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TO : Gary Ansbro/Fergal Mythen
Anglo Irish Division

33. H

FROM: Val O'Donnell

Copied directly to B Callaghan, DoJELR

SUBJECT: Clegg Judgement

Further to Paul Hickey's report Sfax 80 of 31 January, a copy of the full judgement of the Court of Appeal in the above case, and a summary of the judgement, have now come to hand . A copy of the summary is attached and the full judgement is being transmitted separately per schedule.

Mr Griffiths
Not passed on to the
Taoiseach.
9.2.2000.

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THE QUEEN v LEE WILLIAM CLEGG

Summary of Judgment of Court of Appeal

The appeal was against the conviction on 12 March 1999 of Lee William Clegg on his second trial in Belfast Crown Court before Kerr J sitting without a jury, when he was found guilty of attempting to wound Martin Peake with intent to do him grievous bodily harm. Peake was the driver of a car containing three joyriders on which a group of soldiers from the 3rd Battalion of the Parachute Regiment fired on the night of 30 September 1990 at Glen Road, Belfast. In the incident Peake and his back seat passenger Karen Reilly sustained fatal injuries and the front seat passenger Markievicz Gorman was also injured.

On the first trial, held in 1993 before Campbell J sitting without a jury, the judge convicted Clegg of the murder of Karen Reilly and of attempting to wound Peake with intent to do him grievous bodily harm, but acquitted him of attempting to murder Peake, perverting the course of public justice and attempting to obstruct a constable in the course of his duty. Clegg's appeals against the convictions were dismissed. Subsequently the Secretary of State referred the case again to the Court of Appeal, which heard fresh forensic evidence and ordered a retrial on the counts on which Clegg had been convicted. On the retrial he was found not guilty of murder, but guilty of the attempted wounding of Martin Peake.

It was proved that Clegg had fired four shots from his rifle in the incident and that the bullet which caused Karen Reilly's death had been fired from his rifle. Clegg maintained, however, that his shots were all fired before the car passed his position and that they were fired to protect his colleague Private Aindow, whom he believed to be

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endangered by the car being driven at him. Campbell J held in the first trial that his first three shots had been fired before the car passed him and that it had not been established beyond reasonable doubt that he was unjustified in firing. He found him guilty of murder because he held that it had been proved that Clegg had fired the shot which killed Karen Reilly from behind the car after it had passed his position and that he was unjustified in firing at that stage.

Kerr J held in the retrial, after considering very substantial fresh forensic evidence, that he was not satisfied beyond reasonable doubt that Clegg had fired the shot which killed Miss Reilly from behind the car after it had passed him. It remained possible that it was fired before it passed him. He held, as had Campbell J on the first trial, that if the fatal bullet was fired then, it was reasonably possible that he perceived himself or his colleagues to be in imminent danger. It therefore had not been proved by the prosecution that he was unjustified in firing before the car had passed his position. He accordingly found him not guilty of the murder of Karen Reilly.

The judge went on to hold, however, that Clegg had fired one shot from behind the car, although it could not be proved what, if anything, it had struck. He concluded therefore that he fired this shot in an attempt to hit the driver, and convicted him of attempting to wound him.

The Court of Appeal held as follows:

1. Campbell J in effect held in the first trial that Clegg was (a) not guilty of murder or attempted wounding in firing his first three shots (b) not guilty of perverting the course of justice, because he may have thought that a state of facts existed which justified him in shooting at the driver as the car approached. Because of the rule against double jeopardy it was not permissible for the prosecution in the second trial to seek to have him found

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guilty of attempted wounding when he fired those three shots. It may, however, have been permissible, because of the introduction of fresh evidence, for the prosecution, in order to throw doubt on the credibility of Clegg's evidence concerning his firing of the fourth shot, to lead evidence or to put matters to Clegg and his witnesses which contradicted the case that he had made on the first trial concerning those shots, viz that he thought that Aindow was in danger of being struck by the car. The court did not rule finally on the latter point in view of its eventual conclusion on the facts.

2. That factual conclusion was that it could not feel satisfied that the evidence, which was that of Constable Gibson alone, was sufficient to establish beyond reasonable doubt that Clegg had himself fired after the car when it had passed his position. Some soldiers certainly fired at that time, and the constable could see flashes coming from their weapons. He could not tell, however, from which particular weapons the flashes were coming and could not say whether Clegg had fired at that time.

3. When counsel for the prosecution opened the case at the second trial he based the charge of attempted wounding solely on the first three shots. His case about the fourth shot was that it hit the car from behind and killed Karen Reilly. He did not attempt to make an alternative case that if this was not proved, Clegg had fired his fourth shot after the car with unknown result, which was an attempt to wound the driver. The defence did not take any steps to rebut such a possible case, which it would have done if it had appeared to be a live issue. When Clegg was convicted on that basis the defence was left at a significant disadvantage.

4. On these two grounds, the lack of firm evidence and the disadvantage to the defence, the court held that it was unable to regard the conviction of attempted wounding of Martin Peake as safe and set it aside.

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The Lord Chief Justice ended his judgment with the following statement:

"We think it appropriate to conclude this judgment by issuing a reminder that the function of trial judges and appellate courts is to apply the rigorous and demanding standard of proof beyond reasonable doubt in determining the criminal responsibility of a defendant. That standard must remain immutable in respect of every defendant in every walk of life and every situation. Suspicion, however strong, cannot be accepted as proof. The highly discreditable behaviour of which some soldiers were undoubtedly guilty on the night in question cannot be permitted to influence findings of fact which have to be properly based on relevant evidence. Finally, sympathy for the families of Karen Reilly and Martin Peake in their tragic loss cannot be allowed to deflect a court from reaching a decision based on the law and the facts proved in evidence. It has been our task to apply the standards of the criminal law to the case before us, an anxious and demanding task in all the circumstances, and our decision is based on that alone."

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