

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10F-31 The fact that at least one shot which was fired into Sector 5 has not been accounted for raises a question as to who fired it. Whoever did, there is no evidential basis for a conclusion that Soldier F must be responsible for this and any other shot unaccounted for that was fired into Sector 5 simply because he admitted firing two shots into Sector 5.

²⁰ For example, see: AM255.2 paragraph 13, second sentence

FS 7.2370