**BRIEFING NOTE ON THE CASES OF**
**CHARLES FRIEND, FRED SHORT and FRANK TUCK AND 6 OTHERS: 31.11.20.**

## INTRODUCTION

1. These nine Guernsey police officers were taken into German military custody on and shortly after 6.3.42. They were interrogated by the German Wehrmacht Field-Police and the Gestapo. They eventually signed 'confessions', seemingly dated between 17. and 25.3.42., to breaking and entering and stealing from various 'stores' or, in Harper's case, receiving stolen goods. The 'confessions' were written in German, (which they could not understand) and were only translated several weeks later. The offences were allegedly committed between November, 1941 and February, 1942.

2. On 24.4.42., at a German military tribunal 'trial', they pleaded guilty, and were given a range of sentences, between 2 years and 4 years 6 months hard labour, 'subject to confirmation'. Those proceedings related to stores under the direct control of the occupying forces.

3. The German authorities needed to discredit these men in the eyes of the civilian population, lest they became symbols of 'resistance.' They set up a 'show-trial' to convict them of stealing from 'islander- owned' stores: i.e. as common criminals. [There was effectively no 'moral' distinction between Wehrmacht controlled stores and islander owned stores, since the latter were necessarily involved on the 'black market' and supplying the Wehrmacht too.] The 'confessions' in German, extracted in military custody, referred to such offences, and were put to 'good use.'

4. On 29.4.42., the occupation authorities sent the 'military confessions' to the Guernsey law officers with a request for a prosecution in relation to the 'islander store' thefts. Doing their bidding, on 10.5., 15.5. and 16.5.42., Guernsey detectives questioned the accused in German military custody and obtained further 'confessions', after showing them their military 'confessions'. Both sets of 'confessions' were introduced at the 'Royal Court' trial.

5. Overshadowing this process and the trial itself was a threatening letter from the German authorities, which was shown to the men by the detectives. On 8.5.42., Dr. Biel, the German military tribunal Judge, wrote (the 'Biel letter') stating that "In the event of the

accused denying the admissions made by them to the Feldgendarmerie, please advise me immediately, as in this case, the Chief of Tribunal will take up the proceedings even as regards the thefts committed at the expense of the English traders."

**THE TRIAL.**

6. On 1.6.42, at the Royal Court of the Island of Guernsey, with Bailiff Carey and eight jurats sitting, ten men were convicted of various offences of breaking and entering stores and stealing food or drink, or receiving them. All except two men, Harper and Burton, pleaded guilty. One man, Burton, was acquitted. These three did make efforts to resist the process, despite the threatening letter. The tenth man was Duquemin, a hotelier.

7. The 'military' and 'police' confessions were the only evidence presented by the prosecution. Under Guernsey criminal procedure, despite the many guilty pleas, the prosecution called the evidence of the 'confessions'. The prosecutor and the police witnesses repeatedly maintained that the 'confessions were 'freely and voluntarily' made: and conceded that, if not proved to be 'voluntary', they were inadmissible according to Guernsey law, following the then 'common law' rule.

8. The ten were sentenced to between 3 months' and 16 months' imprisonment with hard labour. By some opaque executive mechanism, the appellants were promptly transported to German military detention and prisons or concentration camps on continental Europe, pursuant to the military tribunal sentences. They suffered very badly. Smith was killed in a German concentration camp in 1943. The other eight were only released after the end of the war.

**THE FAIRNESS OF THE 'TRIAL': A 'SHOW-TRIAL'.**

9. The 'Biel' letter. The men had no free choice about these 'confessions' and about their pleas of guilty. The 'Biel' letter from the Military Tribunal Judge threatened potentially severe consequences. If these cases were 'taken over' by the military tribunal, apart from sentencing for those offences, the heavy sentences already passed by that tribunal were 'subject to confirmation', and could have been increased. Those sentences involved transportation to German military detention and concentration camps, under life threatening conditions, which proved fatal for the accused Smith. Charges of 'sabotage' could have been brought, for which the sentence was 'death'.

10. The effect of these threats was to render the 'confessions' inadmissible in law, according to the test relied upon by the prosecutor himself. Since there was no other prosecution evidence, the men all had to be acquitted. The threats also nullified the pleas of guilty and tainted the whole trial process.

11. It was 'grave prosecutorial misconduct' for the Attorney General and the Guernsey police to initiate, approve or conduct an investigation into these offences, under the shadow of the threatening 'Biel letter'. The use by the Attorney- General of the product of this investigation at the trial amounted to an 'abuse of process', and brought the system of justice into disrepute.

12. Had this been a normal and fair trial, properly conducted by the Bailiff, and the prosecution, especially with unrepresented accused, the 'voluntariness' of the guilty pleas would have been considered thoroughly at the outset of the trial. Despite the intimidating context for the trial, there were many indicators from the accused that they had been mistreated and that their confessions and pleas of guilty were 'involuntary'. A responsible prosecutor would have voluntarily produced the 'Biel' letter to the Court, and invited an investigation of the treatment leading to the making of the 'military' confessions, of the custody conditions at the time of the 'police' confessions and of the dissemination of the threat in the Biel letter by the investigating police and between the accused.

Lack of independence.

13. The Bailiff presided over this trial with jurats, as would a trial judge with a jury in an English criminal trial. His extra- judicial role and that of the jurats, in administering the hostile occupation of Guernsey, by forces in a state of war with the Crown, was incompatible with his sitting as an independent judge presiding over this criminal trial: see the case of *McGonnell v UK* 28488/95, 8.2.2000., [2000] 30 EHRR 289, at paras. 17- 29, 48 and 57: and Dawes, The Laws of Guernsey, 2003, at pages 23- 26 and 527.

14. On 12.10.40., the Royal Court, with the Bailiff presiding, had passed into Guernsey law three German laws, extending the German military laws of France to Guernsey, including imposing the death penalty for unauthorized possession of firearms: and establishing military tribunals for contraventions of German penal law, including public gatherings, publications injurious to the Reich, and listening to foreign radio broadcasts. Of the eight jurats acting as jurats/ jurors at this trial seven were present for the passing of this

legislation: Simon, John Roussel, O.P. Gallienne, Dorey, de Garis, James Carey, Falla. That compromised them in the same way as the Bailiff. Under such laws, the Jews of Guernsey were expelled to their fate in mainland Europe.

15. A reward was offered personally by Bailiff Carey on 9.7.41., for information leading to the conviction of anyone marking walls with a resistance sign, or any other sign or words calculated to offend the German authorities or soldiers. It was under Bailiff Carey's authority only five weeks before this trial, on 21.4.42., that three Jewish women were deported from Guernsey by the Germans ultimately to Auschwitz, where they were murdered. No objective observer would be confident that, in these circumstances, the Bailiff and jurat acted, or were in any position to act, with effective independence from the occupying military forces.

Misconduct of the Bailiff.

16. The lack of independence of Bailiff Carey is not a purely formal matter. We have a verbatim transcript of the trial. He behaved disgracefully, making scornful and improper remarks, even intimidating the accused from representing themselves fairly. They were all unrepresented. He slapped down Howlett, Short, Quin, Burton and Harper, when they showed signs of referring to mistreatment and the Biel letter. This can be seen from pages 46, 48, 73- 75, 78 – 80, 88 – 90 of the transcript.

**THE FAIRNESS OF THE 1955 APPEAL.**

17. On 6.10.55, before the Judicial Committee of the Privy Council, eight[1] of the convicted police officers appealed against their convictions. The Committee allowed the appeal upon one conviction, Case 8, for three then appellants Quin, Friend and Short, but rejected all other appeals. Each appellant was left with at least one conviction against his name. At that time, no Court of Appeal existed within Guernsey, hence the Judicial Committee was the first and only mechanism of appeal.

18. The Attorney-General vigorously maintained that the 'confessions' and pleas of guilty were freely made and 'voluntary'. At that time, the Respondent was in possession of convincing material to the effect that violence and/ or threats had been used in obtaining the 'military confessions' from these Appellants and later in the process. The latter directly induced the

[1] Of the original eleven defendants, three were not then appellants. Smith had been convicted, but was killed in a German concentration camp in 1943; Burton had been acquitted at this trial; and Duquemin did not appeal.

police ‘confessions’, in combination with the ‘Biel’ letter, and potently undermined the validity of the pleas of guilty.

19. That material strongly undermined the Attorney’s position, but was suppressed, contrary to their duty to the Court and to the Appellants. It was only uncovered by chance in the Public Record Office more recently. It consisted of three documents. The first was the Cotton report which recorded reliable information from a Doctor and others of ill-treatment. The second, to the same effect, was from the lawyer representing the men before the Military tribunal. The third was a Home Office memo to the same effect. This suppression was egregious misconduct by the Guernsey Attorney-General. When recently drawn to the successor Attorney’s attention, it has not been denied.

20. It is right to say that the Appellants’ legal team did not then raise the issues of ‘abuse of process’ and lack of independence of the Bailiff and jurats as above. This is because the law in those areas had not yet developed to its present extent. No further evidence about mistreatment by the German military was then adduced. There were several reasons for this.

21. There were severe practical difficulties over calling ‘fresh evidence’ about mistreatment in 1955. In the absence of a Court of Appeal in Guernsey, it would have been unprecedented for the Privy Council to engage in days or weeks of evidence about this mistreatment. Secondly, the Attorney General was playing ‘hard-ball’, and indicated that any evidence about this would be contested: and each witness would have to attend the hearing in London for cross-examination. This would have been exceedingly difficult: the men were scattered around the country: some were ill: they had very limited resources.

22. Thirdly, the defence decision not to adduce this evidence was made in ignorance of what the A- G concealed: namely that all along they had material confirming that the men were treated with violence and suffered injuries. The Defence could well have decided differently, if the A-G had not violated his legal duties.

**SINCE THE 1955 APPEAL**

23. Yet more material has emerged since 1955. Inspector Lamy was the most senior prosecution witness, as to the obtaining of the ‘police confessions’ crucial to the trial. He repeatedly in his sworn evidence asserted that these confessions were entirely ‘voluntary’ and not the result of any kind of pressure.

24. Lamy has subsequently written an account called 'Policing During the Occupation, 1940-1945'. He there records that he was aware that confessions would be extracted forcibly from suspects by the German field police: and personally witnessing the use of brutal violence by the German police to extract a confession, and that this was common-place. He says that he used a formula of words in his court evidence to conceal the methods used. He was effectively admitting to committing perjury on this issue.

25. Our new legal team filed an application to re-open the case with the Judicial Committee of the Privy Council in August, 2019. Unfortunately, the Board refused permission to appeal on paper on 11.3.20.

**A RESPONSE.**

26. There is a predictable response to these points, namely that they were all argued unsuccessfully on paper for the Judicial Committee of the Privy Council last year. This does not however invalidate them for other purposes. The Court is concerned with legal requirements: not 'moral' aspects of this history. There is enormous procedural difficulty over re-opening a case formally before the Court after so many decades. From the brief reason given, the Board was concerned about these procedural issues, rather than the accuracy of the substantive issues raised. Indeed the factual accuracy of these points has not been disputed by the Attorney- General.

27. The manifest unfairness of this trial in 1942 and of the 1955 appeal is a taint upon the reputation of the system of justice in Guernsey, which cannot be allowed to remain unresolved.

**PATRICK O'CONNOR QC**

Doughty Street Chambers