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*no longer necessary* *One page summary* *SEC 2/2/1*  
INQUESTS ON THE "SHOOT TO KILL" VICTIMS, ARMAGH, 1982

There were reports this week that the Belfast Coroner, James Elliot, will hold an Inquest in November into 3 of the shoot to kill victims (McKerr, Burns and Toman) shot dead near Lurgan on 11 November, 1982. This will be the first Inquest to be held into any of the series of three shooting incidents which resulted in six deaths in Armagh in 1982 and which were subject to investigation by the Stalker/Sampson Inquiry and will provide the first opportunity for a public airing of the highly controversial circumstances surrounding these killings. There are no indications yet as to when the other two Inquests into the other victims of the Armagh killings (Grew and Carroll; and Michael Tighe) will be held though it is reasonable to assume that these two Inquests are unlikely to be much further delayed.

The holding of Inquests into these deaths has been the subject of considerable controversy over the years. In June 1984, the then Armagh Coroner, Gerry Curran, announced that Inquests would be held in September into the deaths of McKerr, Burns and Toman; and into the deaths of Grew and Carroll. However, in August he resigned citing "certain grave irregularities" in the police files of Grew and Carroll. He was replaced as Armagh Coroner by his deputy, James Rogers, who subsequently withdrew from presiding over the Inquests citing "professional commitments." He in turn was replaced in August 1984 by the Fermanagh and Omagh Coroner, Rainey Hanna. In February of this year the Lord Chancellor's Office announced that owing to the illness of Mr. Hanna, he was being replaced by Mr. James Elliot, the Belfast Coroner.

The conduct of Inquests in Northern Ireland is subject to the Coroners (Northern Ireland) Act 1959 and the Coroners Rules 1953, as amended in 1980, and contain the following salient features -viz-

Verdict: The Coroners Act provides that the verdict will "set forth, so far as such particulars have been proved to them, who the deceased person was and how, when and where he came to his death". Any verdict therefore will avoid any question of civil or criminal liability. Thus the legislation in Northern Ireland differs in a fundamental respect from that pertaining in Britain (or indeed Gibraltar) where a Jury, in addition to determining how the deceased met his death, may also make a finding as to the cause of death. (However, it should be noted that our own Coroners Act, 1962, contains broadly similar provisions as the Northern Ireland legislation regarding the limited scope of verdicts open to an Inquest Jury.)

Jury: The existing legislation provides that a Jury will be summoned in certain defined cases. However, such defined cases in the legislation do not appear to encompass the Armagh shootings and, in this case, the question of whether or not a jury will be summoned appears to be left to the Coroners' discretion. (It may be noteworthy that a Jury was summoned for the Inquest earlier this year into the shooting by the SAS in November 1985, of 3 IRA men in Strabane - Charles Breslin and Michael and David Devine.) Should a Jury be summoned, the legislation in Northern Ireland provides that the local RUC District Inspector shall summon a sufficient number of persons to attend and be sworn as jurors. An inquest jury will be composed of between 7 and 11 persons.

Witnesses to be summoned: The legislation leaves to the Coroners' discretion, the question as to which witnesses are to be summoned, though this "shall not prevent a person who has not been summoned from giving evidence at an Inquest". ( There is some media speculation that Lawyers for the families may attempt to have both John Stalker and Sir Jack Hermon called to give evidence.) However, on past performance, it is

unlikely that either will be called and also unlikely that the RUC men involved in the shootings will be called to give evidence. In the case of the Inquest earlier this year into the Breslin-Devines killings, the Derry Coroner (Ronald O'Doherty) did not call the SAS men involved to give evidence but instead was prepared to accept their written statements as evidence. A case was brought to the Belfast High Court on 9 September on behalf of the Devine family requesting a judicial review of the conduct of the Inquest on a number of points, including the Coroner's decision not to call the SAS men as witnesses. Mr. Justice Carswell upheld the decision of the Coroner and dismissed the case. (It would not be unreasonable to speculate that the fact that a decision now appears to have been made to hold Inquests on the victims of the Armagh shootings in 1982 may well be related to the outcome of that recent case.)

Overall therefore, given that these Inquests will provide the only opportunity for a public airing of the controversial issues involved in the Stalker Sampson Inquiry, their conduct and more particularly, the conduct of the Coroner, James Elliot will be crucial. However, given the very limited scope of inquiry available to Coroners' Inquests in Northern Ireland, notwithstanding the "independence" or otherwise of the Coroner, it is questionable whether these Inquests will shed much light on the controversial circumstances surrounding these killings. (The only exception in this regard may be the Inquest into the death of Michael Tighe where the question of the whereabouts of the "hayshed tapes" is likely to arise. There have been indications that this issue may have been behind the delay so far in holding this Inquest.)

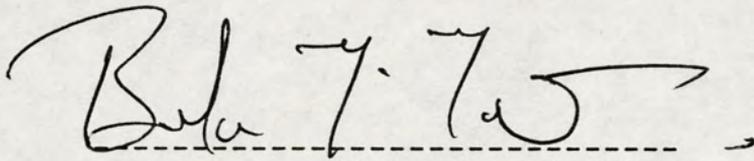
In the light of the fact that we have sent an official observer to attend the Gibraltar Inquest, there may be requests that we be similarly represented at these Inquests. In this

regard, there are a number of obvious consequences were the Government to decide to send an official observer -viz- it could be a cause of some irritation to both the British Government and to the legal establishment in Northern Ireland; it would create a precedent whereby it could prove difficult to resist similar requests in the future. However in addition, there are a number of other considerations which may be relevant -viz-

- In the case of the Gibraltar Inquest, the British Government were quite explicit in stating that the Inquest would be the only public inquiry into the incident. In assessing whether an Inquest would prove adequate in the case of Gibraltar, we were conscious of the clear difference in the scope of Inquests as between Gibraltar and Northern Ireland. No matter what reservations may exist as to the adequacy of an Inquest to get at the full circumstances of the Gibraltar shootings, it is nonetheless the case that an Inquest in Gibraltar can come to a wide range of verdicts including unlawful homicide. The possibility therefore exists that an Inquest in the case of Gibraltar may prove adequate as a public inquiry into the matter. For this reason, the Government in its' statement of 29 April reflected a certain caution or "wait and see" stance in respect of the Gibraltar Inquest when it stated that it "expected the fullest possible information will be provided at the forthcoming Inquest and that any further enquiry or legal action necessary to uphold without fear or favour the rule of law will be instituted."

- By contrast, the situation in relation to the Inquests into the Armagh killings is different owing to the limited scope of Inquests under Northern Ireland legislation. The Inquiry into the Armagh killings has already been held in the form of the Stalker/Sampson Inquiry and the Government has publicly expressed its' deep concern at the manner in which the British Government has handled the results of that Inquiry. The

inquests can not be considered as substituting in some way for the proper handling of the Stalker/Sampson Report. Because of the limitations imposed by legislation in Northern Ireland on Coroner's Inquests, they have not up to now been seen as constituting a "public inquiry" in the proper sense of the term. Official attendance on our part therefore carries the danger of conferring on them a status not warranted in the circumstances and might also be seen as implying that these Inquests can in some way substitute for the proper handling of the Stalker/Sampson Report.

A handwritten signature in dark ink, appearing to read 'Brendan McMahon', written over a horizontal dashed line.

Brendan McMahon  
Anglo- Irish Division  
23 September 1988

cc A/Sec Gallagher  
Mr. O' Donovan