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Public Prosecution Service
Belfast Chambers
Chichester Street
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Dear Sir

**MICHAEL McDAID AND JOHN YOUNG, DECEASED 30 JANUARY 1972 -
BLOODY SUNDAY**

We represent the families of Michael McDaid and John Young, who were shot dead on Bloody Sunday, Derry, 1972.

Michael McDaid was 20 years old and John Young 17, when they were shot behind a rubble barricade on Rossville Street. A third man, William Nash¹ was also shot dead, in close proximity to Michael McDaid and John Young. The deceased were shot within a very short space of time of each other.

Michael McDaid was struck by one bullet. He sustained an entry wound on the left cheek, the bullet exiting through the right side of the back.

John Young was also struck by one bullet. He sustained an entry wound on the left cheek, just to the left of the nose and below the eye, the bullet exiting through the left side of the back.

We would refer you in particular to Chapter 86.157 to Chapter 86.200 (Volume V) of the Report of the Bloody Sunday Inquiry, in which the Tribunal review *inter alia* the medical and scientific evidence, photographic, and the evidence of civilian and media eye-witnesses concerning Michael McDaid's death.

We would also refer you to Chapter 86.244 to Chapter 86.364 (Volume V) of the Report of the Bloody Sunday Inquiry, in which the Tribunal review *inter alia* the medical and scientific evidence, photographic, and the evidence of civilian and media eye-witnesses concerning John Young's death.

¹ We do not represent the family of William Nash

As a consequence of the close proximity in time and area of the shootings of Michael McDaid, John Young and William Nash, the evidence is further examined at Chapters 86.287 to Chapter 86.364

The area of the Bogside in which the shootings occurred on Bloody Sunday was divided by the Inquiry into five broad areas, known as sectors.

The area of the rubble barricade on Rossville Street, where Michael McDaid and John Young were shot dead is in Sector 3.

The Tribunal have reached the following significant conclusions in relation to the deaths of Michael McDaid and John Young:

1. The Tribunal are sure that William Nash, John Young and Michael McDaid were all shot and fell close together when they were slightly to the west of centre of the rubble barricade and that they were shot in the above order
2. John Young was shot as he went to the aid of William Nash
3. Michael McDaid was shot as he probably went to the aid of William Nash
4. The Tribunal are sure that John Young and Michael McDaid were facing north in the direction of the soldiers who were further north along Rossville Street when they were shot and were shot by one or more of these soldiers
5. The Tribunal are sure that none of the casualties at the rubble barricade was armed with any form of lethal weapon
6. The Tribunal are sure there were no additional casualties at the rubble barricade

The Tribunal have concluded that Corporal P shot at least one of Michael McDaid, John Young and William Nash. Lance Corporal J may have been responsible for one of these casualties and they cannot eliminate the possibility that Corporal E was responsible for another.

Corporal P was a member of the Mortar Platoon of Support Company, 1 Para. Lance Corporal J and Corporal E, (who is now deceased) were both members of Anti-Tank Platoon of Support Company, 1 Para.

Corporal P – His first shots

In his first statement to the Royal Military Police, at 2230 hours on 30 January 1972, Corporal P described firing two shots at an alleged nail bomber, whom he claimed had lit a nail bomb, which was fizzing. The alleged nail bomber was at or near the alleyway leading into Columbcille Court. He claimed to have struck the ground with his first shot and struck the man in the chest with his second shot. **Corporal P alleged that a crowd removed the man's body.**

The Tribunal are certain that the first fatality in Sector 3 was Michael Kelly, and that he was shot by Lance Corporal F, who at the time that Corporal P fired the aforementioned two shots, had not yet reached the position at Kells Walk, from where he shot Michael Kelly.

The Tribunal accordingly **reject** Corporal P's account of shooting at a nail bomber, and relying upon the evidence of three civilian witnesses and a priest², conclude that Corporal P fired his first two shots from the waist or hip over the heads of the crowd on Rossville Street.

The Tribunal also conclude that Corporal P **made up** the accounts of shooting a nail bomber in order to conceal this firing. The Tribunal can find no justification for this use of his weapon, fired in clear contravention of the provisions of the Yellow Card.

The **false** accounts that Corporal P gave of shooting at a nail bomber mean that the Tribunal find it difficult to rely on the accounts he gave of his later shots.³

Corporal P – Shots at the Rubble Barricade

In his first statement to the RMP, after his explanation for shooting at an alleged nail bomber, which the Tribunal reject, Corporal P claimed that he advanced towards the rubble barricade and came under fire, possibly from a pistol. He claimed that two bullets struck the wall above his head.

Corporal P claimed that he lay on the ground, and then witnessed a man get up from behind the barricade with what appeared to be a pistol in his hand, pointing it towards the general direction of the troops.

Corporal P claimed to have fired four aimed rounds at the man, the first of which struck the barricade, and the other three appeared to hit the man in the body. Corporal P claimed to have seen a group of people run towards the body and some of them bent down and picked something up, which he assumes was the gun.

He then claims to have fired a further five rounds over the heads of the rioters to attempt to disperse them as he was making his way to his vehicle (Sergeant O's APC) which was by now near the northern end of Block 1 of the Rossville Flats.

In a second RMP statement timed at 1450 hours on 1 February 1972, Corporal P changed his account to state that he fired only three rounds over the heads of the rioters, and not five as he had previously stated. He stated that during the course of the afternoon on 30 January 1972, he fired a total of nine rounds.

In his statement provided for the purposes of the Widgery Inquiry, Corporal P added that the gunman he had witnessed at the rubble barricade had in fact fired a number of shots, something which he had not told the RMP.

The Tribunal have reached the following conclusions in relation to Corporal P.

1. The Tribunal reject Corporal P's written evidence to it, that he can recollect very little about Bloody Sunday

² Brendan Carlin, Liam Mailey, Eamon Melaugh and Fr Thomas O'Gara – see Chapter 73.19-73.27

³ Chapter 73.28

2. The Tribunal reject Corporal P's account of firing two shots at a nail bomber; these shots were probably fired over the heads of the crowd, and were probably fired from the waist or hip
3. The Tribunal reject Corporal P's account of firing over the heads of a crowd that was advancing over the Rubble Barricade
4. There is no evidence to support the suggestion that there was any hostile movement of the crowd at the rubble barricade at this stage
5. On the contrary, at this time people had been killed behind the rubble barricade, and all others had fled, save for Alex Nash who had gone to his son William, whose body was behind the rubble barricade with Michael McDaid and John Young
6. There is no evidence to support Corporal P's various accounts of a man with a pistol at the rubble barricade
7. Such a suggestion that a man would get up with a pistol in full view of a considerable number of soldiers, let alone proceeding to fire a number of shots, is, in the Tribunal's view, simply not credible
8. It seems to the Tribunal highly unlikely that, in view of the fact that Corporal P must have known that people had been killed at the rubble barricade, that he would have invented an account of firing at that barricade. Accordingly the Tribunal conclude that Corporal P did fire at least four rounds at the rubble barricade, but lied about his target, knowing that he had no justification for what he did.
9. It is possible that Corporal P fired more than four shots in this direction, since the Tribunal do not believe his account of later firing over the head of a crowd, which in the Tribunal's view, did not exist.
10. There is no evidence to support Corporal P's evidence as to where he was when he fired the subsequent shots, nor indeed as to when he did so. It is therefore possible that some of these were fired from or near the low walls of the Kells Walk ramp, and may have been fired at an earlier stage than Corporal P was prepared to admit

Lance Corporal J

Lance Corporal J was a member of the Anti Tank Platoon. In his first statement to the Royal Military Police timed at 1515 hours on 31 January 1972, he stated that as he advanced along Rossville Street, he could hear shots, which sounded like automatic shots, coming from the Rossville Flats.

As he and his colleagues advanced along Rossville Street, near to Columbcille Court, they came under fire and heavy stoning from groups of young persons, mostly male youths, located in the Glenfada Park area.

As he reached a location about 100 metres from the entrance of Glenfada Park, he could see the barricade. Shots were being fired at troops from gunmen behind the barricade.

Lance Corporal J said that he saw a youth. In his hand, in the throwing position, he saw an object which he could clearly see was smoking. He fired one aimed shot and observed the shot strike the top of the barricade and the youth then ducked behind the barricade. He did not think that he had hit him.

Lance Corporal J later gave an account that he moved south along Rossville Street, and from the wall of Glenfada Park North ramp fired another shot at a man at the southern corner of Block 1 of the Rossville Flats who was holding a cylindrical fizzing or smoking object, but again did not think that he had hit him.

The Tribunal have reached the following conclusions in relation to Lance Corporal J:

1. The Tribunal do not believe Lance Corporal J when he professed in his oral evidence to the Inquiry that he had virtually no recollection of the events of the day⁴
2. The Tribunal reject the account of Lance Corporal J of witnessing one nail bomb explode before the incident in which he fired at the alleged nail bomber.
3. The Tribunal also reject the account that Lance Corporal J gave of having seen about two more nail bombs explode after that incident, as he moved forward from the direction of Kells Walk
4. Lance Corporal J gave accounts of other matters which the Tribunal consider to have been knowingly false⁵
5. As a result of having given knowingly false evidence, the Tribunal consider that they should not accept Lance Corporal J's claim that he fired at a nail bomber behind the rubble barricade unless other evidence supports it. No such evidence exists.
6. The Tribunal adopt a similar view of Lance Corporal J's evidence of the presence of a nail bomber at the southern corner of Block 1 of the Rossville Flats. There is no evidence from any other source to support this claim and it is the Tribunal's view that there was no such nail bomber.
7. The Tribunal have found no evidence to suggest that Lance Corporal J fired more than one shot at the Rubble Barricade and it is possible that that shot struck and fatally wounded Michael McDaid or John Young or William Nash.
8. The Tribunal are of the view that there is no doubt that Lance Corporal J lied about gunmen, nail bombers and nail bombs in order to conceal, in the case of both of his shots, the fact that he fired either in the belief that no-one in the area towards which he was firing was posing a threat of causing death or serious injury, or not caring whether or not anyone there was posing such a threat.

Corporal E

Corporal E was a member of the Anti Tank Platoon. He is now deceased.

Corporal E gave an account of firing behind the low wall of the Kells Walk ramp at a man with a pistol, who had fired one shot from a window in the next-to-top floor of Block 1 of the Rossville Flats.

There is no other evidence from any source, other than Corporal E himself, that there was a gunman in the position he had identified, or that he had fired at that position, or that a bullet went it through any window at that position.

⁴ Chapter 85.9

⁵ Chapter 83.9

The Tribunal are of the view that Corporal E lied in a number of important aspects in his 1972 accounts, in particular in describing a petrol bomb smashing and burning in front of the rubble barricade and encountering nail and petrol bombers in Sector 4 before he opened fire there.

The Tribunal do not believe that Corporal E had identified a gunman at a window at Block 1 of the Rossville Flats, or that he believed that he had identified or might have identified a gunman at that position.

In view of the unreliability of his evidence, the Tribunal cannot discount the possibility that Corporal E may have fired in another direction and therefore cannot eliminate the possibility that he was responsible for shooting William Nash or John Young or Michael McDaid, and invented an account of firing up at Block 1 in order to escape responsibility for having shot a man at the rubble barricade either in the belief that no one at the barricade was posing a threat of causing death or serious injury, or not caring whether anyone there was posing such a threat.

In any event, the soldiers were not justified in shooting any of the casualties in Sector 3. In the Tribunal's view, Corporal P, Corporal E and Lance Corporal J fired either in the belief that no one in the areas towards which they were firing was posing a threat of causing death or serious injury, or they fired not caring whether or not anyone there was posing such a threat

The evidence and foregoing conclusions reached by the Tribunal point unmistakably towards the evidential test for a successful prosecution being satisfied concerning the murder of Michael McDaid and John Young by Corporal P and Lance Corporal J on Bloody Sunday.

As set out above the Tribunal concluded that Corporal P shot at least one of Michael McDaid, John Young and William Nash. Whilst Lance Corporal J may have been responsible for one of these casualties and they could not eliminate the possibility that Corporal E was responsible for another.

In light of those conclusions there is sufficient evidence to charge Corporal P with murder. In *R v Rahman & O'rs* [2008] UKHL 45, the House of Lords addressed the issue of joint enterprise, Lord Brown formulated the approach to determining whether an accused had the *men's rea* for murder in the following terms:

"If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture *unless (i) A suddenly produces and uses a weapon of which B knows nothing and which is more lethal than any weapon which B contemplates that A or any other participant may be carrying and (ii) for that reason A's act is to be regarded as fundamentally different from anything foreseen by B.*" (The italicised words are designed to reflect the *English* qualification). □ (68)

Corporal P and Lance Corporal J both fired live rounds over the rubble barricade either in the

belief that no one in the areas towards which they were firing was posing a threat of causing death or serious injury, or they fired not caring whether or not anyone there was posing such a threat. 89.72 John Young and Michael McDaid were shot within a very short time of each other. 86.361 Thus even if more than one soldier was responsible killing John Young and Michael McDaid those soldiers were acting together in firing live rounds from Rossville Street in circumstances where they knew, or did not care, that no one behind the rubble barricade was posing any threat of causing death or serious injury.

Applying Lord Brown's formulation, Soldiers P, J and E fired across the rubble barricade knowing that each and everyone of them might kill or inflict serious injury to those behind the rubble barricade and each continued to participate with the others in the venture. As per Lord Brown, "that will amount to a sufficient mental element" for Corporal P, Lance Corporal J and Corporal E to be guilty of the murder of John Young and Michael McDaid. In those circumstances both Corporal P and Lance Corporal J should be prosecuted for the murder of John Young and Michael McDaid.

In circumstances where the State, by its agents, are responsible for the death of its citizens (in this case, an unarmed man and unarmed youth) by the use of lethal force, clearly the public interest limb for bringing a prosecution has also been met.

In addition, it is clear that the evidential and public interest test is satisfied to prosecute Corporal P and Lance Corporal J for perjury in respect of the untruthful evidence that both gave on oath to the Bloody Sunday Inquiry.

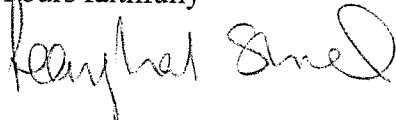
Accordingly, we should be grateful if you would consider the contents of this correspondence, submitted on behalf of the families of Michael McDaid and John Young, in advance of issuing a direction in respect of the prosecution of Corporal P and Lance Corporal J for the murder of Michael McDaid and John Young and for perjury in respect of their sworn evidence.

On behalf of both the McDaid and Young families, we would invite the Public Prosecution Service to prosecute the above mentioned soldiers for the murder of Michael McDaid and John Young, and for perjury in respect of their subsequent conduct before the Tribunal.

In the event that you decide not to prosecute Corporal P and Lance Corporal J, we should be grateful if you would provide your substantive written reasons for your decision.

We await hearing from you by return.

Yours faithfully



P Peter Madden

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