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5 September 1988

Mr. D. O'Donovan
Counsellor
Anglo-Irish Division

Dear Declan

6/9

Gibraltar

I had lunch today with Richard Norton-Taylor, a Guardian journalist who has been following the Gibraltar story closely and who put together the extensive coverage in today's edition in preparation for the opening of the inquest.

Norton-Taylor, who has particularly good contacts in the security and intelligence services, is quite certain that the SAS men will give evidence at the inquest. From recent conversations he believes that they will put forward a defence which will include the following points:

- They were heavily briefed by M15 beforehand about the threat posed by the trio;
- Their initial plan was to try to arrest them on the stretch of land near the airfield and just before the border;
- When the odd-looking aerial on the suspect car was spotted, they concluded that the car contained a bomb;
- They believed that the trio might detonate the bomb by remote control;
- They were under pressure to stop the trio reaching the border (because of extradition difficulties with Spain);
- "Something unexpected" (probably the siren of a police car going off which alerted the trio) forced them to act hastily.

cc: PS / Tairiseadh
PSM, PSS
Mr. Gallagher
Counsellors
Bot.

If pressure is put on them (or perhaps on MOD witnesses who may also be called) to reveal the rules of engagement under which they operated, there will probably be a vague response indicating that these rules were sufficiently flexible to allow the SAS to kill if they believed their own lives or the lives of others were at risk. Although the British Government indicated at the preliminary hearing that the rules of engagement would be made available to the jury at the inquest, Norton-Taylor has the impression now that this will not happen. (It has struck him, however, that, if the Crown gives a vague summary of them or quotes selectively from them, Paddy McGrory could put pressure on the Crown to disclose them in full for the benefit of the jury). Norton-Taylor has heard a suggestion that the rules may permit the word "arrest" to be interpreted by the SAS in a very broad sense, i.e., in the sense in which the late Lord Justice Gibson used it when, in a High Court judgement in 1977, he said that "shooting may be justified as a method of arrest".

It is likely that, if the SAS men or any MOD witnesses are subjected to overly penetrating questioning, John Laws, the Crown Counsel, will object (or advise the person being questioned to object) that the information cannot be divulged on grounds of national security. Laws, who represented the Government in the Spycatcher case, is particularly well-versed in this area of the law and will be endeavouring by this means to limit the parameters of the inquest.

In the event, however, of acute pressure being put on the SAS to account for their actions, the SAS men are likely to "point the finger upwards". If pressed on the subject of the bomb in the car, they will point out that the deduction was made by others. If pressed on the "cock-up" caused by a police siren unexpectedly going off, they will blame the M15 people responsible for liaison with the Gibraltar police. If pressed on the rules of engagement, they will blame those who issued them.

Norton-Taylor is personally very sceptical about the SAS account and believes that the decision to kill rather than arrest may have been taken in a more calculated way, i.e. not because of panic caused by some 'unexpected occurrence' but because the SAS guessed that there might be no incriminating evidence on the trio and, with arrests likely to be followed shortly by their release, decided that they could not let them slip into Spain. He is struck by the fact that, apart from a cursory visual examination, no effort was made to approach the suspect car until some time after the shootings took place.

The British side, according to Norton-Taylor, are deeply concerned at the possibility of an open verdict being returned. He sees Tom King's belated statement about the Drumnakilly incident (i.e. that the security forces acted within the law) in this context. He believes today's leaking of the SAS statement to the media is also part of this strategy. He understands furthermore, that eight M15 officers (who are being termed 'MOD officials') are on hand in Gibraltar for 'guidance' to journalists in the event of embarrassing details emerging in evidence.

Yours sincerely

David Donoghue

David Donoghue
Press and Information Officer