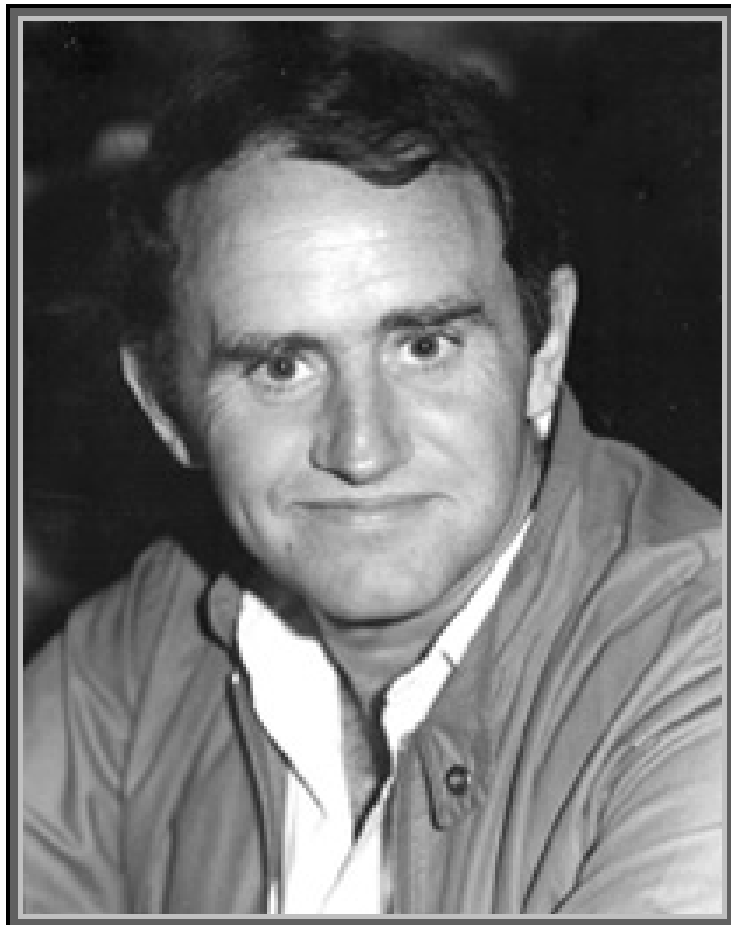


# The Framing Of Michael Mc Kevitt



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Maire MacSwiney Brugha:

*“After my aunt’s death in 1942 I missed her very much. She had been very close to me. I could never understand the public image by which she was portrayed as ‘merciless Minnie’, a hard and unforgiving woman. The other person who was so maligned was Cathal Brugha, being portrayed as a ruthless killer, only considering violent solutions, where in fact he was a truthful and a thoughtful man who tried to find a solution to save the Republic. Pondering about the images created around these two people, I often wondered later had it to do with British propaganda. They obviously were the most prominent opponents of the Treaty, along with de Valera. So it was in the British interest to defame them and to laud people like Griffith and Collins.*

*It was not till much later that I understood how this came about. Peter Wright, who had been a member of the British Intelligence Service, revealed some relevant information in his famous book, **Spy Catcher**. I read all the extracts in **The Irish Times** where he explained that there was a section in the British Intelligence Service whose sole task it was to deal exclusively with black propaganda against those they considered to be enemies of Britain.*

*It was then that I finally understood how people like my aunt and Cathal Brugha acquired this reputation. Of course de Valera, who had a long public life, was able to establish his own reputation. I could never understand why the Irish media, and later historians, followed the same British propaganda, nor why they have retained to this day the image Cathal Brugha and Mary MacSwiney created at that time. Hopefully a true account of their lives will be written at some time in the future.*

*Maire MacSwiney Brugha*

***History’s Daughter – A memoir from the child of Terence MacSwiney (P166/167)***

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## FOREWORD

Reasonable people will read this account of what is happening to Michael Mc Kevitt with a mixture of sadness and anger. People who value good legal systems and appreciate the courage of those who struggled to create them will read it with deep disappointment as well.

The treatment and trial of Michael Mc Kevitt will outrage all of them. Some of us who attended the Green St. court any time during the hearing of his trial will always remember the grip of cold fear we felt at how similar this trial was to what we had read about years ago, the show trials of the dictatorships.

Bringing in a witness who admitted he was motivated by money, opening the court to free passage of police and government agents, the complacency of judges and state lawyers faced the clear presumption that the safety of the state is more important than justice for the individual. We had heard it all before. In the past however, news media and church and universities and all kinds of people had condemned what was happening in those countries which they described as under dictatorship or communist rule. Now we were witnessing in our own people's courts the misuse of a system which we believed was so superior, so basically just, so presided over by people of such integrity that it would always be found better to set the guilty free than to convict even one innocent. This trial has been one of the most frightening and revealing of the past forty years in Ireland's courts north and south.

The case of Michael Mc Kevitt must go to the European courts and when it does our fellow Europeans may well be shocked. We who are already

shocked need not feel helpless. Michael Mc Kevitt and his family need our help and that help should be given for the sake of justice for all of us. In no circumstances must we allow political needs to dictate how our courts will work. And if there is one prisoner unfairly treated then every one of us should feel honoured to make justice rather than political opinion prevail. If any prisoner needs help we are bound and privileged to give it.

Please read this document. Please do what you can to make clear that the safety of the state can never be served by the suffering of even one of its citizens.

Desmond Wilson.

## INTRODUCTION

In November 1997 the 32 County Sovereignty Committee, later to become known as The 32 County Sovereignty Movement, was launched. Bernadette Sands-McKevitt was one of the founding members of the organisation, a political pressure group campaigning for the restoration of Ireland's sovereignty.

By March 1998, the British Irish Agreement commonly referred to as the Good Friday Agreement was nearing fruition. In a leaked Northern Ireland Office document titled *Information Strategy* on the proposed Referendum that would legitimise British Rule in Ireland, author T Kelly Director of Communications laid out a [strategy](#)<sup>1</sup> to ensure the result was a positive one for the government whilst appearing to be the peoples' 'free' choice. It was a strategy that primarily sought to use elements within the media to control and manipulate the general public.

Kelly stated that it would be important "to ensure that not all of the results of opinion polling, etc., will be in the public domain. It would be open to us to encourage some degree of public opinion polling by for example newspapers and current affairs programmes, where we believe the results are likely to be supportive. Some of this can be encouraged during meetings and briefings of senior media people."

In addition he proposed enlisting church leaders, heads of community organisations and trade unions, and other members of the G7 to champion the British cause "ensuring that it is not only government which is seen to be selling the process". In particular he intended to open dialogue with Dan Mulhall of Irish Foreign Affairs and Joe Lennon of the

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<sup>1</sup> <http://cain.ulst.ac.uk/events/peace/docs/nio26398.htm>

Taoiseach Bertie Ahern's office to co-ordinate the messages to better effect and avoid unhelpful clashes between both governments.

In April 1998, post the signing of the Good Friday Agreement, Bernadette along with a fellow member of the movement travelled to New York, to lodge a submission at the head quarters of the United Nations. The submission outlined Ireland's right to national sovereignty and argued that the forth coming referendum was illegal as it denied the Irish people the right to self determination.

Bernadette spoke at a number of public meetings in New York, and Philadelphia. She travelled to Washington and spoke with Congressman Peter King who arranged for her to address members of the Ad hoc committee on Ireland. On returning to Ireland she gave numerous interviews and appeared on television current affair programmes pointing out the flaws in the Good Friday Agreement and arguing for the right of Irish people to self-determination without British interference.

In April 1998, - according to an article by the political editor of the *Sunday Business Post*, Emily O'Reilly, (published on 23.8.1998, about a week after the Omagh bomb) the Irish Taoiseach (first minister), Bertie Ahern, held a private briefing for editors attached to the Independent Group of newspapers. The purpose of the briefing was to give the editors the government's assessment of the Good Friday peace agreement. However, the Taoiseach himself introduced the topic of Michael McKevitt – husband of Bernadette, whom he described as “the head of a splinter IRA organisation”, identified in the article as being the Real IRA. It is obvious from the article that Mr Ahern's briefing was very detailed and circumstantial.<sup>2</sup> Equally, worth noting that it came shortly after the British had relayed details of their *Information Strategy* to their Irish counterparts.

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<sup>2</sup> BIRW report to UN Rapateur on Freedom Speech

Some time in 1999 Ms Jane Winter Director of the British Irish Rights Watch BIRW corresponded with Mr Ahern's office requesting details of the meeting at which he identified Michael McKevitt as leader of the IRA. Mr Ahern's office replied and informed Ms Winter that there were no minutes of that particular meeting in April 1998.

The referendum took place in June 1998; meanwhile Bernadette continued to speak out against the agreement.

On Saturday 15<sup>th</sup> August 1998 a bomb exploded in the Northern Irish town of Omagh, killing 29 people and causing hundreds of injuries. It shocked and outraged the majority of Irish people. The bombing was claimed by a dissident republican group calling itself the Real IRA, which subsequently declared a ceasefire. Media reports constantly linked the 32 County Sovereignty Committee to the Real IRA, but the Committee denied any such link. On 16<sup>th</sup> August, the Committee put out the following statement:

*"We are deeply saddened and devastated by the terrible tragedy in Omagh Co[unty] Tyrone yesterday (15<sup>th</sup> August '98).<sup>3</sup>*

*We share the grief and sorrow of everyone on the island of Ireland and we offer our sincere sympathy to the injured, the bereaved, their families and friends at this moment in time. The killing of innocent people cannot be justified in any circumstances.*

*We are a political movement and are not a military group. We reject categorically any suggestions that has been publicly made, that our movement was responsible in any way."<sup>4</sup>*

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<sup>3</sup> BIRW report to UN Rapateur on Freedom Speech

<sup>4</sup> Ibid

Despite the 32 County Sovereignty Committee's unambiguous condemnation of the bombing and denial of any involvement in it, numerous newspapers named Michael McKeivitt as a perpetrator, an accusation that he strenuously denies.

On 9<sup>th</sup> October 2000, BBC television transmitted a documentary in their respected *Panorama* series, called *Who bombed Omagh?* Journalist John Ware named four men suspected by the police of having been responsible for the bombing. Considerable controversy surrounded its transmission. Lawrence Rush, whose wife died in the bombing, attempted unsuccessfully to obtain an injunction to prevent the transmission, on the ground that it might prejudice the right of those named to a fair trial. He was supported in his application by the Northern Ireland Human Rights Commission. The programme did not name Michael or Bernadette McKeivitt. <sup>5</sup>

The police cast their net very widely in their attempts to identify the bombers; they interviewed 6,500 people and took 2,700 statements. Michael or Bernadette McKeivitt has never been questioned or arrested by the police in connection with this bombing (he was arrested on 26<sup>th</sup> May 2000, long after the bombing, and questioned about membership of an illegal organisation, but was released without charge. However, the police photograph taken whilst he was in custody appeared in national and international newspapers in 2003). Nevertheless, the media have run a relentless campaign of vilification against both Bernadette and Michael McKeivitt, accusing them of involvement in the bombing and putting their lives at risk in so doing. They published their photographs, and photographs of their children and their home, which further endangered their lives. As a result of this campaign, Bernadette McKeivitt was excluded from her shop in the town centre of Dundalk, and lost her livelihood. (Ibid)

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<sup>5</sup>BIRW report to UN Rapateur on Freedom Speech

They later learned from a source close to the Fianna Fail leadership that the owner of the Long Walk shopping centre, Mr Martin Naughton allegedly ordered the closure as a political favour. Mr Naughton, a successful entrepreneur from Slane in Co. Meath, was a member of the Council of State (1997-2004) and also a financial contributor to the present Government partner Fianna Fail. In 1998 he made a significant financial contribution in support of the 'Yes' campaign for The Good Friday Agreement. Post agreement Mr Naughton was appointed as Chairman to InterTradeIreland, one of the six cross-border bodies established under the Good Friday Agreement.

The McKeivitts' had no effective legal remedy against the media campaign. Legal aid is not available for libel actions in the Republic of Ireland, and the costs involved in a libel case are prohibitive. The media campaign was so vehement that it is highly unlikely that the McKeivitts' could obtain a fair hearing were they to bring such a case, whether before a judge or a jury. Furthermore, the campaign was so widespread that the McKeivitts' would be involved in litigation for years to come were they to prosecute every libel they have suffered. There was no Press Complaints Council in Ireland to which they could complain, and complaints to individual newspapers were more likely to result in further adverse coverage than in any retractions. Similar considerations arose in relation to bringing defamation proceedings in the Britain. Although they do have a Press Complaints Council, Irish citizens are not familiar with its workings and most of the coverage that would have formed the basis for any complaint was already outside their time limit. Despite the enormous limitations they continued to search for means to defend themselves. They contacted several human rights bodies including the Irish Council for Civil Liberties, Amnesty International, and British Irish Rights Watch. In November 1999, British Irish Rights Watch submitted a

[report](#)<sup>6</sup> on behalf of the McKevitt family to the UN Rapateur on Freedom of Expression.<sup>7</sup>

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<sup>6</sup> [www.birw.org](http://www.birw.org)

<sup>7</sup> BIRW report to UN Rapateur

# **GARDA (IRISH POLICE) HARASSMENT AND EVENTUAL STITCHUP.**

## **1998-2001**

Running parallel with the vicious media campaign of vilification was a campaign of intimidation and harassment conducted by members of the Garda Emergency Response Unit ERU. The overt campaign was directed at the entire McKevitt family including the three youngest children who were aged 8, 6 and 5. The ERU sat in unmarked cars outside their home for long periods of time; they followed the McKevitt's on a daily basis by car and also on foot. They followed Bernadette while she went shopping in Dundalk and they even followed the children from school. On numerous occasions the ERU stopped the children while they were playing outside their home with their friends and asked them their names. In the evening time after the children were put to bed, the ERU parked opposite the McKevitt house and shone a spotlight into the children's bedrooms. On Christmas day 1999, at 1.00pm as the family sat down to their Christmas dinner the ERU sat outside the front of the McKevitt home and activated the police siren blaring it for several minutes.

At times they used a loudhailer shouting many things including obscenities outside the home (All of these details are documented; names in some cases, times and numbers of cars are recorded also).

Over the years anyone who called to their home was stopped by the ERU and had their names taken in a very aggressive and intimidating manner. At times even the children of neighbours were stopped and asked their names. On one occasion the window cleaner who had called to collect payment was approached by members of the ERU as he left the house. He was thrown onto the bonnet of his car and searched while his hands were held up his back. He was then questioned before being allowed go free. The man was badly shaken and when he went home he made a complaint to his local politician.

On another occasion one of the McKevitt children who had attended a birthday party was dropped home by a school friend's mother. The ERU followed the woman who incidentally had other children in the car and forced her car to stop. They were very aggressive with the woman demanding to know what she was doing at the McKevitt's house. The woman was left shaken and in tears.

Some visitors to the McKevitt home had their homes visited by plain clothes policemen. Neighbours of the McKevitt's who visited their home to assist them had the ERU sitting afterwards outside their home on many occasions also. There are many more such incidents too numerous to include. The McKevitt's kept a log of the surveillance which they passed on to Jane Winter director of BIRW .

In addition, meetings of the 32 County Sovereignty Movement, which Bernadette attended, were disrupted frequently. On one occasion a road block was set up outside of the entrance to a hotel where the meeting was scheduled to take place. Everyone entering the hotel was stopped and their details taken regardless if they were attending the meeting or not. Obviously the hotel was reluctant to accept any further bookings from the group.

Official complaints were lodged with the Gardai and with the McKevitt's solicitor on numerous occasions. One complaint that stands out in particular concerned the videoing of Bernadette and one of the children aged 7, on two separate occasions by detectives. Understandably the family were alarmed and anxious to know the purpose of the videoing and to whom it would be passed on to, as it took place around the time Rosemary Nelson was murdered.

## **OMAGH, DAVID RUPERT, MI5 AND FBI COLLUSION.**

In the summer of 2000, members of MI5 and the FBI met in the Washington office of the FBI. The purpose of the meeting was to finalise the details of the stitch up of Michael McKevitt. Back in the mid 1990's the FBI had supplied MI5 with a paid informant, David Rupert. Rupert had worked with the FBI since 1974. He was a multiple bankrupt and a career informant for 30 years, working initially with the FBI and later with MI5. During those years he was arrested for cheque and wire fraud as well as suspected white slavery having been found with a 15 year old run-away in his truck. He was never charged or convicted of any of the above. However his informant services were used extensively throughout the same period.

Rupert travelled to Ireland spying on Irish citizens from the early 1990's. During the mid 90's Rupert was introduced to MI5 who according to him directed and controlled his actions while in Ireland. At one point the FBI funded the lease of a Bar and adjoining caravan and camping holiday park in Co. Leitrim as a base for Rupert to spy from. Rupert claimed the park was being used by IRA sympathisers and duly sent the names, addresses and telephone numbers of all the families mainly from Belfast who had holidayed in the park to the FBI and MI5. This was at a time when Loyalist death squads were receiving information from state forces to set up and murder selected individuals on their instructions. The Garda authorities were aware of Rupert passing details on to FBI/MI5 about Irish citizens yet they chose to allow this to happen.

Throughout his stay in Ireland Rupert claimed he forwarded all of the relevant intelligence he had acquired to MI5 via encrypted e-mails. Between 1997 and 2001 Rupert posted 2166 e-mails to his paymasters in British intelligence.<sup>8</sup>

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<sup>8</sup> Forum Magazine Feb/Mar 2006

According to an article in Forum Magazine:

*“On 11 April 1998, Rupert dispatched his most controversial e-mail to MI5 headquarters. It was almost five months before the now infamous maroon Vauxhall Cavalier would decimate the centre of Omagh town and kill 29 people. For this reason the e-mail was all the more startling because in it Rupert informed MI5 that a dissident republican group was planning a car bomb attack in Omagh. The April car bomb attack in Omagh was eventually frustrated by Gardai south of the border. However, MI5 management knew the threat was only postponed and not extinguished. Within days MI5 e-mailed Rupert: "We disrupted the intention to use the car bomb, but maybe not for long". MI5 obviously foresaw the strong likelihood of a renewed attempt to bomb Omagh. However, MI5 now held the advantage over the would-be car bombers in that from as early as April 1998 it knew Omagh was a likely target for a dissident republican car bomb attack.*

*Rupert's e-mails were not the only pre-August 15th information in MI5's possession which pointed to a dissident republican attack in Omagh. A second key piece of intelligence came to light on August 4 when an anonymous phone-caller warned British intelligence of a planned dissident republican gun and bomb attack in Omagh on August 15. MI5 subsequently claimed that it dismissed this anonymous phone-warning as a rogue RUC Special Branch call. However, this was a poor attempt at distraction. The importance in all of this is that whereas Rupert provided specific details with regard to the proposed location of the planned bombing, this phone-warning supplemented his e-mail intelligence by not only confirming the location, but also providing the all important precise date of the planned attack.*

*However, the windfall of dissident republican intelligence did not end there. MI5 possessed a third piece of high-grade information which indicated that a car bomb attack was scheduled for mid-August. Two days before the Omagh bombing, FRU agent Kevin Fulton met with a Real IRA informant whose clothing, according to Fulton, was covered in dust particles of homemade explosives. Fulton correctly suspected that a car bomb attack was in an advanced stage of planning. Fulton provided British intelligence with the agent's name and car registration number. Yet once again this vital piece of intelligence was ignored.*

*But perhaps the most startling disclosure concerning MI5's foreknowledge of Omagh came during the inquest into the bombing. According to the Sunday Business Post (26/8/2001) leading British barrister Michael Mansfield QC, acting for Lawrence Rush, cross-examined several RUC witnesses. It emerged that a warning specifying the precise location of the bomb had not been passed on to local officers in time to clear the area.*

*"After that, we started getting threatening calls. We were told by the RUC that our name was on a death-list," Solicitor Des Doherty said.*

*The RUC also confirmed to Doherty that a newspaper report of a spy satellite picking out the car used to transport the bomb was correct.*

*Doherty said. "It is understood that when the RUC contacted the Federal Bureau of Investigation in America, they produced information from the satellite."*

*This suggests that the maroon Vauxhall Cavalier contained a tracking device which enabled a US GPS satellite not only to follow the car's movements but also pinpoint its exact location on the day of the bombing. At the request of MI5, US intelligence would have monitored*

*the car as a priority and would have conveyed this surveillance data to MI5 without delay. Yet MI5 chose not to relay this information to RUC officers on the ground on August 15. Furthermore, the presence of a tracking device on the maroon Vauxhall Cavalier indicates the involvement of an MI5 agent in the planning or the execution of the Omagh bombing, at some point between the unlawful procurement of the maroon Vauxhall Cavalier and the detonation of the explosives on August 15.*

*After the Omagh bombing MI5 ordered Rupert out of Ireland as a matter of urgency. An August 16 MI5 e-mail instructed Rupert to "insulate yourself from the Gardai" [MI5 to David Rupert, E-mail 305, 16-08-98]. Later that night Rupert was ordered to: "Collect tickets at Belfast City Airport...You'll be here [London] for two nights. We need to talk. It's extremely important" [MI5 to David Rupert, E-mail 329, 17-08-98]. Rupert's MI5 handlers obviously feared that their agent might be gripped as part of a massive cross-border investigation and that - if placed under sufficient pressure - Rupert might disclose the prior bomb warning he had conveyed to MI5 in early April in relation to Omagh. Indeed all of Rupert's MI5 e-mails on Omagh were subsequently withheld from Nuala O'Loan when she conducted her large-scale investigation into the intelligence background to the tragic bombing. By late August 1998 there were a number of skeletons inside MI5's cupboard.*

*We now know MI5 possessed four pieces of high-grade intelligence which forewarned of a dissident republican car bomb attack in Omagh on August 15. The earliest intelligence data was dated 11 April. Then came the anonymous August 4 phone-call, Kevin Fulton's August 13 intelligence report and finally the satellite monitoring of the Vauxhall Cavalier arising from a tracking device planted by a British agent involved in the Omagh bombing. Yet notwithstanding this avalanche of intelligence MI5 made no attempt to intercept the bomb. How can this*

*operational decision be rationally explained? What was the motivation of MI5 management? Did British intelligence want to protect the identity of its agent at all costs? Or was this yet another "securocrat" plot to subvert the peace?*

*MI5 management did not want to scupper the peace process, but it did want to protect the identity of its agent and, at the same time, drive - what it hoped would be - the final nail into physical force republicanism at an exceptionally sensitive time in the Irish peace process.”<sup>9</sup>*

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<sup>9</sup> Forum Magazine

## THE FRAMING OF MICHAEL MC KEVITT

When Rupert was approached by MI5 and the FBI to give evidence against Michael McKeivitt his response was ." tell me what to do, make it worth my while and as long as the benefit overrides risk in my view it will be done to the best of my ability."

In November 2000, Rupert was told by the FBI/MI5 what the charges against McKeivitt would be – directing of an illegal organisation and membership. This was two months before Rupert came to Ireland to make his statement to the Gardai against McKeivitt and four months before McKeivitt was arrested.

On 9<sup>th</sup> January 2001 David Rupert made a statement to the Gardai (Irish police) in Dublin. He said many things in his statement carefully using the correct language that would strengthen the inevitable charges of Directing and Membership. He told the Gardai that Michael McKeivitt had attended several IRA meetings in his company. One meeting in particular on 17<sup>th</sup> February 2000, which he identified as a meeting of the IRA army council Rupert stated that McKeivitt attended it and 'directed' Rupert to carry out certain tasks. This date would prove to be significant during the trial.

Early in the morning of 29<sup>th</sup> March 2001 upwards of 40 members of the ERU and the National Security Branch of the Gardai arrived at the McKeivitt home in Blackrock Co Louth. Some members of the team were dressed in combat gear brandishing guns. As soon as the door of the house was opened they burst in passed Michael and ran upstairs to the bedrooms where the children who now awake and frightened were ordered by them to get up. Michael was arrested and kept in the front sitting room. Bernadette who was not arrested at that point insisted that she was allowed to telephone a family friend to come and collect the children who were shaken and crying. The house was thoroughly searched; furniture, bedding and clothing were strewn throughout each

room. A number of items were removed from the house. Bernadette requested the Gardai not to disturb personal items and letters that she had belonging to her late brother Bobby Sands. However they ignored her and read each letter tossing them to one side when they had finished with them.

Bernadette was arrested shortly after the children were collected from the house. She was confined to the kitchen area of the house, a member of the Gardai who was conducting a search of the kitchen held up a small brown container in his hand and enquired “what is this”. He offered the container to Bernadette to hold. She immediately became suspicious by his manner and refused to handle the container. She called out a warning to her husband who had been brought into the kitchen by the Gardai just as he was offered the container to hold as well. It later transpired that it contained a quantity of mercury. The Gardai claimed it was found on the kitchen shelf! Michael and Bernadette refute this and claim that it had been planted by the Gardai. Interestingly, no charges were pressed against Michael or Bernadette regarding the substance. However, had the Gardai succeeded in getting Michael and Bernadette’s fingerprints onto the container this may have been a different scenario. One could pose the question that if Michael and Bernadette’s fingerprints were found on the container would Rupert’s evidence with its inherent flaws be required? If so, it almost certainly would have prevented the exposure and embarrassment of the MI5/FBI stitch-up. The answer perhaps lies in a MI5 disclosed document detailing a conversation in **February 2001**, (one month before the arrest of Michael), between Garda Assistant Commissioner Dermot Jennings (Rupert’s former Garda handler) and a MI5 agent. The agent points out to Jennings where it is alleged in an e-mail by Rupert to his MI5 handler that he (Jennings) expressed indifference to terrorism in NI and was only interested in illegal activity in ROI. Jennings stated that this was untrue. Agent states that if the defence got hold of this e-mail and Jennings denied the report

that would make Rupert an untrustworthy source. The agent then states that Jennings “**urged that the report be removed**”. The agent also states that there was a few more such “**trickinesses**” in the paperwork that were being addressed. The MI5 document further states that Jennings was worried about the **mistakes in Rupert’s statement** and that he proposed to send the MI5 agent a copy of the statement but the agent said not to send it. Between Jennings and the agent they agreed that it might be possible for the FBI to sort matters out before the AGS arrive in the U.S to take a further statement from Rupert. This report would suggest that Asst. Commissioner Jennings was working covertly with MI5 to frame Michael McKeivitt.

Michael and Bernadette were taken to Balbriggan Garda station outside Dublin. A blaze of publicity appeared in the media; both Michael and Bernadette’s names and photographs were printed. While in custody, Michael was told that his arrest was a political decision. When Bernadette was told that her husband was charged, the Garda officers mocked her telling her she would no longer be able to continue with her political work now. (This was indeed proven true sometime afterward. As a result of the framing of her husband, Bernadette’s energies were diverted to campaigning on behalf of Michael. That combined with the rearing of their children single-handedly left her unable to continue with her role in the 32 County Sovereignty Movement.)

On the 30<sup>th</sup> March 2001 Bernadette was released without charge. Michael was taken before the non jury Special Criminal Court (SCC) in Dublin and charged with directing the activities of an illegal organisation and membership of the same organisation namely the IRA. Three days later Michael received a document via his solicitor from the Director of Public Prosecutions (DPP), outlining the charges against him. This document pointed out that bail would be denied for a number of reasons, principally because they claimed he hadn’t rebutted the allegations made

against him in the newspapers. This was inaccurate as Michael and Bernadette had rebutted the allegations through their solicitor however the vast majority of the news media did not report the denials. In addition to this the BIRW compiled a [report](#) refuting these allegations on Michael and Bernadette's behalf. The DPP document also stated that "*an MI5 and FBI informant David Rupert would give evidence against him in any future trial*".

From the outset there was an ongoing steady stream of leaks through the media about Michael's case. Most were complete fabrications without foundation and had been designed to promote an image of guilt to the public prior to Michael's trial. Some reports claimed that emails had been sent between Michael and Rupert and that these would be used as evidence. Other reports claimed that there was surveillance video evidence of Michael meeting Rupert. These reports were completely false.

In August 2001, almost a year after the Panorama programme was aired and shortly before the original trial date, solicitors acting on behalf of seven families who had lost relatives in the Omagh bomb served civil writs on five men, four of whom had been named in the Panorama programme, the fifth person was Michael McKeivitt. The only evidence offered in the civil writ against Michael was that he hadn't rebutted the allegations made against him in the newspapers. (Since Michael's trial, solicitors acting on behalf of the Omagh families have now employed David Rupert as a witness to "give evidence" against Michael).

Prior to the original trial date Michael was contacted by his legal representatives who conveyed an offer of a deal on behalf the DPP. The offer was as follows, if Michael pleaded guilty to the membership charge, then the charge of directing terrorism would be dropped. Despite the fact that this offer would have resulted in a lesser sentence - the charge of

directing terrorism carried a maximum sentence of life imprisonment, Michael refused the offer on the basis that this was an attempt by the prosecution to conceal the stitch-up and also bolster the civil case.

## PRELIMINARY HEARINGS

Owing to the inadequate disclosure of required documents in Michael's Dublin case, a number of disclosure hearings took place in the Special Criminal Court. In one disclosure hearing in 2001 disclosure was denied due to the premature nature of the disclosure application. Significantly one of the presiding judges was O'Donovan J. who later took part in Michael's appeal. This same judge took part in a number of the preliminary hearings prior to the trial.

One major impediment Michael faced in seeking disclosure, pointed out by the Irish Courts, was that the Court didn't have jurisdiction to compel agencies outside the state (MI5/FBI) to disclose any of their files. However, the same court had no difficulty in accepting evidence from a witness supplied by these agencies. Equally, it was accepted that both agencies conspired with Gardai in framing an Irish citizen, yet it was unacceptable for an Irish citizen to access vital information withheld by these agencies that would enable him to prepare a proper defence. This resulted in an unfair disadvantage to Michael's defence team.

Michael also requested disclosure from the Irish authorities. One disclosure document which he sought was the document that detailed who exactly was responsible for authorising the external agencies to operate within the Irish jurisdiction. This request was refused on National Security grounds. Bernadette confronted Irish Taoiseach Bertie Ahern (recorded by television crews) whilst he was electioneering in Portlaoise town. She asked him if he or the government were aware that MI5 were operating within the Irish jurisdiction. He denied he or the government had any knowledge of MI5 working within Irish jurisdiction. If this is true, one must ask the question was the arrest and subsequent conviction of Michael McKevitt on the evidence of an MI5 agent lawful?

There is no doubt that the non disclosure of vital documentation created an unfair situation from the outset and resulted in Michael's defence team being handicapped in preparing and properly structuring a preferred defence case in a meaningful way. They were met with obstacle after obstacle, consequently only one result could emerge from such a trial.

Throughout the pre trial hearings and the trial itself, in an attempt to deflect from the non disclosure of vital documents, the prosecution pointed to the disclosure of thousands of other documents. However, from a logical point of view the quantity of disclosure documents is of little relevance, what is relevant is the quality of the disclosure. In Michael's case the argument could be made that the documents disclosed were misleading in content. Many of the documents disclosed were heavily edited; others were completely blanked out rendering them useless.

Although the Defence did receive thousands of documents by way of disclosure on various dates between 2001 and 2003, they also received documents while the trial was in progress. There was no logical reason why these documents weren't disclosed from the outset. All claims of privilege were fully accepted by the trial court without being scrutinised by the judges.

Over two thousand e-mail reports supposedly between Rupert and his handlers were disclosed as contemporaneous notes but were not submitted as evidence. During the trial it was discovered that many of them were cut and pasted by someone somewhere before being disclosed to the defence. The prosecution were fully aware that the e-mails wouldn't stand up to scrutiny and that is why they were not submitted as evidence.

Many of the disclosed MI5 documents described Mr Rupert as being financially motivated with a criminal past and some described him as a liar. Other MI5 reports outlined where Rupert described himself to his MI5 handler as a “whore” and a “mercenary” who would do anything for money. One document described where Rupert pointed out to his handler “*tell me what to do make it worth my while and as long as the money is right I’ll do it to the best of my ability...*” Another report refers to Rupert saying to his handler that “*he may have to perjure himself...*” However during Rupert’s cross-examination he described the reports as inaccurate, incredibly his evidence was accepted by the court.

Prior to Michael’s trial his eldest son Stephen who was helping him with the case was arrested and all the documents relating to the case including the book of evidence were seized by the ERU. The same police officers involved in Michael’s arrest were also involved in Stephen’s arrest. He was held for two days and offered inducements to give information against Michael whilst in custody. He was released after two days. This is recorded and complaints were sent to the state prosecutor’s office. Not all of the documents taken at the time of the arrest were returned.

In June 2003 just before the trial was about to get under way the Defence were informed by the DPP (Irish prosecution) that Mr Rupert had given interviews to a number of journalists in the US from as early as 2001. The journalists were ghost writing a book for Rupert from which he secured \$1 million as an initial payment. This detail was conceded during his cross-examination and it was confirmed that the package was solely dependent on a guilty verdict. The Defence were also informed that all statements and other disclosed documents to be used at the trial were made available to the journalists by Rupert between 2001 and 2003. The trial court seemed to accept this development and indicated

this in their judgment by stating that Rupert needed the money as insurance in case the FBI money dried up.

Initially disclosure of the journalists' interview tapes were refused on the grounds of privilege. When this was highlighted to the Irish Court they pointed out that they didn't have jurisdiction to order disclosure. However, as the trial got under way in Dublin the defence lawyers went to the US courts seeking disclosure of Rupert's interview notes and tape recordings. The US courts had no hesitation in ordering disclosure in the interest of fair trial.

**[Details of this US court decision](#) available. This was a landmark ruling in the US and is also available on the web.**

These developments confirmed that the FBI withheld relevant documentation and would also suggest that they were withholding disclosure documentation. The information on the book deal was available to the FBI when they gave evidence to the disclosure hearing in October 2002. This information was obviously withheld from the Irish court and Michael's legal representatives. The Irish courts ignored this issue and didn't even query why this information was withheld by the FBI agents during the four day disclosure hearing.

After the US courts ordered the disclosure of the interview tapes, the FBI and MI5 informed the Irish prosecution that they would be editing the journalists' taped interviews before disclosing them to the defence on the grounds of national security. Eventually the edited taped interviews were disclosed and were found to be of poor quality with many parts inaudible. It was astounding that the journalists had possession of the unedited versions of the interviews yet the defence were denied the same on national security grounds. Much of the detail contained in the interviews between Rupert and the journalists conflicted with Rupert's statement of

proposed evidence and some of his evidence to the court. Interestingly, Rupert also informed the journalists that the only reason the Dublin trial was taking place was to bolster the civil case in Belfast.

Other details emerged which included an alleged arrest for white slavery, which Rupert had forgot to mention in his statement of proposed evidence. Rupert told the journalists that he and another truck driver had picked up two young run-away teenage girls and had drove around for a number of weeks crossing state lines before “off loading” one of the girls. He claimed his colleague who had slept with the other fifteen year old girl intended to take her home to keep as a “puppy dog”! When asked by the Defence why he had failed to mention this arrest, he said he was not arrested! He agreed he had been stopped by the police, handcuffed and taken to the police station and questioned, however he said he did not view this as an arrest. He claimed in America things were done differently! This explanation was accepted by the Irish court.

All of this information should have been made available earlier and there can be no doubt that it was deliberately withheld until the very last minute. The defence had no knowledge of its existence until the trial had begun and were not in a position to examine or have examined the tapes or their contents in a timely manner.

Throughout the [trial](#) the non-jury Special Criminal court was packed with FBI agents and members of the Irish National Security Unit. In addition, a backroom of the court was given over to members of MI5 to use.

Whenever the court was asked to enforce the defence request for further disclosure documents it would refuse such an order on the grounds that it did not have the jurisdiction. In addition, it accepted assurances from senior members of the Gardai that all the relevant documents they possessed were already given over. This proved to be untrue at a later

stage in the trial. Despite the obstacles placed in the defence way the trial continued.

Rupert was cross examined for just over a week. During that time his responses were limited and at times contradicted his earlier testimony. He used “I don’t recall” over 1000 times!

During cross-examination Rupert revealed that the British Security Services (MI5) trained him over the previous few years and coached him in the lead up to the trial. During cross-examination he admitted that he was coached on ‘court etiquette’. Throughout the trial it was abundantly clear that he was directed, influenced and financed, primarily by MI5 and also by the FBI. Undeniably on Rupert’s own evidence he was career informant since 1974 and was financially motivated throughout his adult life. However, the wider sections of the print media ignored it. One would have thought that the blatant abuse of the law would leave a considerable sense of unease amongst those who profess to value the independence of the rule of law in Ireland, however in relation to Michael’s case their silence has been deafening.

After Rupert left the box, a number of Gardai from the National Surveillance Unit gave evidence that they had observed Rupert and others including Michael enter a house in Oakland park, a local authority housing estate in Dundalk. They stated they had remained there until Rupert and Michael left. The purpose of their evidence was to corroborate Rupert’s evidence. However, each of the three gardai contradicted each other, Rupert and their own original statements during their evidence in chief! When cross examined it was confirmed that they did not make their original statements, which incidentally were identical, until a year after the alleged meeting took place and a month after Michael’s arrest.

It transpired during the cross examination of a senior member of the unit that there were no written contemporaneous notes of the alleged incident. Instead he explained that he had stood in an adjoining laneway, recording his observations onto a Dictaphone tape, whilst at the same time he was in radio contact with the other members of the team receiving their observations and recording them onto the tape also. He also claimed that he left his location to follow Rupert by car to another location twenty minutes away yet still made it back to the original location in time to take up his position and record his observations and the observations of the other unit members as Michael left the house. He confirmed there was no photographic evidence as they didn't have a camera that could take photographs in the dark! He appeared to be embarrassed when the defence produced copies of photographs of the same street taken at night by a photographer employed by them.

Incidentally another member of the team stated that he had observed the comings and goings of Rupert and Michael while hiding behind a curtain in a van parked in a lay-by in the street where his view was further hindered by a wall and a tree yet he claimed he could see clearly. He also admitted to having no watch or pen or paper to record accurately his observations. Bear in mind these were members of the elite national surveillance unit who according to them had prior knowledge of the meeting taking place yet came unprepared.

When the senior member was asked if the original tapes could be produced to the court he claimed the tapes had been wiped after he had transferred the information onto a personal organiser. When asked if the personal organiser could be produced he said it broke after he had transferred the information onto a computer in Garda headquarters. He stated that it was from this computer containing the surveillance log that the members of the unit made their identical statements a year later.

This surveillance log had been withheld from the Defence team despite the numerous requests for relevant disclosure documents over the previous two years. The prosecution claimed they were unaware of its existence. Yet, the gardai when asked by the defence to produce it were able to furnish the defence with an edited copy approximately an hour later.

The surveillance log consisted of two pages that contained the surveillance observations of that week including the night in question.

The entries of the Oakland Park observations were short and did not correspond with the elaborate detail given by the gardai in the court. Furthermore they were disjointed and not in sequence with the rest of the log. Michael's solicitor James MacGuill studied the other details contained in the week's log and found what was clearly alibi evidence for Michael. The document placed Michael in the front room of his home at the time when Rupert stated he had met him at an IRA Army Council meeting on the 17<sup>th</sup> February 2000. It also contradicted Rupert's evidence in Chief where he said he had been picked up from McKevitt's house and driven to the meeting house by Michael's son Stephen. The surveillance report did not record Rupert anywhere near McKevitt's home that evening. Furthermore, it logged Stephen McKevitt driving alone in a southern part of the county at the same time Rupert had claimed he had taken him to a house north of Dundalk.

The defence team protested to the court that this relevant document should have been disclosed. They questioned what else was being withheld. They stated they could no longer provide a proper defence for Michael as their strategy had been irreparably damaged. They moved for the trial to be stopped. The court refused and ordered that the trial should proceed. The defence called for the court to dismiss itself, as it

had not ordered an investigation into the circumstances surrounding the withholding of this document to determine if in fact there were sinister reasons behind the nondisclosure. This was refused also.

After consulting with his legal team, Michael found he had no option but to dismiss his legal team and withdraw from the case. He addressed the court detailing his reasons for withdrawing citing the proceedings as nothing other than a 'show trial'. He stated he was told by a senior Garda at the time of his arrest that the decision to frame him was a political one. He stated that he was withdrawing from the 'show trial' with his dignity intact.

The trial continued in the absence of the defence and the defendant. Michael remained in his cell beneath the court refusing any requests from the court to attend. At one point the court ordered that he be taken before the court. A number of guards tried to forcibly drag Michael up the stairs into the dock. However Judge Johnston realising the spectacle unfolding halted the course of action ordering that Michael should not be harmed and that if he chose to remain in the cell that was his choice.

The remaining prosecution witnesses were hurriedly dealt with without any challenge to them. In the lengthy judgement at the conclusion of the six-week trial, the court said they were impressed with the performance in the witness box of David Rupert, the chief prosecution witness. Mr Justice Johnson presiding said that the court was satisfied that Rupert had a considerable knowledge of the republican movement. However during his evidence Rupert didn't say anything, which would indicate that he was an expert on Irish Republicanism, on the contrary anything, which emerged in his evidence, is freely available in the public domain, and would be common knowledge by anyone even loosely associated with Irish Republicans since 1992 as Rupert was.

The court was particularly struck by the witness's ability to recall on day 4 and day 19 of the trial, the seating arrangements of the first meeting where he allegedly met McKeivitt in the foyer of the Four Seasons Hotel in Monaghan. "Overall he had very considerable knowledge of the facts to which he testified", the court found. However, the special non jury court didn't check the layout of the Hotel. Nor were any witnesses put forward by the state to verify what Rupert had stated. In fact the Defence had employed an engineer who would have proven Rupert's description of the Hotel Foyer was inaccurate. However, his evidence never was heard, like the other defence witnesses evidence because of Michael's withdrawal from the trial. It was therefore the court's duty in the absence of a defence to eliminate any doubts by seeking corroboration. Instead they accepted Rupert's uncorroborated evidence.

At no time was it denied that Rupert was at the McKeivitt home in Blackrock, in fact Michael's defence lawyer Mr Hartnett S.C. during the cross-examination of Rupert did confirm that he was in contact with Michael's wife. Michael's wife Bernadette was due to give evidence to the court as a defence witness.

Given that Rupert was a 'co-operating witness' his evidence in court had the advantage of extensive and careful rehearsal with the MI5 and FBI intelligence agencies for almost 3 years before the trial. However, none of these issues mattered to the court and his performance certainly impressed Judge Johnston and his two colleagues O'Hagan and O'Reilly. On one hand the Special non jury court found that Rupert was "a very truthful witness". This was in stark contrast to the opinion of the head of the Garda Crime and Security branch Dermot Jennings, who, in other circumstances, found him to be a "liar" and a "bullshitter".(MI5 Disclosed documents)

As in previous super-grass trials in the North of Ireland the defence case hinged heavily on the prosecution witness's credibility. Mr Rupert made no secret of being a serial bankrupt; these started in the early 70's and continued through the 90's he was also a tax cheat. Rupert acknowledged to his home-town newspaper that he had a reputation as a crook, thief and fraudster. It was also revealed that he became a police informant in New York in 1974, when he was investigated for cheque fraud. He gave evidence before a grand jury there about drug deals he had set up with detectives. Subsequently the cheque fraud charges were dismissed as a result of his actions as an informant at that time.

In MI5 documents disclosed to the defence a Garda report said the only information/intelligence he gave them came from newspapers and that his information was low-level and unreliable. By 1993, the Garda Crime and Security Branch tipped off the FBI on Rupert and reported that he had connections with Irish Republicans in the Bundoran area. However, although the FBI said that they only recruited him in 1994; it was established during the trial that Rupert had been working as an informant since 1974. This would suggest that the FBI had already been working Rupert in Ireland from earlier than they admitted to the Irish authorities. This meant that he was operating within the territory without the authority of the Irish.

The FBI agent-in-charge of the Irish terrorism section in Chicago in the early 90's, Pat "Ed" Buckley, claimed that he recruited Rupert as an informer in 1994 a claim which was questionable and unconvincing due to the fact that Rupert admitted that he had been an informant in the 70's. Agent Buckley is well known amongst the Irish Republican community in the Chicago area. He is described by many of those who know him as a corrupt agent.

In another case Buckley attempted to stitch up a family named [Fogarty](#)<sup>10</sup> in Chicago however the case subsequently collapsed as a result of fraudulently obtained evidence.

In the early 90's Rupert was under Federal investigation for wire fraud but no charges were brought. Around that time many of his employees were questioned by the FBI about the fraud allegations, however, Rupert claimed in his evidence that he knew nothing about the FBI investigation and had only heard about it in the late 90's. Not surprisingly the Special non jury court accepted this claim from Rupert as being truthful.

FBI documents disclosed to the defence revealed that in the mid 90's, his handler agent Buckley arranged for Rupert to fly to London to meet with MI5 agents. According to Rupert he was trained by MI5 in 1997 and begun working for them as an informant in the North of Ireland. He was also coached in court etiquette by a consultancy firm hired by MI5.

Other documents provided to the defence team show that, even at that early stage of his involvement with MI5, they were preparing him for an eventual appearance as a court witness. Initially MI5 paid Rupert £10,000, but said this was "compensation and reimbursement" – an important legal phrase. Subsequently, Rupert got an agreement for pro rata payments and bonuses etc; from MI5, which doubled his take from the FBI.

Throughout the short period of his involvement with the Irish authorities Rupert's Garda Special Branch handler Dermot Jennings had an extremely poor opinion of him, until he emerged as the secret weapon which might secure the conviction of an Irish Republican. The Garda documents disclosed to the defence didn't reveal anything of meetings between Rupert and his handler Jennings; however, MI5 documents obtained by the defence team as a result of discovery orders uncovered

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<sup>10</sup> <http://lark.phoblacht.net/2901066g.html>

these Garda opinions of Rupert. One MI5 document in particular reported "*The Garda view was summed up by Det Chief Superintendent Dermot Jennings of the Garda Crime and Security Branch (CSB) who described Rupert to MI5 officers as a "bullshitter" and "a liar".*

As chief of the CSB (formerly C3) at Garda HQ, Dermot Jennings was the working head of the Irish State Security apparatus throughout the 90's. His opinion, therefore, expressed at a formal meeting (which it was never expected would be made public) with senior MI5 officers in London, at which he was accompanied by Det Supt Peter Kirwan, might reasonably be regarded as convincing by any Irish court. It was not, since Jennings, in statements made to the prosecution denied all such assertions revealed in the MI5 documents and described them as being misquotes etc; this was how Jennings explained away these comments and said that they were taken out of context or that they were never said in the first place. Another MI5 document revealed where Jennings prompted the MI5 agent to "remove" sections from the reports to avoid Rupert being exposed to the Irish courts as an unreliable witness. These documents were brought to the attention of the Special non jury Court in October 2002.

One MI5 briefing note states "*In June 1999, DCS Dermot Jennings of An Garda Síochána, who had not met Rupert since 1996, expressed his personal opinions about Rupert, which were not favourable. He expressed doubts about Rupert's judgement, and Jennings stated that Rupert had falsely suggested that Jennings had not paid him all the money he was entitled to*". (The rest of the document was obliterated.)

Another MI5 document marked "Secret" and labelled "Telegram to Washington 14 June 1999" states: "I spoke to Dermot Jennings privately on 11 June about Rupert ... (the rest of the long paragraph is edited). Paragraph 2 reads: "Jennings seemed embarrassed at the mention of Rupert's name and took a little time to gather his thoughts, but at no time

was he cross or disappointed ... but was evidently surprised ... (When) he had composed himself he made a number of disobliging comments about Rupert rehearsing some of what is already on file and Rupert's threat to expose his agent role through his lawyer if he did not receive certain payments; the fact that his wife was conscious and that he told her everything; Rupert's overblown sense of his own importance and the value of his information; and the fuss – Jennings used the word "lies" – over payments made or not made by Jennings."

An MI5 file note dated September 15 2000, records a conversation between the MI5 section head in London and Rupert's agent handler. The report, giving an account of the handler's meetings with Rupert in Chicago, is largely edited. However, one key section reads: "*The subsequent meeting between (handler) and Rupert went very well. Rupert was confident, sensible and related much about his earlier criminal and smuggling background.*" These allegations were put to Rupert during cross-examination; he denied the allegations and said that the handler must have made errors during his reporting.

The court judgement summarised Rupert's business experience in the following words: "*He clearly had a very chequered business career and operated close to the edge in many matters.*"

## RUPERT'S REWARD

Rupert's total take as a result of the conviction has been estimated at around \$5 million. This consists of an acknowledged \$1.5 million from the FBI up to the year 2000, plus a similar payment from MI5 through the pro rata agreement for services to them, plus a reported \$50,000 per month for life and a substantial percentage of the profits of a book on his life and times in Ireland being ghost-written by two US journalists. Much of these payments were dependent on the conviction of Michael McKevitt. Acquittal in the trial would have been a financial disaster for David Rupert. It also would have been a major embarrassment for MI5, the FBI the Gardai and the Irish DPP's office.

An undated and heavily censored MI5 file note made available on discovery reads: "*Rupert volunteered he was a "whore" ... and his motive is money. He had earlier told the FBI that he hoped the money would not dry up ...* During the disclosure hearing in October 2002 the English Barrister Simon Dennison was asked by Defence lawyer Philip McGee S.C., did he agree that Rupert's motivation was financial, Mr Dennison replied he was in agreement that Rupert was financially motivated.

An undated MI5 paper says: "*On November 28<sup>th</sup>, 2000, when discussing the possibility of giving evidence against McKevitt, Rupert stated that his participation (in any prosecution of McKevitt) was dependent upon the right terms. He asked his handlers what the figures were. He was told it was vital to avoid any suggestion that his testimony had been induced by some promise of reward. He could not be rewarded for his testimony. He could be compensated for his loss of earning potential; the impact on his lifestyle and arrangements could be made for the necessary security measures to be taken to ensure his protection for as long as they were*

*needed.* The language used was for legal reasons to avoid the perception of inducement to him.

As a veteran performer in State and Federal courts since 1974 Rupert was clearly at ease with the cut and thrust of cross-examination. When Mr Hugh Hartnett S.C trapped him into contradicting himself he resorted to the expression so beloved of some witnesses at the Dublin Castle tribunals of saying “he could not recall” what he had said earlier. On one occasion when Hartnett pointed out that he was saying the opposite of what he had said the previous day in court, Rupert retorted: *“I do not recall what I said yesterday ... you’ve done your job this morning, you have me thoroughly confused.”* On another occasion during the trial Mr Hartnett pointed out to the court where Rupert, in answer to questions from the defence on the previous day said “he couldn’t recall” on 254 different occasions.

However, the court, in their judgement pointed out how they were impressed by Rupert’s recall, which was bizarre and in stark contrast to Rupert’s performance while under cross-examination.

## **RUPERT'S INCONSISTENCIES**

Some of the “inconsistencies” were also blatant. He told the Gardai in his initial statement and also the Special Criminal Court during cross-examination that his trucking firm went into receivership because of a fatal crash that could have resulted in \$50 million of personal injuries claims. Details of the bankruptcy were never disclosed by the prosecution. Defence investigators in the US discovered the details that he had filed for bankruptcy two weeks before the fatal crash. His claim that the bankruptcy was triggered by a disastrous road accident fits in with much of what Rupert was trying to project about himself as an honest businessman whose repeated bankruptcies were due to bad luck, not fraud. Later all public records relating to Rupert's bankruptcies were wiped clean.

All of Rupert's phone records disappeared, while his tax information which was on the public record at Dickson House, the Federal building in Chicago, was removed after Irish Americans inspected it but before they managed to get copies for the defence team in Ireland. Everything, which could portray Rupert as a dishonest and manipulative person, was wiped from the public records.

The court found that virtually the entire of the cross-examination of David Rupert spanning some 11 days concentrated on his activities and history within the US:

*Mr. Hartnett S.C sought to discredit Mr Rupert and show him up to be an unreliable and untruthful witness and a person not worthy of being believed. To this end many topics were investigated: the production or not of photographs when he first met FBI agent Buckley and his two statements to the Gardai relative to same; his reputation in the eyes of*

*New York state police officer trooper Hamill who described him as a street smart criminal, smuggler and person operating close to the margins of legality; his reputation in the eyes of FBI; his reputation in the local press in Meccina; a police informer and betrayer of friendships; his retention of monies from the sale of his house which ought to have been paid to his bank; his views of the collusion between a local judge and that judge's former partner; gambling negotiations in Florida with Mafia and other criminal types; his alleged arrest and detention for the abducting of two young (minor) girls in the Alabama area described as white slave trading; smuggling of aliens, arms, explosives, cigarettes and other contraband materials on the Canadian border. The use of bankruptcies in the US to avoid paying debts on more than one occasion; the relationship between his brother Dale and his employer, a former colleague of the witness and the fact that this colleague and Dale were charged, convicted and sentenced for dealing in drugs; bounced cheques; wire fraud; flamboyant cars; deals with tax authorities; use of book rights and film rights to raise money; etc.<sup>11</sup>*

Dublin's non jury Special Criminal Court under the direction of Mr Justice Richard Johnston found Michael McKeivitt guilty and sentenced him to 20 years imprisonment principally on the evidence of David Rupert.

As in any case in a proper court of law the legal maxim is, Justice must not only be done, but it must be seen to be done, by the people in the public gallery and the wider population.

There is a high value placed in criminal law on a judiciary independent from Government's influence. Irrespective of the guilt or innocence of an accused, justice must be seen to be done. If one was to be honest at

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<sup>11</sup> DPP V's McKeivitt, Special Criminal Court, 2003.

the conclusion of Michael's trial in the non jury Special Criminal Court justice was not done and was not seen to be done.

Meanwhile in the civil case Michael's attempts to defend himself were being met with obstacle after obstacle. The limited legal aid was stopped, the reason given by the Legal Aid Services was his conviction in the Dublin trial, even though others with numerous convictions have secured legal aid since. The Omagh families have also been granted legal aid despite the fact they had raised over a million pounds via private donations (including one from former secretary of state Peter Mandelson) plus a further £850,000 donated to the fund directly from the British government. Michael successfully challenged the illegal donation by the British Government in the high court in Belfast. The court found the British Government had acted unlawfully. The British government agency responsible for allocating legal aid then responded by granting the Omagh families legal aid whilst denying Michael legal aid.

Left without legal representation in the civil case Michael struggles to defend himself. Rupert will appear as a witness for the Omagh families and is expected to give evidence via satellite link.

## CONCLUSION

Michael's appeal against his conviction took place in Dublin's Court of Criminal Appeal in November 2005. It lasted four days. The prosecutors opening comments to the court was to remind them that International agreements could be affected if Michael McKeivitt was freed. The judges came back four weeks later and took approximately 60 seconds to deliver their [judgment](#). They upheld that Rupert was a credible witness! The Mc Kevitt family were outraged; particularly when on reading the judgement in full they discovered that it contained numerous factual errors. In one example quoting from the original trial judgement, the appeal court refers to "details of further meetings between David Rupert and the appellant, in one of which there was a discussion about the raiding of a training camp in Donegal."

There are two vital errors contained in the above quote. Firstly, the meeting referred to where the so called discussion took place, is the very same meeting that was proven during the trial that Michael could not have attended as he was logged by the Gardai sitting in the front room of his home.

The appeal court acknowledged this insofar as:

*Mr. Rupert himself in evidence, both in direct examination and cross-examination, stated that he could not recall if the appellant was at the Greenore meeting (day 5-p.48 and day 20-p.14). In his proposed statement of evidence he did not give a date for the Greenore meeting. In the course of his evidence he referred to the difficulty he had in dealing accurately with some of his dates because of the large amount of reporting of intelligence which he had done. In addition to the evidence given at trial by David Rupert, the defence were also in possession of the contemporaneous e-mail dated 17 February 2000 which reported the Greenore meeting to his handlers but which specifically stated that the appellant did not attend this particular meeting.*

The appeal court however, overlooked the fact that the email quoted contained the details of the training camps discussion. Therefore, if it is accepted by all that Michael was not at the meeting then how could he have had the discussion about the camps? Remember it was the content of this discussion that was used by the court to enforce the charge of directing. The court referred to the email as “contemporaneous” yet failed to acknowledge that during the trial the authenticity of the emails were challenged by the defence. What’s more, the court also overlooked the fact that Rupert had stated in evidence and in the same ‘contemporaneous’ email that Stephen, Michael’s son had collected him from the McKevitt home and dropped him off at the meeting house. Yet the Garda surveillance log offered evidence to contradict Rupert once again. It reported a sighting of Stephen miles away from the location of the meeting alone in his car at the specific time Rupert claimed he was with him! In addition, the Gardai surveillance log as stated previously recorded Michael in the front room of his home yet does not record Rupert either entering or leaving the McKevitt home as he had claimed.

Secondly, Donegal was never mentioned as the location of the training camp in any of the trial court transcripts, judgement, witness statements or disclosure documents submitted to the defence. This information was added by the Appeal Court!

In another example, the appeal court judgement states “He (Rupert) was again back in Ireland in August 1992, this time with Linda Vaughan, who became his second wife,..” Once again this is factually inaccurate, at no time throughout the original trial or in any of the documents related to the case was it asserted that Rupert was married to Linda Vaughan. In fact he had only gone out with the lady for a short time and was in fact with someone else in 1992. There are numerous other such mistakes contained within the appeal judgement which begs the question how credible is the actual judgement if it is based on such inaccuracies.

The next stage of this process will take place in the Supreme Court Dublin in late 2006. Michael's family view the Irish process with much scepticism. They feel that to date his incarceration is based purely on political grounds and that he will not receive justice until his case goes before the European Court of Human Rights.

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Author's note:

Since completion of the above account of the framing of Michael McKevitt the following information has come to the attention of the author.

In the run-up to the trial of three Irish students in the Old Bailey, London, May 1999, the British Anti-terrorist Branch presented lip-reading transcript evidence against Tony Hyland, Liam Grogan and Darren Mulholland, who were accused of conspiring to cause explosions in Central London in July 1998.

The background to the lip-reading transcript is as follows: While in London in July 1998, Liam Grogan, Darren Mulholland and Tony Hyland were placed under 24-hour surveillance by the relevant British authorities. Prior to their arrest, Liam Grogan and Tony Hyland were, on two separate occasions, filmed by the Anti-terrorist Branch from a discreet distance while having a conversation on a park bench in Acton Green in West London.

The two video tapes (approximately 55 minutes in total) were then sent to a lip-reading 'expert', Jessica Rees. Ms Rees claimed to have outstanding qualifications and a unique ability to lip-read.

The Crown Prosecution Service and Anti-terrorist Branch engaged Ms Rees to produce a lip-reading transcript of the surveillance video recording. Ms Rees's final transcript which incidentally was compiled post the Omagh bomb, contained numerous references to an alleged plot to bomb Omagh (which subsequently occurred three weeks after the three Irish students were arrested) and a couple of references to "McKevitt" throughout the transcript.

From the outset the three students vehemently rejected the authenticity, accuracy and validity of the Rees transcript and questioned her ability as a lip-reader.

Gareth Pierce, the three men's defence solicitor, demanded that the Crown Prosecution Service and the Anti-terrorist Branch undertake a controlled experiment whereby two actors would be recorded from a distance but with concealed microphones which would record their actual conversation. The video tapes would then be sent to Ms Rees and her transcript could be compared to the actual content of the actor's recorded conversation.

Both the prosecution and defence counsel in this trial agreed it was the fairest means to assess the veracity, accuracy and credibility of Ms Rees's work.

In the final analysis Ms Rees correctly lip-read less than three per cent of the words spoken by the actors during the controlled experiment and she failed to successfully identify any of the topics which they had discussed.

When faced with these appalling results the Crown Prosecution Service and the Anti-terrorist Branch decided to refrain from presenting Ms Rees's original lip-reading transcripts as evidence before the courts. Justice Klevin accepted and acknowledged this decision.

Furthermore, last year (2005), the BBC current affairs programme *Newsnight* investigated all of the previous work carried out by Jessica Rees. Gareth Pierce was interviewed by the *Newsnight* investigating team. *Newsnight* exposed Ms Rees's lack of qualifications to lip-read and numerous inaccuracies in her work. Consequently, the *Newsnight* investigative report resulted in every conviction which relied upon her evidence to prosecute being re-opened and re-examined.

The transcript concocted by the Anti-terrorist Branch-sponsored lip-reading charlatan, Jessica Rees, is yet another example of an underhanded attempt by the British state to indirectly connect Michael McKevitt with the tragic events in Omagh on August 15 1998.

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