

LOGS MINUTE  
A/79/Gen/4132

22-422

APS/Secretary of State

C.G.S. ....
V.C.G.S. ....
TO SEE

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- PS/Minister of State
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15/7  
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FRAGA

NORTHERN IRELAND CIVIL LITIGATION: Mary McNICHOLL v MOD

In your minute MO19/3/12 of 5 April 1974 you said that the Secretary of State would like to be kept informed of developments over the two soldiers who withdrew from the SAS to join the SRU in Northern Ireland and who were prosecuted in connection with two armed robberies. You will recall that the two soldiers, L/Cpl Simpson and Ranger Tymon, are now serving six-year terms of imprisonment.

2. Claims for compensation were subsequently made against the Ministry of Defence on behalf of the McNicholl family, one of the two households robbed by the men. A Civil Bill against the Ministry of Defence has now been issued in the Coleraine County Court on behalf of Mrs Mary McNicholl alleging assault and battery, and we may expect Civil Bills in due course on behalf of Bernard, Christopher and James McNicholl of that household. The Secretary of State may wish to know what action we propose to take in these cases.

3. Normally, where an injury has been caused by off-duty soldiers the MOD would deny liability and leave the plaintiffs to take action against the individuals if they chose. Equally, in any criminal proceedings where the alleged offence was committed by an off-duty soldier, we would not take responsibility for his legal defence. You will remember that in this case, however, it was decided that Simpson, exceptionally, should be defended at public expense to reduce the risk of disclosure of the SAS/SRU connection and SRU operations. Tymon was assisted through the Legal Aid scheme, and did not need defence at our expense, and it was thought inadvisable in the circumstances to give no assistance to Simpson.

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4. It might therefore be argued that to continue to reduce the risk of disclosure of this information the present action should be settled without a fight. We should, of course, have to treat the other claims arising from these robberies in the same way. The claims are not large - the present Civil Bill claims £300 - so financial factors are not predominant. A very important issue of principle arises, however. It is one thing to pay for an off-duty soldier's defence at a criminal trial but it is quite another thing, in effect, to accept liability for an armed robbery. It would be inferred that the soldiers were acting under orders and considerable interest would be excited about the nature of the Unit they belonged to, and its activities. In this context it is interesting that the Civil Bill is against the MOD rather than the individual ex-soldiers. The plaintiff's solicitors might have done this because they think MOD will settle to avoid possible embarrassment since they presumably know the soldiers were (as was reported at their trial) on "special duties". They may simply be interested in claiming damages for their clients, but if we do settle we shall be very vulnerable should anybody want to make political capital out of this affair.

5. If we defend ourselves in the action, and it goes to court, there is the risk that the two ex-soldiers might be subpoenaed and reveal sensitive information. Public interest in this case may be re-kindled. On the other hand, Simpson and Tymon have never claimed that they were acting under orders nor have they volunteered any sensitive information so far. Both are of course aware of their responsibilities under the Official Secrets Act, and are also aware that disclosure of their Service background may well put their families at risk. Counsel for the plaintiff might cross-examine them on the nature of their work; whether or not he will be allowed to pursue such a line of questioning would depend on the court. In any case, Simpson's and Tymon's information is now rather dated.

6. In conclusion, we consider that the present action against MOD should be defended and that we should handle this case as we would any other, and that Simpson and Tymon must take their chance if proceedings are subsequently initiated against them. To settle this case would place MOD in an untenable position. The Crown Solicitor for Northern Ireland, and HQNI agree. We would deal with any other Civil Bills against MOD in this affair in the same way. We shall be writing to Crown Solicitor, instructing him accordingly. Crown Solicitor has suggested that if Solicitors for the plaintiff realise that we are determined to defend these actions it is possible that they might be withdrawn. If not, we shall have to fight them.

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9 July 1975

Page 2 of 2

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