

612/92



FROM: N P PERRY
Security Policy and Operations Division
8 January 1993

- cc PS/Secretary of State (B&L) - B
- PS/PUS (B&L) - B
- PS/Mr Fell - B
- Mr Ledlie - B
- Mr Steele - B
- Mr Wood - B
- Mr Marsh
- Mr Leach
- Mrs Collins
- Mr Brooker - B
- Mr McCaffrey - B

ASST *in m 33211*
SEC 12 JAN 1993
CENT SEC

UNDER/ 244/1
SEC
11 JAN 1993
CENT SEC

Mr Wiggins
for file
Dr
in report 8/1/93
Mr J O
Mr Murphy

PS/Mr Mates (B&L) - B

FORTHCOMING INQUEST INTO DEATH OF SEAMUS MCELWAIN

As the Minister may be aware, the inquest into the death of Seamus McElwain, a PIRA terrorist killed by the security forces in Co Fermanagh in 1986, is due to open in Enniskillen on Monday 11 January.

2. The inquest is the first involving special forces for some years, and is likely to attract some media interest. The coroner will be Mr Leckey, and there will be two military witnesses. By law, other soldiers who were present and fired shots which may have caused the death cannot be compelled to give evidence.

Background

3. McElwain was shot dead by an Army patrol on 26 April 1986, near Rosslea, Co Fermanagh. He was a well-known PIRA member who had been convicted of murder, and who had broken out of the Maze prison in 1983.

4. A command wire IED had been discovered earlier in the day in a culvert under the road, apparently placed by the IRA with the aim of murdering members of the security forces. Soldiers were tasked to observe the intended firing point. In the subsequent incident, McElwain was shot dead. A second terrorist, Sean Lynch, was arrested nearby, and found to have been wounded. He was subsequently convicted of attempted murder and sentenced to 25 years' imprisonment. Two rifles were recovered from the scene of the incident; they were found to have been used in previous murders and terrorist attacks. A firing pack was also found.

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Other Forthcoming Inquests

5. An outcome in the appeal on the issues which have halted the inquest into the deaths of McKerr, Toman and Burns, shot by the police in 1982, is expected later this month. (It is possible that the same issues - selection of the jury and access to defence documents - will be raised at the McElwain inquest also.) Other forthcoming inquests with a security force dimension include Gough (PIRA member shot in Londonderry - due to begin 19 January); McAnespie (Sinn Fein member shot by mistake in Co Tyrone - due to take place in February/March); and McNeill, Hale and Thompson (three armed robbers shot in Belfast in 1990 - possibly beginning in March).

Lines to Take

6. Lines to take on the McElwain inquest are:

- No comment should be made on the incident itself (including the involvement or otherwise of special forces), which is still sub judice.
- [Lethal force: general] The roles under which policemen and soldiers may open fire in Northern Ireland are fully consistent with the principles of minimum force and the protection of life. Every shooting incident involving a member of the security forces is fully investigated; it is for the independent Director of Public Prosecutions to decide whether a prosecution should result. Members of the security forces are subject to the same law as everyone else, as well as internal disciplinary procedures.
- [Inquest procedures] These are a matter for the Court Service and the Lord Chancellor's Office. As in England and Wales, inquests are fact-finding inquiries and not proxy trials.

(Signed)

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