

**RETURN
TO AN ADDRESS OF THE HONOURABLE
THE HOUSE OF COMMONS
DATED 3 DECEMBER 1992 FOR A REPORT
OF THE INQUIRY INTO THE
CIRCUMSTANCES SURROUNDING
THE CONVICTIONS ARISING
OUT OF THE BOMB ATTACKS
IN GUILDFORD AND WOOLWICH
IN 1974**

**BY
THE RT HON SIR JOHN MAY**

**SECOND REPORT
ON
THE MAGUIRE CASE**

*Ordered by the House of Commons
to be printed 3 December 1992*

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19th November 1992

The Right Honourable Kenneth Clarke QC MP
Secretary of State for the Home Department

The Right Honourable Sir Nicholas Lyell QC MP
Her Majesty's Attorney-General

Gentlemen,

I was appointed on 26th October 1989 by the warrant of your predecessors to inquire into the circumstances leading to and deriving from the trial of Patrick Armstrong, Gerard Conlon, Paul Hill and Carole Richardson on charges arising out of the explosions in public houses in Guildford on 5th October 1974; of Patrick Armstrong and Paul Hill in relation to charges arising out of an explosion in a public house in Woolwich on 7th November 1974; and of Anne and Patrick Maguire, their sons, Vincent and Patrick Maguire, and Patrick Conlon, Patrick O'Neill and Shaun Smyth on charges of possessing explosives and to report.

The convictions of Patrick Armstrong, Gerard Conlon, Paul Hill and Carole Richardson were quashed by the Court of Appeal on 19th October 1989. My consideration of those convictions has been long delayed by the impending prosecution of three police officers involved in the case. At our meeting on 27th July 1992 you endorsed my decision to pursue that part of my inquiry by examination of the extensive written material available, with oral evidence being taken in private, and that work is well under way.

When I was appointed the convictions of the four Maguires and three others still subsisted. In my interim report of 9th July 1990 I concluded that the convictions were unsound for a number of reasons, and recommended that they should be referred to the Court of Appeal under the provisions of the Criminal Appeal Act 1968. These convictions including that of Guiseppe Conlon, who had died in custody in 1980, were so referred on 12th July 1990 and were eventually quashed by the Court of Appeal on 26th June 1991.

I now have pleasure in submitting my second and final report in the Maguire case which includes an examination of the original decision to prosecute and of the handling by the Home Office of representations made over the years.

The Right Honourable Sir John May

**SECOND REPORT ON THE CONVICTIONS ON
4TH MARCH 1976 OF THE MAGUIRE FAMILY AND
OTHERS FOR OFFENCES UNDER SECTION 4 OF THE
EXPLOSIVE SUBSTANCES ACT 1883**

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**SECOND REPORT ON THE CONVICTIONS
ON 4TH MARCH 1976 OF THE MAGUIRE FAMILY
AND OTHERS FOR OFFENCES UNDER SECTION 4
OF THE EXPLOSIVE SUBSTANCES ACT 1883**

1. Introduction

1.1 The circumstances leading to my appointment in October 1989 by the then Home Secretary and Attorney-General and my terms of reference were fully set out in my interim report published on 12th July 1990¹. That report also made it clear why I felt unable to make any progress in my inquiry in relation to the convictions of Patrick Armstrong, Gerard Conlon, Paul Hill and Carole Richardson ("the Guildford Four") on charges arising out of the explosions in public houses in Guildford and Woolwich on 5th October and 7th November 1974 respectively, and only limited progress as regards the prosecution and conviction of members of the Maguire family and others (to whom for convenience I shall again refer as "The Maguire Seven") on charges of possessing explosives. In that report I also expressed my gratitude for the help that I received from my three assessors. They have continued to give me the greatest assistance and I remain grateful for all that they have done. Since the publication of that report, Mrs Clarkson left my secretariat on promotion. She was succeeded by Tim Morris and I have continued to receive from him the same unstinting help and support which I received from his predecessor. In so far as the other members of my secretariat are concerned, I cannot but repeat with gratitude what I said in paragraph 1.10 of my earlier report. As to Counsel, my team has been augmented by Victoria Williams who has been of the greatest help, particularly in relation to the many further documents that I have had to consider for the purposes of this report. In so far as my existing team from the Bar is concerned, that is to say David Clarke QC, Timothy King QC and Ian Burnett, I again repeat what I wrote in my earlier report.

1.2 In my interim report I concluded, on the evidence and documents which were put before me at public hearings in May and June 1990, first, that the Crown could no longer be taken to have proved that the traces on the defendants' hands and upon Mrs Maguire's gloves when tested in December 1974 were traces of nitroglycerine (NG) (paragraph 14.4). Secondly, I concluded that it had been shown before me that the whole scientific basis upon which the Maguires' prosecution was founded had in truth been so vitiated that on this basis alone the Court of Appeal should be invited to set aside the convictions (14.5). Thirdly, I expressed my view that the conduct of the trial could be validly challenged on at least two points on which I elaborated in my earlier report (14.6). Fourthly, I was of the opinion that the possibility of innocent contamination had not been excluded (14.8).

¹ HC556

1.3 For these reasons I recommended that the Home Secretary should refer the case of the Maguire Seven to the Court of Appeal under the provisions of section 17 of the Criminal Appeal Act 1968. The Home Secretary accepted this recommendation and referred the case on 12th July 1990, the day upon which my report was published. In consequence the Maguire Seven were thereafter deemed to be appellants against their original convictions.

1.4. One might have hoped that in all the circumstances the prosecution of such an appeal would have been conducted with considerable dispatch. Unfortunately it was not until August and October 1990 that preliminary grounds of appeal on behalf of the Maguire Seven were filed at the Criminal Appeal Office and these were not perfected until January 1991. The Court of Appeal (Criminal Division) then held a preliminary hearing on 18th April 1991 and ultimately sat to hear the appeal from 7th May to 10th June 1991. The judgment of the Court was delivered on 26th June 1991 allowing the appeals, but only on the limited ground upon which the Director of Public Prosecutions had indicated that he felt unable to support the convictions, namely that at the trial the Crown had not disproved the possibility that the hands of the defendant appellants had been innocently contaminated with traces of NG. My interim report recorded this stance of the Director in paragraph 14.2. The Court of Appeal clearly found itself unable to agree with any of the other conclusions to which I had come in my interim report. Understandably the judgment of the Court was not well received, either by the Maguire Seven or by the many who had been campaigning on their behalf.

1.5 Notwithstanding the patent differences of view between myself and the Court of Appeal on the Maguire case, I do not think that my overall task requires me to analyse the judgment of 26th June 1991 in detail. However, in fairness to all concerned I think it necessary to make three points.

1.6 First, early in their judgment on the substance of the reference and appeal the Court said:

“In our judgment the Crown’s case that all the appellants must have been knowingly handling bulk explosive was highly improbable. But the force of these criticisms in relation to the finding of NG largely, if not entirely, disappears on the hypothesis that there was a primary source of contamination of NG in the house and that some, if not all, of the appellants may have been innocently contaminated by it. We do not know to what extent these arguments were deployed at the trial. If they had been, they should have been sufficient in themselves to cast doubt, not on the findings of NG on the hands, but on the opinion of Mr Elliott and Mr Higgs that the findings were inconsistent with innocent contamination.”

I agree that the Crown’s case of deliberate knowing handling of NG was highly

improbable. It must be remembered that the onus of proof remained on the Crown who had throughout contended against any possible innocent explanation of the findings of explosive traces on the swabs and gloves. Bearing in mind where the onus of proof lies in criminal cases I find it surprising that in 1991 the Court of Appeal were not driven by their finding of high improbability and logic quickly to the conclusion that the convictions were unsafe and unsatisfactory on this ground alone.

1.7 Secondly, I do not find it possible to reconcile the Court of Appeal's dismissal of the appellants' arguments on the inadmissibility of the evidence relating to the 916 samples in the Pollution Survey on the ground that these were covered by the earlier decision of the Court of Appeal, and were thus *res judicata*, with the decision of the House of Lords in *R v Chard* [1984] 1 A.C. 279.

1.8 Thirdly, the Court of Appeal drew the inference that the Defendants must have been advised by their scientist that the PETN issue raised at the end of the trial would not assist them. This inference was drawn from the absence before them of relevant contemporary material from that scientist apart from Exhibit 60, the document which raised PETN. The scientist had, in fact, sent two notes with Exhibit 60 to the Defendants' lawyers at the trial. Those notes were before me in May 1990, as I set out in paragraph 10.1 of my interim report. Had the same material been available to the Court of Appeal, as I believe it should, the inference to which I have referred could not have been drawn.

1.9 In the result I do not find anything in the appeal or judgment to lead me to alter the conclusions which I expressed in my interim report.

1.10 I should here record that since my appointment in this Inquiry it has become apparent that miscarriages of justice have occurred in a number of cases other than the ones with which I am particularly concerned and after references by the Home Secretary to the Court of Appeal a number of convictions in some equally high profile cases have been set aside. This led to the expression both in Parliament and in the media generally of considerable misgivings about the operation of the criminal justice system in England and Wales. In the result, a Royal Commission was appointed under the Chairmanship of Viscount Runciman of Doxford to consider the operation of our criminal justice system. It began work in June 1991 and Lord Runciman hopes to publish a report by the Commission in June 1993. The Commission is of course not considering especially the facts of any particular case, but the more general considerations which I would have addressed in the course of my Inquiry, including the issues listed in Appendix C of my interim report, have now been assumed by the Royal Commission. As I am a member of the Royal Commission I am in a position to pass on to the Chairman and my other colleagues the evidence which I have already and will hereafter receive in relation to the cases of the Guildford Four and the Maguire Seven.

2. Reconsideration of scientific issues

2.1 As I recorded in my interim report, the prosecution case against the Maguire Seven depended on establishing that there was NG on their hands (and gloves found in the Maguires' house) and that its presence was not the result of innocent contamination. In this context the Crown relied on the findings of NG under the fingernails of the male Defendants as proving that they had manipulated a bulk of explosive (the kneading hypothesis). I considered these two contentions, as well as other issues, in some detail in the light of the evidence put before me at the public hearings which I held in May and June 1990 and expressed my conclusions on them in my interim report. In short these were that the tests by the scientists had not been specific for NG and that the handling or kneading hypothesis could not be based on the presence of NG traces beneath fingernails. For these and other reasons I concluded that the convictions were unsound and should be considered by the Court of Appeal.

2.2 One of the matters which led me to my conclusion about the validity of the scientific evidence at the original trial, in particular the kneading hypothesis, was the study carried out in 1977 by Dr Twibell and others of the extent to which NG would transfer to the hands of persons coming into contact with commercial explosives. Mr Higgs, who gave evidence for the Crown at the original trial, was named as a co-author of this study. The results of it were reported in 1982 and I referred to it in paragraph 9.3 of my interim report. There was no submission during the public hearings before me in 1990 that Dr Twibell's results might be misleading or that the conclusions to which they led me were wrong. Indeed it was upon the ground that the kneading hypothesis as put forward at trial could no longer be supported that the Director of Public Prosecutions (DPP) conceded before both me and the Court of Appeal that he could no longer support the convictions because the possibility of innocent contamination had not been excluded.

2.3 Prior to and indeed in the course of my 1990 hearings I had invited RARDE² to be legally represented and to take part in them. Despite strong recommendations by Counsel to the Inquiry and myself, RARDE declined to take this course. However, two of the RARDE scientists who gave evidence at the trial, Mr Higgs and Dr Hayes, were represented and gave evidence before me. In the course of his evidence Mr Higgs conceded that the kneading hypothesis could no longer safely be advanced. This answer, however, followed a line of questions based on the Twibell experiments and must now be read in the light of further evidence provided to me by the West Committee (see paragraphs 3.1-3.16 below).

² RARDE (Royal Armament Research and Development Establishment) is now part of the Defence Research Agency (DRA). I propose to continue to refer to it as RARDE.

2.4 Nevertheless when I told all those concerned that I proposed to hold further public hearings in relation to the Maguire case both RARDE and Mr Higgs asked for leave to be represented before me. I granted these requests. Notwithstanding Mr Higgs' evidence to me in 1990, he and RARDE contended by their representatives at further hearings in September and October 1991 that on a full and proper analysis of the research carried out by Dr Twibell his findings were not only consistent with the kneading hypothesis but even tended to support it. Secondly, they did not accept that Mr Elliott or Mr Higgs advanced the kneading hypothesis at the trial of the Maguire Seven in the absolute terms to which I referred in paragraph 8.1 of my interim report. However, those acting for RARDE conceded that the hypothesis was advanced and relied on at the trial in terms which were too wide: they argued that it was impossible to prove the kneading hypothesis, but that it might be possible to disprove it by a series of properly conducted experiments designed for that purpose. In this connection those acting for RARDE and Mr Higgs further contended that one could not validly draw the conclusions which both Professor Thorburn Burns, who had earlier conducted experiments on behalf of the Inquiry, and I drew from the results of these experiments because of the risk (which they said was apparent from the video recording) that cross-contamination had occurred. They nevertheless fully accepted that the Court of Appeal (Criminal Division) had been correct in allowing the appeal of the Maguire Seven in June 1991 and expressly disavowed any suggestion that the original convictions of the Maguire Seven could be justified.

2.5 It was clearly most unfortunate that RARDE had not been represented at my hearings in 1990 and that neither they nor Mr Higgs had then advanced the arguments which they now belatedly sought to press upon me. However, it would have been wrong and thus unjust of me to dismiss these fresh contentions out of hand. If my earlier criticisms of the scientists were or might have been unjustified then in fairness to those scientists I should re-examine them.

3. Scientific Committee

3.1 I therefore decided to set up a Scientific Committee to advise me further on the disputed issues. I was very fortunate that Professor T S West, now retired but formerly of Birmingham and Aberdeen Universities and of Imperial College, agreed to be its Chairman. The other members were Professor Thorburn Burns; Dr Lloyd, acting for the Conlon family; Dr Caddy, for the surviving members of the Maguire Seven; Dr Marshall for RARDE; Dr Scaplehorn for the Home Office; and Mr Higgs. The Terms of Reference of the Committee, agreed upon by all its members, were:

- “1. To discuss the validity of the kneading assertion of contamination by nitroglycerine-based explosives.
2. In the light of subsequent experience to interpret a migration hypothesis in the context of the Maguire case.
3. To discuss whether conclusions or inferences not hitherto considered may be drawn from the nature, distribution and persistence of the contamination of the Maguire family.
4. To discuss the validity of the finding of nitroglycerine under the fingernails of the six defendants at levels detectable by TLC.
5. To these ends to discuss whether further experimental work may be desirable and feasible on sampling for, contamination by and temporal persistence of nitroglycerine under fingernails.
6. To consider whether any other scientific issues arise which require investigation.
7. To advise Sir John May on what conclusions can be reached as a result of the Scientific Committee’s findings.”

3.2 It is unnecessary for me to repeat here the various matters considered by the West Committee or the tests which they carried out, as these were set out in full in the Committee’s report dated August 1992. The report was formally put in evidence at a public hearing on 14th September 1992, when it was also provided to all interested parties and made available to the press. Final submissions on this report were made on 17th September 1992. I should, however, refer to some of the conclusions of the Committee.

3.3 First, the Committee agreed with the view that the Thorburn Burns experiments could have been invalidated by a process of cross-contamination in which NG placed on hands for the purpose of those experiments could have been transferred under the fingernails in the process of taking samples for analysis. Unless the person taking the samples with a solvent laden swab took

care not to approach the fingernails too closely, the actual process of swabbing could force some NG under the fingernails.

3.4 Secondly, when the West Committee looked at the video record of some of the Thorburn Burns experiments, it appeared that the fingernail sampling materials, comprising in the main a small scraper stick and paper on which the scrapings were caught, could have become contaminated with NG from other parts of the hands transferred, for instance, by the gloves of the operator which were not changed between the process of swabbing the skin of the hands and the process of scraping beneath the fingernails.

3.5 Having reached these conclusions the West Committee's experiments, which were carried out primarily to re-examine the kneading hypothesis and the significance or otherwise of the presence of NG under the fingernails, were carefully designed and agreed by all its members to obviate so far as possible any risks of cross-contamination.

3.6 The Committee's experiments led them to the conclusion that it was improbable that NG would be found under the fingernails of subjects who had washed and dried their hands using NG-contaminated soap and towels some 3-4 hours previously, whereas those who had kneaded NG might well be found to have NG under their fingernails after such an interval. Therefore the results did not disprove the kneading hypothesis as the Thorburn Burns experiments had appeared to do.

3.7 The Committee did not however contend that their results proved the validity of the kneading hypothesis. Their conclusion was contained in paragraph 3.2.22 of their report and was in these terms:

"3.2.22 Although we have found NG in TLC-detectable amounts under the fingernails of six of the eight kneaders and under none of those of the 18 innocent contaminees examined in Strathclyde I and II it is not the Committee's contention that its work validates the kneading hypothesis, ie. that NG can be found only under the fingernails of subjects who have kneaded NG-based explosives. As mentioned in paragraph 3.2.21 such a conclusion cannot be reliably supported on the basis of the limited amount of experimental work we have been able to do on this particular topic in the time available to us and, as indicated above, other possible routes for innocent contamination would require to be assessed and examined experimentally before such a judgement could be made. While the limited amount of work we have been able to undertake supports the hypothesis, there is insufficient scientific evidence at the present time to conclude that paragraph 14.8 of the interim report, in which Sir John recorded his finding on the kneading hypothesis, was incorrect."

I must therefore proceed on the basis that although the kneading hypothesis was not disproved by the Twibell or Thorburn Burns results, it is not a hypothesis which can safely be relied upon. On the other hand, I remain of the view that the Twibell results raised questions about the validity of the kneading hypothesis, questions which are not simply answered by referring to the different swabbing techniques.

3.8 The West Committee went on to consider a number of other scientific aspects of the Maguire case. The original hand test kits had been retained and were examined in the presence of all the members of the Committee. Those that had yielded positive results in 1974 were pooled but kept separate from those which had yielded negative results and each batch was then analysed by modern quantitative methods. These demonstrated the presence of minute amounts of both NG and EGDN in each batch. Because of the lapse of time, the minuteness of the quantities found, and the uncertainty about conditions of storage, the Committee were at pains to stress that no conclusion could safely be drawn from the findings as to the presence of explosives in the kits in 1974.

3.9 The Committee reached certain other conclusions from their re-examination of the original kits, as follows:

“3.6.1 There was no evidence of the presence of ‘substance X’ which might have mimicked the behaviour of NG.

3.6.2 There was no evidence of the presence of the dyestuffs Solvent Yellow 2 and 56³. Had these been present in TLC-detectable amounts in the 1974 swabs their presence would almost certainly have been seen since they are fairly stable and involatile substances.

3.6.3 There was no evidence of the presence of PETN. In view of its high stability and low volatility, detectable traces might have survived had it been there in 1974.”

There is therefore still no evidence of the presence in the hand test kits in 1974 of any substance which might have been confused with NG, such as PETN, dyestuffs or any other ‘substance X’.

3.10 On the issue of the differentiation between NG and PETN which I discussed at length in my interim report, the West Committee has advised me that the two compounds can be distinguished in the course of the relevant TLC procedure if the heating of the TLC plate is carried out at a lower

³The Committee examined the kits for evidence of the presence of such dyestuffs because of its relevance to the case of Judith Ward which had recently been before the Court of Appeal.

temperature than 100°C (the temperature used by Mr Elliott according to his evidence at the trial). Since Mr Elliott did not use PETN as a standard, however, it could not have been excluded on the basis of the analysis carried out in this particular case.

3.11 The Committee then considered and discussed extensively the question of contamination of the samples after they were taken from the Maguire Seven in 1974 and the possible sources of such contamination. On this question there were differences of opinion within the Committee, though there was general agreement that some sources (including deliberate contamination of the samples) could be discounted. Some members believed that accidental contamination was likely to have occurred, raising a number of possible sources and suggesting that the most likely source was contaminated ether in the RARDE laboratory. Other members disagreed.

3.12 The conclusion of the Committee as a whole on this issue is contained in paragraph 4.6 of their report as follows:

“Conclusions on accidental contamination of the Maguire samples in 1974

We have attempted to summarise briefly the reasons for and against thinking that contamination might have arisen from various sources. Opinion varied in the Committee largely because of the absence of incontrovertible data against which to test the various hypotheses we advanced and perhaps because of the different weights given by members to what was available.

The Committee counsels extreme caution over any attempt to translate this speculative review of pros and cons for these contamination hypotheses into actual probabilities of contamination thus to explain the original results. Whilst in respect of a number of possible contamination sources opinion was divided between those Committee members who felt that contamination was likely or highly likely and those who felt that it was neither, those who took the latter view accept that the possibility of contamination cannot be absolutely excluded.”

3.13 After the Committee as a whole had concluded their consideration of the points raised by their terms of reference and their report had been prepared, separate reports by Drs Caddy and Lloyd and by Drs Hiley⁴ and Marshall were provided to me. Drs Caddy and Lloyd developed their argument that accidental contamination of the samples was likely to have occurred, basing it in part on their interpretation of RARDE notebooks and other documents which

⁴ Dr Hiley is a colleague of Dr Marshall at RARDE.

appeared to indicate other instances of contamination at RARDE. Though a number of possible sources of contamination were discussed in their report, the authors suggested contaminated ether as the most likely source. They drew attention to the pattern of the positive findings (set out in tabular form in paragraph 7.1 of my interim report) and carried out experiments which produced results demonstrating a similar pattern.

3.14 In their report Drs Hiley and Marshall dealt in detail with each of the contamination instances referred to by Drs Caddy and Lloyd, contending that none of them bore a close relationship to the Maguire case and that they gave no more than indications of some possibilities for contamination. They went on to emphasise the assumptions which it was necessary to make in order to justify the contaminated ether hypothesis, arguing that some of these assumptions were pure surmise and highly unlikely to be valid. They also criticised the experiments of Drs Caddy and Lloyd, contending that they were designed to produce a pattern of positive and negative results consistent with the results in the Maguire case.

3.15 I am grateful to these four scientists for arguing their respective points of view in this way. The difference between them concerns the degree of probability or improbability of contamination of the samples having occurred. The Committee as a whole has advised me that the possibility cannot be absolutely excluded, and that at this length of time it would in any event be impossible to reach a definitive conclusion that contamination had or had not occurred. I accept this advice. In these circumstances I did not consider it necessary or helpful to hear oral evidence on this topic.

3.16 The further scientific evidence since my interim report has caused me to modify one of the conclusions which I expressed in that report and to draw certain further conclusions:

(a) The kneading hypothesis was not disproved by the Twibell paper nor by the Thorburn Burns report, contrary to my conclusion in section 9 of the interim report; the hypothesis remains unproved, however, and should not have been advanced in unqualified terms at the trial (see paragraphs 7.1 *et seq* below).

(b) The fact that cross-contamination is likely to have occurred between hands and fingernail samples in the course of the Thorburn Burns experiments demonstrates that there is a possibility that some of the positive fingernail findings could have resulted from cross-contamination during the taking of the Maguire samples (without any fault on the sampler's part).

(c) There is a possibility that the positive findings from the samples resulted from accidental contamination of those samples after they were obtained from the Maguire Seven.

4. Further hearings of the Inquiry

4.1 Once the Court of Appeal had delivered judgment in the case of the Maguire Seven, I felt free to investigate two other aspects of their prosecution. First, as they were charged with an offence under the Explosive Substances Act 1883 it was necessary, having regard to section 7 of that Act, to obtain the consent or fiat of the Attorney-General to the prosecution. The case against the Maguire Seven depended almost entirely on the scientific evidence. If, as I found and recorded in my interim report, this was vitiated, then it was clearly desirable for me to investigate the circumstances in which the Attorney-General's fiat had been applied for and granted. Secondly, after the Maguires' convictions in 1976 and until you appointed me to inquire into the circumstances of those convictions, repeated representations were made to the Home Office to the effect that the convictions were suspect and ought to be set aside. I therefore also thought it right to inquire into such representations, when they were made, their substance and content and the way in which they were dealt with by officials in the Home Office. It was at least a matter for consideration why the inquiries which I have been able to make since my appointment and the conclusions to which as a result I came, could not much earlier have been made and arrived at by the Home Office.

4.2 I held public hearings on the first of these two issues, namely the inception of the prosecution, between the 9th and 12th September 1991 and on 9th October 1991. I then sat on 29th October 1991 to hear closing submissions. I held public hearings on the second issue, namely the Home Office phase, between the 23rd September and 7th October 1991 and heard closing submissions on 23rd September 1992. The format of these hearings was different from that which I adopted in 1990 when the convictions of the Maguire Seven still subsisted. By the Autumn of 1991 the convictions of the Maguire Seven had been set aside. The investigations which I then made, different from those a year earlier, were not as to the validity of the Maguire trial. They were into what had or had not been done by others in relation to the two issues to which I referred in the preceding paragraph over the relevant periods. No confrontational scenario was involved. Further, it has always been my desire to conduct my inquiry in public so far as may be practicable and I was well aware that in seeking to receive evidence in public from civil servants, and indeed from Ministers, I was breaking new ground and, it may be, setting a precedent for the future. It was for these reasons and in order primarily to achieve my objective that I altered the nature of the later hearings as I have mentioned. In the latter I did not allow any cross examination of witnesses by anyone other than Counsel to the Inquiry and myself, although counsel appearing on behalf of the various witnesses were permitted to re-examine their clients. Furthermore, those representing interested parties were afforded opportunities to suggest lines of questioning for Counsel to the Inquiry to follow, and many of their suggestions were accepted and acted upon. I am satisfied that by adopting this procedure I did no injustice to anyone nor deprived anyone, in particular the Maguire

Seven, of any rights which they might have expected. I am doubtful whether I would have obtained the co-operation of all concerned that I did had I not adopted this procedure. Although various criticisms of it were expressed in the course of the hearings I am quite satisfied that these had no real substance. I am also wholly satisfied that the information which I obtained and the documents which I saw have enabled me to reach full and valid conclusions about the two issues and to these I now propose to turn.

5. Inception of the prosecution

5.1 As is usually the position in serious cases, the prosecution of the Maguire Seven was one for the DPP to conduct. The procedure was then in 1974/75 and still is that a report from the police force which led the investigation, in this case the Metropolitan Police, was sent to the DPP's office for his consideration. The police report on the Maguire Seven, dated 27th December 1974, was written by Detective Chief Inspector Munday and submitted at the same time both to the DPP and to the Chief Constable of Surrey (because of the obvious interest of the latter in the case of the Maguire Seven). As one would have expected, it went into detail about the circumstances of the arrests and the findings of RARDE scientists based on their TLC test of swabs taken by the police.

5.2 In a submission to me early last year, the Crown Prosecution Service (CPS) described the criteria which the DPP would have adopted in considering whether or not to proceed with the prosecution:

"The first question to be determined was the sufficiency of the evidence. A prosecution should not have been started or continued unless the prosecutor, in this case the Director, was satisfied that there was admissible, substantial and reliable evidence that a criminal offence known to the law had been committed by an identifiable person. The Director did not support the proposition that a bare prima facie case was enough, but rather applied the test of whether there was a reasonable prospect of a conviction.

In normal circumstances where there was an evidential sufficiency and the criminality alleged was serious, it was the Director's view that the public interest required a prosecution.

In a serious case, it was and is usually the practice of the Director to instruct Counsel to advise at an early stage. The advice of Counsel is sought on whether the evidence is sufficient to justify the institution or continuation of proceedings, and the charges which should be preferred against the alleged offenders. In an appropriate case, Counsel is also instructed to prepare a written statement of facts for submission to the Attorney-General in order to obtain his fiat.

. . . It was rare for circumstances to arise in which, although Counsel advised that there was insufficient evidence to obtain a conviction, the Director decided nonetheless that such a prosecution should proceed. On the other hand, in a case in which Counsel recommended prosecution and positively approved the sufficiency of the evidence, the Director gave great weight to that advice and would normally authorise the institution or continuation of the prosecution, if he considered it in the public interest to do so.

If the advice of senior lawyers [on the Director's staff] differed from that of Counsel – though there is no suggestion that such was the

position in the case of the Maguires – the Director took that advice into consideration. In general, however, the advice of Counsel tended, comparatively speaking, to exert greater influence in the decision-making process.”

These criteria and the procedure described seem to me to be wholly appropriate.

5.3 In a joint statement prepared for this phase of my Inquiry Sir Thomas Hetherington⁵ and Mr Archer⁶ explained the criteria adopted by the Law Officers in deciding whether or not to grant a fiat in the following terms:

“There is some lack of uniformity in the type of statutory offence for which Parliament, in creating the offence, has included a consent provision. However, these are usually offences in which there may be a particular threat to public security (eg. Explosive Substances Acts) or some other element of public interest or potential implications where the Law Officer as a Minister of the Crown is particularly well placed to assess whether the public interest requires prosecution (eg. Official Secrets Acts, cases involving corruption, cases involving racial discrimination, cases concerning the United Kingdom’s international obligations, cases involving the freedom of the press etc.).

It follows from this that Law Officers accepted the convention that unless specifically consulted by the DPP about evidence they thought it right to accept the judgment of the DPP (and, where Counsel had been consulted, Counsel) on the adequacy of the evidence, and directed their attention primarily to public interest considerations. If their attention had been drawn to some particular difficulty over evidence, of course, or if it was otherwise apparent to them that the evidence was inadequate, they would consider that aspect also. But, subject to that, their concern was whether it would be in the public interest to give their consent to the prosecution. Further, while they could properly express a view on the particular charges to be brought, they did not normally concern themselves with the future conduct of the case. . . . In conclusion, we considered that it was primarily the function of the DPP to assess the evidence and that it was proper for the LOD then to proceed on the basis of that evidence as evaluated by the DPP. We would not have taken the view that LOD themselves had to undertake their own independent examination or evaluation of the evidence as presented by the DPP. Nor was it considered to be the duty of the LOD to form a view as to the chances of success of a prosecution independently of the DPP. For this purpose, we would have relied on the DPP’s own assessment. We were aware that the DPP’s Department

⁵Then Mr Thomas Hetherington, Legal Secretary to the Law Officers.

⁶Now Lord Archer of Sandwell QC; then Mr Peter Archer QC MP, Solicitor-General.

took the view that statements by witnesses, and particularly scientific witnesses, should be taken at face value unless there was reason to doubt them. We were also aware that the test adopted by the DPP in deciding whether or not to recommend a prosecution was whether, on the evidence available, there was a reasonable or realistic prospect of conviction, as opposed to the test which was adopted by many other prosecuting authorities at that time which was merely whether there was a *prima facie* case against the defendant. We saw no reason to go beyond the DPP's own assessment or evaluation of the case, unless – as mentioned above – it was apparent that the evidence was in some way inadequate. The LOD were generally concerned not to tread on the toes of the DPP's Department by “handling” cases. In any event, we did not have the resources to do so.

We should add that we tended to regard the statutory requirements of consent to be intended mainly as safeguards against the possibility of prosecutions which it would not be in the public interest to pursue. So far as evidential questions were concerned, it was considered that the adversarial procedure would ensure that the defence could test the strength of evidence. But again, where there were genuine concerns about the quality of evidence, we would certainly raise them. Also, in a case where an acquittal might have adverse consequences from the point of view of the public interest (eg. a prosecution of a body or organisation for incitement to racial hatred), the risk of an unsuccessful prosecution was certainly a factor which would have been taken into account by the Law Officers in deciding whether or not to give their consent to the proposed prosecution.”

5.4 On 17th January 1975 Mr Michael Hill, then Treasury Counsel, was instructed in the case. As it was clear that the case against the Maguires would, from a practical point of view, rest entirely on the scientific evidence, Mr Hill set about checking it and informing himself of its details. On 7th February 1975 – by which date he had already produced a first draft Statement of Facts – Mr Hill, together with his colleagues on the prospective prosecution team (Sir Michael Havers QC, Mr Paul Purnell and Mr Philip Havers), members of the Director's staff (Messrs Jardine, Barnes, Williams, Walker, Adams and Nugent) and three Surrey police officers (Messrs Rowe, Underwood and Hopkins) visited RARDE to see a demonstration of the TLC procedure. There is no evidence of a representative of the Metropolitan Police at the visit. The scientists at RARDE who took part were Mr Elliott, who gave the demonstration, and Mr Higgs. At this time the Maguire Seven and Guildford Four cases were still being treated as one, and thus Mr Hill's statement of facts for submission to the Attorney-General dealt also with the Guildford and Woolwich bombings.

5.5 The relevant parts of the Statement of Facts were as follows. The passages added after the visit to RARDE are in italics:

“10. Whilst Anne Maguire had been implicated by Hill, Conlon, Richardson and Armstrong in the preparations for and the execution of the Guildford bombings, she and her family had no reason to suppose that they had been implicated in the bombing campaign since nothing that had been published about the police investigations seemed to point to them. However, *the Talbot bombing took place on 30 November and, since one bomb did not explode, they will have feared that examination of that bomb might lead to them* and in the early hours of 3 December 1974, Patrick Joseph Conlon⁷ (Gerard Conlon’s father) crossed from Belfast to Heysham, told the security services at Heysham that he had crossed to collect a heavy goods vehicle from Tunbridge Wells, and travelled directly to the Maguire home at 43 Third Avenue, Harlesden. He appears to have arrived unannounced at some time between 1.00 pm and 3.00 pm that afternoon, although there is a suggestion that he first sent a telegram to Patrick Maguire senior (Anne Maguire’s husband) in advance of his arrival. If he did, it is clear from the interview with the members of the Maguire family and others present at the house that afternoon and evening that Patrick Maguire senior had not divulged Patrick Conlon’s expected arrival to anyone. Enquiries are proceeding to see if any such telegram was sent and received: no trace of it was found in the house. Patrick Conlon’s explanation to the security services at Heysham was a lie and can be proved to be such. Living at the Maguire house at that time were Patrick Maguire senior, Anne Maguire, their four children – Vincent John Patrick, aged 16, John Patrick Thomas, aged 15, Patrick Joseph Paul aged 13, and Anne Marie, aged 8 – and Anne Maguire’s brother, William John Smyth. Smyth appears to have arrived home about 5.00 pm that evening. At 7.00 pm that evening, two officers of the Metropolitan Police Bomb Squad commenced observation on 43 Third Avenue and saw four men and one woman in the front room. They are able to identify the woman as Anne Maguire and one of the men as Sean Liam Tully of London, W9. Soon after they arrived, Tully left 43 Third Avenue in a Ford Escort motor car which was followed for a short distance by the observing officers who recorded the number of the car and returned to continue their observation of the house. At 7.45 pm Patrick Maguire senior, Patrick Conlon, Smyth and a man called Patrick O’Neill left the house and went to the nearby Royal Lancer public house – again followed by the two observing officers who then returned to the house. At 8.45 pm they were joined by other officers and the police then entered the house immediately behind Vincent Maguire who appeared to be returning to the house at that time. Present in the house when the police entered were Anne Maguire, her children Vincent, John and Anne Marie, and two children of Patrick O’Neill. With some obstruction from John Maguire, Patrick Maguire senior, Patrick Conlon, Smyth and O’Neill were identified in the Royal Lancer and detained. During the course of that

⁷ Referred to in the evidence and in my interim report as Guiseppe Conlon.

night, hand swab tests were carried out on those four men and on Anne Maguire and her three sons. The tests on the four men and on Vincent and Patrick (junior) Maguire proved to be positive as follows:"

(The positive findings were then set out; these are recorded in my interim report at paragraph 7.1)

"The test on Anne Maguire was negative, as were the tests carried out then and subsequently on the house and its contents – save for 39 clear plastic gloves, of the kind used in laboratories and hospitals which showed clear traces of nitroglycerine on the outer surfaces. Anne Maguire has stated, and this has been confirmed, that she suffers from a skin disease on her hands which necessitates the application of ointment and that she wears these plastic gloves when doing housework, etc. She and the other members of her family have stated that the plastic gloves recovered from the house were hers and that she was the only person to use them. A pair of ordinary household rubber gloves were recovered from the house and tests on them proved negative for explosives. Also found in the house was a quantity of 1" black plastic adhesive tape, similar in all respects with the tape used to bind the unexploded Talbot bomb. Differing stories were told about the source and use of that tape. Forensic tests have revealed no mechanical match between the tape recovered at the house and the tape on the Talbot bomb. Investigations are still proceeding at the Metropolitan Police Forensic Science Laboratory to see whether threads found adhering to the Talbot bomb can be connected with any of the many items of clothing taken from 43 Third Avenue.

11. The prosecution will be able to prove that the hand swab tests are *unsophisticated* ["crude" in the first draft] in the sense only that they do not reveal the minute quantities of nitroglycerine such as might be expected to be transferred from a contaminated surface to an "innocent" person. The expert evidence will be that the method of testing employed in this case – involving the use of dry and ether swabs and the examination by means of thin-layer chromatography of the material distilled from those swabs and from the dislodged debris – is scientifically well established, is used all over the world, has been published and has not been the subject of any known published scientific criticism. Experiments conducted at the Royal Arsenal Research Development Establishment at Woolwich (which issued the test kits used in this case and carried out the examination thereof) have shown that traces of nitroglycerine, detectable by these means, are unlikely to remain on the hands and under the fingernails for more than 24 hours, although a 48 hour maximum is possible, and that the mere touching of nitroglycerine or of a non-explosive surface contaminated with nitroglycerine will not result in debris containing nitroglycerine being present under the fingernails. Moreover, the rubbing of fingers over a contaminated palm or other surface is, similarly, not an explanation of the fingernail traces.

On 7 February 1975, all Counsel instructed for the prosecution in this case, the Deputy Director of Public Prosecutions, the Assistant Director (country) and other professional officers of the office of the Director, together with senior police officers concerned in the investigation, visited the RARDE at Woolwich and had demonstrated to them

- a) *the method of taking hand swabs as used in this case and*
- b) *the method of scientific examination of those swabs.*

The scientific officers explained the theory behind the tests and demonstrated, also, the steps taken to ensure the integrity of the swabs and debris from the moment that the test kit is opened for swabbing to their arrival at the laboratory and the continuing integrity of the material distilled from those swabs and debris through their examination at the laboratory. It was clear that, properly conducted, the testing and examination were valid and could and should be relied upon in Court to establish the significant presence of explosive material on the hands of persons so tested.

12. When interviewed, both before and after the results of the tests were known, each one of the persons implicated by those tests denied handling explosives and, with the exception of Vincent and Patrick junior, could give no explanation at all.⁸ Both boys spoke of something described variously as a candle and a large piece of chalk being under Smyth's bed, although both said that they merely touched it.

13. Each of the persons listed above had nitroglycerine under his fingernails and the officers taking the tests noted that the Maguire family had short bitten fingernails. The expert evidence will be that to get nitroglycerine under fingernails it is necessary to "knead" and that its presence under the nails is indicative of breaking sticks of explosives into smaller pieces, of inserting a detonator, of moulding the explosive into a convenient shape, of dismantling an already constructed bomb or of some such "intimate" act. *This will be the more so if the nails are short and bitten.*

14. During the course of the interview on the night of 3 December, each one of the persons connected with 43 Third Avenue denied the presence in the house of the man who turned out to be Sean Tully until the police made it clear that they had seen another person leave the house at about 7.00 pm. Exhaustive investigations and enquiries of Tully, of his address, of the addresses of those arrested and their known associates and of various derelict houses in the area of those addresses have failed to reveal any trace of explosive. O'Neill maintains that his

⁸ Though not referred to in the Statement of Facts, Patrick O'Neill had in fact said in interview on 9th December 1974 that he had washed his hands and dried them on a towel, adding: "That's the only thing I did. Whether I could have got it off the towel or not I don't know."

presence at the house on 3 December was purely fortuitous and arose from the fact that his wife had been taken into hospital that day and that he had brought his two children to Harlesden, arriving at some time between 6.00 pm and 7.00 pm that evening, to ask Anne Maguire to care for them whilst his wife was in hospital. He lives in Stockwell. Enquiries are still proceeding to establish the true position with regard to Mrs O'Neill and the need for O'Neill to visit Third Avenue with the children – the evidence presently available is that they had no night clothes or toilet articles with them.

15. It is the case for the prosecution that the timing of the arrivals of the various persons at 43 Third Avenue on 3 December and the fact that, with the exception of John and Anne Marie Maguire, traces of nitroglycerine were found on or can be attributed to all of them, indicate clearly that the failure of the Talbot bomb to explode and Patrick Conlon's unexpected arrival were seen by the Maguires – and probably, principally by Anne Maguire – as being a threat to their safety since they would establish a connection with the bombing campaign and, in particular, with the Guildford bombing (Gerard Conlon was known to be in custody in relation thereto) and might well lead to a police raid. The prosecution will further allege that the immediate reaction was to remove all explosives from the house and that this was done successfully.

16. The possibility that the nitroglycerine could have got onto the hands or under the fingernails of any of these persons through their occupations has been excluded.

...

18. Unless forensic evidence becomes available clearly connecting the Talbot unexploded bomb with 43 Third Avenue, it is not the prosecution's intention to seek to commit any of the persons at that address with the other four or to try them together with them but the unities of time, place and action relating to those at 43 Third Avenue upon whom the traces of nitroglycerine were found clearly establish a case of possessing explosives and a case of conspiracy to cause explosions.

19. In these circumstances the Attorney-General's Fiat is sought for the charges of causing explosions, conspiracies to cause explosions and possessing explosives as follows:

...

iv) against Patrick Maguire (senior), Anne Maguire, Vincent Maguire, Patrick Maguire (junior), Patrick Conlon, Smyth and O'Neill: conspiracy to cause explosions;

v) against Patrick Maguire (senior), Anne Maguire, Vincent Maguire, Patrick Maguire (junior), Patrick Conlon, Smyth and O'Neill: possession of explosives on 3 December 1974."

5.6 On 14th February Mr Barnes sent draft fiats and the revised version of the Statement of Facts to the Legal Secretary to the Law Officers, Mr Thomas Hetherington, with a request that the Attorney-General give his consent to the prosecution of the Maguire Seven and the Guildford Four. It is clear from the evidence that in coming to the decision that his criteria for prosecution were met the DPP relied upon the opinion of experienced counsel. His own staff had played little part.

5.7 Between the 14th and 17th February 1975 the then Attorney-General (Mr Sam Silkin QC MP) considered the application for the fiats and on the latter date he signed those relating to the Guildford Four. At the same time he wrote a minute to Mr Hetherington commenting on the Statement of Facts, the material part of which read:

“Fiats herewith in respect of Hill, Richardson, Armstrong and Gerard Conlon.

The evidence against the others seems to be confined to the nitroglycerine traces under fingernails and on plastic gloves. Counsel’s theory is that they had been breaking up explosive material and disposing of it as they feared a police raid. If this is correct (as it may well be), it is likely to have taken place after the arrival of Patrick Conlon at about 1pm–3pm on 3 Dec, since swabs taken during the night of 3 Dec showed NG traces on all of them including Patrick Conlon, who therefore seems to have arrived in time for the disposal process (possibly to warn the others to dispose of any explosive). But the police found no explosive when they searched. They found black tape identical with that used in the Talbot bomb but that is the only connection with the Talbot bomb – or with any other bomb except through the statements of the 4 Guildford bombers who implicate Anne Maguire; but their statements are not evidence.

It seems to me that there is some evidence to support the charge at para 19(v) but only just. I cannot see what there is to establish para 19(iv) at present.

I suggest that the SG should take this over in my absence and should consult with RM and see MH – particularly as RM seems to have serious doubts about the TLC test used at Woolwich.”⁹

5.8 It is clear that Mr Silkin was concerned about the adequacy of the evidence against the Maguire Seven. He recognised that this was limited to the NG traces under their fingernails and on the plastic gloves. He also recognised the evidential difficulty in seeking to prove that the seven proposed defendants were

⁹SG=Solicitor-General; RM=Roger Maitland, a legal assistant in the Law Officers’ Department; MH=Michael Hill.

breaking up and disposing of NG when no trace was later found in the Maguires' house. I have already referred to the inherent improbability of the Crown's case against the Maguires on this score, and to the Court of Appeal's recent acceptance of this inherent improbability. As I said in paragraph 8.6 of my interim report, any observer considering the circumstances of the trial and convictions must ask himself where the alleged bulk of NG which had been handled could have been and when each of the defendants together or separately could have handled it.

5.9 In the event and at the request of the Attorney-General Mr Hetherington arranged a meeting on the 18th February with counsel instructed on behalf of the prosecution. This was attended by Sir Michael Havers and Mr Michael Hill of counsel, Mr Jardine and Mr Barnes from the office of the DPP and Mr Hetherington and Mr Maitland of the Law Officers' Department (LOD). Mr Maitland had the day-to-day dealings with applications for fiats in this and other cases.

5.10 Three notes of this meeting were put before me in evidence. First, there was a contemporaneous handwritten note by Mr Hetherington. This read:

"NOTE FOR THE FILE

AG discussed with Havers, Hill, Jardine and Barnes the evidence against the further 7 (the Maguire group) i.r.o possession of explosives, and conspiracy to cause explosions. On basis that the Woolwich Forensic Lab methods of detecting nitroglycerine had not been challenged, and appeared 99% conclusive, AG consented and signed fiats. He asked for a Note by Counsel concerning the proposed conspiracy to cause explosions charge."

Secondly, there was a copy of notes made by Mr Hill. The latter had not been able to check the accuracy of the copy, but I see no reason to doubt this. It read:

"18.2.75. Consultation with law officers. Michael Havers, Michael Jardine, Peter Barnes, Hetherington and MH. Fiats for Maguire group – for moment go only on possession. Further conspiracy paper in due course."

(No further paper on the proposed conspiracy charges was prepared, and it seems that this suggestion was never taken further.)

Thirdly, there was a note by Mr Maitland describing this meeting more fully, but it was dated 4th March, some two weeks after it took place. Mr Maitland gave

evidence in this part of my Inquiry. He was quite clearly a concerned and caring member of the LOD staff who was more sceptical about the worth of the material scientific evidence than his colleagues. The note read:

“At the meeting on 18th February the A.G was particularly concerned about the Maguire group, who had been arrested and charged on the basis that so-called traces of nitroglycerine were found upon their palms and under their nails.

Sir Michael Havers and Mr Michael Hill emphatically assured the A.G that the Woolwich method of analysis provides conclusive proof of the presence of nitroglycerine. They said that it was comparable to fingerprint identification.

With reference to the under-nail traces, Havers and Hill advanced the usual Woolwich theories, ie:-

- a) That under-nail traces cannot be obtained unless the defendant has been kneading gelignite, like dough.
- b) That the finding of under-nail traces suggests that the defendant has forced a detonator into gelignite with his fingers. (R.M understands that bombers often use a pencil to make a hole.)

With reference to the traces on the palms, Havers and Hill advanced two novel theories of their own:-

- c) That the defendants had been hurriedly breaking up a 25 lb roll of gelignite because they feared a police raid. (R.M has not seen any case involving gelignite in a 25 lb roll.)
- d) Alternatively, that the defendants had been hurriedly dismantling bombs, as they knew it to be unsafe to remove them without doing so.
- e) That the absence of traces of nitroglycerine in the house (except on the rubber gloves) may be explained by the possibility that the defendants worked on polythene sheets.

The A.G was informed that Mrs Maguire's 18 pairs of rubber gloves were found in a pile and that, due to a blunder by the police, cross-contamination was probable. The gloves had been tested as a batch and traces of nitroglycerine were found.

Mr Jardine suggested that there were no innocent possibilities except remote possibilities, such as the possibility that everybody used the same towel. (R.M was very puzzled by this but said little.)

Mr Jardine added that Woolwich results had never been successfully challenged in the courts but did not explain what he meant. (R.M

assumed that he meant that, although Woolwich evidence has been challenged, there have been no notorious acquittals.)

No-one explained that:-

- i) In other cases there has always been other cogent evidence, eg. admissions.
- ii) That the Woolwich theories (a and b) have been strongly challenged by retired experts from Woolwich.
- iii) That, when they retired, the challengers were honoured for their services to science and the public service.

The A.G asked Havers and Hill, indirectly, whether they had studied the Ward evidence. They make an affirmative reply.

The A.G enquired whether the four gentlemen (including Mr Barnes) were unanimously advising him that the evidence was satisfactory. They made an affirmative reply.

The A.G then signed the forms for the Maguire group, after stipulating that he was authorising only the charges for possession. The proposed conspiracy charges for this group were not authorised at this stage.”

When Mr Hill gave evidence to my Inquiry he strongly disagreed with the accuracy of one paragraph of Mr Maitland’s note, namely the paragraph lettered “c)”, and I accept that counsel did not advance any theory involving a 25 lb roll of gelignite. Nevertheless, I am quite satisfied that the remainder of the note is a sufficiently accurate summary of what had transpired at the meeting.

5.11 In passing, I have been unable to come to any conclusion about the origin of the assertion that TLC is comparable to fingerprint identification (in the context of specificity). Mr Maitland has it coming from counsel, and Sir Michael Havers certainly put it to the jury in opening the Maguire trial. Asked about it during the public hearings in 1990 Mr Hill did not recall its use but said that the prosecution’s opening comments as to specificity would, he believed, have drawn upon what had been learned from the RARDE scientists. The analogy may well have been mentioned on the 7th February visit, but whilst Mr Higgs says that he was not present at the demonstration of TLC and only took part in the general discussion that followed, the details of which he cannot now recall, he is sure that it did not come from him or from Mr Elliott. Dr Marshall of RARDE told me in a statement prepared for last year’s hearings that he does not believe that either Mr Higgs or Mr Elliott would have used such an analogy. There I fear I must let it rest. I believe that it was an unhelpful analogy in that it overstated the specificity of the TLC test.

5.12 The advice given to the Attorney-General which satisfied him that it was right to grant fiats in respect of the Maguire Seven, authorising prosecution for alleged offences of unlawful possession of explosives, was based upon the RARDE scientists' contentions, first, that the tests which they carried out on the hand and fingernail swabs had been specific for NG and showed that the Maguires' hands and Mrs Maguire's gloves had been in contact with that explosive within hours before being swabbed, and secondly, that the traces under the fingernails showed that the Maguires had been handling or kneading a bulk of NG (and thus "knowingly" had the explosive in their possession) – even though no other evidence of any such bulk was ever found or was ever forthcoming.

5.13 There was no separate consideration at this stage of the position of Mrs Anne Maguire against whom the only evidence consisted of traces of NG on plastic gloves which belonged to her and which, according to paragraph 10 of the Statement of Facts, were used by no-one else. The basis for excluding innocent contamination (namely the kneading hypothesis) clearly had no application in her case and the question whether the gloves might have been contaminated by another person was not discussed. Mr Michael Hill told me in evidence that the fact that Mrs Maguire's hands were negative for NG, together with the absence of any evidence of bulk NG in the house, tended in his mind to undermine the innocent contamination theories since a common source of contamination should have affected her as well as the other defendants. As I said in paragraph 8.9 of my interim report, I consider this argument somewhat paradoxical.

6. The Law Officers' Department

6.1 It is convenient at this point to consider the general background against which the case was considered within the LOD. That Department and the DPP sent the Inquiry documents from a number of files in other cases in order that I might compare the decision to consent to a prosecution of the Maguire Seven with the decisions made in those other cases. It became apparent from all the documents that Mr Maitland had serious doubts about placing undue reliance on forensic evidence, particularly evidence based on the TLC procedure used at RARDE. In my public hearings on this aspect of the Maguire case I sought to investigate the basis of these doubts, their validity, and the extent to which they informed, if at all, the LOD's approach to the Maguire case. The Attorney-General's general policy with respect to fiat applications is set out in paragraph 5.3 above.

6.2 It will be recalled that, as I acknowledged in my interim report, there had been a succession of terrorist attacks in 1974 which placed the police, the prosecuting authorities and government scientists under great pressure. In the late summer and early autumn of 1974 there was an exchange of correspondence between the LOD and DPP about the handling of terrorist cases, as a result of which it was agreed, among other things, that all such cases should be referred to the Attorney-General through the Deputy Director, Mr Jardine. According to the evidence from Mr Archer and Sir Thomas Hetherington, this was agreed because of concern within the LOD that there should be a uniform policy and consistent treatment of prosecutions in explosive cases with a terrorist connection.

6.3 It is also clear from the documents that at around the time the Maguire case was under consideration there was indeed discussion within the LOD about the merits of prosecuting on forensic scientific evidence alone. Although some of the papers seem to suggest otherwise, there never was a policy either in the DPP's office or in the LOD not to prosecute on forensic scientific evidence alone, but it appears that the Maguire case was the only one in which a prosecution for unlawful possession of NG was based solely on such evidence. In looking at the other cases I wished to see whether other proposed prosecutions based on evidence comparable with that in the case of the Maguire Seven were in the end not proceeded with, and why. The only one that turned out to be properly comparable was that of "M". (Suspects in other cases were referred to anonymously before me. Most of them were not prosecuted, and their names were not material.)

6.4 On 12th November 1974, three weeks before the arrest of the Maguires, "M" was arrested at Kilburn and his hands were swabbed. RARDE recorded the right hand ether swab and the right and left hand nail scrapings as positive. The TLC test was performed by Dr Hayes but viewed by Mr Elliott and others. Mr Elliott prepared a statement in which, as in his initial Maguire statements, he

made no reference to the significance of the fingernail results. The DPP referred the case to the LOD on 11th December 1974 with a view to the Attorney-General granting his fiat under the 1883 Act. As far as one can tell the LOD's file has long since been destroyed but I have seen that of the DPP. Unfortunately it does not contain the Statement of Facts. It seems that, as in the Maguire case, there was no evidence of the possession of explosives other than the TLC results, but there was some possible support in circumstantial evidence that "M" had apparently admitted being a would-be recruit for the IRA. In the event, after an exchange of correspondence between the LOD and DPP¹⁰, in the course of which Mr Maitland sought to test the soundness of the TLC procedure as employed by RARDE, the Attorney-General declined to grant his fiat. However, between the decision in "M" and the decision in the Maguire case there was an important change in circumstances, namely the visit by the prosecution team to RARDE with all that it involved. Because of this I do not believe that it would be right to regard the comparison with the refusal to consent to the prosecution of "M" as providing any foundation for criticising the decision to prosecute the Maguires.

6.5 In his note of 4th March 1975 recording the meeting of 18th February on the Maguire case – quoted in paragraph 5.10 above – Mr Maitland referred to "the usual Woolwich theories". In a note of 8th April 1975 about another meeting held on or about 18th February he said, in the context of a discussion of the case of an individual "S" unconnected with the Maguire case, that the RARDE scientists:

"had always insisted that when, by their method of detecting invisible traces of NG (separation by TLC plus one visualisation of Griess' reagent) a pink reaction from a swab taken from under the fingernails is obtained, this is reliable proof that the accused has been kneading gelignite, like dough. Maitland had always doubted this."

As he put it to me when giving oral evidence:

"I think I should add that I was pouring in rather a lot of scepticism all the time, for a full year."

6.6 It was quite apparent to me, taking the evidence as a whole, that Mr Maitland's doubts were genuine and broadly based. They arose principally from a concern that the procedures for both swabbing and subsequent analysis were not foolproof or had not been properly followed, so that cross-contamination could have occurred. Asked by Counsel to the Inquiry whether he had thought that the TLC procedure as conducted by RARDE represented intrinsically poor scientific evidence he replied that he had not. He told me that he had always thought that TLC was in fact a very good test, but that it all depended on

¹⁰ See below, paragraph 6.6.

whether or not it was properly carried out. That this was the nub of his concern is borne out by questions he posed in two letters of 16th December 1974 to the DPP on the "M" case. In a letter to Mr Palmes he asked a number of specific questions about the procedures followed by the police officers and scientists concerned in the case, and received a reply assuring him that the proper procedures had been followed.

In the other letter addressed to Mr Jardine which concerned the general approach of the DPP in cases based on the finding of NG on suspects' hands, he asked:

1. Do you examine the scientific evidence to discover any possible flaws in:-
 - a) the swabbing of the hands,
 - b) the transmission of the swabs to the laboratory,
 - c) the procedure at the laboratory.
2. Are you prepared to prosecute when there are flaws in a), b) or c)?
3. Would you recommend proceedings when there are no flaws in a), b) or c)?

In his reply Mr Jardine said that scientific evidence was examined just like any other evidence, relying on the statements and other evidence submitted to the DPP. There was no general rule about prosecuting; the decision had to depend on the facts of the particular case and on the evidence available. He referred in particular to the adverse inferences to be drawn from a positive test "particularly if it relates to fingernail scrapings".

6.7 Although, as Mr Maitland made clear to me, his primary concern was with the way in which the tests were carried out, he also had reservations as to TLC's specificity without a confirmatory test. He considered that it was at best a presumptive test which should not be regarded as conclusive on its own. In a note of 17th February 1975 in another unrelated case, "O" and "N", he commented:

"TLC plus Griess test is not a conclusive test but some of the Woolwich scientists have implied that it is."

And again in a note of 17th December 1975:

"A conclusive result cannot be obtained unless the technique is refined, or another test, eg. gas liquid chromatography or mass spectrometry is added in order to confirm."

6.8 These were Mr Maitland's concerns. I considered the question of specificity at length in my interim report. I concluded then that, despite Mr Elliott's assertion (at the trial) to the contrary, TLC as conducted in the Maguire case could not distinguish between NG and two other explosives, PETN and EGDN¹¹, but that there were no other mimics-no "substance X". I recorded also that, again contrary to the evidence they gave in 1976, the RARDE scientists had in fact run second tests on the Maguire samples, with negative results. Mr Maitland of course knew nothing of these second tests or of PETN. We cannot know the extent to which the Attorney-General shared Mr Maitland's doubts but the papers demonstrate that he and the Solicitor-General did take them seriously.

6.9 In the course of Mr Maitland's evidence I reminded him of the doubts expressed by others after the conviction of the Maguire Seven and asked him whether he ever revealed the doubts which he had felt before the prosecution was authorised. He told me that he did not and that it would not have been appropriate for him to do so. His doubts were general, were not specific to the Maguire case and had been taken into account before the decision was made. I am satisfied that Mr Maitland cannot be criticised for keeping his doubts to himself after the conviction. Not only had the decision to prosecute been made at a much higher level than his, but the jury convicted and the Court of Appeal upheld the conviction. In those circumstances it was not for him to press his point of view, still less to express his doubts publicly.

6.10 These issues seem to have come to a head early in 1975. In a note to the Solicitor-General of 6th February 1975 Mr Gasson of the LOD voiced concern about forensic evidence in the context of the wider issue of the co-ordinated handling of terrorist cases to which I referred earlier in paragraph 6.2. In particular he raised the possibility that the DPP's office and LOD were not thinking along the same lines with regard to the evidential value of forensic evidence and proposed that urgent steps be taken to resolve the matter. A further note to the Solicitor-General, this time from Mr Hetherington and dated 12th February 1975, contained this passage:

"Clearly problems have arisen over the TLC test for nitro-glycerine. I am not sure where we stand in respect of this. If the position of the Law Officers is that they feel that a prosecution should not proceed if that is the only evidence of possession of explosives, I suggest that the Director should be so informed. It is unfair and time consuming to all concerned not to give a clear direction on this matter. But I am not sure that we have reached that stage. Perhaps Counsel should be asked to advise on the adequacy of that evidence. I understand that Michael Havers and Michael Jardine recently visited the Woolwich Laboratory,

¹¹ See paragraph 9.2 of the interim report.

in relation to the Guildford case, and I think we should seek a report from them on this question generally.”

6.11 The meeting of the Solicitor-General and his team was held on 20th February 1975 and written up by Mr Hetherington in a note of 6th March:

“It was agreed that the tests for the presence of nitroglycerine, as at present carried out at Woolwich, appeared to be adequate, and that a positive conclusion was sufficient to justify the institution of proceedings for possession of explosives, unless there were present other factors which pointed in a contrary direction.”

I am satisfied that this agreement was reached in the light of the advice given by counsel and by Mr Jardine and Mr Barnes at the meeting on the Maguire case two days earlier, on 18th February 1975.

6.12 I should perhaps add for the sake of completeness that Mr Hetherington’s note continued:

“In view of the doubts expressed by R.D.M., [Mr Maitland] however, it was agreed that the scientific literature should be studied further, and if this literature casts serious doubt on the reliability of the tests it would be necessary to reconsider the matter urgently.”

As far as anyone has been able to ascertain no report was ever written and no policy ever flowed from this work. Mr Maitland believes that as the steam behind the questioning of TLC came from him it could well have been he who looked into the literature. He says that he would still have been worried about contamination, by which he means the risk of swab contamination or labelling muddles rather than contamination of the hands, but he believes that the conclusion was that the literature did not cast serious doubts on the test. His doubts lingered on, of course, as his 17th December 1975 comments on specificity indicate (see paragraph 6.7 above).

7. Further consideration of the kneading hypothesis

7.1 I thus return to the kneading hypothesis, with a view to considering its origin and the scientists' justification for advancing it. The hypothesis appears to have originated in the preparations for the trial of Judith Ward in 1974 and in the evidence which Mr Elliott and Mr Higgs in particular gave at that trial.

7.2 On 10th September 1973 bombs exploded at Euston and King's Cross stations. Miss Ward and two others were arrested and their hands were swabbed. When the hand test kits were processed by Mr Elliott at RARDE two days later, he found all three were positive for NG, though the record of the tests relating to Miss Ward stated that these showed faint traces only. The three were released but Miss Ward was re-arrested on 13th February 1974 in connection with the M62 coach bombing earlier in that month. She allegedly then made admissions in respect of the Euston and M62 blasts. A Metropolitan Police report of 2nd April 1974, only about 8 months before the arrest of the Maguires, recommended that Miss Ward be prosecuted for these offences, but also explained why she and the other two had not been prosecuted earlier for the bombings at the railway stations. Paragraph 15 of the report read:

"It will be appreciated that positive traces of explosives on hands and nails alone is not sufficient evidence of handling explosives due to contamination which can be caused by other means."

7.3 On 30th August 1974 the DPP's office sent Mr Higgs at RARDE a list of questions prepared by Mr John Cobb QC, leading counsel for the Crown in the Ward case, to which answers were sought for a consultation scheduled for 3rd September. After the consultation RARDE responded with a document which had been prepared by Mr Higgs and Mr Elliott and which addressed each of Mr Cobb's questions in turn in these terms:

"ANSWERS FROM SCIENTISTS TO POINTS RAISED IN NOTES FOR CONSULTATION – 03.09.74

1. How is trace-evidence of nitroglycerine transmitted onto skin/
under nails?

By the handling of bare explosives of the nitroglycerine type or the handling of wrapped explosives.

To obtain traces of nitroglycerine under the nails something more than mere handling is required. eg. the moulding or kneading of the bare explosive, as would be necessary for the insertion of a detonator in preparing a bomb immediately before emplacement.

Experiments in our laboratory have shown that where the tips of

the fingers are drawn along the inside of a bag contaminated with explosives, positive traces have been found on the skin, but negative results only from under the fingernails. This offers conclusive proof, in our opinion, that contamination found under the nails cannot be obtained by light contact with surfaces contaminated with explosive vapours or residues.

.....

4. Does 'under the nails' have any real significance?

Yes. From the foregoing, it must intimate contact with the explosive in such a manner that the space between the fingertip and the nail is extended under pressure, to allow traces of the explosive to penetrate the depth of this space.

.....

6. Could Ward's positive swabs at Euston have resulted in spending three hours on the Station, touching things?¹²

Definitely not."

7.4 The importance of this document for present purposes is that it is, as far as I have been able to establish, the earliest record of the kneading hypothesis. The view which the RARDE scientists expressed in this document as to the significance of traces of NG under the fingernails was quite unequivocal.

7.5 The extract from the police report on the Ward case which I have quoted above would seem to indicate that on 2nd April 1974 the Metropolitan Police were not familiar with the kneading hypothesis. One would expect that force, if not others, to be up to date with such developments in RARDE's thinking, so it is probably reasonable to conclude that the formulation of the kneading hypothesis in the minds of the scientists is unlikely to have appreciably pre-dated the Ward report, if pre-date it it did. Further, in the document prepared by RARDE in answer to Mr Cobb's questions there were references to experiments on which the scientists' opinions were based. However, the only evidence of any specific experiments carried out before September 1974 and relevant to this point which I have been able to find, concerns work done at RARDE on 9th April 1974.

7.6 It appears that the inside of a contaminated duffel bag was handled for some 25 to 30 seconds. The right hand of the handler was then swabbed and the

¹² This is a misquotation of the question which read, "Could Ward's positive swabs at Euston have resulted from spending three hours on the station touching things?"

fingernails scraped. On TLC testing the right hand swab was positive, but the fingernail scrapings proved to be negative for NG. When the left hand was similarly tested four hours later both hand swab and nail scrapings were then negative. The test was carried out by Mrs Brooker and a description of it was written up by Mr Higgs.

7.7 There would appear to be no surviving record of the 3rd September consultation, but in connection with the case of a man whose hands had been found positive for NG by TLC analysis (a fiat for whose prosecution, however, the Attorney-General subsequently refused) Mr Maitland recorded in a note of 18th December 1974 that:

“12th December LOD received an important report concerning a meeting of Mr John Cobb QC, DPP staff, scientists and police (to discuss the nitroglycerine point) which had been held on 3rd September TLC, the superior test is only presumptive proof!¹³ (This meeting had resulted from the Attorney-General’s consultation with Mr Cobb concerning Miss Ward’s case.)”

Whether the “Answers from Scientists” document was the “important report” to which Mr. Maitland referred, or whether it was enclosed with the report, is unclear. In any event it was accepted by all concerned that the document comprising the “Answers from Scientists” was received by the LOD on 12th December 1974.

7.8 On 16th October 1974, in the course of his evidence in chief in the trial of Judith Ward, Mr Higgs described the test which he and Mrs Brooker had carried out on the 9th April in the terms I have just outlined. His cross-examination later contained these questions and answers:

“Q. The duffel bag experiment, if I may turn to that now, I understood from something you said this afternoon that the experiment was designed particularly to ascertain contamination of fingernails, or rather under the fingernails. Was that conducted in your presence?

A. It was indeed, sir.

Q. What you said was that the person rubbed his hands over the inside surface of the bag and then the nails and hands were tested?

A. Indeed, sir.

Q. You appreciate I am trying so that you can give the jury a description – there is a distinction between rubbing one’s hands round the surface and drawing one’s hand up a surface?

A. There is indeed.

¹³ Mr Maitland’s underlining.

Q. Obviously if you take the palm of your hand and put it down – let us assume that this has got oil on it and I put the palm of my hand down, the palm will become oily, and in that situation you would be very surprised if any oil got on my finger nails, either on top of them, the edge of them or underneath them. If, on the other hand, I draw my hand through like that, again, you would be very surprised if I got anything on the nails?

A. Yes, indeed.

Q. But assuming one has got finger nails of ordinary length and they are not bitten to the quick, if you turn your finger so that your nail edge is resting on the surface and you do that, then you would get it under your nails, would you not?

A. Yes, indeed.

Q. If one puts one's hand inside a bag and goes down, one very frequently, I suggest to you, Mr Higgs, draws the finger nails up on the side of the bag?

A. This is precisely, sir, what I said this morning, that this was done in the experiment when the hand was, in fact, drawn across the canvas bag in that manner.

Q. Not drawn across the canvas bag so that you did that, but rather drawn up the canvas bag like that? Do you follow?

A. I follow you, yes.

Q. What I am suggesting is if you draw it up like that, then you will get the contamination under your finger nails?

A. That is precisely what was done, and we had no positive under the finger nails. If there was any there at all, it was below the level of our detection. I am not saying it wasn't on the edge of the nails but it was below the level of detection.

Q. Below the level of your detection on TLC?

A. On TLC."

And then in re-examination, concluding with a question from the trial judge there was this exchange:

"MR TAYLOR (prosecuting counsel): I want to ask you about the duffel bag. You say that you actually got the person who was putting his hand in, in effect – if I may put it into words – to claw his way up the inside of the bag? Is that right?

A. Yes.

Q. And the result was negative?

A. The result was positive on his hand, but negative under the nails.

MR JUSTICE WALLER: Of course, it is a fundamentally different movement, is it not? You explained earlier that the way you get it under the finger nails is to pull back the cushion of the finger and, at the same time, push it into the explosive so that it opens the mouth a little bit to take a little bit of explosive in?

A. The question I was addressing myself was whether it was possible for anyone accidentally to put their hand in a bag which to them was quite an innocent bag and pick up contamination on their hands and under their nails. That was the whole object of the exercise as far as I was concerned, and to my mind the drawing of the fingers in that manner along the surface of the bag would give a good chance of something accumulating under the nails.

MR TAYLOR: But, in fact, the result was negative?

A. In this particular experiment the result was negative.

Q. What did you have in the bag in the way of nitroglycerine traces?

A. At the time the explosive was taken out, but in order to contaminate the bag we had several sticks of gelignite wrapped up in paper, I believe, kept overnight, which was something like sixteen hours' duration, in the bag.

MR JUSTICE WALLER: What you are really saying is, so far as you could test, you thought that it was not – I will not say it was impossible, but it was very, very difficult indeed to get the material under your finger nails except by actually putting them into the explosive in the sort of way you have described?

A. That is the result, my Lord: certainly something much more vigorous than rubbing that surface of the contaminated bag.

MR TAYLOR: So anything short of the actual material in bulk, you think, would not get under the finger nails?

A. Quite so."

7.9 There is no reason at all to doubt that the duffel bag test referred to by Mr Higgs in his evidence at the Ward trial was indeed that carried out on 9th April. He cannot now recall that test, nor can he say whether he recalled it at the time of the Maguire trial. The following, in answer to a question from Mr Justice Donaldson, would suggest that he did:

"Well, in our opinion and from tests which have been carried out in the laboratory to try and answer the question, "Can you get nitroglycerine under your nails from accidentally touching a bag or something which may have contained explosives?" We have not been able to show that nitroglycerine can get under the nails in that manner."

7.10 It would seem that when Mr Hill came to draft the Statement of Facts he

had already studied the Ward transcripts. There is, for example, some similarity between the terms he employed in the passage quoted earlier from paragraph 13 of his first draft (quoted in paragraph 5.5 above), and the following extract from Mr Higgs' evidence:

Q. You have described two possible ways of getting it under the nails, either whilst putting in a detonator or whilst putting the explosive into a container. It is possible, in your opinion, to get nitroglycerine under the nails in that way (indicating), simply by flat hand contact with a parcel containing it?

A. No, sir.

Q. If, for example, somebody were to be carrying a parcel containing explosive or nitroglycerine, or if they were to pass their hand across a surface that had been contaminated with such explosive or nitroglycerine, or were to touch anybody else's hand which had been, would it get under the nails, in your opinion?

A. No, sir.

Q. What is the necessary physical action that gets it under the nails?

A. Either the one I have already described, or one in which the nails are literally scraped over the surface, but in contact with massive explosive."

7.11 From my examination of RARDE's papers – and I should perhaps stress that the Inquiry has been given full access to all RARDE's documents of any possible relevance – it would seem that the only other relevant test prior to the 7th February 1975 visit was one carried out on 6th February by Mr Elliott. It is likely to have been a test carried out to check the validity of the kneading hypothesis. Mr Higgs has told the Inquiry, and I see no reason to doubt, that he knew nothing about it either at the time of the visit or when giving evidence at the Maguire trial. It appears to have been a single test showing that even when a hand had been handling bare explosive with the fingertips, pressing it as if shaking it or inserting a detonator, a negative result was obtained from the fingernails.

7.12 This test, and the duffel bag test, are the only ones which appear to me to provide any experimental foundation for the kneading hypothesis. Mr Higgs' closing submission to this phase of my Inquiry lists numerous other tests, though many of these post-dated the 18th February consultation at which the flats for the Maguires' prosecution were signed. I do not believe that any of these other tests lent any specific support to the kneading hypothesis, though they perhaps formed part of the scientists' general body of experience on which they based their opinion. In his statement prepared for last year's hearings Mr Higgs said that he did not base the kneading hypothesis on any tests or experiments but rather on his reasoning that when the hand is clenched, the flesh of the finger is pushed against the nail thereby closing the gap between the nail and the

finger into which the NG might otherwise be transferred. This was in accord with the evidence he gave at the public hearings I held in 1990:

“Q . . . You were asked [at the Maguires’ trial] about clenching of the hand and nitroglycerine under the fingernails. “What about the clenching of the hand? Have you thought about that, as to whether that could leave nitroglycerine upon the palm of the hand to get under the fingernails?” Your answer is, “I think Mr Elliott described this quite adequately, that if the hand is clenched – I have quite normal sized nails and when the hand is clenched the first thing that happens is that the flesh is pushed underneath the fleshy tip of the nail. I cannot see how you can transfer a measurable quantity by that technique no matter how many times you do it. If there is only a trace on the hand then you are bound to transfer very much less than a trace on to some other site.” That was your view at the trial?

A. It was my view at the trial; it is my view now.

Q. Am I right in thinking that it was not a view based upon any particular tests carried out then?

A. Not by myself, no. That was reasoning on my part.

In this context the following, from the transcript of Mr Higgs’ evidence at the Maguire trial under cross-examination by Mr Self,¹⁴ is also of interest:

“...you could easily get a direct transference if there was contamination on that towel directly under the nails?

A. I think this is very unlikely. You could get it on your hands without doubt.

Q. Without what?

A. Without any doubt I think you could get it on to the hands, in my opinion. You wouldn’t get it under the nails.

Q. Again, have you done any tests at all, Mr Higgs –

A. I am expressing an opinion, sir.

Q. Yes, but have you done any tests with materials, Mr Higgs?

A. No, not for the specific purpose of seeing whether or not such contamination can go from the towel to under the nails.

Q. So it is pure surmise; is that right? It is not based on any scientific evidence at all, is it, what you are saying?

A. It is based on many observations of what you are likely to find on the hands, sometimes after swabbing has taken place.”

7.13 Of the visitors to RARDE on 7th February 1975 Mr Jardine and Mr Nugent have since died. Recollections among the others are generally poor

¹⁴ Leading counsel for the defence of Patrick O’Neill.

and the only written record that I have been able to find (apart from the RARDE visitors' book which gives the names of those who attended) is a note by Mr Hill which indicates that the significance of the fingernail results was raised. He gave evidence to me in 1990 about the visit but this was chiefly to do with the specificity question which was also explored on the visit. However, Mr Hill was able to confirm in his 1991 evidence that there was indeed discussion of the significance of positive findings under the fingernails and of the basis upon which the experts' evidence would exclude innocent contamination. Mr Hill recalls, and I accept, that the scientists' opinions as to the quality and significance of their findings were very firm. The scientists confirmed that positive findings under the fingernails indicated direct handling, particularly where the fingernails were short. This led to Mr Hill's amendment to the Statement of Facts referred to in paragraph 5.5 above. However, whilst Mr Hill is quite sure about the opinions given on the visit he cannot be certain of their source. It will be recalled that it was Mr Elliott who gave the demonstration, and one might suppose that the kneading hypothesis was to some extent at least discussed with him. But Mr Hill believes otherwise:

“... We were a bit anxious, I recall, not to involve those whose factual evidence would have to be deployed in discussions about what they actually did, because there is always this, as you will know, there is always this problem that you have with experts that fact upon which – the facts – the conduct of their experiments, as it were, may be in dispute, and you have got to draw a line between talking to them about their opinions and the justification for what they did rather than actually what they did. My recollection is that, when we got down to discussions, the discussions that we had were with senior officials within the laboratory.

Q. Do you mean after the demonstration or before?

A. I really could not tell you which it was. It may have been after the lecture; it may have been before the demonstration, after the demonstration, because I know Sir Michael and I had a number of questions we wanted clarified as best we could, and if I am right in my recollection that they were senior officials, then in the context of those with whom we dealt at all at RARDE that means Carver and Higgs, I think. I cannot think that there was anybody else that we would have been talking to about the guts of this thing, about the substance of the scientific – the scientific basis for what they were doing.”

7.14 Mr Higgs says that he did not attend the demonstration but that he did attend a general discussion afterwards. He cannot recall the details of that discussion but thinks that it did not cover the kneading hypothesis. I have to say that on balance I believe that it did.

7.15 It is Mr Higgs' view that the underlying basis for the hypothesis was not sufficiently investigated during the visit. I do not agree with this, nor can I see

what evidential basis there is for it. Counsel to the Inquiry pointed out in their closing submission to me that the responsibility of the scientists should not be overstated because, after all, they did not make the decision to prosecute. Strictly speaking that is right; they did not. The purpose of the visit to RARDE, which was made in the expectation that there would be a trial, was to confirm to the satisfaction of the prosecution team that all was well with the science and in so doing arm them with an understanding of the TLC procedure and of the evidence gained from the HTKs sufficient to take the case through the courts to a conviction. It seems to me that there was not a shadow of doubt in the minds of counsel following the visit about the soundness of the kneading hypothesis. That degree of certainty can only have come from the scientists. To suggest that despite being satisfied that the science was in no way deficient counsel should still have pushed and prodded (though had they done so I cannot see on the evidence that they would have got anywhere) is really to put the cart before the horse. It was the responsibility of the scientists to tell counsel in clear terms what the scientific evidence meant. They had ample opportunity to do so.

7.16 On 7th January 1976, the day before the start of the Maguire trial, Mr Elliott carried out another experiment which I think he devised to see whether it was possible, as a result of the actual swabbing process, to transfer NG from the surface of the fingers to beneath the fingernails. I have no doubt that Mr Elliott concluded from this experiment that such adventitious transfer would not occur and he gave evidence to this effect at the Maguire trial. If this were correct, it was further support for the kneading hypothesis which he was advancing. However the entry recording this test in Mr Elliott's laboratory notebook is by no means clear and contains a number of deletions and alterations. Had Mr Elliott's notebook been available at trial there could have been yet further material upon which he could have been effectively cross-examined.

7.17 Turning now to the evidence which the RARDE scientists gave to the courts in the Maguire case it is interesting to note that by the time of the visit to RARDE there was still no mention of the kneading hypothesis in the statements that had been prepared for the proposed prosecution. Indeed it was only on the day before the committal, which began on 20th March 1975, that Mr Elliott prepared a further (third) statement in which he said:

“It is my opinion that traces of nitroglycerine detected under the fingernails indicate that an explosive substance containing nitroglycerine has been handled and manipulated rather than merely touched.”

Mr Elliott expressed this opinion in clear terms at the trial and was supported in it by Mr Higgs. I shall not quote extensively from the trial transcripts, but include the following extracts to demonstrate the firmness of the scientists' view. First, Mr Elliott under cross-examination by Mr Self:

“So it is quite obvious you could get an innocent contamination from

that house, is that not right.

A. As I say, yes, but as I think I said in my statement and this is my opinion, contamination under the fingernails does not arise from you touching objects.”

Mr Higgs re-examined by Sir Michael Havers:

“Would the presence or absence of nitroglycerine under fingernails assist you at all as a scientist between knowingly and unknowingly handling?”

A. Yes. If they do have nitroglycerine under the nails then you are certain that they have knowingly handled explosives.”

Mr Higgs questioned by the judge:

“If there is nitroglycerine under the nails they certainly knowingly handled nitroglycerine. Are you saying that?”

A. That is my opinion.

Q. There is always a difference when people start using the word ‘knowingly’. Supposing that you handed me nitroglycerine, having listened to this case I would know it, I would knowingly have handled it. Am I right that when you say knowingly handling nitroglycerine you mean that they knew that they were handling something which they knew was nitroglycerine and were contaminated by it?

A. Quite right.

Q. What is the significance of the ‘knowingly’?

A. Well, in our opinion and from tests which have been carried out in the laboratory to try and answer the question, “Can you get nitroglycerine under your nails from accidentally touching a bag or something which may have contained explosives?” We have not been able to show that nitroglycerine can get under the nails in that manner.”

7.18 Mr Higgs does not now suggest that it was impossible to get NG under the fingernails other than by kneading or close manipulation of a bulk of explosive. Moreover, whilst he gave written evidence to the Inquiry as to those parts of an original draft of a 1977 Home Office Central Research Establishment (HOCRE) report with which he registered his disagreement at the time, he did then agree with a statement in the report that “a relatively high level under the nails may indicate that a subject has kneaded the material in his fingers”. We shall never know whether Mr Elliott’s understanding of the kneading hypothesis was in fact more subtle than it appears. However, the submission on behalf of Mr Higgs that the intention of the scientists was to advance an opinion in qualified terms to the effect that the presence of NG under the fingernails only “tended to show” rather than “showed” that the subject had knowingly handled explosive, is in my

view wholly at variance with the evidence given at the Maguires' trial and elsewhere. Had this been the scientists' opinion, they should have made it clear to counsel. They did not.

7.19 On the material available to me I believe that the kneading hypothesis was left in unambiguous and unqualified terms at the close of Mr Higgs' evidence in the Maguire case. The hypothesis was first expressed in the "Answers from Scientists" document before the Ward trial. Although the hypothesis was from time to time stated in more qualified terms in the course of the evidence of Mr Elliott and Mr Higgs I am quite satisfied that the overall effect of their evidence was to state it in unqualified and unambiguous terms. As I said in paragraph 3.16(a) above, this should not have occurred. There was never any justification for stating the hypothesis in these terms.

8. The Judith Ward Appeal

8.1 Before expressing my conclusions upon this part of my Inquiry, I record that following a referral of Miss Ward's convictions of 4th November 1974 to the Court of Appeal by the Home Secretary on 17th September 1991, judgment in what thus became Miss Ward's appeal was given by that Court on 4th June 1992.

8.2 The Crown case at Miss Ward's trial had to a large extent been based on the admissions which she made in various interviews with police officers before she was charged, coupled with damaging remarks she was alleged to have made to people other than police officers. It was the Crown's case moreover that her admissions were substantially supported by scientific evidence to the effect that traces of explosives had been found on her hands and her luggage and in her caravan. Dr Skuse, a chemist from the Home Office Forensic Science Laboratory, and Mr Higgs, Mr Lidstone, Mr Elliott and Mr Berryman, all from RARDE, gave evidence for the prosecution at Miss Ward's trial. Dr Skuse testified that swabs taken by him from under Miss Ward's fingernails had proved to be positive for NG.

8.3 At the hearings of the appeal the following witnesses gave evidence on the scientific issues: Dr Lloyd, Mr Higgs, Mr Berryman, Mrs Kemp (formerly Mrs Brooker) and Dr Hiley.

8.4 The Court of Appeal (Criminal Division) allowed Miss Ward's appeal on the grounds that there had been material irregularities at her trial comprising *inter alia* the failure by the Crown, including both lawyers and expert witnesses, to disclose relevant material which ought to have been disclosed.

8.5 I do not think it necessary to go into more detail about Miss Ward's trial and appeal, but in their judgment the Court of Appeal were highly critical of Mr Higgs and of the late Mr Elliott. The Court found that these scientists withheld important information which might have weakened the prosecution case or which might have encouraged investigation by the defence. They also rejected the evidence of Mr Higgs that he had been unaware of certain experimental data which was highly material and which should have been disclosed to the prosecution, the defence and to the Court. Furthermore, in a passage which echoes the conclusion which I expressed in paragraph 14.5 of my interim report, the Court said:

(transcript pages 132A-133B) "There was another matter which caused us concern. Mr Higgs and Mr Elliott took the caravan samples. They must have supervised the TLC tests. And on Mrs Kemp's evidence, which we accept, her role was that of a laboratory assistant and Mr Higgs and Mr Elliott must have determined the test results. The

interpretation of a TLC process is a matter of judgment. The chemist must exercise judgement in respect of the distances travelled by the suspect and control spots as well as the colour of the suspect spot. Given the fact that we have found that Mr Higgs and Mr Elliott had allowed their objectivity to become clouded by partisanship, the question arises whether we can have faith in their supervision and interpretation of test results. It may, of course, be that in dealing with the tests Mr Higgs and Mr Elliott were approaching their task with clinical detachment. But can we be sure? After all, in February 1974, a day or two after the caravan samples were tested, Mr Higgs and Mr Elliott were already arranging for firing cell tests to be done at Woolwich, with a view to obtaining evidence which could be used by the prosecution at Miss Ward's trial. Mr Higgs and Mr Elliott in due course misrepresented the results of the first firing cell tests to the court, and they concealed the results of the further firing cell tests in September and October. In these circumstances it seems more realistic to accept that the lack of objectivity that subsequently characterised the conduct of Mr Higgs and Mr Elliott may also have affected their judgment on the earlier interpretation of the TLC tests. For this further reason we have to say that we have no faith in the accuracy of the caravan test results."

8.6 In fairness, I should also refer to the conclusions of the Court of Appeal when quashing the convictions of the Maguire Seven in June 1991. That Court, having heard evidence from Mr Higgs and having concluded that certain instances of non-disclosure of relevant material by the scientists constituted material irregularities, nevertheless held that these did not of themselves render the convictions unsafe or unsatisfactory. In relation to the non-disclosure of PETN, for example, the Court held as follows:

(transcript page 62B-D) "... while the senior RARDE scientists who were concerned with this case at trial, and not least Mr Higgs, deserve criticism for not revealing to the Crown lawyers (and hence inevitably to the defence lawyers) the fact that PETN might mimic NG in the TLC/toluene test, we are satisfied that they withheld this information because they thought it an unnecessary complication and/or a procedural embarrassment and not because they thought it scientifically relevant".

8.7 As I indicated in paragraph 1.9 above, however, the judgment of the Court of Appeal in the case of the Maguire Seven has not led me to alter any of my own conclusions. On the other hand the judgment of the Court in the case of Miss Ward does provide some confirmation of the views which I earlier formed and to which I still adhere.

9. The prosecution – Conclusions

9.1 When I prepared my interim report in July 1990 the convictions of the Maguire Seven still subsisted and I expressed my conclusions and recommendations against this background. I discussed the constitutional position in section 2 of that report. The convictions have since been quashed by the Court of Appeal and I am no longer constrained from commenting as I see fit upon all the circumstances of the case, though I repeat that it is not my province to determine the issue of the guilt or innocence of any of the persons concerned.

9.2 When the Court of Appeal quashed the Maguires' convictions on 26th June 1991 they referred to the "clear and succinct submissions" of Counsel for the Conlon family that "the Crown's case, as presented at trial was so improbable as to be frankly incredible . . ." and said (in a passage already quoted in paragraph 1.6 above) "In our judgment the Crown's case that all the appellants must have been knowingly handling bulk explosive was highly improbable." The Court added that Counsel's arguments, if deployed at the trial "should have been sufficient in themselves to cast doubt . . . on the opinion of Mr Elliott and Mr Higgs that the findings are inconsistent with innocent contamination."

9.3 As I have already pointed out, the Attorney-General's note of 17th February 1975 demonstrated that he was mindful of the inherent improbability of the prosecution case, the TLC results notwithstanding, but he could not have had a full appreciation of all the facts as they were to develop at the trial. He appreciated the significance of the lack of any bulk of explosive or of any other trace of explosive or bomb making equipment, as is also shown by paragraphs (d) and (e) of Mr Maitland's note of 4th March 1975 (see paragraph 5.10 above) which shows that the inferences were discussed. Because of the sheer bulk of the documents the DPP's office had not sent the statements to the LOD, but Mr Barnes had specifically offered to forward them should the LOD wish to see them. In all the circumstances no criticism can be made of the fact that this offer was not taken up. However, this did mean that the Attorney General relied on the Statement of Facts alone for the movements of the defendants in and out of 43 Third Avenue and for the timing of them.

9.4 By way of examples the following facts, not related in the Statement of Facts, were accepted (or at least not challenged) at the trial:

- i) shortly after his arrival Guiseppe Conlon went with Paddy Maguire to a public house and may have been absent from 43 Third Avenue for up to two hours;
- ii) Vincent Maguire was at home for lunch and for the rest of the afternoon but had left for his evening class by about 5.40 pm. (He did not return until after the police had entered the house);

- iii) Patrick Maguire, who was still at school, arrived home around 5.30 pm. After supper he went to a youth club, not returning until after the police had arrested the men in the Royal Lancer public house;
- iv) Shaun Smyth did not return from work until around 6.30 pm (not 5.00 pm as stated in paragraph 10 of the Statement of Facts).

All of these further reduced the “time window” during which the defendants could have been handling NG. Nor should one forget that:

- v) John Maguire and his friend Hugh McHugh arrived at the house after Guiseppe Conlon, had lunch and stayed until 4.30 pm;
- vi) John’s girlfriend, Maxine Ryan, visited from about 4 pm to 4.30 pm;
- vii) a neighbour, Mrs Roach visited the house between 4.15 pm and 4.30 pm.

The Attorney-General knew none of this but these facts increase the improbability that NG was being kneaded when young Hugh, Maxine and Mrs Roach were in the house. I make no criticism that he was unaware of these facts since most of them emerged only at the trial.

9.5 One other matter to which I should refer at this point concerns the weight that may or may not have been given on 18th February 1975 to inadmissible evidence or to improper speculation.

9.6 As I have already shown, the Statement of Facts recorded that Anne Maguire had been implicated by the Guildford Four in the preparation and execution of the Guildford bombing. There was possibly also, it was suggested, a link with a failed bombing, namely that at the Talbot public house.

9.7 The Attorney-General undoubtedly recognised that the confession statements implicating Anne Maguire were certain to be inadmissible. However, it seems to me that in February 1975 there were some grounds for believing that some evidence of a link with the Talbot bombing might become available, and for taking that possibility into account in authorising the prosecution.

9.8 In written evidence to my Inquiry Mr Michael Hill said this:

“It is essential that the Attorney-General has put before him all appropriate information to enable him to reach an informed decision on whether or not it is in the public interest to institute a prosecution. In the context of the Guildford and Woolwich bombings, background information, whilst falling short of admissible evidence, was necessary to show that the allegation was well founded.”

This I accept. It was inevitable that counsel and the Attorney-General were aware of the statements which implicated Anne Maguire and that these formed part of the background for the decision to prosecute, notwithstanding that the statements would not be admissible in evidence. It would be totally unrealistic to suggest that different counsel should have been instructed for the Maguire case and should have been kept in ignorance of the circumstances in which Mrs Maguire was first implicated. I accept that the decision to prosecute was based on the admissible evidence, though the inadmissible material may have been regarded as reassurance that the case was well founded.

9.9 Turning to the question of speculation, paragraph 10 of the Statement of Facts (quoted in paragraph 5.5 of this report) sets out the essence of the prosecution's case – which was graphically described at the trial as “all hands to the pump” – and Mr Maitland's note shows that it was discussed on 18 February 1975. The case was subsequently opened to the jury on the same basis. I quote from the note made by Counsel for one of the Defendants:

“He [Guiseppe Conlon] arrived at 1pm. . . . [It] might have been thought in that house that a connection with Gerry Conlon would be followed, or that Gerry Conlon would say anything that came into his head. . . . Sudden fear that police would be interested and then all hands to the pump.”

On the face of it this approach, whilst obviously speculative, was in my opinion not improperly so. On the basis of the scientific evidence, counsel were starting from the premise that seven individuals had knowingly handled bulk NG. It was proper for them to consider why and in what circumstances such handling could have occurred. Gerard Conlon's arrest and his father's arrival were facts which could give rise to an inference that the handling occurred as a consequence. If one starts from the premise that there was explosive in or near the house, the arrest of a close relative for a bombing offence might well give rise to a desire to dispose of it.

9.10 In oral evidence Mr Hill acknowledged the factual difficulties to which I have referred, but told me that these had been considered by the team which had come to the conclusion that the scientific evidence and not any inherent improbability won the day. As I have already indicated, counsel suggested and indeed opened to the jury at the trial certain speculative theories. Prosecutors must keep speculation and the theories which it engenders in rein: apart from questions of professional ethics, juries are unlikely to convict, or indeed judges to leave cases to a jury to consider, where the required speculation strains credulity too far. There is a fine line to be drawn between proper and improper speculation. If counsel, and for that matter the Attorney-General, had taken the view that the potential improbabilities were such as to lead them to advise against the prosecution on the one hand or to deny his fiat on the other, I would not have been surprised and would certainly not have criticised either. But I do not consider that either counsel or the Attorney-General overstepped the line

when taking the opposite decision as they did. Each was in my view substantially misled by the scientists.

9.11 Nevertheless at the end of this part of my Inquiry I remain troubled by the underlying improbability of the prosecution case against the Maguire Seven. Whatever may have been the scientific evidence in the case, whatever criticism one may make of it and of those who gave it, however much one may speculate about a contaminated towel, about the chance of there having been contaminated ether, or about imprecise swabbing procedures, I agree with the submission of Counsel for the Conlon family to the Court of Appeal in 1991 which I have quoted in paragraph 9.2. If this ground stood alone, I would nevertheless think that the verdicts on the Maguire Seven were unsafe and unsatisfactory.

9.12 Why, despite the inherent improbability of the prosecution case which is now apparent to me, were the Maguire Seven prosecuted and convicted? Mrs Anne Maguire had been implicated by Paul Hill and Gerard Conlon, two of the Guildford Four, in the course of the confession statements upon which the case against them was to be based. These statements included references to Anne Maguire showing them in her kitchen how to make bombs. When the decision was made to prosecute the Maguire Seven, this fact was known to those involved in making that decision, and was taken into account as part of the background for the decision even though it was recognised that the material would not be admissible in evidence.

9.13 By the time of the trial of the Maguire Seven, the Guildford Four had been convicted. Their trial had received wide publicity, including prominent and frequent references to Mrs Maguire's house as a bomb factory. In the course of his most recent evidence to me Mr Michael Hill agreed that the trial of the Maguire Seven had been run as a terrorist trial. The trial judge's remarks on sentencing after the jury's verdict confirm this. Although the jury received a warning to put all prejudice out of their minds (summing-up transcript pages 10-12), I believe that the underlying "bomb factory" assumption pervaded the entire case and was allowed to obscure the improbability of what was alleged against the Maguire Seven. I do not criticise the jury: the context of the prevailing bombing campaign and the atmosphere of the trial are likely to have made it impossible for them to make a wholly objective and dispassionate appraisal of the admissible evidence alone.

9.14 As I have said in paragraph 9.4 above, some of the important facts about the movements of the Maguire family and friends were not apparent at the time of the inception of the prosecution but emerged only during the trial. Many of them only became apparent in the course of the defence evidence, after the judge had ruled that there was a case to be considered by the jury. Despite these facts, the jury convicted on the strength of the scientific evidence against the

Defendants. In 1977 the Court of Appeal heard detailed arguments based on the Defendants' movements and timings, and nevertheless held that these arguments gave rise to no lurking doubt. The Court's conclusion on this point contrasts markedly with that of the Court of Appeal in 1991 which I have quoted in paragraph 1.6.

9.15 As a result of all the time which I have spent considering the case both before and since preparing my interim report in 1990, I have reached the conclusion that the Maguire Seven were the victims of a serious miscarriage of justice. Further, if the Attorney-General had been aware in 1975 of the matters of which I am now aware affecting the reliability and credibility of the scientists upon whose evidence the prosecution case depended, I do not think he would have granted even the limited fiats which he did.

10. The Home Office – Introduction

10.1 This part of my report considers the many representations that were made by a number of people to the authorities after the conviction of the Maguires. These were all to the effect that a serious miscarriage of justice had occurred, that the Maguires were wrongly convicted and that their convictions should now be set aside. The Government Department whose task it is to consider such contentions is the Home Office. The Home Secretary is constitutionally responsible for deciding both whether or not the exercise of the Royal Prerogative of Mercy should be recommended in a particular case, and also whether a particular conviction should be referred to the Court of Appeal (Criminal Division) under section 17 of the Criminal Appeal Act 1968. In practice the prerogative nowadays is only relevant in two limited classes of case: namely those where there has been a conviction at a Magistrates' Court and those where the nature of the material before the Home Secretary is such that the Court of Appeal cannot consider it under section 17. No question of the exercise of the Royal Prerogative arose in the Maguires' case, save in respect of Giuseppe Conlon, and I shall therefore concentrate on the provisions of the Criminal Appeal Act and how the Home Office dealt with the many representations which it received criticising the Maguires' convictions.

10.2 Before detailing the relevant history in this case, both from the documents and also from the evidence which was given to me, I refer first to the relevant statutory provisions. The power of the Home Secretary to refer cases to the Court of Appeal, and previously the Court of Criminal Appeal, has existed since the Criminal Appeal Act 1907. There were originally and still are two separate types of referral of cases by the Home Secretary, first, a general referral of the whole case, and secondly a limited referral for the determination of a particular point. Section 17 of the 1968 Act reads as follows:

“(1) Where a person has been convicted on indictment, or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability, the Secretary of State may, if he thinks fit, at any time either:-

- a) refer the whole case to the Court of Appeal, and the case shall then be treated for all purposes as an appeal to the Court by that person, or
- b) if he desires the assistance of the Court on any point arising in the case, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.

(2) A reference by the Secretary of State under this section may be made by him either on an application by the person referred to in Subsection (1) or without any such application.”

10.3 Although the terms of section 17 are unrestricted and on their face give a Home Secretary an unfettered discretion to refer a case to the Court of Appeal “if he thinks fit”, in practice he and the civil servants advising him on these matters operate within strict self-imposed limits. These or similar limits have been observed ever since the power to refer was first given to the Home Secretary by the 1907 Act. They rest upon constitutional considerations and upon the approach that has been demonstrated by the Court of Appeal itself to its own statutory powers. The starting point in these cases is always that there has been a conviction by the court of trial and usually, also, a decision by the Court of Appeal dismissing an appeal or refusing leave to appeal. In a memorandum which the Home Office submitted to the Donovan Committee in 1964 it said:

“It has been the Secretary of State’s practice to treat his power to refer a case to the Court as exceptional and one not to be used as a means for the reconsideration of matters which have already been considered by the Courts. Accordingly, a reference in relation to a conviction is normally made only if there are fresh considerations which were not before the Court at trial.”

In a note to my Inquiry Mr Angel¹⁵ in his turn wrote:

“Successive governments have taken the view that it is fundamental to our system of justice that questions of guilt or innocence are matters for the Court to decide free from interference from Ministers. Juries are the arbiters of facts, and it is not for the Home Secretary to seek to set aside a verdict simply because he or others who have interested themselves in a case have drawn a different conclusion about a convicted person’s guilt based on their own assessment of the evidence which was before the Court. Similarly, questions of law are matters for the judges, not the Secretary of State. It is not for him to substitute his view on such questions.”

All the Home Office witnesses who gave evidence to my Inquiry expressed the same views. Similarly Mr Hurd, who himself as Home Secretary set up the Inquiry, told me in the course of his evidence:

“. . . a Home Secretary must never allow himself to forget that he is an elected politician, and that under our system the process of justice must be kept separate from the political process. It is open to others to say: “If I were trying that case as a judge I would have given a different summing-up”, or, “If I had been on that jury I would have reached a different verdict”, but it is not open to the Home Secretary simply to substitute his own view of the case for that of the courts. It would be an abuse of his powers if he were to act as though he or those who might advise him constituted some private court of law.

¹⁵ Mr Angel was the civil servant in charge of the Criminal Policy Department of the Home Office at the time of the public hearings in this part of my Inquiry. The Department included C3 Division, part of whose work concerned alleged miscarriages of justice.

A different situation arises of course if new evidence or some new consideration of substance is produced, which was not available at the trial or before the Court of Appeal. In any civilised system of justice there must be a means whereby a case can be reopened so that new matters can be assessed alongside the old evidence by due process of law. This distinction between new evidence and differences of opinion about old evidence has governed the way which my predecessors have used the power under section 17 of the 1968 Criminal Appeal Act to refer cases to the Court of Appeal.”

10.4 In addition the Home Office view is that there is no purpose in the Home Secretary referring a case where there is no real likelihood of the Court of Appeal taking a different view of it on the reference than it did on the original appeal. The Court will not do so unless and until some new material is put before it.

10.5 On this basis the statutory criterion has been construed by the Home Office at all relevant times as requiring the existence of some new evidence or some new consideration of substance before it was right to refer a conviction to the Court of Appeal. Over the years a number of variations of this wording appear in the documents, but having heard the evidence and considered all the relevant documents I am quite satisfied that there has at no material time been any relevant change or relaxation of the principles governing the exercise of the Home Secretary’s power of referral under section 17.

10.6 Be that as it may, I have no doubt that the reasoning of the Home Office on the point of construction has been soundly based in both law and logic and that no criticism can properly be made of that Department in setting up and applying the criterion which it did.

10.7 However, there is no doubt that the criterion so defined was and is a limiting one and has resulted in the responsible officials within the Home Office taking a substantially restricted view of cases to which their attention has been drawn, as it was in the case of the Maguires. The very nature and terms of the self-imposed limits on the Home Secretary’s power to refer cases have led the Home Office only to respond to the representations which have been made to it in relation to particular convictions rather than to carry out its own investigations into the circumstances of a particular case or the evidence given at trial. As it was expressed to me on a number of occasions in the course of the evidence the approach of the Home Office was throughout reactive, it was never thought proper for the Department to become proactive.

10.8 In the light of such constitutional reasoning I think that most of the public criticism that there has been of what with hindsight have been shown to

have been miscarriages of justice, and of the alleged failure of the authorities to do anything about them, has been unjustified. We have in this country a criminal justice system which has at its centre the trial of alleged offenders by jury. If a jury acquits then the defendant goes free and cannot be prosecuted again for the same offence. Where a jury convicts, then where there has been no error of law or in the conduct of the trial, logic requires that before a court, or for that matter an executive authority, can be justified in disturbing the jury's verdict there must be fresh evidence or some new consideration of substance raising a doubt about the original conviction.

10.9 Over many years after the Maguire convictions and indeed until the inception of my Inquiry, appeals have been made by commentators and critics to some concept of abstract justice by which, it has been argued, the Maguire convictions were clearly unjust. As I have indicated, those convictions have now been set aside by the Court of Appeal as having been unsafe and unsatisfactory. But until my investigations unearthed the unsatisfactory features of the Maguire case to which I have referred both in my interim report and also earlier in this report and upon one of which the Court of Appeal relied in setting aside the convictions, what real evidence or consideration had come to light, other than mere speculation or unjustified criticism of the authorities, the judiciary or the system as a whole, which would have entitled a Court or some other proper authority within the criminal justice system to reconsider the original convictions? It is true that what is now seen as the improbability of the Crown's case (above, paragraph 9.2) was discoverable from a close study of the evidence; but the fact is that the jury had found the case proved beyond reasonable doubt after a trial in which, so far as appeared, all the formalities were properly observed, and the Court of Appeal had upheld the conviction. It was not open to the Home Secretary to substitute his judgment for that of the courts.

10.10 Herein also lies one of the other substantial problems when cases such as this are under consideration, and that is how one may recognise a verdict to have been a miscarriage of justice when there is nothing more available to the commentator or the public than the evidence which was put before the jury and upon which they convicted. It is, as I have said, only when one does dig deeper that in a very limited number of cases it may appear that there has in fact been an injustice. No-one would suggest that every criminal conviction should thereafter be subjected to the detailed investigations to which I have subjected the Maguire convictions in this Inquiry, but it is clearly a matter of public concern that cases such as that of the Maguires are so far as possible identified sooner rather than later and that they then receive the attention which they deserve.

10.11 Further, it must be borne well in mind that a system such as ours can only be as good or as trustworthy as every element in it – which will include the police, the prosecuting authority, the advocates appearing at trial, the trial judge, the jury and, if there be an appeal, the members of the Court of Appeal. Where, as

in the case of the Maguire Seven and in the other recent notorious miscarriages of justice, the ground upon which the convictions have ultimately been set aside is that there has been a failure to make full and proper disclosure either by scientists or the lawyers in any particular case, or that one or more police officers appear to have perjured themselves, it is wholly unjustified to make general and unparticularised criticisms of the system itself, or of the judge conducting the original trial, or of the members of the Court of Appeal, or indeed of the jury. The definitive view of any necessary changes to the criminal justice system will of course be a matter for the report of the Royal Commission. For my part, I deprecate the type of uninformed general criticism that has been made in some cases without any proper material upon which to base them. This is not to say that there have not been miscarriages of justice. My Inquiry and reports and the decisions of the Court of Appeal in these cases bear witness to that.

11. The Home Office – History

11.1 With that introduction, I turn now to the facts and documents relevant to this part of my Inquiry. The initial representations to the Home Office in the case of the Maguire Seven were made on behalf of Guiseppe Conlon. He had been suffering from progressive lung disease since well before the trial and it was through concern about his health at that time that his MP, Mr Gerry Fitt (as he then was), became involved in the case.

11.2 The Archbishop of Westminster, Cardinal Basil Hume, who was to play a significant part in the campaign on behalf of the Maguire Seven and the Guildford Four, first wrote to the then Home Secretary, Mr Merlyn Rees, in March 1979. He sought the release on compassionate grounds of Guiseppe Conlon because he would not live long enough to complete his sentence. He also said in his letter:

“I have met Mr Conlon in person myself and would have little doubt in my own mind that he is innocent.”

11.3 He further pursued Mr Conlon’s case (following the change of government in May 1979) with the Prime Minister, Mrs Thatcher, and Mr Whitelaw, the new Home Secretary. Cardinal Hume met the latter in July 1979 to discuss Guiseppe Conlon’s case but although he told the Home Secretary that he believed Mr Conlon to be innocent, the meeting focused more on whether the case met the criteria for the exercise of the Royal Prerogative for release on health grounds than on the issue of innocence. After the meeting the Home Secretary told his officials that as soon as Mr Conlon’s health deteriorated further to the point at which his case fell within the criteria usually applied to remission on health grounds, he would immediately consider recommending the exercise of the Royal Prerogative.

11.4 In preparation for his meeting with the Cardinal, the Home Secretary had before him a detailed note on the case prepared by Mr Bourlet, a junior officer in C5 Division (the predecessor of C3 Division). It was drawn mainly from the judgment of the Court of Appeal of July 1977, but Mr Bourlet also commented:

“Conlon came to this country from Belfast on the day he and the others were taken by the police because, he said, his son had been arrested in connection with the IRA bombing of public houses in Guildford. He went to stay with Mrs Maguire who was his sister-in-law. That may well have been the case. There was certainly no evidence to show that he had been actively involved with Mrs Maguire in any long term enterprise in aid of the IRA.

However, the case against Conlon did not depend upon the availability of such evidence. The nature of the charge was such that in all the

circumstances the presence of traces of nitroglycerine on his hands – and on the hands and gloves of his co-defendants was sufficient to establish guilt. The position was that seven persons who on that particular day in December were joined by their connection with Mrs Maguire and the Maguire house had all (on that day is implicit in the traces discovered by the TLC) handled nitroglycerine. The chance of innocent contamination by that explosive in all seven cases is so remote that it can be dismissed. The general tests made by Woolwich of persons employed where explosives were made or stored and the tests of the swabs taken at random by the police all over the country show how very unlikely innocent contamination would be.

None of the more usual factors of a criminal case are present here. No questions of identity or alibi. No disputed oral statements to the police. No documentary evidence. No fingerprints. Indeed, no significant evidence other than that of the expert witnesses. The possibility of the innocent contamination of any one of the defendants (and it was positively canvassed in the case of O'Neill) has been considered and rejected by the courts, and by the verdict of the courts and on present information all or none of the defendants must be considered guilty.

The conclusion must be that to “re-open” the case it would be necessary to produce fresh and material information to show either:-

- a) that the chromatography tests run by Woolwich of the swabs taken from the defendants were positively invalid as indicators of the presence of nitroglycerine or that those tests were unreliable as indicators (such information would have to go beyond that already given by the expert witnesses for the defence),
- b) that the swabs and scrapings taken by the police from the defendants' hands were inadvertently and unknowingly contaminated by nitroglycerine or were deliberately so contaminated by the police officers involved acting in concert, to pervert the course of justice.

I cannot foresee such information arising.”

11.5 At an early stage, therefore, the Home Office were taking a stand upon the regular convictions of the Maguire Seven, the dismissal by the Court of Appeal of their applications for leave to appeal and the absence of any fresh material satisfying the necessary criterion to which I have referred.

11.6 Mr Conlon's health continued to deteriorate. He was admitted to an outside hospital at the end of 1979 and again in January 1980, and Mr Fitt met the Home Secretary on the 15th January 1980 to press for his release. The Home Secretary decided to recommend the exercise of the Royal Prerogative to release Mr Conlon on 23rd January 1980, but he died in hospital later that day.

11.7 However, the representations on behalf of both Guiseppe Conlon and then also his co-defendants did not cease on his death. A letter from Mr John Biggs-Davison MP in February 1980 raising the case again with the Home Secretary was the first of many which he and other leading churchmen, politicians, lawyers, journalists, scientists and laymen were to send to the Home Office over the years until 1989.

11.8 The reply he received was typical of the many sent by Home Office Ministers over the period:

As you will know, as Home Secretary I can intervene in a criminal case by recommending the exercise of the Royal Prerogative of Mercy to set aside a conviction, and it is possible to do this even after a convicted person has died. But the Prerogative is not a means of reviewing the decisions of the courts or of duplicating the ordinary machinery of appeal. I cannot reconsider cases on the basis of facts already considered by the courts, but only where some relevant new evidence or consideration of substance has come to light.

While Mr Conlon was still alive, an alternative to the exercise of the Prerogative might have been to refer the case to the Court of Appeal, under section 17 of the Criminal Appeal Act 1968, but again it would not have been right for me to exercise this power unless there had been some new consideration of substance, not previously considered by a court, which raised such doubt about the rightness of the conviction that the Court of Appeal might have found grounds for varying the decision previously reached.

All the available evidence in Mr Conlon's case was closely scrutinised both by the court of trial and – at exceptional length – by the Court of Appeal, which upheld his conviction. No new evidence which would have justified my intervention in either of the ways described above has ever been submitted. It is no longer possible to refer the case to the Court of Appeal, but if any new evidence or consideration of substance is put forward by anyone we shall, of course, examine it carefully.

11.9 In August 1980 Mr Biggs-Davison raised the Maguire case for the first time in Parliament during the debate on the Consolidated Fund Bill. Although speaking specifically about the case of Guiseppe Conlon, at the end of his speech he asked that the Conlon case should be studied afresh by expert opinion – scientific as well as legal.

11.10 As I have already mentioned, the question whether the criteria for referring cases to the Court of Appeal had changed at any material time was raised in the evidence given to me. In June 1981 Mr Christopher Price MP, who had been active in an earlier alleged miscarriage of justice case, the "Confait

case”, wrote to the Home Secretary on behalf of Sir John Biggs-Davison, Mr Fitt and himself asking for a meeting to discuss the criteria on which the Maguires’ case might be referred back to the Court of Appeal, and in particular to “explore methods of assembling scientific evidence to show that the tests used to convict Mr Conlon and some of his fellow defendants were so fallible as to be unsafe and unsatisfactory in maintaining the verdicts of the jury.” He pointed out that virtually all the experts who might testify, with particular recent experience, about the reliability of thin-layer chromatography tests were in the employ of the Home Office and subject to the Official Secrets Act. His letter continued:

“Though we understand there are academic analytical chemists who could give theoretical evidence about the reliability of such tests, the natural Home Office monopoly of the real experts does put Mr Conlon’s legal representatives in a difficulty as to how they might go about preparing a case. We are sure that the Home Office would not wish this ‘monopoly’ to stand in the way of efforts by Mr Conlon’s representatives to prove his innocence.”

He also referred to the point he had made in the House of Commons the previous year that a reinterpretation of the scientific evidence in the Maguire case would be consistent with the approach taken in the Confait case in which a “reinterpretation of the scientific evidence as to time of death was deemed a sufficient ‘consideration of substance’ to enable the Home Secretary to refer this case back to the Court of Appeal.”

11.11 Mr Whitelaw’s reply on 1st July 1981 answered these points:

“You say that Roy Jenkins, while he was Home Secretary, changed the criteria upon which cases may be referred to the Court of Appeal under section 17 of the Criminal Appeal Act 1968. This is not so. After you had made a similar point during the debate about this case last July, on the second reading of the Consolidated Fund Bill, Leon Brittan looked into the matter very carefully. He found that while, over the years, different forms of words may have been used in different contexts, to meet the circumstances of particular cases, the criteria by which such cases are considered have remained the same, under successive Home Secretaries, for many years. It is still the position that I could consider intervening in Mr Conlon’s case only on the basis of some relevant new evidence or consideration of substance that has not previously been before the courts. So far nothing of that kind has come to light.

As Leon Brittan explained during the debate last year, the scientific evidence given at the trial, in particular the validity of the “thin-layer chromatography” test in detecting nitroglycerine, the possibility of other substances giving similar test results and the way the technique was used in this case were thoroughly gone into during the examination and cross-examination of expert witnesses, which lasted for many days. One of the witnesses for the defence was Mr John Yallop,

a former principal scientific officer at the Royal Armament Research and Development Establishment, Woolwich. When, last year, his alleged views on the efficacy of the TLC test received some publicity, Leon Brittan told several people who brought this to our notice that if Mr Yallop were to provide us with the results of his own examination of the techniques we should be glad to have them considered. This offer has not been taken up, but it still stands.”

11.12 In February 1982 Mr Price forwarded a report by Dr Brian Caddy of Strathclyde University to the Secretary of State on the case against Guiseppe Conlon and the evidence presented at trial by Mr Yallop, one of the scientists called for the defence. In the course of his report Dr Caddy expressed the opinion that a single TLC test as performed by RARDE was insufficient, without a confirmatory test, to make an unequivocal finding of NG.

11.13 There was then a meeting at the Home Office on 12th March 1982 between the Minister of State, Mr Patrick Mayhew, and three MPs, Mr Price, Sir John Biggs-Davison and Mr Fitt. The discussion still focused on the case of Guiseppe Conlon, but it was recognised that many of the points made would affect all the convictions. At this meeting the MPs contended that Mr Conlon had only come to England from Belfast because of his son's arrest for the Guildford bombings. This was his first visit to London for 17 years and his health was failing. On the scientific evidence they said the TLC test by itself merely indicated the presence of NG and that conclusive proof of its presence could only be obtained by further testing. In reply the Minister said that it was recognised that the forensic evidence had been essential to the prosecution case at the trial and so the question was whether the jury could safely have relied upon what was presented to them as scientific fact by the prosecution scientists. If the TLC test were now shown to be unreliable or inconclusive without corroborative testing then further investigation of the case would be justified. The note of the meeting then also records that in discussion after it concluded Mr Mayhew said that he would welcome an assessment by the Home Office Forensic Science Service (FSS) of the reliability of the TLC test in cases such as these in the light of any recent developments.

11.14 The Minister's request for an assessment was passed to Dr Alan Curry, the Controller of the FSS, who responded on 7th April 1982 in the following terms:

“I have now discussed this case with the experts from the Royal Armament Research and Development Establishment Woolwich.

The word (sic) “Thin Layer Chromatography” crops up time and time again as if the whole case stood or fell on this technique. In fact the simple procedure involves many other criteria which all the experts are agreed add up, even today, never mind in 1975, to the finding of

nitroglycerine and, furthermore, that this was very well tested in the court at the time. I can go into details if Mr Mayhew requires a meeting.

Because of the furore raised in the Conlon case additional tests are now carried out but nothing has come to light to throw doubt upon the evidence given in 1975.”

Dr Curry was asked by Counsel to the Inquiry what he had understood he was being asked to do. He replied “I was being asked a very technical, analytical question and you see in my reply I dodged the question saying, look if you want to learn about this I had better come and see you because books had been written about TLC”. No such meeting occurred.

11.15 Dr Curry told me that to answer Mr Mayhew’s queries he had discussed the case with Mr Higgs and Mr Elliott and had been informed in general terms about the methods used at RARDE and the results they obtained there. However he did not inspect the notebooks, nor apparently did he know any specific test results. Further, Dr Curry made no reference in his reply to Mr Mayhew to the fact that some years earlier he had said that he did not consider a single TLC test to be sufficient. He had said this in June 1976 after being sent a copy of a report on the Maguire trial prepared by the Metropolitan Police. In a note to the Police Department in the Home Office he had commented that he was at a loss to explain why it appeared that only thin-layer chromatography was used by RARDE unless they did not have the necessary equipment for other tests. He agreed with the defence experts’ view that a confirmatory test using a different method was needed. On the 11th November 1976 he wrote to Dr Carver at RARDE:

“I am particularly concerned with the analytical procedures and the evidence your scientists give before the courts. A very serious point of identification arises with the TLC method and I would not consider a single chromatographic parameter as proof of identity.”

11.16 However Dr Curry told me, and I accept, that following that letter conversations with the RARDE scientists about the ‘916’ survey and tests within the Establishment itself had satisfied him both that they had carried out the necessary confirmatory tests and also that the substance on the swabs was NG.

11.17 Nevertheless Dr Curry had also seen the report of a Forensic Science Seminar which had been held at RARDE in November 1977 and had been attended by forensic scientists from RARDE, the Home Office and the police. At it Mr Higgs gave a paper entitled “Chemical Evidence at the Maguire Trial”. This was an account of the scientific issues which had arisen in the Maguire trial and in particular the challenges to the RARDE findings by Mr Clancey and Mr

Yallop. In the ensuing discussion this exchange is recorded in the note of the meeting:

“Mr Hall¹⁶ I am worried about the specificity of the charge, since of course one compound that you could not separate under these conditions is EGDN, and I would very much like some comments on that. Secondly would it not have been more appropriate to spend some of the massive amount of time that was spent, on identifying both EGDN and NG since the EGDN is a constant compound of all commercial explosives?”

Mr Higgs I do not see much point in identifying EGDN when you have to deal with commercial explosives. All UK explosives have EGDN added and the only advantage would be to confirm its absence in a suspected case of home made NG. At the time of this investigation we did not have GLC/ECD to help us to differentiate between these two explosives, and therefore we were not too worried about this. What did worry us however, was that we were not able to satisfactorily distinguish between NG and PETN using toluene as eluent. However, this point never really cropped up during the trial. We were all very careful about what not to say in this respect. I know this is not entirely a satisfactory scientific viewpoint, but we took the view that for a given amount of explosive we could distinguish PETN by the slower rate of colour development.

It was only towards the very end of the trial that Yallop, who knew all along that this was a possibility, actually produced the evidence in the form of a letter he had received from Wally Elliott giving details of TLC separations. The disclosure caused a great deal of concern but after a consultation all Counsel agreed that there was no question that PETN was the substance found on the accused's hands and that this piece of evidence should be dismissed. We are very concerned about looking for all explosive constituents and we can now, and do, look for EGDN and NG as well as all other organic explosives components.

Mr Hall The point I was making is that the identification of two components means that Defence have to find two components that simultaneously interfere with TLC results. Therefore this strengthens the evidence considerably.

¹⁶ Mr Hall was a scientist on the staff of the Northern Ireland Forensic Science Laboratory.

Mr Higgs I take your point, and now we can meet these more stringent requirements, but at the time when the Maguire hand test kits were dealt with this was certainly not so.

Dr Carver Two points I would like to make. Firstly, we were keenly aware of these deficiencies and were worried about the exact wording of the indictment. In future I think we would suggest to the police a much more general form of words which would indicate only the findings of explosives rather than a specific substance. . . .”

Dr Curry told me that this passage had not caused any concern to him when he read it, nor to any of his staff who attended the seminar. I find this surprising. As the Court of Appeal in the Ward case commented, this document revealed an improper approach by the scientists to their role as expert witnesses. However, it does not appear that any of the officials dealing with the case in C5 Division saw this report although the file which contained it appears to have passed through the Division at least once.

11.18 Following the meeting in March 1982 Mr Price had further discussions with Dr Caddy who made clear that his work on the case had been based upon very limited documentary evidence and so he set out a series of documents he wished to see and particular areas of inquiry which he thought should be pursued. The documents comprised principally the RARDE scientists’ experimental notebooks. The first request for documents was made on 30 March 1982 and correspondence continued between Dr Caddy, the Home Office and RARDE about these documents until December of the same year. Although Dr Caddy received the relevant scientific exhibits and transcripts of evidence and a number of his questions were answered, he was not given access to any prosecution papers which had not been disclosed at trial. Mr Higgs, in a letter to the Home Office dated 20th April 1982, offered to see Dr Caddy at RARDE to review the evidence which had been given at the trial about the findings from the swabs, the population survey and the other tests carried out, and the tests done during the trial to check the points made by Mr Yallop. But no such meeting ever took place.

11.19 In February 1983 Mr Price forwarded a second report from Dr Caddy to Mr Mayhew. Whilst Dr Caddy confirmed that there was no substance amongst the proprietary products exhaustively considered at the trial which could have been identified as NG by the TLC test using toluene as the eluent, he also considered that the test could not have distinguished nitroglycerine from PETN and EGDN and that a confirmatory test should have been carried out. Mr Price suggested that Dr Caddy’s report amounted to a “substantial consideration” which should enable the Home Secretary to regard the verdict as unsafe and unsatisfactory and grant Mr Conlon a free pardon. He asked to meet the Minister.

11.20 Mr Cook in C3 Division sent the report both to the FSS and to RARDE. Mr Elliott had died by then. Mr Higgs had retired but was working as a consultant and attended a meeting chaired by Miss Pereira (Controller of the FSS, 1982–1988) at the Home Office to discuss Dr Caddy's report. One of the topics discussed was the possibility of innocent contamination. A manuscript note of the meeting (but not the typed version) recorded "in the absence of proof of level of spot on Conlon it is difficult to say it could not be contamination." In the result a reply to Dr Caddy's report was prepared by the FSS in consultation with RARDE and sent by Miss Pereira to C3 Division at the Home Office on the 17th March 1983. It was in these terms:

- "a) The thin-layer chromatography test used could not have distinguished nitroglycerine from either of the two other explosives mentioned. This I understand was made clear in court, however EGDN is never found on its own in the commercial field and is always associated with nitroglycerine in commercial explosives found in the UK and Europe. As far as PETN is concerned it has no known commercial usage other than Cordtex (detonator cord) which is used for specialised quarrying purposes in conjunction with other commercial explosives.

The first recorded misuse of PETN in Northern Ireland was in 1979 and on the UK mainland in 1980. However letter bombs containing a mixture of PETN and RDX originating from Europe arrived in the UK in September 1972.

- b) The thin layer chromatographic method used was run on plates which were scored into separate strips thus removing the edge effect. Each plate always had standard samples run, these were of RDX, TNT nitroglycerine and nitrobenzene which checked the resolution of the method. The whole system was a multifaceted one which was not based solely on the Rf value but also on the ability to reductively hydrolyse and form a nitrite and thence to react with the Griess reagent to produce the appropriate colour in the appropriate time.

A survey of approximately 1,000 people selected at random provided hand swabs which were checked by the same method. No compounds which could be confused with nitroglycerine were detected.

A survey was carried out on 351 compounds representative of those commercially available which it was considered might interfere with nitroglycerine identification. These included compounds containing nitro, nitrite and nitrate groups; they were examined by the same method and it was shown that none could be confused with nitroglycerine. It is, and always has been, standard practice for each thin layer plate to have a nitroglycerine standard applied to it.

A combination of all this information led to the conclusion that the substance found on the swabs taken from CONLON was unlikely to be anything but nitroglycerine.

It is now standard practice to perform confirmatory tests as the result of the progress which has been made over the last few years. It is important to note that since that time every sample which has been found to be nitroglycerine by the thin layer method has been confirmed by these further tests.

- c) The possibility that CONLON became accidentally contaminated cannot be eliminated, however if this were the case it would have had to have been from contact with a very heavily contaminated person or object. All the swabs taken from objects within the house where he was apprehended were negative in respect to nitroglycerine. Contamination on CONLON's hands was heavier and more widespread than on all but one of the other suspects' hands, ie. under finger nails as well as on the surface of both hands."

11.21 This note was misleading in two important respects. First, it stated that the inability of the TLC test to distinguish NG from PETN (and EGDN) was made clear in court. In my earlier hearings and in my interim report I considered in detail the events at the trial on 1st March 1976, in the course of which the RARDE scientists maintained that the two substances were distinguishable by reference to their different rates of colour development. As I explained in section 10 of my interim report, it was on the strength of this assurance that counsel acted as they did, making no application for further oral evidence to be called.

11.22 Secondly, the last paragraph of the note contained a misleading comparison of the degree of contamination of Guiseppe Conlon's hands with that of the other suspects. The positive findings obtained by TLC tests were not quantitative, and contamination under the fingernails was not a feature distinguishing Mr Conlon from the others.

11.23 Miss Pereira (who had been involved in reviewing a number of cases of discredited forensic evidence given by Dr Clift) was asked at the Inquiry about this meeting and her own understanding of the evidence in the Maguire case. She told me that she did not review the entire evidence herself and had not seen the trial evidence, the Judge's summing up or the Court of Appeal judgment. The purpose of the meeting was to ascertain whether the science was reasonably reliable, to check what RARDE had done and what precautions they had taken. She had been unaware of the importance to the Crown case of the kneading hypothesis, nor did she know the individual TLC results, so that she could not be expected to question the assertion that Mr Conlon had been heavily

contaminated. She was not aware either of how PETN had been dealt with in court, although she said she thought the position should have been made clear in the original statements.

11.24 It is clear to me that the FSS were not supplied by C3 Division with sufficient information about the scientific evidence and course of events at the trial to enable them to look critically at the advice given by RARDE at the meeting.

11.25 Mr Mayhew then met Mr Price, Mr Fitt and Sir John Biggs-Davison, accompanied by Dr Caddy, on 23rd March 1983, when once more the discussion focused on Guiseppe Conlon. From the note of this meeting made within the Home Office it is apparent that the principal topic raised and discussed was the specificity of TLC testing. The subject of innocent contamination does not seem to have been discussed at the meeting.

11.26 In May 1983 Mr Price sent a final report from Dr Caddy to the Home Office. This dealt with four points: first, whether the TLC tests used by RARDE could differentiate between NG, PETN and EGDN; second, how long NG remained on hands after they had been contaminated with it; third, the extent to which such contamination could result from handling objects themselves previously touched by handlers of explosives; fourth, various questions concerning heart tablets which commonly contain NG. Dr Caddy reported that his experiments confirmed that the TLC systems used by RARDE could not distinguish NG from PETN and EGDN, and that secondary contamination could indeed take place through the handling of door knobs and similar objects. However he did not deal with any question of the relevance of any contamination under fingernails.

11.27 Dr Caddy's report was sent to RARDE by the FSS and on 24th June 1983 Dr Carver responded to the points in it somewhat dismissively. He dealt with the contamination issue by briefly referring to published data, including Dr Twibell's 1982 paper¹⁷ but giving no details. Dr Carver expressed surprise that Dr Caddy was not aware of the information in the literature, but this comment was not passed on to Dr Caddy by the Home Office nor indeed was Dr Caddy's attention drawn to the Twibell paper. It is clear from all the evidence and material that I have received that nobody appreciated the potential significance of its findings in the context of the Maguire convictions. In passing, it is worth commenting that this was the last occasion on which the issue of innocent contamination of the hands was raised in any of the representations made to the Home Office.

¹⁷ See paragraph 2.2 above.

11.28 On 22nd August 1983 a lengthy submission was made to Ministers by Mr N R Varney, then head of C3 Division, on the “troublesome, involved, long standing and notorious case” of Guiseppe Conlon. After a detailed discussion of the points raised by Dr Caddy this submission concluded:

“Conclusions

The grant of a posthumous Free Pardon (a very rare event) to Conlon would imply that the Home Secretary had positive reasons for regarding him as innocent. This is not our view of the merits.

The other form of intervention by which a conviction may generally be corrected is to refer the case to the Court of Appeal under section 17 of the Criminal Appeal Act 1968. The Registrar of Criminal Appeals has advised that there is strong argument for the view that a reference under section 17(1)(a) cannot be made in respect of a deceased person. It is more likely that a reference might be made under section 17(1)(b), whereby the Court is asked for its opinion on a particular point in the case. This does not, however, enable a conviction to be quashed.

Even if the case could be referred, we do not think the new evidence or the arguments adduced would justify it. Dr Caddy’s findings do not seem to us to call these convictions seriously into question or to add at all significantly to the issues contested at the trial and at the appeal.

It is to be noted that, although Conlon’s is the only one of the seven cases to have been adopted by the MPs, the arguments are the same in all of them. There is no obvious basis, pace Mr Price, for intervening in one but not the others.”

11.29 Following the general election in June 1983 Mr Mayhew had been replaced by Mr David Mellor as the Minister responsible for considering alleged miscarriages of justice. On 5th December 1983 Mr Mellor, after discussion with Mr Varney and Mr Cook, notified the Home Secretary of his view that the advice contained in the submission of 22nd August should be accepted and that accordingly no action should be taken. The Home Secretary agreed, and on 20th December 1983 Mr Mellor wrote to Sir John Biggs-Davison saying that he saw no grounds to recommend the granting of a free pardon to Guiseppe Conlon.

11.30 I have seen nothing in the documents nor heard any evidence which explains the delay which occurred between August and December 1983. I accept that the receipt of Dr Caddy’s report in May required further consideration and that there was no undue delay before the submission to Ministers was made on 22nd August, but I do not know why the decision on this submission was not taken until December.

11.31 Be that as it may, there was relatively little activity within the Home Office on the case in 1984 and of this I make no criticism. Outside the

Home Office, however, things were different. A documentary about the Maguire case, screened by Yorkshire Television on 6 March 1984 in the 'First Tuesday' series, attracted some attention and the campaign now widened to include all the Maguire defendants, two of whom were then still in prison.

11.32 On 16th July 1984 Cardinal Hume wrote to the Prime Minister:

"For a number of years now I have experienced grave disquiet over the case of Patrick Conlon who died, you will recall, on 23rd January 1980 in Hammersmith Hospital, while still serving a sentence of 12 years for his alleged involvement in the alleged manufacture of explosives in the house of the Maguire family in 1974.

I discussed my misgivings with you soon after you first arrived at Downing Street. I must confess that I have not been at all satisfied with the official answers that have so far been offered. I know that my anxiety over Patrick Conlon's innocence and how he and those accused with him were convicted is shared by some public figures including Lord Fitt and Sir John Biggs-Davison, surely no friends of terrorists or the IRA. His protestations of innocence until his death and his funeral in Belfast – with no hint of paramilitary presence – must surely give rise to the most grave anxiety about the likelihood of a major miscarriage of justice. Whatever the forensic evidence may seem to prove, every other indication would argue for the intrinsic improbability of the charges levelled against the Maguire family in general and Patrick Conlon in particular.

I am disturbed too by the evidence produced by Yorkshire Television's programme on this case screened on March 6th, 1984. I would hope that the relevant authorities have called for a transcript of that programme and have weighed the serious doubts and questions it raised.

I am well aware that it is normal practice to produce fresh evidence to justify the re-examination of a judicial sentence. As events subsequent to the trial have cast doubt on the justice of its conclusion, I would suggest that an examination of the evidence actually presented in Court needs to be conducted.

I am understandably reluctant, as you will well appreciate to cause fresh controversy in the present state of Anglo-Irish relations. That, however, can never be the only consideration. Justice remains an absolute priority. I am sure I speak for others when I say we would be reassured only if we could be convinced that every aspect of this case has been objectively and fairly reviewed after the death of Mr Conlon, and every reasonable anxiety allayed, not only about his case, but that of the people convicted with him, one of whom, Mrs Annie Maguire, is still in prison.

I would ask you to ensure that the Home Secretary looks carefully at this whole case and its consequences. There are so many indications which cast doubt on the justice of the Court's verdict."

The Prime Minister replied on 4th August:

"... I understand that the case for the Crown rested largely upon expert scientific evidence based on the results of thin-layer chromatography tests used in detecting nitroglycerine. The validity of the test, the possibility of other substances giving similar test results and the way the technique was used in this particular case were thoroughly gone into during the examination and cross-examination of expert witnesses both for the prosecution and the defence. Later, the scientific evidence was central among the issues considered in great detail by the Court of Appeal at a hearing lasting ten days, at the end of which they found no grounds for disturbing the convictions.

You will know that neither I nor any Minister has power to re-assess a case on the basis of evidence that has already been before the courts. Nor can we act as a further Court of Appeal when the normal avenues have been exhausted. As you say, the Home Secretary is empowered under section 17 of the Criminal Appeal Act 1968 to refer a case to the Court of Appeal (Criminal Division). But it would not be right for him to do so unless significant new facts or considerations of substance had come to light which threw doubt on the rightness of the conviction and which had not previously been before the courts. In Mr Conlon's case there have also been requests that the Home Secretary recommend the exercise of the Royal Prerogative of Mercy to grant a posthumous Free Pardon. But again it would only be proper for him to do so in exceptional circumstances where he was satisfied that the defendant had no intention of committing an offence and had not, in fact, committed one.

The whole case has been examined very closely on a number of previous occasions but each time the Home Secretary has concluded that there are insufficient grounds to justify intervening in either of the ways I have described. The points raised in the television programme to which you refer were indeed taken into account. Most of them had, in fact, been advanced and considered before. Account was taken also of the reports by Dr Brian Caddy of Strathclyde University, an independent forensic scientist commissioned by Mr Christopher Price and others who have been active campaigners on Mr Conlon's behalf.

I am sorry to say that in the circumstances there is no action I can properly take in relation to this case. But if you would like to discuss your concerns once more with the Home Secretary, I know that Leon Brittan would be ready to meet you."

11.33 These two letters well represented the two opposing views. On the one hand, there was anxiety about the justice of the convictions of the Maguire Seven, particularly that of Guiseppe Conlon, based upon little more than the unlikelihood that he had had any connection with the IRA and the intrinsic improbability of the charges levelled against the Maguires generally. On the other side of this exchange of correspondence the Prime Minister was repeating the Home Office stance that as there had been regular convictions and an unsuccessful application to the Court of Appeal, then in the absence of any new material it would be wrong for the Home Secretary to refer the convictions to the Court of Appeal under section 17 of the 1968 Act. In any event it would have been purposeless to refer the case to the Court of Appeal without such new material.

11.34 Then in May 1985 Lord Fitt initiated a debate in the House of Lords on the Maguire case, pressing the Government to reopen it. He was supported from all sides of the House and Lord Mishcon, Labour front bench spokesman on Home Affairs made a new and specific request to the Home Secretary (although he said he was speaking in a personal capacity):

“... to appoint independent scientific advisers to look at the evidence that was given and advise the Secretary of State whether there are grounds under the section [17 of the Criminal Appeal Act 1968] for him to consider that there is new evidence ...”

This suggestion was duly considered in C3 Division of the Home Office, but Ministers were advised by Mr Watts, then head of the Division, in these terms:

“We see no real merit in this suggestion. Lord Mishcon saw an enquiry as a step to help the Home Secretary to decide whether he would be justified in referring the case to the Court of Appeal under s.17 of the Criminal Appeal Act 1968 as an alternative to pressing the Home Secretary to decide at once to refer the case. But that is to misunderstand the position. On the information available to us up to now (essentially Dr Caddy’s views considered in 1983) a decision has long since been taken that there are no sufficient grounds for a s.17 reference. What we now need to receive are the views of Professors Beechey and Boyle and Dr Solomons who it appears have relevant things to say, but so far we have received nothing from them. When we do receive their views, we can consider them, in consultation with the Royal Armament Research and Development Establishment (RARDE), Woolwich – who provided the prosecution scientific evidence at the trial – and with the Forensic Science Service, and then advise Ministers whether these new opinions/evidence would justify a s.17 reference. We do not need an independent scientific enquiry to help us reach that point.

If we were to ask a group of independent scientists to evaluate for us the views of Professor Beechey et al, and the group took the view that a s.17

reference would be justified, the Home Secretary, who has to have regard to the circumstances of the case as a whole, not merely the scientific aspects, could be faced with an awkward choice between disregarding the group's advice or referring the case under s.17 on inadequate grounds.

If Ministers agree that Lord Mishcon's suggestion should be resisted, we would need to give him some reassurance that any new scientific evidence as at (b), when we receive it, will be properly considered. The reply to Lord Mishcon ought to be copied to Lord Fitt and the opportunity taken to repeat the call made in the debate by Lord Glenarthur for any new scientific material to be submitted to the Home Secretary as a matter of urgency. If none is received within a reasonable time we shall have to consider whether we should ourselves make direct approaches to Professor Beechey et al asking them to let us have their views."

11.35 This advice was given after Lord Mishcon's suggestion had been discussed between Mr Watts and Mr Cook in C3 Division. Both gave evidence to me and were asked how they reached this view. Mr Cook said that they were not sure whether the scientists who had been mentioned in the debate had any substantial new evidence and that in any event the Home Office had a mechanism for considering any further representations. I asked Mr Cook why the Home Office should not have gone directly to the scientists. His view seemed to be that the correct approach to them was through the members of the House of Lords who had mentioned them.

11.36 Mr Watts did not recall the matter but he told me that he must have thought:

"We are being told here that some additional scientists have things to say about these convictions and the best course of action is to get hold of what they say, and to consider that, and see whether that provides any new material which could properly form the basis of referring the case back to the Court of Appeal, and to do that . . . we did not need an independent committee looking into the whole of the evidence much of which had not been questioned as to its reliability by representations."

Furthermore, he felt that it would be awkward if the scientists supported the views already expressed by Dr Caddy, which had been considered insufficient in the Home Office to found a referral to the Court of Appeal.

11.37 It is not easy to reconcile the oft-repeated claim by the Home Office to openness in this and other similar matters and to its readiness to receive and consider any new material with its reluctance on this occasion to seek the views

of the fresh scientists who were mentioned. However, in my opinion this reluctance stemmed from a strict application of the criteria to which I have referred within the Division and from the fact that the representations which had been and were being made to the Home Office on the scientific issues were mainly directed to the question of the specificity of the TLC test for NG. This had been the principal issue at the trial of the Maguire Seven and the question of possible innocent contamination, which had been very much a secondary issue at the trial, was not now being raised in the representations to the Home Office.

11.38 In the result, after receiving his officials' advice in the terms I have quoted, Lord Glenarthur wrote to Lord Mishcon, in response to the latter's suggestion in the debate in the House of Lords, in this way:

“The Home Secretary has looked at this proposal very carefully but he has concluded that there would be nothing to be gained by setting up an inquiry of this kind. However, as I indicated in the course of the debate, we are more than ready to consider any new scientific material with a bearing upon these convictions and I can only repeat my call for it to be sent to the Home Secretary or David Mellor as soon as possible. If on examination of any such new material we were to conclude that a s.17 reference would be justified, the Home Secretary would not hesitate to proceed in that way.”

11.39 Nevertheless, during the summer and autumn of 1985 political pressure on the Home Office to reopen the case continued. The Maguires' MP, Mr John Wheeler, who was a member and later became chairman of the House of Commons Home Affairs Committee, wrote to Mr Mellor in July 1985 with a detailed statement sent to him by Mr Robert Kee the journalist. Mr Wheeler said:

“I had the opportunity of a discussion with Mr and Mrs Maguire and their son, Patrick, on 13th July. As you know, I have considerable knowledge of the Police and the criminal justice system and also some detailed knowledge of the IRA. I must say frankly that I was immensely impressed with the demeanour of the Maguires who are not bitter about their conviction and subsequent sentences, even although they have maintained their innocence throughout. They are merely concerned to clear the family name. On the basis of what I know, I strongly believe that a serious injustice occurred in 1974.

I think that anyone interviewing the Maguires will find their demeanour and attitude since their release from prison a matter of consideration in itself. However, I know that this is not adequate and that the real test of their innocence hinges upon a re-assessment of the forensic evidence. The difficulty here is that there can be no reassessment of the original, physical scientific evidence as this ceased

to exist long ago. The basis of the Home Office Inquiry would seem to be either to show that there was scientific evidence available at the time of the trial which, if presented to the jury, might have altered the effect that the presented evidence had on them, or to show that new scientific knowledge has been acquired which will now make the conclusions reached as a result of the presented evidence unacceptable.

There is one other aspect to this case which crosses my mind and this is that the samples which were given to the laboratory at Woolwich may not have been true samples of the condition of the accused's hands as swabbed. I do not know whether witnesses could be found to prove this contention and I, therefore, feel that the basis of a Home Office review may be about the assessment of the forensic evidence."

Mr Wheeler's comment on the impression that the Maguires made on him was reflected in many of the representations made to the Home Office. But as he acknowledged this alone could never have been sufficient to cause the Home Office to refer the case.

11.40 Shortly after this, Dr Peter Boyle of Trinity College, Dublin, whose name had been mentioned by Lord Fitt in the House of Lords debate, wrote to Mr Mellor. His letter again concentrated on the question of the particularity of the TLC tests, especially in so far as any confusion between NG and PETN might be concerned. He argued that since the indictment had been specific in its reference to NG the conviction was unsafe. He also wrote:

"Many scientists of my acquaintance who are thoroughly conversant in their work with the technique of the TLC are appalled that a conviction was obtained on the evidence of a single TLC test run in one solvent by an inexperienced operator . . ."

11.41 Mr Stanton, who had succeeded Mr Cook in C3 Division as the Grade 7 official with responsibility for the case, consulted the Legal Adviser's Branch in the Home Office on whether Dr Boyle's point could be a ground for a reference to the Court of Appeal (although he did not set out the facts of the case and as far as I know the Legal Adviser's Branch were never given the full facts). The Legal Adviser's opinion was that even if the Court of Appeal considered that the evidence at trial could not have conclusively proved that the substance on the hands of the Maguire Seven had been NG rather than PETN, the Court might apply the proviso to section 2 of the 1968 Act and dismiss the appeal. In my view that was sound advice.

11.42 Nevertheless, by this time Mr Stanton had before him, in addition to that from Dr Boyle, a number of further representations about the Maguire case on which Mr Mellor needed his advice. In November 1985 he sought to draw all the various threads together in a submission for Ministers, prefacing it with these remarks:

“I am sorry that this matter should have been so long delayed, but in the knowledge that both the Maguire family and Lord Fitt have said that they will not give up their campaign to prove the Maguires (and associates) innocent, and have the case “re-opened”, I have given some effort to an unfortunately fruitless attempt to find a means of settling the matter.”

When Mr Stanton gave evidence to me he was asked what he had meant by “settling the matter”. He explained that he was first trying to assess for himself all the points that had been raised, and then secondly seeing whether it was possible to establish some form of agreement on the matters which the Home Secretary had already decided did not meet the criteria for a referral.

11.43 On repeated requests to establish a scientific committee Mr Stanton’s advice was clear:

“These approaches must continue to be resisted. We do not know what conclusions, if any, a committee of scientists might arrive at. There would be pressure for the Secretary of State to act on the basis of any recommendations (eg. referral) it might make, leaving potentially awkward decisions to be made, and setting a dangerous precedent. Arguably it remains up to the Maguires and their supporters to demonstrate a case, not for the Secretary of State to explore it himself.”

Mr Stanton told me that he thought that a scientific committee would merely examine the TLC test and might simply reiterate the doubts which had already been expressed, so that nothing new would emerge. This would be awkward because the Home Secretary would then apparently be in the position of refusing to accept the advice of the scientific committee.

11.44 It was, I think, unfortunate that neither Mr Stanton nor any of his colleagues envisaged that a scientific committee might come up with something fresh, though it was understandable in the light of the representations which had been received. However, with the combined experience of the members of such a committee they might perhaps have sought to look at the RARDE laboratory notebooks and concluded that these did give rise to new considerations of substance. In any event I do not agree with the suggestion that it might have been awkward if the scientific committee did merely canvass the matters which had already been put to the Home Office and produce nothing new. A reasoned statement to that effect would have been of some value in dealing with further representations.

11.45 Before responding to the representations Mr Mellor held a meeting on 16th December 1985 with Dr Stephenson of the FSS and Mr Stanton to discuss the forensic evidence. The discussion focused on the specificity issue and the indictment point but the note of the meeting records that Mr Mellor asked for confirmation that the tests had been properly carried out. Dr Stephenson replied that a misreading of the results was extremely unlikely and there was no evidence of any ineptitude.

11.46 Following the meeting Mr Mellor agreed that those making representations on behalf of the Maguires should be advised that the representations made since the House of Lords debate did not provide grounds for a reference to the Court of Appeal, or for setting up a scientific committee, but that the Home Secretary would be happy to consider any fresh material and he wrote to the MPs accordingly.

11.47 However, this did not halt the flow of representations on behalf on the Maguires. During 1986 206 MPs signed the following early day motion:

“That this House notes the widespread concern felt in Parliament by eminent scientists, by other responsible observers and by members of the public who have viewed programmes on the matter screened by Channel 4, that Anne Maguire, Patrick Maguire (senior), Vincent Maguire (then aged 17), Patrick Maguire (then aged 14), Sean Smyth, Patrick O’Neill and the late Guiseppe Conlon, sentenced in 1976 to long terms of imprisonment since served, now appear, despite confirmation of their convictions at the time by the Court of Appeal, to have been entirely innocent of the crime with which they were charged; further notes at the conclusion of a debate in the other place on 17th May 1975, the recognition by the Parliamentary Under Secretary at the Home Office of the strength of feeling on this matter in that House and his pledge to draw the attention of the Secretary of State for the Home Department to what had been said; and therefore earnestly urges the Secretary of State for the Home Department in the interests of the highest standards of British justice of which this country needs to feel rightly proud, to move without delay for a review of these convictions, either under the provisions of section 17 of the Criminal Appeal Act 1968, or by such other public process of review as he may deem appropriate to this disturbing case.”

11.48 Early in the same year a number of MPs made further representations to the Home Secretary. They included Mr Wheeler and two former Home Secretaries, Mr Merlyn Rees and Mr Roy Jenkins, the latter having been Home Secretary at the time of the Guildford pub bombings. Mr Jenkins discussed the case with Mr Hurd, the new Home Secretary, in February 1986 putting forward some of the arguments adduced by Mr Kee, who was in the process of finishing his book on the Guildford Four and Maguire cases which was published later that year.

11.49 In May 1986 Mr Kee was in touch with Mr James Prior MP about the case. Mr Prior then discussed it with Mr Wheeler and on the 20th May 1986 the former wrote to the Home Secretary saying that he felt “some unease about the possible miscarriage of justice in this case” and that the considered view of Mr Wheeler and himself was that the Secretary of State should hold an enquiry. In July 1986 Mr Hurd and Mr Mellor met Mr Prior, Sir John Biggs-Davison and Mr

Wheeler. No fresh points emerged in the course of the discussion and Mr Hurd reiterated that Home Secretaries had never used their powers under section 17 of the 1968 Act “simply because people had come to feel that the jury or Court of Appeal had reached the wrong decision”; it was necessary for there to be fresh material not previously considered by the Courts. Nevertheless at the meeting both Mr Prior and Sir John Biggs-Davison suggested that RARDE had said in 1985 that they would no longer use a single TLC test in isolation. After enquiring Mr Hurd confirmed that this was so but pointed out that this did not necessarily invalidate or render doubtful a TLC test in earlier cases.

11.50 The publication of Mr Kee’s book “Trial and Error” on the Guildford Four and Maguire cases led to a detailed consideration in C3 Division of the points made in the book. Many of these arose from the scientific evidence, and Mr Stanton consulted Dr Stephenson of the FSS who responded in detail in notes dated 11th November and 18th December 1986. The principal scientific issue raised by Mr Kee was that of the specificity of a TLC test to identify NG, coupled with the need for confirmatory tests and the apparent change of practice since 1974 whereby prosecutions were not brought without positive confirmatory tests. The issue of possible innocent contamination was not raised and the evidence on this issue was therefore not further considered by the FSS.

11.51 On the question of PETN, Dr Stephenson’s note of 11th November 1986 stated:

“The Maguire Trial

At the Maguire trial the identification of NG was based on the TLC/Griess test. The positive result obtained was interpreted as being NG because:

1. Except for EGDN and PETN, no other compounds were known which satisfied the criteria for a positive result.
2. EGDN was not found alone but in combination with NG as a byproduct of manufacture.
3. PETN-based explosives were not being used by terrorists.

Because the charge referred to NG specifically, the problems of possible misidentification with EGDN and PETN were raised at the trial and eliminated for reasons of which you are aware. However, it was clear at the time that the technique did not unequivocally identify NG and the identification was reached partly by a process of elimination.”

As a description of events at the trial, this was misleading (see paragraph 11.21 above). Dr Stephenson told me that he had not seen the court transcripts and it is clear to me that he was not in fact aware of the way in which the issue had been handled at the trial.

11.52 In November and December 1986 C3 Division officials were preparing detailed submissions to Ministers for their consideration of the three major terrorist cases, namely the convictions for the Birmingham bombings, the Guildford and Woolwich bombings and the Maguire case. In a long submission on 19 December 1986 Mr Caffarey, then head of C3 Division, set out and evaluated the options open to Ministers in the Guildford and Woolwich and Maguire cases in which he did not believe there was new evidence or a new consideration of substance to justify a reference to the Court of Appeal. He wrote:

“4. . . . There has been a steady move away from the use of Prerogative powers in favour, wherever possible, of the use of the power of reference in accordance with the principle that it should primarily be for the courts and the judicial process to intervene in convictions. This has gone hand in hand with a more liberal interpretation of the “new evidence” requirement. But we have never abandoned that requirement and sought to refer a case to the Court of Appeal on the basis of evidence or opinions which have already been before the courts.

5. We strongly recommend against a reference to the Court of Appeal in any of these cases unless . . . it can be convincingly argued that the new evidence test is met. Our reasons for this are:

- i) it would set a most unwelcome precedent, making it very difficult to maintain any defensible line. To refer a case without fresh evidence for the Court of Appeal to consider would leave us with no objective grounds for refusing to refer any case in which the convicted person strongly maintains his innocence and questions particular parts of the prosecution’s case. It would be highly invidious if the question whether to refer turned on the number, status or political weight of supporters;
- ii) a reference without new evidence is pointless: the Court has nothing to bite on;
- iii) there would be a serious risk of a reference backfiring. First, it might lead to criticism by the Court of Appeal, perhaps with an implication that the Home Secretary had tried to shift responsibility onto the Court of Appeal and to sidestep the question of prerogative action. The Lord Chief Justice’s reported remark in his recent meeting with the Home Secretary – to the effect that we should not depart from the new evidence criterion – must be taken as a warning in this regard. Second, it might not satisfy, even in the short term, some of those who have been campaigning on behalf of the “Guildford Four” and the Maguires. It might be argued that, in referring the case to the Court of Appeal in the knowledge that there was no new evidence, the Home Secretary had acted in a hollow and cynical fashion: a view

which would be strengthened when the Court of Appeal upheld the conviction;

- iv) it would endanger the delicate balance between the functions of the executive and the judiciary: the Home Secretary would, in effect, be casting doubt on the courts' verdict on the basis of his own assessment of evidence which the courts had already considered and, by implication, inviting them to take a different view. If the Home Secretary feels compelled in such circumstances to intervene in a conviction, he ought, arguably, to do so by exercising the Royal Prerogative of Mercy, rather than by making a specious reference to the Court of Appeal; . . .

An inquiry

9. It is becoming increasingly clear that what those who have been campaigning in these cases are really seeking is a retrial (which the Home Secretary has no power to order) or an inquiry of some kind. An inquiry could (as Mr Jenkins has suggested) be into the Guildford and Woolwich/Maguire cases (we doubt whether it would be practicable to divorce the cases). Although those who have called for an inquiry have not been very specific as to its purpose, it can be assumed that what they are seeking is a high-level inquiry which could sift all the available evidence, receive new material and representations and which would be specifically asked to reach a view on the safety of the convictions.

.....

In the Guildford and Woolwich and Maguire cases we are likely to be faced with a long drawn-out campaign for an inquiry if no action is taken as a result of the current review. Accordingly, if Ministers find the inquiry option attractive it would be better to give further consideration to it now than to risk being forced into accepting it later.

.....

12. We would advise against a major inquiry . . . for the following main reasons:

- i) in the Guildford and Woolwich and Maguire cases the doubts which have been expressed about the convictions are not, in our view, sufficiently cogent to justify a step of this magnitude. The most important evidence (the confessions and the scientific evidence respectively) has not been weakened by anything which has happened subsequently. To set up an inquiry in these circumstances would implicitly express a lack of confidence in the judicial process. Moreover, it seems most unlikely, so long after the event, that an inquiry could shed any significant or decisive new light on the key issues;

.....

- iii) an inquiry into the Guildford and Woolwich and Maguire cases

would be a massive and complex undertaking;

.....

- vi) the establishment of an inquiry would set a precedent which we would be urged to follow in other contentious cases;

.....

- vii) it would also encourage those who have campaigned in the past for some permanent independent review machinery: we have always seen great difficulty in the concept of supra-judicial review.

13. In addition, there would, of course, be many practical problems to be overcome: responsibility for conducting and servicing an inquiry, its terms of reference, powers, membership, scope, ability to compel, and immunity for witnesses, procedure, etc.

14. In short, the setting up of an inquiry of this kind is, we believe, a highly unattractive prospect and one which, in respect of the Guildford and Woolwich and Maguire cases, we simply do not believe is justified by the nature of the doubts expressed about the convictions.

15. It is possible that someone may draw attention, in this regard, to the willingness which the Government expressed in its reply to the Select Committee's report (paragraphs 14 and 21) to consider appointing lawyers on an ad hoc basis to assist in assessing alleged wrongful convictions. But it is clear that this was envisaged only in cases which for some reason were unsuitable for reference to the Court of Appeal (eg. because the new evidence was inadmissible). To appoint a lawyer in the Guildford and Woolwich and Maguire cases would be tantamount to setting up an inquiry.

16. Another, more limited, form of inquiry would be to ask someone to undertake a review of the scientific evidence in the Maguire case (as opposed to the whole of the case). A form of review would need careful thought. One possibility would be to invite an independent scientific expert to look at the soundness of the scientific findings, in the light of the doubts cast on them. Another would be to look to a lawyer (possibly assisted by a scientific expert?) who might be invited to assess the soundness of the scientific evidence, with a view to assisting the Home Secretary in deciding whether he should intervene in any way. Both of these options would have similarities with the proposal by Lord Fitt and others for a scientific committee – which the Government rejected.

17. If Ministers feel that they must do something in the Maguire case, this option may be worth examining further. But we cannot recommend it. We think that there is a fundamental difference

between appointing a lawyer (or other expert) to assist the Home Secretary in assessing new material and appointing someone to – in effect – rake over existing material with a view to seeing whether new evidence or considerations of substance can be uncovered. It would be a new departure for the Home Secretary to help prepare the defence case in this manner. Moreover, such an appointment would be taken to imply that the Home Secretary thought that there was something wrong with the scientific evidence in the Maguire case. In practice, too, the facts surrounding the TLC tests in the Maguire case are well established and it seems most unlikely that an inquiry would be at all productive.

Other options

i) Do nothing

18. The Home Secretary could, of course, conclude that no action on his part is justified . . . (In the Maguire case this would simply take the form of confirming the decision taken previously.) This is, in fact, the course which we think justified in the Guildford and Woolwich and Maguire cases. While we would do our best to demonstrate, in explaining this decision, the weaknesses in the arguments put forward, there can be little doubt that the campaigns mounted in these cases would continue. Although many people, eminent and otherwise, may have opinions, the fact is that few people have the time, energy and resources to get to grips with these cases in a way which allows them to reach their own judgment on the safety of the convictions. Inevitably, the field is left to those who, for whatever reason, are concerned only with highlighting weaknesses, contradictions, obscurities, etc and whose views, because of their seeming familiarity with these cases – and because there are puzzling, even inexplicable, features in all 3 cases – are accorded a quite unwarranted respect. It would, of course, be uncomfortable and tedious to have to continue to deal indefinitely with representations on these cases, but we do not think that it would place us in an impossible position.

ii) Initiate further police enquiries

19. Although this option is mentioned for the sake of completeness, it seems to have nothing to commend it. . . .

In the Guildford and Woolwich and Maguire cases it is impossible to see that any satisfactory remit could be given to the police: police enquiries would really only make sense if there was some new material to provide them with a starting point. Rightly, they would not see it as their task to be given the job of reviewing evidence which had already been before the courts.

Conclusions

21. Turning to the Guildford and Woolwich and Maguire cases, we see no grounds for any of the following: reference to the Court of Appeal, use of the Royal Prerogative, instituting further police enquiries or appointing a lawyer (as discussed in the Government's reply to the Select Committee).

22. The remaining options are: appoint an inquiry, set up a limited review of the scientific evidence in the Maguire case or do nothing. As we have argued in paragraph 14, we do not consider that the nature of the doubts in either case would warrant setting up an inquiry and, for the reasons given in paragraph 12, we would see many difficulties with this course. Nor, for the reasons given in paragraph 17, can we recommend the idea of a limited review of the scientific evidence in the Maguire case. We are therefore forced back to the conclusion that the Home Secretary should do nothing *ie* he should say that, having carefully reviewed both cases he does not consider that there are grounds which would justify his referring either case to the Court of Appeal or intervening in any other way.”¹⁸

11.53 It is worthy of comment that not even by this stage at the end of 1986 was any question of innocent contamination of the Maguire Seven raised by the campaigners on their behalf, nor was this specifically referred to by Mr Kee.

11.54 The papers were then considered by Mr Mellor, who indicated in a note dated 5 January 1987:

“As the Secretary of State knows, I reviewed this case thoroughly in 1986 and personally explored the validity of the TLC test with a specialist from FSS. My conclusion then was that the forensic evidence which formed the central, perhaps the only significant, element in the prosecution was unshaken by any subsequent developments. That remains my view after reading this careful analysis.”

He also made it clear that he was not impressed by Mr Kee's arguments.

¹⁸ This submission has been edited to remove the passages relating to the Birmingham Six case, which the Home Secretary subsequently referred to the Court of Appeal in January 1987.

11.55 The Home Secretary spent some time over the Christmas break considering all the material in all three cases, and decided that in the Maguire case he wanted further to consider the scientific evidence. He held a meeting on 7th January 1987 with Mr Mellor and officials at which he said that he wished to examine one central question:

“was there a body of reputable scientific opinion which would now, in the light of scientific developments since the trial, argue that there were doubts about the accuracy of the TLC test employed, or at least grounds for qualification which had not existed at the time?”

That question was answered in detail by Miss Pereira and Dr Stephenson of the FSS who emphasised that the TLC test had not been discredited and that there was no innocent substance which could have been confused with NG. The note of the meeting records that Miss Pereira and Dr Stephenson did not believe the test had been reputably challenged or found to be scientifically faulty. It was agreed that the Home Secretary could not refer the case to the Court of Appeal simply on the ground that the defendants might have been handling EGDN rather than NG.

11.56 The meeting then discussed the idea of setting up a group of scientists (presumably from the FSS and universities) to advise whether the TLC test was so discredited as a technique that it could no longer carry the weight which it did in this case. The Home Secretary saw some attraction in this proposal, and it was discussed at length. The note of the meeting records the following points which were made in the discussion:

- “i) it would be difficult to draw a group of scientists of this kind back to 1974. Purists would say that the TLC test was not satisfactory; indeed it had been superseded by more developed techniques. The group would therefore need to be challenged to focus on whether the test was actually discredited, and whether a substance could be named which would give the same results as had occurred in this case. Members of the group would not be able to identify such a substance; nor would they be able to say that the theoretical possibility of the existence of such a substance was anything other than so remote as not to be a basis for doubt in this instance;
- ii) it was arguably wrong to convene a group for this purpose. If the Home Secretary was doubtful about the weight which could be carried by the TLC test (and Mr Mellor indicated that he was satisfied this was not a basis for reference) then the case should be referred. This would make it possible for the court to examine the question, which was of a kind suitable for judicial scrutiny. The Home Office should not set itself up to determine a question better laid before the courts. Reference under section 17 in order to allow the examination of this point would be a perfectly honourable course to follow;

- iii) section 17(1)(b) allowed the Secretary of State to refer to the Court of Appeal any particular point on which he wished the court's help. The court was then obliged to give him its opinion. Although this might appear a more satisfactory course for examining the TLC point than a general reference under section 17(1)(a), it would not necessarily dispose of things but would eventually leave matters back with the Home Secretary;
- iv) there was a risk that convening a group of scientists would serve only to prolong public discussion. Even if the scientists were unable to identify another substance which could have given the same results, and thereby suggest the convictions were unsound, they would be bound to make reference to the way in which the TLC test had been superseded by more modern techniques. This would be a signal for continuing (if mistaken) unease about the convictions although it would not be a proper basis for a Court of Appeal reference. The Home Secretary's position might therefore be weakened, not strengthened;
- v) if it was legitimate to refer this case because of developments in scientific techniques, then arguably the floodgates would be opened for the reference of other cases where in some way understanding or techniques had changed since the time of conviction. Police procedures, especially for recording remarks by the accused, were now far tighter than they used to be but concern about standards in earlier times could not possibly be allowed to be grounds for reopening convictions. Nor should the Home Office set itself the precedent (as it might by establishing a group of scientists in this case) of being willing to re-investigate cases where events had moved on;
- vi) the establishment of a group of scientists might encourage a reference to the Court of Appeal on a very narrow scientific point. The court would not find an alternative substance which could have given the same forensic results but there was still a risk that it would offer some comment, for example about the existence of more modern techniques, which would maintain pressure on the Home Secretary to do something. As with Cooper and MacMahon, he could then be pushed to exercising the Royal Prerogative as the only way out. This would not be satisfactory;

.....

Summing up the discussion, the Home Secretary said he recognised it would be difficult to frame a satisfactory reference to the Court of Appeal which focused on the adequacy of the TLC test, whether or not a group of scientists had been convened. It could not be suggested that the TLC test as such had been discredited; the terms of the reference might accordingly say that techniques had developed in such a way as now to make it unsatisfactory to rest convictions entirely on the TLC

test, without corroborating evidence of a scientific or other kind. He would reflect on the points which had arisen in the meeting and would pursue the question at the meeting to be held on 12 January. In the meantime he would be grateful if officials could prepare draft terms for a reference which could be considered at that meeting.”

11.57 When Mr Hurd gave evidence to my Inquiry he indicated that he thought that the second point referred to in the note of the meeting which I just quoted was the most compelling and indeed it was the basis of his decision a few days later not to set up a scientific committee. He agreed with the principle on which the point was based, namely that if the Home Secretary was doubtful about the weight which could be carried by the TLC test, an evidential point, this would be an argument for referral: the Home Office should not set itself up, by forming a scientific committee, to determine a question which should more properly be considered by the Courts.

11.58 Following the meeting Mr Caffarey, while drafting, as requested, a letter of reference to the Court of Appeal, considered again the arguments against establishing a scientific committee to look into the Maguires’ case. He wrote:

“The main objections seem to me to be as follows:

- i) There is no call for us to set up a committee of this kind. No-one has come forward with any information which throws significant doubt on the scientific validity of the TLC test in general nor on the results obtained in the Maguire case. This has remained the position in spite of what has amounted to an open invitation to scientists and others for many years to send us any material which they wished us to consider. (Dr Caddy spent a good deal of time reviewing the evidence and sent two reports to Mr Christopher Price in 1982 and 1983. These were duly passed to us and considered in consultation with FSS and RARDE.)
- ii) Whatever interpretation we might place on the setting-up of a committee, the inference drawn would be that we had sufficient doubt about the scientific evidence to think that this course was necessary.
- iii) The setting-up of a committee in these circumstances would be tantamount to an attempt by the Home Office to see if it could unearth new evidence which others have failed to produce. This is not our function.
- iv) The critical question is not really scientific in nature, given that almost everyone seems to accept that there is nothing wrong with the TLC test as such. It is, rather, an evidential matter: can evidence based on the TLC results alone (or virtually alone) be

regarded as sufficient to ground the convictions? I do not see that the scientific committee is likely to have anything very helpful or relevant to say on this point. Indeed, it seems to be more likely that (as Miss Pereira and Dr Stephenson argued at the meeting) the committee would approach the matter, unhelpfully, from an academic/purist stance with an over-concern with scientific proof and certainty. The jury, however, must have been fully aware – it was pointed out to them often enough – that the TLC results did not prove that the traces were nitroglycerine. What the jury had to decide was whether the evidence was such as to put the matter beyond doubt. The basis on which they reached the view that it was has not changed in all the years and arguments that have followed.

- v) I fear that the answer which a scientific committee would probably give us would leave us in a worse position in the long run. It would not come up with anything which cast significant doubt on the TLC test itself or the results in the Maguire case. But any comfort we might derive from this would almost certainly be outweighed by riders to the effect that nowadays TLC test results alone would not be regarded as sufficient and that it is surprising that a confirmatory test of some kind was not undertaken. (This is very much the tenor of comments made previously by Dr Caddy, who would probably be a member of any scientific committee.) Although neither of these arguments is new (and nor, in our view, particularly cogent), they would undoubtedly be seized upon by supporters of the Maguires, who would take little notice of anything else the committee might have to say. The fact that such views were being expressed by a high-level scientific committee appointed by the Home Secretary would then be used to apply even greater pressure on the Home Secretary to take action. But there would not, in our view, be grounds for reference (and even if we did refer the case, the Court of Appeal would almost certainly dismiss it) and the pressure would turn to calls for Prerogative action.

For these reasons I think I would still have to advise against the setting up of a scientific committee but if the Home Secretary felt that he had to take some action, I would at present see less difficulty with this course than trying to construct grounds for a reference (though we are, of course, trying our hands at a draft as requested).”

11.59 At the same time a draft letter of reference was produced. At the Home Secretary's request two alternatives were prepared; first for a reference under section 17(1)(a), secondly, for one under section 17(1)(b) seeking the court's views on whether particular points might be regarded as evidence which the court should consider in order to determine whether or not the convictions might be regarded as unsafe or unsatisfactory.

11.60 Mr Caffarey in his accompanying submission was clearly unhappy about the grounds of referral set out in his draft letter, saying:

“Unless as we see it, there is some piece of paper which we can send to the Court of Appeal to the effect that the TLC test and the Maguire results have been cast into doubt as a result of subsequent developments the reference does not begin to get off the ground.”

11.61 Mr Hurd held a second meeting of ministers and officials on 12th January at which these points were fully discussed. The note of the meeting records:

- i) the evidence in the Maguire cases was as strong or as weak as it ever had been. The TLC forensic test had not been discredited;
- ii) if the cases were to be referred to an adviser a question would still need to be put to him. This would have to be whether the TLC test was a sufficiently strong basis on which to found a conviction? In doing this he would be acting virtually as a court, and would have to be a person of stature, possibly a judge;
- iii) of the possible options, it could be argued either that the establishment of a scientific committee or that a reference under section 17 were the least disruptive. In support of a reference it could be said that the matter had reached such a pitch of public concern that it had to be re-examined properly;
- iv) if there were to be a reference, it was important that the Home Office frankly stated its reasons to the Court of Appeal;
- v) if the Maguire cases were referred there was a strong possibility that large numbers of people convicted on the basis of forensic tests which had now been superseded by more modern techniques would feel they were entitled to have their cases reconsidered before the Court of Appeal. This would open the floodgates.

The Home Secretary noted that the Maguire convictions were founded on a narrow point, namely the forensic evidence that they had handled explosives. The options were to refuse to refer the cases; to pluck out the various considerations which might appear to be new and refer the cases generally; or to make a reference under section 17(1) (b), seeking an opinion on whether the court would accept evidence of more modern scientific techniques as grounds for doubting the validity of early convictions; or setting up a scientific body to look at the state of the opinion on the TLC test; or, finally, asking a lawyer or judge to review the case. He noted that the TLC test in question had not been discredited by more recent developments and that Mr Mellor did not think the Maguire cases should be referred to the Court of Appeal.

Whatever lurking doubt there might be because of the narrow basis of the convictions he did not see how he could reflect that doubt in action. He did not think this was a case for the use of the Royal Prerogative. Accordingly no further action would be taken with the Maguire case.”

11.62 Mr Hurd told me that in his view the conclusive argument against a scientific committee was that it would not settle anything; that it would cast the problem back onto his desk without dealing with the central question. But he also accepted that a scientific committee with fairly wide terms of reference might have recognised the significance of the innocent contamination point, which might have led to an earlier reference to the Court of Appeal.

11.63 The Home Secretary explained his decision to refer the case of the Birmingham Six to the Court of Appeal but not the Guildford Four or the Maguires in the House of Commons on 20 January 1987. In doing so he set out his own view of the way a Home Secretary should exercise his powers under section 17 of the Criminal Appeal Act:

“A Home Secretary must consider very carefully in what circumstances if any he would be justified in interfering with a verdict reached by the courts. Over the years, all kinds of changes may come to alter the view which some people may take of a particular case. The enormity of the crime committed may cease to dominate the scene; those convicted may continue to protest their innocence; police procedures may be improved; new scientific tests may be developed; individuals may write books or produce television programmes which summarise days or weeks of evidence in a way which reflects their genuine conviction that the verdict was wrong or open to considerable doubt; as a result, a body of distinguished opinion may grow up to the same effect. All that has happened here.

In responding to these pressures, a Home Secretary must never allow himself to forget that he is an elected politician and that, under our system, the process of justice must be kept separate from the political process. It is open to others to say: “If I were trying that case as a judge, I would have given a different summing up,” or, “If I had been on that jury, I would have reached a different verdict.” But it is not open to a Home Secretary to substitute his own view of a case for that of the courts. It would be an abuse of his powers if he were to act as though he or those who might advise him constituted some higher court of law.

A different situation arises, of course, if new evidence or some new consideration of substance is produced which was not available at the trial or before the Court of Appeal. In any civilised system of justice, there must be a means whereby a case can be reopened so that new

matters can be assessed alongside the old evidence by due process of law. This distinction between new evidence and differences of opinion about old evidence has governed the way in which my predecessors have used the power under section 17 of the 1968 Criminal Appeal Act to refer cases to the Court of Appeal.

Mr Robert Kee, in his book "Trial and Error", implies that this distinction is a technicality. I disagree. In my view, it is fundamental. It is hard to see how the Court of Appeal could fail to dismiss any reference to it based simply on the proposition, argued without fresh evidence, that its predecessors and the jury had got it wrong. More important, perhaps, this House and the public would rightly become deeply suspicious of a convention which enabled politicians to throw a verdict into doubt simply because they had developed, without any fresh evidence, a view that the verdict may have been mistaken. Once such a convention had become established, the door would be wide open to interference in any case in which a Home Secretary thought it convenient to bow to pressure to have a case reopened.

Thus I believe that my predecessors were right to take a principled view of the circumstances in which it is proper to exercise the power of reference to the Court of Appeal, and after much thought I mean to follow them."

11.64 A memorandum dealing with the main grounds on which the convictions in the Maguire case had been challenged was placed in the House of Commons library, but this did not stop continuing argument on the case. A series of comments, replies and rejoinders continued during 1987, as scientists interested in the case continued to express their doubts. C3 Division officials analysed all the points made in these representations but concluded that none raised any new points.

11.65 In July 1987 the Home Secretary met a delegation led by Cardinal Hume, comprising also two former Home Secretaries, Mr Jenkins and Mr Rees and two former law Lords, Lord Devlin and Lord Scarman, to discuss the Guildford Four and Maguire cases. In advance of the meeting an aide memoire by Lord Scarman was sent to the Home Office. It argued that the criteria applied by the Home Secretary in section 17 cases, namely the need for "new evidence or matters of substance", were too narrow. Neither the wording of the Act nor its interpretation by the courts required such a narrow construction.

11.66 On the Maguire case, the aide memoire highlighted some of the 'improbabilities':

"Extreme improbability, given the court accepted movements of Maguire household that day, and given complete absence of any

bomb-making equipment or body of explosives in the house or neighbourhood, that the nitroglycerine on the swabs as tested can have come from the hands of those arrested and subsequently convicted.

Extreme improbability, if the Maguire household had been handling explosives, of Paddy Maguire going to the local police station to enquire about his missing brother, as he did, in the period in which the Crown alleges explosives were being handled in his house.

Failure of the Crown to explain how, if explosives were being handled in the house as alleged between 6.30 pm (approx.), when Smyth and O'Neill arrived, and 7.00 pm, when the police put the house under observation, the bulk of the explosives can have been disposed of without trace.

Absurdity of Judge's suggestion that it might have been disposed of while the men were on their way to the nearby pub, while under police observation, without the disposal being observed by the police.

Extreme unlikelihood, if O'Neill had been handling explosives as alleged by the Crown, of him not taking advantage of the three days' liberty allowed him by the police before the result of the tests on his hand swabs were known, to leave the country.

Demeanour of Guiseppe Conlon until his death (1980) and Maguire household for past 12½ years."

It appears from the note of the meeting that the discussion at it was concentrated on the criteria to which I have referred and on the new facts emerging in the Guildford Four case. There appears to have been no discussion of the facts of the Maguire case.

11.67 Thereafter, although there was a continuing interest by MPs, including Sir Bernard Braine who took up many of the points made by Mr Kee, the Home Office saw no reason to contemplate any further action in the Maguire case. As Mr Hurd wrote to Sir Bernard in March 1988:

"The single charge against all those convicted was that of handling/possessing explosives. They were not charged with murder or with causing explosions and have now been released, although Mr Conlon, of course, died in prison. The convictions were almost wholly founded on the results of the thin-layer chromatography test and this test was not later found to be defective in any way. What Robert Kee argues is that wider considerations should prevail. Since there has been no serious attempt to shake the evidence on which this specific prosecution was successfully brought I do not see reasonable grounds for interfering with that verdict.

Robert Kee suggests in his letter to you that the three cases should be reviewed by an independent body of the kind envisaged by the Home Affairs Select Committee in its Sixth Report (Session 1981–1982, HC 421). I cannot see any justification for doing so. I took the action I thought right in the Birmingham case, in using my powers of referral. The Guildford and Woolwich case remains under consideration. In the Maguire case I could see no grounds for my intervention. Moreover, I remain of the view expressed in the Government's Reply (Cmnd 8856) to the Select Committee's Report, namely that it should be primarily for the courts and the judicial process to review convictions and if necessary upset them, and that it is better that miscarriages of justice which occur within the judicial system should, so far as possible, be corrected by that system. We said then, and I would repeat now, it cannot be assumed that where the judicial process might have failed to arrive at a just solution an alternative arrangement can be devised which could be certain to get it right. And if I may continue quoting from that Reply, the introduction of an advisory body, or any other institutional change, would not ensure that such decisions are infallible. Nor would they offer any guarantee that in every instance the petitioner would accept the eventual decision as just. I should also add that I do not think that I could properly place myself in a position where, for example, I could undertake to abide by the recommendation of an independent body, for example if it suggested that I should recommend the grant of Free Pardons in some particular case. And in the Birmingham six case, I am not aware of any evidence which the Court of Appeal was unable to consider and which merits further inquiry."

In a personal footnote to a further letter in April 1988 he wrote:

"What I do not think I could justifiably do (and this is the core of the disagreement) is refer a case back to the Court of Appeal simply because a number of distinguished people disagree with the verdict, even though there is no new and substantial matter which was not before the Court which confirmed that verdict."

11.68 Thereafter there was no fresh consideration of the case of the Maguire Seven until, following an investigation at the Home Secretary's request by the Avon and Somerset police into the Guildford Four case, this was referred to the Court of Appeal under section 17 in January 1989. It was only the quashing of the convictions of the Guildford Four in October 1989 that led to the establishment of my Inquiry. The case of the Maguires was only included in my terms of reference because of their connection with some of the Guildford Four.

12. The Home Office – Conclusions

12.1 I have already referred to section 17 of the Criminal Appeal Act 1968, and to how Ministers and officials in the Home Office have operated the power of referral thereunder, in paragraphs 10.3 to 10.8 of this report. As I said in paragraph 10.6, I have no doubt that the criteria applied by the Home Office before a referral can be made are soundly based in both law and logic and that no criticism can properly be made of that Department in this regard.

12.2 Nevertheless, as I have also said, because of this policy the approach of C3 officials has been a reactive one, principally geared to dealing with representations, examining them to see if they raised new evidence or considerations of substance and, if so, pursuing them to assess their strength. Although the application of the criteria necessarily restricted the activities of the C3 officials, all the evidence which I have heard leads me to conclude that within these limits the relevant officials have investigated the representations and cases coming to them with care and thoroughness. In particular, in my opinion it would be wrong to criticise officials for not engaging in further enquiries in a particular case on their own. Where a defendant has been convicted of a criminal offence and his appeal against that conviction has been dismissed, it is not normally the function of the Home Office to engage in independent enquiries of their own to ascertain whether a conviction was a proper one or not.

12.3 The C3 officials were questioned about their general approach and particularly about a number of notes and submissions in which they speculated about the guilt of the Defendants. I do not believe that this was improper, or that they allowed any views which they may have formed about the guilt of any of the Defendants to affect their proper consideration of the representations.

12.4 Further, one effect of the application of the criteria in these cases is that it leaves no room for references based on “lurking doubts” which may be felt by officials or ministers, where those doubts are not based on any new evidence or new consideration of substance. Despite the decision in *R v Chard* [1984] 1 A.C.279, any such reference in a case which had already been the subject of an appeal would in reality be bound to fail. If the first Court of Appeal has felt no lurking doubt, there can be no second chance.

12.5 Such considerations also mean that officials are effectively limited to considering the substance of the particular representations that may be made to them in any given case. That has been an important factor in the case of the Maguire Seven. Over the years campaigners on their behalf pressed the following main points in their representations to the Home Office:

- (i) The nature of the family, their continued protestations of innocence and the campaigners’ own strongly held views of their innocence;

- (ii) the improbability of the facts alleged by the Crown, against the background of the negative findings in the house and the difficulties over the timing of events on 3rd December 1974;
- (iii) the argument that TLC identification of NG should not have been accepted as sufficient without positive confirmatory tests;
- (iv) the specific terms of the indictment and the possible confusion with PETN and EGDN;
- (v) the possibility that the samples were not true samples of the hands as swabbed, that is to say that the samples may have been accidentally contaminated; of which there has never been any evidence.

12.6 Although there was some other evidence before the jury, the convictions depended on the scientists' evidence, as was throughout recognised by C3 Division and Ministers. There was therefore no realistic possibility of referral without new evidence or a new consideration of substance undermining that evidence. Unless there was significant new evidence, no referral could be considered on the strength of a lurking doubt arising from the non-scientific evidence.

12.7 In the circumstances to which I have referred, the argument in paragraph 12.5(iii) above was the only one which might properly have led to a referral. As I have indicated, this argument was exhaustively considered over the years by Home Office officials, discussed with FSS and, through them, with RARDE. The fact that it had subsequent to the trial of the Maguire Seven become common practice to carry out confirmatory tests was not regarded as new evidence or a new consideration of substance. What was needed was evidence that the TLC test itself was inaccurate or unreliable and no such evidence was ever provided. Apart from the point concerning PETN and EGDN, the identification of NG by a properly carried out TLC test with toluene has remained unshaken.

Innocent contamination

12.8 "Innocent contamination" is referred to repeatedly throughout the papers which I have studied. Many of these references are to the question of contamination by "substance X", which concerns the issue of specificity rather than innocent contamination of the defendants' hands by NG. The latter argument was advanced only on behalf of Guiseppe Conlon in the early stages and was never later advanced by campaigners on behalf of the Defendants as a whole. Either it was not appreciated, or it was deliberately not advanced because it would presuppose at least some secondary source of NG contamination in the house.

12.9 As I have related, in the case of Guiseppe Conlon only, innocent contamination was considered in March 1983 and dismissed. It was not urged upon the Home Office thereafter. Because of the reactive approach stemming from the application of the criteria, it was therefore never properly considered in relation to the other Defendants. I have had to consider whether this absence of consideration can be said to be the fault of any particular person. It was submitted on behalf of Mr Cook that Miss Pereira's note to which I referred in paragraph 11.20 above was such that he was not alerted to consider any of the defendants other than Guiseppe Conlon; it is true that the note did not refer in terms to the position of the others, but I consider that the simpler conclusion is that Mr Cook did not think about the point in relation to the other defendants because he was only dealing with representations that had been made to the Home Office on behalf of Mr Conlon.

The kneading hypothesis

12.10 As will already have been apparent, the argument which eventually led to the quashing of the convictions of the Maguire Seven in 1991 was that the kneading hypothesis which had been relied on at the trial had been shown by later studies to be invalid. This hypothesis had been advanced at the trial by Mr Elliott and Mr Higgs and the Crown also needed to rely on it to disprove innocent contamination.

12.11 It was submitted to me on behalf of RARDE and Mr Higgs that the kneading hypothesis was not advanced at the trial as a certainty. However, although there are passages in the evidence at trial in which the hypothesis was qualified to some extent, the overall effect of the evidence as it was left before the jury was clearly that in the opinion of the scientists the presence of NG under the fingernails proved knowing deliberate handling as a matter of certainty. I have already dealt with this point both in my interim report and earlier in this report.

12.12 The argument that the Crown's reliance on the kneading hypothesis was flawed was never advanced by campaigners on behalf of the Maguire Seven, including scientists, who in addition never drew attention to the significance of the hypothesis as being fundamental to the Crown's case. Despite some parts of Mr Stanton's and Mr Caffarey's proofs of evidence, I think that the proper finding from all the other evidence which I was given is that nobody in C3 Division appreciated its significance.

12.13 If the significance of the kneading hypothesis at the trial and the later evidence questioning its validity had been appreciated within C3 Division, it is I think likely that this would have been regarded as amounting to new evidence or a new consideration of substance relating to the scientists' original evidence,

such as to justify either referral or further investigation. It would have constituted a challenge not to the accuracy of the TLC test results but to the conclusions drawn from them by the scientific witnesses. I have therefore had to ask myself whether, without the benefit of hindsight, the significance of the kneading hypothesis should have been appreciated by C3 officials in the absence of representations drawing attention to it. I agree with the submission made to me on this point by Counsel to the Inquiry that so to conclude would be unduly harsh on the officials concerned. The significance of the kneading hypothesis was not highlighted either in the summing-up by the trial judge or the Court of Appeal judgment, which I am satisfied were the officials' main sources of information about the issues at trial. I am not surprised that the point was not picked up. I agree that it is unfair to expect officials dealing with cases such as these to analyse documents in the same way as might a court or with the critical attention which they have received during this Inquiry.

12.14 Nevertheless, I think that the failure to appreciate the importance of the kneading hypothesis reveals a defect in the system operated by the Home Office as it affected this particular case. There was a need for a full appraisal of what the Crown had to prove and of the evidence on which they relied to prove it. Had such a full appraisal been carried out, officials would have realised that the Crown relied on the scientists not only to prove the presence of NG but also to prove deliberate knowing handling and thereby to disprove innocent contamination. In the circumstances of the case of the Maguire Seven, I think that such an appraisal could only have been done by a lawyer, with a lawyer's practical appreciation of evidence and the burden of proof. Although I know that there is within the Home Office an experienced Legal Adviser's Branch, I have been surprised that there was no lawyer amongst the C3 Division officials.

12.15 I should add that if the relevant parts of the 1977 RARDE seminar transcript, to which I have referred in paragraph 11.17 above, had come to the attention of such a lawyer he would at once have realised its implications as regards the general reliability of the scientific witnesses, and this might have led to a line of inquiry revealing the non-disclosures to which I referred in section 11 of my interim report.

Scientific committee

12.16 This suggestion was specifically considered and rejected on two occasions: the first after the House of Lords debate in May 1985 and the second at meetings with the Home Secretary on 7th and 12th January 1987. As I have said, the principal and repeated scientific submissions, especially from Dr Caddy, concentrated on the question of specificity and the absence of any confirmatory tests. If a scientific committee had been limited to considering these issues it could well, as C3 Division officials and Ministers foresaw, have

concluded that there could and should have been confirmatory tests. However, this point had already been decided not to justify referral. This decision was reasonable, on the basis of the advice of the FSS that the accuracy of the TLC identification had not been undermined and in the light of the criteria.

12.17 I think that it is too dangerous to speculate with hindsight what the ultimate result would have been had a scientific committee been set up on either of the two occasions. I add that I think that it would be wrong to criticise individual officials within the Home Office for their advice not to set up such a committee or any Minister for not doing so, given, first, the thrust of the representations being made and, secondly, the criteria under which they had to act.

Scientific advice obtained by the Home Office

12.18 Although Home Office officials sought the advice of the FSS from time to time, this advice was only sought on specific points. The FSS were not supplied with full details of the issues at the trial and consequently were in no position to provide the Home Office with independent scientific advice. Rather they acted as a conduit for communicating with RARDE. It was apparent to C3 Division officials that the main challenge to the verdicts in the Maguire Seven trial was scientific and also that the evidence given at that trial which was being challenged had been given by RARDE. I do not think that the officials took these facts sufficiently into account and as time passed and the challenges continued to be made I think that it would have been wise if they had sought scrutiny of the evidence given by the RARDE scientists at trial by suitably qualified independent scientists.

12.19 This is particularly pertinent when one considers the PETN issue to which I have referred earlier. At the meeting with RARDE on 10th March 1983 Miss Pereira was given to understand that it had been made clear at the trial that NG could not be distinguished from PETN on the TLC test. However, Mr Higgs' note taken at the trial, read in conjunction with Sir Michael Havers' note, shows that on 1st March 1976, at the trial, the contrary assertion was made by counsel on the advice of RARDE scientists, namely that the substances could be distinguished by reference to rate of colour development. This point was covered in detail in section 10 of my interim report. The result was that Miss Pereira reported to C3 Division on the basis of this wrong understanding of what had occurred at trial. On this report, Mr Cook understandably concluded that the point raised no new consideration of substance. Had he been given an accurate account of what occurred at trial, it is likely that this would have been identified as raising a new consideration of substance which might justify a reference. It could also have raised questions about the general credibility of the scientific evidence on which the Crown had relied, similar to the questions raised by the RARDE seminar record.

12.20 I do not think that it would be proper to conclude that the RARDE scientists deliberately sought to mislead Miss Pereira. They genuinely believed the PETN point to be irrelevant to the convictions. However, and as I said in my interim report, it was not for the scientists to decide such issues of relevance. This further highlights the dangers in taking advice from those whose evidence would inevitably be questioned if a reference to the Court of Appeal was made.

12.21 I turn to the paper by Dr Twibell submitted to RARDE in June/July 1977 and ultimately published in 1982. As a result of the investigation by the West Committee it is now clear that that paper by Dr Twibell was inconclusive on the question of the kneading hypothesis. Nevertheless, on its face, that paper was relevant to that hypothesis; it showed that the hypothesis was open to serious question and it at least cast doubt on the certainty with which it had been advanced at trial.

12.22 At the meeting between RARDE and FSS on 10th March 1983 the question of innocent contamination, as it affected Mr Conlon, was discussed. The significance on this issue of the finding of traces of NG under the subject's fingernails was known to RARDE but not to FSS. I think that the importance of these findings to the issue of innocent contamination should have been raised by RARDE at that meeting, making reference also to the Twibell findings. Despite the submissions made on their behalf, I think that RARDE and Mr Higgs could not have regarded the findings as irrelevant to the kneading hypothesis, even if they thought that the findings could be distinguished. I think that this is also clear from the concerns expressed in Mr Higgs' memorandum of 28th July 1977.

12.23 Had the importance of the kneading hypothesis been appreciated by FSS, it is probable that the issues would have been pursued to a result similar to that reached by the West Committee. I do not criticise the relevant FSS officials on this score: they did not have the Twibell paper brought to their attention either by RARDE or by campaigners on behalf of the Maguire Seven.

The future

12.24 In the course of the hearings I heard some evidence, particularly from Mr Hurd and Mr Angel, expressing views on alternative machinery for considering alleged miscarriages of justice. All the evidence which I have heard and all the material which I have received leads me to the conclusion that some alternative machinery is indeed required in place of the existing power of the Home Secretary to refer such cases to the Court of Appeal under section 17 of the Criminal Appeal Act 1968. What this machinery should be is a matter for the Royal Commission on Criminal Justice. I merely offer some considerations which might be thought material to this issue.

12.25 In the first place, it is only a court of law, which means in practice the Court of Appeal (Criminal Division), which ought to have the ultimate

jurisdiction to set aside criminal convictions. The latter are judgments of a court of law applying legal criteria and should only be reversed by a similar tribunal applying the same criteria. Secondly, however, I do not think that the Court of Appeal has the power nor indeed the necessary expertise to initiate, let alone to control, the necessary investigations that may have to be carried out in any particular case. Neither in my view should those investigations be carried out by or on behalf of the Home Office. As I have already said, I think that that Department very properly felt itself to be constrained by its correct constitutional approach to its consideration of these cases. In my opinion, therefore, new independent machinery must be set up to carry out all those investigations and inquiries which the circumstances of a given case may require. It will be necessary for this machinery to be set up by statute. It will no doubt have its own procedural rules, but subject to these it should have the power and resources to investigate any conviction which may merit such inquiry. These will no doubt include the fullest power to call for documents and other exhibits and to be able to enforce their production. Precisely how cases come to be considered by such machinery must be a matter for future consideration. For the reasons I have given, however, if upon the completion of the investigation it is concluded that a miscarriage of justice may have occurred, whatever machinery is set up will no doubt enable the case and the result of the investigations to be referred to the Court of Appeal.

12.26 Any proposal to set up such machinery, however, brings with it concomitant problems which I think will also be for the Royal Commission to consider and about which to make recommendations. While a court of law can only, by definition, adjudicate in a given case upon evidence and material which is legally admissible according to the rules of evidence, a full investigation may well consider evidence and material not so admissible and lead to a conclusion upon it, at least in part, that the conviction under investigation is unsafe. What is presently inadmissible hearsay to a court might be thought on investigation to be compelling material upon which to conclude that the conviction was wrong. But if in consequence the conviction is referred to the Court of Appeal by what legal rules or criteria should that Court determine that reference? These and other problems will no doubt be addressed by the Royal Commission and need no further discussion in this report.

LIST OF PARTIES AND THEIR REPRESENTATION

1. Mr David Clarke QC, Mr Timothy King QC, Mr Ian Burnett and Miss Victoria Williams of Counsel, instructed by the Treasury Solicitor, appeared on behalf of the Inquiry.
2. Mr Neil Butterfield QC, Mr Jonathan Barnes and Mr Martin Edmunds of Counsel, instructed by and appeared on behalf of the Director of Public Prosecutions.
3. Mr Simon Hawkesworth QC and Mr Nicholas Price QC, instructed by Stitt & Co., appeared on behalf of the Rt Hon Lord Havers, Mr Michael Hill QC, Mr Paul Purnell QC and Mr Philip Havers.
4. Mr Andrew Collins QC, instructed by the Treasury Solicitor, appeared on behalf of the Rt Hon Peter Archer QC MP, Sir Thomas Hetherington QC and Mr Roger Maitland.
5. Mr David Latham QC, succeeded by Mr Alan Moses QC and Mr Rabinder Singh of Counsel, instructed by the Treasury Solicitor, appeared on behalf of the Home Office.
6. Mr Robert Carnwath QC and Mr John Litton of Counsel, instructed by the Treasury Solicitor, appeared on behalf of the Rt Hon Douglas Hurd CBE MP.
7. Mr Robert Nelson QC and Mr David Hart of Counsel, instructed by the Treasury Solicitor, appeared on behalf of Mr Brian Caffarey, Mr Robert Cook, Dr Alan Curry, Miss Margaret Pereira, Mr Peter Stanton, Dr Michael Stephenson and Mr Rosslyn Watts.
8. Mr Michel Kallipetis QC and Mr Martyn Barklem of Counsel, instructed by the Treasury Solicitor, appeared on behalf of the Defence Research Agency (formerly RARDE).
9. Mr Guy Sankey QC and Mr William Hoskins of Counsel, instructed by Mishcon de Reya, appeared on behalf of Mr Douglas Higgs.

In addition, the following appeared on 14th and 17th September 1992 when the West Committee report was presented and submissions were made upon it:

10. Miss Ann Goddard QC and Mr John McGuinness of Counsel, instructed by the Metropolitan Police Solicitors' Department, appeared on behalf of the Commissioner of the Metropolitan Police and members of the Metropolitan Police Force.
11. Mr Anthony Arlidge QC, Mr Anthony Clover and Mr Michael Cousens of Counsel, instructed by The Logan Partnership, appeared on behalf of Mrs Anne Rita Maguire, Mr Patrick Maguire (senior), Mr Vincent Maguire, Mr Patrick Maguire (junior), Mr Shaun Smyth and Mr Patrick O'Neill.
12. Mrs Gareth Peirce of B M Birnberg & Co appeared on behalf of the Conlon family.

WITNESSES WHO GAVE EVIDENCE, SEPTEMBER/OCTOBER 1991:

1. The inception of the prosecution:

The Rt Hon Peter Archer QC MP

Mr P Barnes CB

Mr J G H Gasson*

Sir Thomas Hetherington QC

Mr D G Higgs*

Dr R Hiley

Mr M Hill QC

Mr R D Maitland

Dr M Marshall

2. The Home Office's handling of representations on the Maguires' behalf:

Mr G Angel

Mr B Caffarey

Dr F W S Carver*

Mr R G W Cook

Dr A S Curry

Mr D G Higgs*

The Rt Hon Douglas Hurd CBE MP

Dr M Marshall*

Miss M Pereira

Mr P A Stanton

Dr M P Stephenson

Dr J D Twibell*

Mr R R G Watts

* Statements read

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