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SECRET

DoJ paper

Fatal Shooting of Aidan McAnespie at Aughnacloy, Co. Tyrone on 21 February 1988

Crowley Report findings

The enquiry took statements from a total of 49 persons.

It was not possible to establish with evidence whether the shooting was deliberate or otherwise, nor was it possible to establish positively whether only one shot or more than one shot was fired.

Mr. Crowley gives it as his opinion that

- a short burst of 3 or 4 shots was fired (from a general purpose machine gun)
- the shooting was not a deliberate act by the soldier involved
- it is open to conjecture that the soldier involved had McAnespie in his sights and, with whatever thoughts there may have been in his mind on what he would wish to do to him, he accidentally discharged a burst of fire
- it is difficult to accept the soldier's reported defence that his fingers slipped when cleaning the gun – it is too much of a coincidence that the gun went off accidentally as McAnespie was "in the sights."
- McAnespie was walking southwards at the time with his back to the checkpoint and was shot by a ricochet bullet which entered his back.

The R.U.C. suspected Aidan McAnespie of gathering intelligence about the movements of security force personnel in the Aughnacloy area and supplying details to local units of the I.R.A.

He was subjected to an excessive amount of harassment by the security forces, which, in Mr. Crowley's opinion, went beyond the bounds of necessity and was not in accord with what one would expect from trained, disciplined personnel.

The enquiry also received complaints of harassment generally, mainly of the young male population of the Aughnacloy area.

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Findings of Dr. Harbison's post-mortem report

The bullet which struck Aidan McAnespie did so in the back and exited from the front of his chest.

There is little alternative explanation for his injuries than that of a bullet ricochetting off the ground a very short distance behind him and entering his body on the upwards rebound while tumbling in flight. This is based on

- the direction of bullet travel from back to front
- the vertical slit-like entry wound in the back in the shape of a bullet "sideways-on"
- the steeply rising trajectory of the bullet in the body (over 50° above the horizontal).

Disclosure/publication of contents of reports

The statements made to Deputy Commissioner Crowley were taken on the basis of confidentiality.

The report itself should not be published or made available to anybody other than the Government.

It would be possible to issue a statement which would set out the main findings of the report in general terms without revealing either directly or by implication the identity of any witness and without prejudicing the trial of the British soldier who is facing charges in the North of the unlawfull killing of Aidan McAnespie. A draft press release is attached.

Dr. Harbison's report should be made available to the McAnespie family.

Dr. Harbison's report as a whole should not be published or made available to anybody else, for the present at least.

The main findings of the report could be made public - i.e. back-to-front entry of the bullet following a ricochet.

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Fatal Shooting of Aidan McAnespie at Aughnacloy, Co. Tyrone on 21 February 1988

Background

1. On 21 February 1988 Aidan McAnespie, aged 23, of Aughnacloy, Co. Tyrone was shot dead north of the Border about 350 yards south of the British Army checkpoint at Aughnacloy. On 22 February the Garda Commissioner at the request of the Government appointed Deputy Commissioner Eugene Crowley to institute an immediate enquiry into the fatal shooting and the circumstances surrounding it. On 24 February an 18-year-old British soldier, David Jonathan Holden, was charged in Northern Ireland with unlawfully killing Aidan McAnespie and was released on bail in military custody to await trial.

2. On that same day the McAnespie family indicated to Deputy Commissioner Crowley that they had heard media reports that the death was said to have been an accident caused by a ricochet bullet. They did not accept this, and they requested that the Irish Government give consideration to having the body exhumed from its grave in Co. Monaghan for the purpose of having an independent post-mortem performed. The exhumation of the body was duly authorised in accordance with section 47 of the Coroners Act 1962. On 28 February the body was exhumed and a post-mortem examination was conducted in Monaghan by the State Pathologist, Dr. John Harbison.

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3. Deputy Commissioner Crowley presented his report to the Garda Commissioner on 30 March 1988. Dr. Harbison presented a preliminary report to the Commissioner on 29 February and his final report on 4 April. The Garda Commissioner submitted the Deputy Commissioner's report and Dr. Harbison's final report to the Minister for Justice on 8 April.

Summary of Deputy Commissioner Crowley's findings

4. Deputy Commissioner Crowley took statements from a total of 49 persons who came forward to assist. He was not able to establish with evidence whether the shooting of Aidan McAnespie was deliberate or otherwise, nor was he able to positively establish whether only one shot, or more than one shot, was discharged from the British Army observation post at Aughnacloy on the afternoon in question. However, the Deputy Commissioner gives it as his opinion that more than one shot was fired - he favours the view of those witnesses who thought that a short burst of 3 or 4 shots was fired (from a general purpose machine-gun). He also expresses the opinion that the shooting of McAnespie was not a deliberate act by the soldier involved. He says:

> "There can be no doubt about the fact that he was being singled out for particular attention and harrassment at the Aughnacloy checkpoint and at spot-check scenes, but, if the final intention were to kill him, I would consider that the Security Forces could have chosen a more surreptitious occasion and time to effect a killing".

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He goes on to suggest that:

> "it is open to conjecture that the soldier involved had McAnespie in his sights and with whatever thoughts there may have been in his mind on what he would wish to do to him, he accidentally discharged a burst of fire. I would find it difficult to accept the press report that his fingers slipped when cleaning the gun. It would be too much of a coincidence that McAnespie happened to be in the line of fire at the time".

5. It is also the Deputy Commissioner's opinion that McAnespie was walking southwards at the time with his back to the checkpoint and was shot by a ricochet bullet which entered his back. Dr. Harbison's final and conclusive report on the post mortem was not available to the Deputy Commissioner when he formed this opinion, only his preliminary, inconclusive one. Dr. Harbison's final report bears out this opinion. Mr Crowley basis his opinion on the fact that the bullet wound was 6 1/2 inches higher in the chest than in the back and on the evidence of some eye-witnesses at the scene that the chest wound was more elongated than circular. Also, there was no evidence to indicate that the deceased was facing the checkpoint when he was shot. McAnespie was found lying on his back with his head towards the South and his ankles crossed. Mr. Crowley suggests that "a ricochet from the ground upwards into his back could effect a turn about of his body and, in the process of falling, one ankle would cross over the other".

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6. On the night following the date of the shooting some shots were reported to have been heard in the vicinity of the Aughnacloy checkpoint. There were some suggestions in the locality that the purpose of these shots was to mark the roadway to indicate that bullets had ricochetted. Mr Crowley finds it impossible to accept this. It was dark at the time and the road was open to traffic. If the Security Forces wanted to create such a scene, he says, they could readily have done so at a time when the road was actually closed to traffic.

7. The report indicates that the R.U.C. suspected Aidan McAnespie of gathering intelligence about the movements of Security Force personnel in the Aughnacloy area and supplying details to local units of the I.R.A. But the evidence contained in statements from witnesses, even allowing for some exaggeration, "clearly indicates that he was being subjected to an excessive amount of harassment by them". This, in Mr Crowley's opinion, went beyond the bounds of necessity and was not in accord with what one would expect from trained, disciplined personnel. In the main complaints of harassment made to the enquiry related to the excessive degree of attention which was given to the late Aidan McAnespie but they also included complaints of harassment generally, mainly of the young male Catholic population of the Aughnacloy area.

8. Statements from witnesses indicated an amount of sectarian feeling abounding in the Aughnacloy area where Catholics form about 30% of the population. A factor presented to the enquiry was the influence of particular members of the Aughnacloy RUC in having McAnespie and other youths in the area subjected to apparently extraordinary attention by the British Army. Complaints were made against named local members of the R.U.C. and the R.U.C. Reserve who were said to be using their knowledge to cause unnecessary and unwarranted harassment of local

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people. Even allowing for the necessity for the police to maintain good local knowledge, Deputy Commissioner Crowley considers that it is not conducive to good community relations to have such type of police serving in an area where, according to what was conveyed to him by the one side, an unacceptable element of sectarianism exists - particularly if those policemen are influencing the British Army to subject individuals to selective attention at checkpoints.

9. The enquiry team received two Sinn Fein Councillors, Caoimhghin O Caolain and Paul Corrigan. Mr. Crowley considered it a wiser course to receive them and accept their statements of harassment of McAnespie. To refuse to receive them would, he believes, have generated adverse publicity indicative of selectivity and would probably have created an element of doubt as to the sincerity of the approach to the enquiry.

10. Mr Crowley states that he believes that the decision to set up the enquiry was a good one. On his arrival in Monaghan he gathered that emotions and tension were very high in the Aughnacloy area and adjoining areas of Co. Monaghan. The setting up of the enquiry helped, he believes, to defuse those emotions and relieve the tension by giving the people an opportunity to come forward and tell what hey knew and to air their grievances. The decision to have a second postmortem examination was also very well received he says, and confirmed in the minds of people the sincerity of the approach of the enquiry.

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Summary of findings of Dr. Harbison's postmortem report

11. Dr. Harbison's findings are based on his examination of the exhumed body of Aidan McAnespie and his inspection of two items that were in the posession of Dr. Derek Carson, Northern Ireland Deputy State Pathologist - a portion of the breastbone and adjacent ribcage which had been removed by the latter during the original post-mortem in Northern Ireland and an album of RUC photographs of the body.

12. Dr. Harbison concludes that:

(a) Aidan McAnespie died from shock and internal haemorrhage, as a result of a bullet wound in his right lung.

(b) The bullet which struck him did so in the back and exited from the frong of his chest just below the right collar-bone. This 'inescapable conclusion" is based on the bone and cartilage fragmentation patterns in the back and front of the ribcage respectively. A bullet could not have passed through the opening in the front ribcage from front to back but only from back to front.

(c) Given the direction of bullet travel from back to front, the vertical slit-like skin entry wound in the back in the shape of a bullet "sideways-on", and the steeply rising trajectory of the bullet in the body (over 50° above the horizontal), there is little alternative explanation for his injuries than that of a bullet ricochetting off the ground a very short distance behind him and entering his chest on the upwards rebound, while tumbling in flight. This presumes that the deceased was walking along in

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the normal erect position. Had he been stooping and hit directly without ricochet, he would have received a normal small round or oval entry wound, not the "sideways-on" wound found.

An alternative explanation might have been a bullet in unstable flight at the beginning or end of its trajectory, i.e. in the first few yards or at a range of over a mile. However, the range was a few hundred yards, i.e. when the bullet would have been in stable flight.

(d) The lung damage was somewhat less than might have been expected from a high velocity bullet. This lesser degree of damage supports the ricochet interpretation since the bullet would have lost much of its velocity in striking the ground first.

13. At the time of his examination of the body on 28 January 1988, Dr. Harbison was faced with conflicting pathological evidence as to whether the bullet had entered the body front-to-back or back-to-front. He indicated his findings at that stage to the representatives of the McAnespie family as being inconclusive. When the portion of the breastbone and ribcage, together with the R.U.C. photographs, became available to him he was able to come to a conclusion. Dr. Harbison has indicated orally that he was able to reach a definitive conclusion because the breastbone/ribcage proved to be a crucial item of evidence - it was not surprising that Dr. Carson removed it because it was so vital.

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Disclosure/publication of contents of Mr. Crowley's Report

14. When Deputy Commissioner Crowley's enquiry was set up it was indicated to him that the Government wished him to approach the matter on the basis that neither the fact that any person gave evidence to the enquiry nor the contents of any statement given would be disclosed to any quarter other than the Governemnt, except with the consent of the person concerned. In his report Mr. Crowley strongly requests confidentiality in the matter of the statements he received from witnesses (which are appended to his report). Most of those who presented themselves made it quite clear to him that they would not talk if their statements or identity were to be made known to the R.U.C. for fear that this might result in harassment by the Security Forces in Northern Ireland.

15. Mr. Crowley also stresses the absolute necessity for confidentiality in the matter of the main body of his report where the release of any of it would lead to the identity of persons who made statements being disclosed or where aspects of it could be attributed to the residents of the Aughnacloy area. It should be possible, however, to draw up a statement which would set out the main findings of the report in general terms, without revealing either directly or by implication the identity of any witnesses.

16. Some of the findings ought not to be revealed for the present, even in such a "sanitised" statement. The killing of Aidan McAnespie is now sub judice in the North and nothing should be disclosed from Mr. Crowley's report at this stage which might prejudice the fair trial of the British soldier who is facing charges. For example, it would

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not be proper to publish Mr. Crowley's statement that he would find it difficult to accept that the soldier's fingers slipped on the trigger when cleaning the gun.

17. It is very likely that the British will press for the report to be made available to them. The Secretary of State for Northern Ireland indicated around the time the enquiry was instituted that they would be doing this and that they would hope that the contents of any statements received would be provided to the R.U.C. to assist in the investigation of the killing. There can be no question of this, of course. The most that can be provided to the British is a "sanitised" general statement of the kind referred to above, with perhaps some further details which would not reveal the identity of any witness.

Disclosure/publication of Dr. Harbison's post-mortem report

18. Dr. Harbison's post-mortem was undertaken in the first place at the request of the McAnespie family and it was envisaged all along that a copy of his report on the post-mortem would be made available to the family. The only question is whether this should be delayed until after the criminal proceedings in the North are out of the way. There does not seem to be any good reason for such a delay since the report concurs with the findings of the original post-mortem conducted in the North and it is difficult to see how there could be any question of prejudice to the trial as a result of Dr. Harbison's report being given to the family.

19. The position is less clearcut as regards publication of the post-mortem report. Deputy Commissioner Crowley's report indicates that he was requested to convey to the Government that the McAnespie family would

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be very disappointed if the post-mortem report was "turned over to the R.U.C.", that they did not wish the post-mortem report to be made public and they would wish to be consulted before any decision might be made to make it public.

20. Strictly speaking the post-mortem report would appear to be a public document. The exhumation was ordered under the Coroners Act and the post mortem examination would appear to have been made in pursuance of that Act. Section 29 of the Act provides that every report of a post-mortem made in pursuance of the Act will be preserved by the coroner and that a coroner shall forward a copy of any document preserved by him under the section to every applicant therefor. It might be argued that, while the exhumation was ordered under the Act, the post-mortem was not actually conducted in pursuance of the Act but simply at the request of the family. Given the terms of the Act, however, there are formidable difficulties in the way of such an argument.

21. It may be necessary to obtain definitive legal advice on this matter if some member of the public (say, a journalist) seeks to invoke the terms of the Act in order to obtain a copy of the post-mortem report. For the present, the best course would seem to be not to publish the report but to make the main findings (i.e. back-to-front entry of the bullet and ricochet) known publicly. The family may object to this course but any such objection might be answered by saying that the post mortem examination, while requested by the family, was never a purely private matter in as much as it required the intervention of the Government and the participation of State agencies, and the public interest requires that at least the main findings be made public.

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22. If an attempt were to be made by representatives of the family to discredit the post-mortem report by publicising some of the details of it and pointing to an apparent change of mind on Dr. Harbison's part since the time when he conducted his actual examination of the body, it might become necessary to publish the report in full in order to vindicate its scientific basis. It would seem that the terms of the Coroners Act could be relied upon in that event.

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AUGHNACLOY SHOOTING

BACKGROUND NOTE

1. At 2.50 p.m. on Sunday, 21 February, Mr. Aidan McAnespie (23) of Aughnacloy, Co Tyrone, was shot dead at Monaghan Road, Aughnacloy, at a point described in the preliminary Garda report as 600 metres north of the Monaghan/Tyrone border and 400 metres south of the British Army checkpoint. The dead man had just walked south through the checkpoint on his way to a GAA football game in a field close to the border. It is clear that he was shot from the British Army Observation Sanger just north of the checkpoint. Mr. McAnespie came from a well-known local republican family. The Gardai describe him and three brothers as listed and active members of the IRA. His three brothers have resided in Co Monaghan since June 1981. They are wanted for questioning by the RUC in connection with the attempted murder of Samuel Bush, a part-time member of the UDR at that time. Both Sinn Féin and the IRA have denied that Aidan McAnespie was a member of either organisation.

2. We immediately expressed concern and sought a full report on this incident through the Secretariat.

3. The initial explanation given in the Secretariat is that the soldier involved was being replaced on guard duty and was clearing his weapon of ammunition when he discharged three rounds accidentally, one of which ricocheted off the road killing Mr. McAnespie. The soldier was immediately taken off duty and placed in military custody pending the outcome of an investigation by the RUC. The British Army have publicly expressed "deep regret".

4. Local reaction has been very strong. The local SDLP Councillor, Anthony McGonnell, described the incident to us as "a case of cold-blooded

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murder". He repeated his view on RTE Radio (Morning Ireland). Mr. McAnespie works in a poultry factory in Monaghan town and crossed the border frequently. He is reported to have been subjected to continual harassment at the Aughnacloy checkpoint, presumably because of his Sinn Fein/IRA connections. For this reason, local people feel that the victim was targetted deliberately by the British Army. Their view is reinforced by reports that the soldier in question was not dressed in Army uniform, but rather in a tracksuit which has caused speculation of SAS involvement. The fact that the RUC did not go near the body until 10 or 15 minutes after the shooting is also considered by locals as evidence of a deliberate shooting.

5. We await more detailed information and explanation from the British side and of course the outcome of the RUC and Garda investigations, but there seem to be three possibile reasons for the shooting.

A. The shooting may been deliberate and premeditated. It seems extraordinary, however, that a soldier would deliberately shoot an unarmed man without any element of provocative behaviour on his part (which the British confirm), by use of a machine gun at a distance of some 400 metres and in the presence of a crowd of people going to a Sunday football match. The RUC and one soldier at the checkpoint reacted immediately by running to the Sanger but may have taken no further action in the belief that there had been no casualty. (In the event of the accidental firing of a machine gun, it is difficult to establish where the rounds have gone.) The tracksuit may be explained by the soldier changing into casual clothes on going off duty.

B. The shooting may have been entirely accidental.

C. The soldier who fired may have been play-acting with his weapon (i.e. playing "chicken"). Locals report pointing of the weapon before the shots were fired.

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Whatever the reasons, there is cause for deep concern. Even if the incident was an entire accident, people can reasonably point out that they have expressed anxiety about the possibility of just such an accident (this anxiety was expressed recently to Minister Wilson by the parents and school authorities at Cloughoge primary school, near Newry).

6. The Government issued the following statement on Monday, February 22nd:

> "At the request of the Government, the Garda Commissioner today appointed Deputy Commissioner Eugene Crowley to institute an inquiry immediately into the fatal shooting of Aidan McAnespie at Aughnacloy on 21 February, and the circumstances surrounding the fatality. For this purpose he will take statements and obtain information from all persons able and willing to assist. A report on the findings of the inquiry will be provided to the Government at the earliest opportunity".

7. This action has been welcomed by the dead man's family who have urged potential witnesses to assist the inquiry and "not to turn to the RUC". The Secretary of State was low-key in his public reaction to the effect "that he had been informed of the Garda inquiry and he asked that any evidence obtained south of the border be made available to the RUC".

8. Given the strong local feeling that has been aroused, the lack of confidence in the RUC especially in the wake of the Stalker/Sampson affair and the fact that the incident occurred near the border and has cross-border elements (the football match, McAnespie's job in Monaghan), it is reasonable that the Gardai should also investigate.

Declan O'Donovan,
23 February 1988.

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Text of G.I.S. Statement.

The Government have noted with surprise and deep concern the decision of the prosecuting authorities in Northern Ireland not to proceed with the criminal charge of manslaughter previously preferred against a soldier of the British Army in connection with the fatal shooting of Aidan McAnespie on the 21 February, 1988. The Government have been given no indication of the reasons for this decision.

The Government view this latest decision against the background of a number of other developments in this area and in particular the decision taken last January that certain members of the RUC should not be prosecuted for criminal offences "in the public interest".

The decision announced today must affect public confidence in the rule of law in Northern Ireland.

Enquiries are being made by the Government from the British authorities concerning the circumstances of this decision which could have implications for the legal arrangements existing between the two jurisdictions. In the light of such enquiries the Government will be pursuing the matter further with the British Government.

26th September, 1988.

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