

Shooting the messenger: Col. Costello and the Murray case

By Marcus Bourke

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When General Michael Costello died in 1986, Ireland lost its most distinguished – and arguably its most controversial – military figure since Michael Collins. Affectionately known as “Mickey Joe” to thousands of admirers among an older farming generation, many employees of Irish Sugar and Erin Foods and countless retired soldiers of all ranks who had served under him, General Costello had been out of public life for 20 years. Yet his death evoked nationwide tributes and merited a fulsome editorial in the *Irish Times*. Costello had been, the paper claimed, “a man in the Thomas Davis and Young Ireland mould . . . in truth a legendary figure.”

The future general was born in 1904 in Cloughjordan, Co. Tipperary, the son of a teacher. When he left the Christian Brothers School in Nenagh Costello became a cub reporter on the *Midland Tribune*. In 1920 when only 16 he joined the IRA. When the Truce came in 1921 the 17-year-old veteran of several ambushes in North Tipperary supported the Anglo-Irish Treaty. What was good enough for Mick Collins, he used to quip, was good enough for Mick Costello. So he began a fresh career in the new Irish Army.

Costello's subsequent two careers in uniform and in agriculture revealed his exceptional ability. The 18-year-old lieutenant of 1922 was a colonel and Director of Military Intelligence at 19. By 1931 he was Assistant Chief of Staff and by 1939 OC, 1st Southern Division, retiring in 1945 at 41 with the rank of Lieutenant General.

Around this time Costello's name was linked to widespread rumours of an impending military or political coup. However, instead in 1946 he joined the Irish Sugar Company (then in the doldrums and riven by labour problems) as General Manager, holding that post for 21 years until his resignation in 1966 (still only 62) in a major policy disagreement with the Dept. of Finance. For another 20 years Costello farmed extensively in Co. Roscommon.

Above all else General Costello was a survivor. He achieved promotion under both the Cosgrave regime of 1922-32 and the de Valera administration of 1932-48. In 1924 he helped crush the IRB-led army mutiny, and in the 1930s founded the Military College. He also trained for a spell in the U.S. – giving rise to the famous Rommel story, itself revealing much about Costello's personality. Briefly, it was said (and widely accepted) that at the prestigious Westpoint Military Academy, in an examination



at the end of the course, Costello beat the future Field Marshal Erwin Rommel into second place.

In reality the story was 100% fiction. It was at Fort Leavenworth Military Staff College in Kansas that Costello studied for two years – and Rommel was never there! When, only weeks before his death, I last met General Costello on the steps of the National Library in Dublin, he watched me carefully from under bushy eye-brows, filling his pipe as I spoke. Yes, he confessed, the Rommel story had no factual basis. But, he added, it was not he who invented it – though with characteristic candour and a puckish grin he admitted he never did anything to contradict it!

Thirty-five years before Costello's death another Tipperary man, from a very different background from Costello's, passed away in Clonmel. When he died in 1951 William Carrigan had been a King's Counsel for 42 years. Born in Thurles in the 1880s, Carrigan came from a well-to-do family of newsagents, with a branch in Tipperary town. Originally from Moycarkey, the Carrigans had flourished in Co. Tipperary for a century or so.

Given his background, it is not surprising that William Carrigan KC was a unionist in politics. Like General Costello he proved adept in adapting to political upheaval – in Carrigan's case between 1913 and 1923. Qualifying as a solicitor, he switched to the Bar in 1897, probably with a promise of Crown briefs. Practising on the Leinster Circuit (which included Tipperary), he declined in 1908 to become Assistant Under Secretary for Ireland, about third from the top in the Dublin Castle administration. He then spent what one might call the decade of the Sinn Féin revolution (1911 to 1922) as a senior magistrate in Belfast.

In the twilight of the old regime Carrigan got himself called to the English Bar, lest events in Ireland might deprive him of a livelihood here. In the transitional period of 1921-23 he was Acting Attorney General for Ireland. Then in 1924 he made an astonishing U-turn career-wise by joining the team of leading criminal lawyers operating in the new Court of Criminal Appeal. Well into the 1930s, after de Valera had come to power, Carrigan was earning high fees from a regime he must have privately despised. He is buried in the immaculately kept cemetery adjoining Moycarkey Catholic Church, where the rows of tiny white crosses in the family plot remind one of a miniature war cemetery.

Between them the teacher's son from Cloughjordan and the Castle Catholic lawyer from Thurles, both of whom slotted comfortably into the ambience of the infant Irish Free State, may seem an unlikely pair of allies in any venture. However, in the chilling Civil War episode told in this article Costello and Carrigan, it would seem, played a major role in tandem. The third principal actor in this tragic drama was a young National Army captain from Dun Laoghaire, whose career – indeed, whose very life – was cut short by the affair.

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It was early on Friday morning, 14 December, 1923 when Laurence Kelly, a publican near Milltownbridge village in Co. Kildare, contacted the police to report finding a body. It was lying at the bottom of the canal near Thomastown crossroads a half-mile from the village – a remote spot five miles from Kildare town and two miles or so from the nearest main road. What looked like an Army pass found in the pocket identified the corpse as that of Corporal Joseph Bergin, a teenage military policeman from Mountrath in Co. Laois stationed at Beresford Barracks at the Curragh. Bergin, who had travelled to Dublin the previous day ostensibly to purchase a motor-cycle, had been thrown into the water during the night.

According to Sergt. Hackett of Newbridge police, Bergin was dressed in civilian clothes. But

he wore no collar, no tie, no socks and no boots. Around his neck were strung the belt of a missing trench-coat, his braces and a handkerchief – the usual evidence of a summary execution. To this day, 74 years later, the bicycle Bergin was last seen riding out of Kildare town on the previous night has never been found.

The military pass, which permitted the holder to be absent from his quarters from 7 a.m. to 9 p.m. on Thursday 13 December, was a forgery, and almost certainly originated in Tintown internment camp at the Curragh. There, some eight months after the Civil War, some 12,000 republican activists were still in custody.

Dr. Roantree (also of Newbridge) told how young Bergin had died. He had suffered five gunshot wounds – one between his left eye and ear, two over the left eyebrow and two more on the top of the skull. Two bullets were still in his skull, one in his mouth, another in his brain. All the wounds but one were entrance wounds. All had been fired at close quarters at Bergin while he was in a prone position. He was dead when dumped in the canal.

There was no mystery about the route Bergin's murderers had taken to the canal. A disused, isolated farmhouse, only a half-mile from Milltownbridge but 300 yards in from the road and 500 yards from the nearest house, was known by its owner Patrick Ennis to have been regularly used as a hide-out by Republicans since Ennis had vacated it in August 1922. When the police visited it on Sunday afternoon 16 December they found the kitchen floor covered in blood, with more on a table on which stood an empty whisky bottle.

In the jamb of an internal door a bullet was lodged; out in the porch lay a nail-scissors and the remains of sandwiches. Blood and soot had been tidily swept into a hole near the fireplace; nearby lay Bergin's bloodstained tie. Because of heavy rain that night, police were able to follow the tracks of the car carrying Bergin's body all the way to the canal bridge.

It was over a year before the public learned that the police believed an Army officer was responsible for Bergin's death. In January 1925 Capt. James Murray appeared in Dublin District Court, charged that on 13 December 1923 he "did feloniously murder one Joseph Bergin". It was another five months before the public heard the horrific details of the crime committed 18 months before – for which, were he found guilty, Capt. Murray would be liable to be executed by hanging.

James Murray was born in Dun Laoghaire in 1899. In his teens he joined the Dublin Brigade of the IRA and operated against British forces before joining the National Army in 1922. A married man, he lived with his wife and two young daughters at Crofton Avenue, Dun Laoghaire, not far from his widowed mother at Convent Road.

His brother Michael, also formerly of the Dublin Brigade, was a commandant in the army. Both had fought against Republican forces in the Civil War. As will later appear, Commdt. Murray played a major role in the year-long events of 1924 which culminated in his brother's arrest in the family home in December 1924 – by David Neligan, Collins's famous spy in the Castle police force and now a Chief Superintendent in the new police force.

3

In the Central Criminal Court in Green St. courthouse in Dublin on 9 June 1925 the trial of Capt. James Murray opened before an all-male jury. Presiding was Mr. Justice Henry Hanna of the High Court. Prosecuting were William Carrigan KC, Dudley White KC and John A. Costello, the future Taoiseach. Appearing for the defence was one junior barrister, William Gleeson, later a popular Circuit Judge until his retirement in 1955.

The trial was to last four days, during which the jury would hear evidence from 38 witnesses

– 32 for the State and six (including Capt. Murray himself) for the defence. Nor did the case end in Green St. In July there was a five-day hearing before the new Court of Criminal Appeal, and later that month a one-day hearing by the Supreme Court. William Gleeson BL, who defended Murray, was instructed by the firm of Noyk and O'Reilly, whose principal was the Jewish solicitor Michael Noyk, a close friend of Arthur Griffith and an early Sinn Féin supporter.

Although by 1925 when the Murray trial began the Curragh was comparatively deserted, back in 1923 when Bergin was murdered Tintown internment camp held thousands of hardcore republicans, including some of their leaders. Opposed in principle to the very existence of the Free State – in their view imposed by Britain – they were dedicated to the overthrow of the new regime.

As a result, Tintown resembled a modern prisoner-of-war camp, with its own internal regime and military code, including regular secret contacts with outside supporters. The strength of the Republican anti-Treaty movement, not to be fragmented until the foundation in 1926 of Fianna Fáil, was shown only two months before Bergin's murder by the enormous public funeral of the popular Dublin republican officer, Noel Lemass.

Despite the large number of witnesses who testified at the Murray trial, the jury's verdict hinged on the evidence of four witnesses – two for the State, Col. Michael Costello and his driver, Private James Cleary, and two for the defence, Capt. James Murray and his brother Commdt. Michael Murray. The stories told by Col. Costello and Capt. Murray (supported by



Capt. Jimmy Murray (top) and his brother Commdt. Michael Murray – a photo taken on Dun Laoghaire pier.

his brother) were so diametrically opposed that the jury had no choice but to accept one totally and reject the other totally. Legal tactics were therefore an important factor in the case, and the impact made on the jury by Driver Cleary must also have been crucial.

Col. Costello's evidence was straightforward and, on its face, entirely credible. In October 1923 he became Director of Military Intelligence and in mid-November he first met Capt. Murray. They met to discuss the Bergin case. For some time the authorities at the Curragh knew there was a Republican "mole" in their midst. Someone in the army with access to Tintown camp was bringing messages out to the Republican Director of Intelligence, Michael Carolan, in his secret headquarters in Dublin. After studying a file on the case given him by the new Director, Murray became convinced that the informer was a young military policeman on the camp staff, Corporal Joseph Bergin.

On Thursday 13 December, Murray told Costello, Bergin was once more on his way to Dublin with documents for Carolan. Col. Costello acted at once. An Army car with Driver Cleary at the wheel was put at the disposal of Murray, who would be accompanied by two Intelligence agents. Murray's orders from Costello were clear – or so Costello told the jury. Once outside Army HQ in Dublin Cleary would give him the car. Murray would intercept Bergin at Kildare railway station on the latter's return from Dublin, dispossess him of the documents he had presumably got from Carolan and interrogate him.

Murray would inform Bergin that Col. Costello knew all about his relations with the Republicans, and that this could have very serious results for him. Murray would persuade Bergin that it would be in his best interests to turn Government spy – to save his job by becoming a double agent, in other words.

According to Costello, Murray accomplished his mission. The next morning (Friday 14 December) Murray woke him at 8 a.m. at Portobello Barracks. He had found important documents on Bergin, who had met Carolan in Dublin and had confessed. Handing Costello the documents, Murray said he had parked the car in Crown Alley in the city centre – because the two Intelligence agents did not want to be seen at Army HQ. This early morning meeting was, according to the colonel, the last time he saw Murray until both attended the District Court 13 months later.

Private James Cleary, an Army Transport driver allotted to Col. Costello, was nothing if not articulate and precise. Capt. Murray himself later commented that Cleary was "about the only person in this case telling the truth"! Between 4 and 5 p.m. on Thursday 13 December (Cleary testified) he brought an army car to Army HQ on Col. Costello's instructions. There three others boarded it – two men in "civvies" and one in uniform. The latter was introduced to Cleary as Capt. Murray; Cleary was not introduced to the other two.

The colonel told Cleary to drive the three men to McKee Barracks nearby and there to give Murray the car. When Cleary replied that he could not hand over an army car, Costello said to report back to him and he would give Cleary a letter for his commanding officer. Driving out of GHQ, Cleary stopped the car after only about 100 yards – nowhere near McKee Barracks. Capt. Murray said that was far enough. Cleary handed the car over to Murray; Cleary reported back to Costello, who furnished him with a letter to his own OC.

To complete Col. Costello's version of events, it is necessary to mention three important witnesses from Kildare. James Kelly, a ticket-checker at the railway station, said he saw Capt. Murray at about 8 to 8.15 p.m. on Thursday 13 December in the bar of the Railway Hotel. Sergt. Patrick Nolan, of the officers' mess at Beresford Barracks at the Curragh, said he saw Murray in the diningroom between 9.15 and 9.30 that same evening. Peggy Daly, an active republican who had been interned in the Civil War, testified that early on the morning of the same day

Corporal Bergin had called to her house in the town to park his bicycle. Around 8.30 that evening he collected it and cycled off for his quarters at the Curragh.

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From the moment of his arrest at his home in Dun Laoghaire in December 1924 Capt. Murray denied any part in Bergin's murder. However, soon after Bergin's body was found a year earlier Murray had apparently vanished, leaving Ireland and staying away for a whole year. The circumstance of this prolonged absence was one of the most bitterly contested matters between Col. Costello and the Murray brothers.

Needless to say, both Costello and his driver Cleary were cross-examined at length by Capt. Murray's counsel. During his re-examination of Costello, the leader of the State legal team, William Carrigan KC, introduced in evidence four letters which had reached Costello during Murray's absence in 1924.

These revealing documents – cunning or merely frank in their terms, depending on one's interpretation of their contents – were all admitted to have been written from abroad by Capt. Murray. They formed a vital part of the trial, and are essential for an understanding of the gulf between Col. Costello and Capt. Murray regarding the arrangements (if any) between the two about how to deal with Bergin and the aftermath of Bergin's death. The jury's decision on Murray's guilt or innocence must have turned largely on whatever interpretation they put on these four letters, and also on that of a fifth document, the authorship of which was hotly disputed.

Because none of the four Murray letters lends itself to summarising, all are reproduced in the Appendix to this article; so is the fifth document. They are called respectively Letters D, C, B and A because they were so called and produced at the trial in that order, probably because they were written by Capt. Murray in that order.

To assist the reader in making sense of the letters, it is necessary to identify persons and bodies referred to by initials only. "M" is Col. (Michael) Costello, "P" is President Cosgrave, head of the Free State Government; "M.D." is Minister for Defence; "B" is Bergin. (The Minister for Defence, incidentally, was Peter Hughes, a Dundalk TD, who played no part in the Murray case.) "R" in Letter D cannot be identified, but "Davie" is Col. David Neligan. "M O'C" is a Free State Intelligence agent in Glasgow named Michael O'Callaghan, and "C.G records" are Civic Guard (i.e. Garda) records.

Capt. Murray's answer to the murder charge can be reduced to six words: I never left Dublin that evening. On Thursday 11 June, 1925, the third day of his trial, he took the stand. He began by explaining that after receiving the Bergin file from Col. Costello he spent three days (December 10-12) at the Curragh investigating the case. On Thursday 13 December the colonel told him that an army car was leaving Dublin that afternoon on special duty and that he (Murray) would be driving it. At GHQ in Parkgate he met Costello; two "strange men" in civilian clothes were speaking to Costello as the three came out of Costello's office – another hotly disputed piece of evidence.

Costello told Murray: "They [the three men] have the necessary instructions in the matter", and told Driver Cleary to go as far as North Circular Road. Murray remembered Cleary make some objection. After Cleary left the car Murray was directed by the two strangers to head for the Naas Road, as they were going to Kildare town in connection with the Bergin case. Becoming suspicious about the object of the journey, Murray refused to proceed and handed the car over to the two Intelligence agents. Giving them his home address in Dun Laoghaire, he promised to be there if they were back by 8 a.m. the next morning.

Returning to GHQ, Murray reported to Col. Costello. That evening he kept an appointment in the city with his brother Michael. Meeting a Dun Laoghaire friend, Patrick Kinsella (a former officer), the three went to Kidd's Buffet. Michael left at 9 p.m. to meet his girlfriend, meeting his brother James again later in the Winter Gardens at the Theatre Royal, where Capt. Murray spoke to at least a dozen others. Around 10 to 10.15 he went home to Dun Laoghaire, not going out again. His movements in Dublin were corroborated by his brother and Kinsella, while his sister Frances confirmed that he slept at home that night.

The next morning at 6.30 he was still in bed when the two "strange men" called with the car; one was given tea while Murray dressed. Then he drove the pair into the city. At the corner of Nassau St near Jammet's Restaurant they gave Murray a packet of documents for Col. Costello. They said to tell him they had got on alright, that Bergin had seen Carolan (the Republican Director of Intelligence) the previous day. At Crown Alley all three left the car, Murray making his way to Portobello Barracks, where he reported to Col. Costello.

That afternoon at GHQ Col. Costello showed him a wireless message about Bergin's body in the canal. The colonel, Murray said, "told me to keep my mouth shut". When the two met at GHQ the next day Costello was agitated. He told Murray the police were "very hot on the trail of the car". As he (Murray) was the only person whose name Driver Cleary knew, he should make no statement for the present. When Costello realised that Murray would not co-operate, Costello said he would send him away "on inspection duty" the following Monday, giving him £50 for expenses. That, according to Capt. Murray, was his last meeting with Col. Costello.

On Monday Capt. Murray received from Capt. (later Col.) Dan Bryan of Military Intelligence an order to report to an Intelligence agent in Liverpool. He left by boat that night, staying only briefly in Liverpool. A verbal message to go to Glasgow reached him from a courier of Costello, Thomas Deegan (also of Dun Laoghaire), who will re-appear later in an important role.

In Glasgow Murray reported to Intelligence agent Michael O'Callaghan ("M. O'C" of the four letters) and spent some weeks on Intelligence duties, living on another £50 sent him by Costello via Deegan and on a fortnightly salary of £10 from O'Callaghan's funds. Through Deegan also Col. Costello now suggested that Murray should go to the U.S. When he refused, Costello sent over Michael Murray several times to Glasgow to talk his brother James round.

Eventually Murray gave in. With £100 given to them by Col. Costello and supplied with a bogus passport in the name of James O'Doherty, the two Murrays travelled via Crewe and London – not to the U.S., but to Buenos Aires in the Argentine, where they arrived on 10 May 1924. Michael returned after a week, but James remained until October. He then returned to Glasgow, from where he sent the four letters to Costello, eventually reaching Dun Laoghaire in mid-December. His brother told the police of his return and he was arrested at home and lodged in College St. police station.

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When it came to the cross-examination of State witnesses, Capt. Murray was ably represented by William Gleeson BL, an expert on military law. As often happens through skilful questioning, the pictures that emerged after intensive cross-examination of both Col. Costello and Driver Cleary were somewhat different from what their original testimony had suggested. Contrariwise, it is also arguable that when Capt. Murray's brother, Commdt. Michael Murray, left the box the impact of his direct evidence had also been lessened.

Obviously, the most important cross-examination was that of Col. Costello; should he deviate substantially from his direct evidence, the entire State case could collapse. Murray's counsel lost no time in pressing for more details on what was agreed to be done with Bergin when he got off the Dublin train. Costello gave away nothing new. Bergin was to be searched for documents and no question of using force arose. He gave no order to use violence, much less one that Bergin was to be shot if found to be a spy; he was to be released minus any incriminating documents found on him, and to be asked to turn double-agent.

About the two Intelligence agents, however, the colonel seemed to be less convincing, even to the judge, who frequently intervened. Cleary was wrong in saying that he (Costello) came out of his office with them or had any conversation with them. He did not even know them; he never had contact with such men. He spoke to Capt. Murray only, but gave him no orders on who to bring with him or how many. Cleary, Costello said, was also wrong in saying that he had later reported the bloodstained condition of the car to him. Murray's counsel failed to ask Costello why in the District Court he had omitted to mention the two agents at all.

On the arrangements for the expedition to Kildare, Col. Costello also seemed less certain of his facts. Admitting that the army car held "six at a crush", why (the judge asked him) dispense with the usual driver and then state, in the letter covering Cleary, that there was no room for the driver? He got no answer; in fact, Costello gave some of his evidence in such a low tone that he had to be told by both judge and jury foreman to speak up. On the colonel's contacts with Capt. Murray, he rejected what Murray's counsel said would be Murray's evidence. For Murray to say he had returned to GHQ and reported his refusal to go to Kildare would be "an absolute fabrication". Moreover, Costello swore, Capt. Murray did not leave Ireland at Costello's suggestion or direction, and was paid no expenses by him while away.

As far as Col. Costello was concerned, Capt. Murray was absent without leave until his discharge in March 1924. He admitted to having met Commdt. Murray in January 1924, but did not tell him then that Capt. Murray was "on special duty and would be back soon". Nor did he ever suggest to Michael that James should cross the Atlantic. On re-examination Costello denied any part in the crime or any responsibility for a drumhead court martial. He did admit, however, that nine months after her husband's disappearance Mrs. James Murray called on him; he was not asked (nor did he volunteer) the purpose of this meeting.

Driver Cleary under cross-examination told a quite sensational story capable of a sinister interpretation not calculated to help the State case. On Monday 17 December, three days after Corporal Bergin's body was found, Cleary told the court, he was arrested – apparently by Col. Henry, the Assistant Adjutant General – his own OC, to whom Costello's letter about the army car had been addressed. Cleary was told he was being kept "in safe custody ... to keep me safe from attacks". He was held under "close arrest, because it was not safe for me to be at large". After four months in custody Cleary was released because, Col. Henry confided to him, "someone else had gone". He was not told who this person was or where he had gone; but it was clearly implied by Cleary that his superiors thought he had been in some danger and that now he was safe again.

Capt. Murray spent the whole of Day 3 of the trial on the stand. He answered no less than 807 questions, of which 640 (80%) came in cross-examination. As if sensing that in his direct testimony Murray had not satisfactorily explained why he had gone missing when Bergin's body was found, William Carrigan KC began by probing this topic. He returned to it several times as if to try to catch Murray off-guard and, reading the official transcript some 70 years later, it has to be said that Capt. Murray did not give a wholly convincing account of this crucial part of his case.



Capt. Murray's false passport, obtained as James Doherty from the Argentine Consulate in Glasgow, & (opposite) his photo with moustache grown as a disguise.



James Doherty

Because of the scattered nature of Murray's evidence on this point, the best one can do is to summarise. He and Costello had apparently built up a comradeship as fellow officers during the previous few eventful years, so that (up to a point) the captain was prepared to cover for the colonel. Accordingly, Murray repeatedly insisted, he went to Britain and South America on Costello's orders, but not as a fugitive from justice as he had not taken part in Bergin's murder. He relied on Costello to deal with the aftermath of the crime. Eventually, he explained, a time came when he felt he was no longer obliged to shield Costello, having tried without success – presumably through his brother's contacts with, and his own letters to, Costello – to effect a settlement with the authorities, without either compromising Costello or incriminating himself.

Facing squarely the irreconcilable conflict between his and Costello's version of events, Capt. Murray said the colonel had masterminded the killing of Bergin. Costello, Murray insisted, knew that Bergin was to be murdered and had sent out the two Intelligence agents on that mission. He believed Costello had turned down the proposals Murray had put to him in correspondence, simply because the colonel wanted to save his own skin. He also believed that

in his evidence the previous day Costello had committed perjury. In a defiant gesture, Murray explicitly disowned his own counsel's statement to the judge the day before, when William Gleeson BL had exonerated Col. Costello from responsibility for the death of Corporal Bergin.

As if stung by Murray's clear implication of Costello in the murder, or perhaps concerned lest the jury should accept the defence case in preference to that of Costello, the State in the most dramatic moment of the trial now played its trump card – what it claimed was a confession by Capt. Murray. Carrigan, having got Murray to identify the four letters, suddenly handed him a fifth document, which became Document E. Examining it carefully, Murray conceded that its handwriting was "very like my hand". But he swore three times that he never wrote or signed it. However, when the judge in front of the jury compared it with the letters, it became clear that the State's production of Document E was a turning-point in the trial. It came just when the State case seemed to be in danger of going off the rails.

Document E (reproduced in the Appendix to this article), if accepted by the jury at face value, was in truth a confession by Capt. Murray. In it he admits to intercepting and interrogating Corporal Bergin, finding incriminating material on him, and then taking him to the empty house, where he was shot. The document concluded by admitting that the suggestion to disappear came from Murray himself and not from Col. Costello, but was conditional on the latter looking after Murray's wife and family – something, incidentally, which Murray's family insist he did not do. Undated, Document E purports to have been witnessed by Murray's brother, Michael.

Predictably, the production of Document E at such a late stage in the trial led to heated exchanges between the opposing lawyers and the judge. The sudden production of the document after the State case had closed was certainly unorthodox, if not unethical. For his part Murray's lawyer said so to the judge, urging him to disallow Document E and to direct the jury to disregard it. However, the judge said the matter could be dealt with adequately in Gleeson's closing speech to the jury. From the jury box came the sensible suggestion that the opinion of a handwriting expert should be obtained.

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After the drama surrounding Document E much of the remaining evidence – even that of Commdt. Murray in support of his brother – was something of an anticlimax. One senses that from then on the prosecution knew they were on a winner and pressed home their advantage at every opportunity, even managing to wring more concessions out of the judge that enabled them to present fresh evidence after the defence case had concluded. As it happened, Commdt. Murray was not to prove as supportive of his brother as might have been expected. He gave needlessly long answers, perhaps because of over-anxiety to help his brother's case, and had to be cautioned by the judge.

In his direct evidence Commdt. Murray told of meeting his brother on Monday 17 December 1923 in a public-house in Dublin; if true, this showed that Capt. Murray had not gone missing from the previous Friday, as the State had claimed. Capt. Murray told him that Col. Costello was in trouble over Bergin's murder and that Costello had told him to say nothing about it. According to Commdt. Murray, he saw Costello twice weekly over the next three months, acting as a go-between for his brother, even travelling to Glasgow at Costello's suggestion to try to persuade his brother to go to the U.S. He also interviewed Thomas Deegan (Agent 101A) about his brother's position, and travelled back from Glasgow to Dublin with Michael O'Callaghan, the Intelligence agent there, to meet Costello.

In cross-examination by Carrigan, who asked about his earlier career in an obvious attempt to discredit him as a witness, Commdt. Murray admitted involvement in a recent incident when a man was accidentally shot in a Dublin theatre. But, he insisted, he had been cleared of involvement by a military inquiry and acquitted by a court. When pressed about his assertion that Col. Costello was involved in the Bergin murder, he made a revealing comment that some may feel reflects the brutal atmosphere of the time. "Such things were not unusual in the army at the time... unofficial executions were taken for granted."

Then suddenly, when under pressure, Commdt. Murray blurted out an admission that his brother had had a similar experience in 1923 in the Noel Lemass case. It had been suggested to Capt. Murray then, his brother said, that he should take the blame for Lemass's death; but he had refused. In hindsight, it seems likely that what Commdt. Murray had intended to be an attempt to discredit the military authorities backfired. Instead, the jury, at least one (and possibly more, as the record is not clear on this) of whom had shown republican sympathies by their probing questions and acid comment, may have allowed Capt. Murray's apparent association with the Lemass affair to influence them when they later retired to consider their verdict.

Unfortunately for the Murrays, the case of Noel Lemass had recently resurfaced shortly before the Bergin murder. Capt. Lemass, a brother of the future Taoiseach Sean Lemass, had been a prominent Dublin IRA officer who took the republican side in the Civil War. Captured and interned by the Free State, he escaped to England but returned to Dublin in 1923 to resume his post as an engineer with Dublin Corporation.

In July 1923 he was kidnapped in broad daylight in a Dublin hotel and two months later his decomposed and mangled body was found in the Dublin mountains, showing obvious signs of horrific torture. A popular figure, Lemass's funeral was attended by enormous crowds, including thousands of unarmed republicans who stretched for two miles behind the hearse and brought traffic and business in the city to a standstill.

At an inquest at which the jury returned a verdict of "murder, with State forces implicated", there was evidence that Capt. James Murray had been associated with the killing, and the solicitors' firm of Noyk and O'Reilly (which later acted for Murray in the Bergin case) employed counsel to attend the inquest on behalf of an unnamed army officer. According to widespread rumours in Dublin at the time, Capt. Lemass had himself been involved in 1922 in an abortive attempt to assassinate Michael Collins, and it was assumed that his kidnappers were plainclothes Army Intelligence agents revenging Collins's assassination in Cork on behalf of comrades in the Free State Army. Any Dublin juror in 1925 with a political background – and the transcript of the Murray trial shows that there was at least one and possibly more – would have been familiar with the Lemass case, and hence possibly prejudiced against Capt. Murray after hearing his brother's evidence.

Following the close of the defence case, Judge Hanna took the unusual course of permitting the State not only to recall Col. Costello to the stand (to reply to the more serious accusations made against him by the Murray brothers), but also to allow fresh evidence from an army handwriting expert on Document E and by several military officials regarding earlier documentary evidence. One of the latter, Capt. Dan Bryan, said in cross-examination that he had got Document E from Thomas Deegan, whom he knew to be in the Government's Intelligence Dept.

After what appears from the record to have been, with one major exception to be mentioned shortly, a fair address by the bench to the jury, the latter brought in a verdict of guilty after 80 minutes. Donning the traditional black cap, the judge showed signs of emotion as he sentenced

Capt. Murray to be hanged. Before sentence was passed Capt. Murray, in a firm voice, said: "I wish to declare my innocence and to state that I have been made a scapegoat of for this crime. I only hope that the officers who have sworn my life away will be as prepared to meet their God when the time comes as I am prepared to meet mine."

At a five-day hearing in July an appeal against the verdict was heard by the Court of Criminal Appeal. On 13 July Murray's appeal was dismissed. So was an application on his behalf to the Supreme Court two days later to have that court hear a further appeal. Then on 20 July 1925, four days before the date fixed for his execution, the Government commuted Capt. Murray's sentence to life imprisonment. On 15 July 1929 he died in Portlaoise prison hospital of tuberculosis, from which he had suffered intermittently from childhood.

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If Capt. Murray's public declaration of innocence before he was sentenced to death was genuine, it is arguable that part at least of the blame for a miscarriage of justice rests with the judiciary. Near the end of his charge to the jury Judge Hanna made some comments regarding an appeal that may well have helped to swing the verdict against the accused man. Explaining the legal rule to give Capt. Murray the benefit of any doubt they might have, he went on: "... "Mr. Gleeson can have the whole matter reviewed [on appeal] ... where the natural bent of their [the appeal judges'] minds is to give the prisoner the benefit of that doubt."

However, and possibly to Murray's detriment, the judge had seriously misstated the law regarding the powers of the appeal court. It is at least possible that his erroneous statements may have misled the jury into thinking that at an appeal the facts of the case (and not merely the law) would be open to review. In the event, the appeal court, while criticising Hanna, rejected Murray's counsel's argument that the error was sufficiently serious to warrant treating Murray's trial as unsatisfactory. Today, 70 years later, with a string of Supreme Court decisions on the rights of accused persons, it is unlikely that Hanna's charge to the jury in 1925 would be permitted to stand.

The likely impact of Document E on the jury requires brief reference to both the facts and the procedure regarding the alleged confession. At no stage, either in the District Court or at the later trial until the moment of production, was even the existence of a confession mentioned by the State, although later evidence showed that it was in the prosecution's possession before the trial began. Moreover, no notice of intention to use it was given to the defence. Since it was in substance (if genuine) clearly a confession, it should have been made part of the prosecution case in both courts. Normal practice required its mention by William Carrigan KC in his opening address. One can only speculate on what weakness in the defence case necessitated this deception.

Instead, Carrigan produced it almost out of nowhere and, before proof of its status as evidence was given, proceeded to read it out in its entirety, giving Murray's counsel no chance to object to its introduction. How weak the legal basis for Carrigan's sleight-of-hand was may be gauged from the fact that in the appeal court the State was obliged to rely on the combined effect of a mid-Victorian (1865) Evidence Act and a then recent (1924) Irish Act to justify the belated use of Document E. Not surprisingly, the 1865 Act does not appear ever to have been used in such circumstances in the subsequent 70 years!

Moreover, Capt. Murray had good grounds for complaining of an unsatisfactory trial, leading to a potential denial of justice, even on non-technical grounds. Reading the official record of the trial 70 years later, one is struck by two unusual features – the State's failure to

produce several key witnesses, and the number of unanswered questions posed by the conflicting evidence. Of the "missing" witnesses, perhaps the most obvious was Agent O'Callaghan ("M O'C" of the letters) of Glasgow, who according to the Murrays played an active role in the events leading to Capt. Murray's departure from Ireland. Although O'Callaghan was interviewed by Murray's solicitor, it seems that the State kept him well away from Green St courthouse – perhaps because he could not contradict the Murrays' evidence about him?

Equally odd was the non-appearance of Col. Henry, Driver Cleary's OC. Here too one can only speculate on the reason(s) for his absence. Driver Cleary, without mentioning any names, gave the impression that the purpose of his arrest (almost certainly unlawful) was to protect him from the Murrays and their supporters until the captain was safely across the Atlantic. Could it have been that under cross-examination Col. Henry might have told quite a different story – perhaps that the threat to Cleary came from more senior officers rather than from the Murrays, leaving the jury to wonder about the veracity of Col. Costello's version of events?

The most curious absence of all was that of Thomas Deegan of Dun Laoghaire – Agent 101A, friend of both the Murrays and Costello, the man who handed Document E to Capt. Bryan to pass to the colonel, the secret agent who was so secret that one Dept. of Defence official swore he had never heard of him! Inexplicable is an inadequate adjective to describe Deegan's failure to take the stand, especially as he is known to have been in the courtroom. Of all the questions he might have answered, the most important surely was: who gave him Document E? Also, did he by any chance know (as Capt. Murray claimed under oath that Agent O'Callaghan did) that a bogus confession had been prepared in advance should Murray persist in implicating Col. Costello in Corporal Bergin's murder?

There is, moreover, reliable evidence that some important facts were not disclosed at Murray's trial. In November 1925 two men were arrested in Dublin in connection with the Bergin affair. One, a former lieutenant in the National Army, was sent for trial for conspiracy to murder Bergin. Giving evidence in the District Court, Col. Costello said the man now accused was in the Military Intelligence Dept at the time of the murder, but denied that Driver Cleary had identified him as one of the two men in "civvies" at Army HQ on the evening of



Col. Costello leaving the courthouse after the verdict.

14 December 1923. A careful search of Dublin newspapers suggests that – perhaps because there would be a problem about identification – no trial was ever held of the former lieutenant, who in an interview said: "...the whole thing is a huge joke"

As to unanswered questions, one may start with two aspects of the technical evidence. Despite what were presumably comprehensive efforts by the police to link Capt. Murray with the army car, they failed to find a single finger-print of his on it. Moreover, his own explanation under oath of the difference between the type of gun he was issued with and that used to kill Bergin

was not rebutted by the State. Finally, perhaps the most intriguing unanswered question of all is: if no State funds were used to ship Murray off to Argentina, who paid his fare and how did he exist for five months there? Was it a coincidence that Col. Costello had a brother in Buenos Aires, the capital of Argentina?

On Capt. Murray's side there were also unanswered questions. Twice during his trial there was brief reference to a pro-Murray lobby. Col. Costello himself admitted its existence, and later Murray in his own evidence told how, while he was abroad in 1924, his supporters kept him posted about events in Ireland. Then there were those documents taken from Corporal Bergin by whoever met him at Kildare railway station. These, Capt. Murray told the court, he still had – and they had come to him from Col. Costello through Agent Deegan when the latter visited Murray (for what purpose?) in Glasgow! Could this by any chance have happened in the course of abortive negotiations between captain and colonel, despite the latter's vehement denial of any contacts with Capt. Murray from the day the latter went absent without leave?

However, what counted most at the end of his four-day trial for his life was the verdict of the twelve men in the jury box. What influenced them most counted for nothing now – whether, as seems likely, they "swallowed" Document E, whether they simply judged Col. Costello to be a more credible witness than him, whether the dredging up of the Noel Lemass case turned some (or maybe even all) of the jurymen against him, or whether the decisive factor was Judge Hanna's blunder about what he wrongly felt would happen at an appeal. Although he was not to know this until late July – and the prison records show what mental torture he had to endure till then – Capt. Murray was probably fortunate in the harsh political climate of the day to have escaped the hangman's noose.

In the end the life sentence he got amounted to only four short years, ending in a premature death at the age of 30, probably brought on by the uncongenial surroundings of Portlaoise jail for a tubercular case. While in custody in Mountjoy jail awaiting trial Captain Murray twice went on hunger strike, but when he heard of the decision to commute the death sentence he gradually settled down to serious study. From Christmas 1927, however, the tuberculosis



The bridge near Milltown in Co. Kildare where Corporal Bergin's body was dumped in the canal.

returned and he began to deteriorate steadily, his weight falling from 10 stone 3 lbs to 8 stone 8 lbs (a 20 lb drop) in a ten-month period.

In a humanitarian gesture rare for the time, the Government handed over his body to his family for burial in the family plot in Dean's Grange cemetery near his native Dun Laoghaire. I understand from his family that this followed strong pressure by his young widow (who had to emigrate penniless to Britain with two young girls who never knew their father) and by fellow-officers of the National Army outraged by his trial and conviction. A series of critical articles in a Dublin weekly periodical analysing the trial may also have helped.

As the cases of the Birmingham Six and Guilford Four proved, not only juries but even distinguished judges (like Lord Denning) can make serious mistakes. To give only one random example not previously mentioned: suppose that one (or, worse, both) of the two Kildare witnesses who claimed to have seen Murray at the railway station or in the officers' mess on the vital night were wrong – and their evidence is not only shaky but contradictory in the official transcript – then Capt. Murray's evidence, supported by his brother and sister and the officer Kinsella, that he never left Dublin that evening, stands uncontradicted.

Recalling Denning's famous blunder with the Birmingham Six about the "appalling vista" implied by perjury by uniformed bureaucrats, one is tempted to try to construct one's own appalling vista for Col. Costello, had the jury in *The People versus James Murray* acquitted Capt. Murray. *Gan amhras, sin scéal eile!*

Appendix

Letter D

"To M., I have been thinking over the advisability of attempting to deal direct with the 'P.' and 'M.D.' regarding my case. Of course this would have to be very carefully thought over before any move is made, and would only be necessary in the event of there being no prospect of my returning to military duty, say, during the next year. My plan is roughly: – to get a reliable clergyman to see P., and find out his views on the case, also to do likewise with the M.D. Then, as the thing would develop, I could place copies of all the captured stuff before them, with a statement to the effect that 'B.' was tried by Drumhead Courtmartial, and found guilty on his own statement. All this would necessarily be done under a promise of secrecy; and, in the event of their not being willing to reinstate me, I am sure they would make an offer of a settlement of some description. In any event, if the thing broke down completely no harm would have been done. In fact, it might do a lot of good, inasmuch as it would show them that I am not willing to let the matter rest, as has been done up to the present. My position at the moment is, that were it not for the fact that you would get yourself mixed up in the thing, I would be perfectly willing to place the full facts of the case before the public, and accept their judgment, no matter what sacrifice it might entail.

"Having expressed these views, I think it would be a very good thing if you met me on this side any time at your own convenience and discussed the matter fully, exploring every possible channel which might be useful towards fixing the thing up, as I am sure a settlement would strengthen your position as much as mine, and, if they made an offer, no matter how little, it would give us a lever, as they would then have hopelessly compromised their position, and would have to give way to my demands for a settlement.

"You will understand that I do not wish to embarrass you in any way, and I am willing to take your instructions regarding this matter, as I have done in every case up to the present, and I am only putting this plan to you in the nature of a suggestion, by which we can both find a way out of a very difficult position.

"Before seeing you I would like to be in possession of the following information:– What is the M.D.'s attitude, and reason for it? What is 'R.'s' attitude? How much do they know? Has Davie received orders for my apprehension? Have they circulated a photo or good description? Have they been sent on to the Yard? Have G.O.C.'s Commands received instructions for my arrest? Have Staff Duties been notified that

I am missing? Have I appeared in orders as missing? What are the chances of getting copies of the finger prints, with a view of comparing them with mine? What are the chances of destroying C.G. records?

"I will close now for the present, hoping that above scheme will meet with your approval, and that I shall be seeing you in the near future. Yours sincerely, 'J'."

"P.S. - You can discuss the matter fully with bearer, as I have told him everything except that any person had knowledge of the thing before it was carried out. 'J.'"

Letter C

"To M., I have been speaking to our friend, and am greatly surprised at your attitude regarding the proposal which I outlined in my last communication. However, I have decided to put the thing through on my own, and will start working on it immediately. I do not see how I can possibly do any harm in going ahead with it, and if I do not make some attempt to rectify matters I will be a haunted man for the rest of my life. You on your part, as far as I know, have done nothing to settle things. You did not even think it worth while to accede to my request for an interview, consequently I am obliged to withdraw the pledge of obedience to your orders which I have given. This does not mean that I am going to let you down, but it certainly does mean that I am going to use every means in my power to effect an understanding with the Government. Regarding your proposal to cross the Atlantic, I treat this with the contempt it deserves, as I look on it as a very poor attempt to get me quietly out of the way.

"I hope, M., that you will consider this action in the light in which it is taken, as you know I am the only one that is paying the penalty, and as such I certainly am entitled to take such action as I think necessary for my own welfare, as long as I do not let any one down in doing so. To tell you candidly, my opinion of the whole matter is, that you are letting the thing play on your nerves, and consequently are not asserting yourself as you should do. I am very sorry to see that you are letting it wear you down as it has done, as I had, and still have, every confidence in your ability to strike out a plan of action, if you will only pull yourself together, and not let the situation overawe you. I am, yours sincerely, 'Jimmy.'"

Letter B

"Dear M., with reference to my letter of to-day's date - you will no doubt have been surprised at the sudden change in front on my part. Well, the reason for that change is that certain things were pointed out to me, in a letter which I received to-day from Michael. These I will not discuss, as he will probably have seen you before you receive this, and will have told you a lot. Whilst accepting full responsibility for my purposed action, which may have seemed to you to be rather hasty, I, although realising that certain forces have been at work to cause me to take that action, believe that the situation could have been avoided if you had written to me, or sent over someone capable of expressing your views.

"In the first place I told M. O'C. to inform you, when we went across the first time, that if you could put me on his staff at £5 per week, I would undertake to bring my wife to Glasgow temporarily, and thereby make things easier for you, as you would not have to provide any other funds.

"I went into this matter fully with him, and he agreed that if you gave permission, he could do away with one or two men here, so that there need be no increase in his weekly cheque. This plan seemed to be a perfectly feasible one, and I thought you would be willing to endorse it. When he returned he told me that you had absolutely turned it down without giving any reason for doing so.

"I further told him that, when submitting to you my proposal regarding writing to P., he, in the event of your turning it down, should obtain your views on the whole matter. His answer to me was that you had nothing to say on the matter beyond the fact that you could not agree to my proposal.

"Then again I had to consider 1, your repeated proposals that I should go to the States; 2, my wife writing to me for money; 3, you either consciously or unconsciously withheld four of the most important of the 'B.' papers from me. These things, together with the reports that I was getting, to the effect that you were getting afraid of the situation, forced me to decide on a definite and independent course of action, in the event of your not coming up to scratch.

"I am not making an apology for my attitude, but am merely stating the main points which led up to my adopting it. I hope that when you receive this, you will write me, and let me know exactly what your attitude is. You know I am absolutely in the dark regarding your views, and I would be very thankful to have them. It would also be advisable, in the event of your writing, to address your letter to 41. Michael will give you full address. I would also welcome the chance of meeting you, and talking things over, as I am sure that a ten minutes' conversation would show us both exactly how we stand.

"It is a rotten thing that I should be jockeyed into the position of treating you unfairly, and I believe that if, in future, you communicate with me directly, these misunderstandings will vanish, and that no fresh ones will be created.

"I am keeping an open mind on the matter, and will not, in any way, alter the attitude I am now adopting until I hear from you. But I may tell you candidly that if you do not reply to this letter, I will surrender for trial. My reason for doing so is that if you let me down, I could never again trust anyone. This would only mean that it would be far better to go through with it, win or lose, than be constantly waiting for the next to let me down. I remain, yours sincerely, Jimmy.

"P.S. - There are a lot of details which I would like to mention, but will do so at a more appropriate time. J."

Letter A

"Dear 'C.', just a few lines to let you know that because of certain circumstances over which I have no control I have been obliged to cut short my tour of the southern hemisphere, and as the period of one year for which you requested me to remain absent has almost expired, I would like to have an interview with you regarding my future action. For this purpose I intend to visit Dublin as soon as I have made the necessary arrangements regarding 'digs', etc., and I can assure you that it would be to our mutual advantage to arrange an interview with me. I will not say anything further at present, as if you meet my wishes in the matter we will be able to go into everything, and thereby clear up the whole situation. Yours sincerely, Jimmy."

Document E

(Capt. Murray's alleged confession)

"Statement of Captain James L. Murray regarding the shooting of Private Joseph Bergin.

"On or about the 6th of December, 1923, I was informed by Colonel Costello, Acting Director of Intelligence, that Private Bergin, stationed at Tintown Camp, was in the pay of the Irregulars' D.T. He instructed me to proceed to the Curragh and make inquiries, with a view of finding out the line of communication between B. and Irregular G.H.Q.

"On Monday, 10th December, I again saw Colonel Costello at his office. He, on this occasion, told me that Bergin would have to be shot, as he was a very dangerous man. I replied to the effect that I was willing to carry out any orders he thought necessary. It was then arranged that I should go to the Curragh next day and report to him on the possibility of doing the job in such a way that the military would not be suspected. My brother, Commandant Michael Murray, was present at this interview.

"I proceeded to the Curragh on the 11th, as instructed, and returned on the following day. I reported to Colonel Costello that it would be impossible to carry out his orders unless provided with a motor-car. He then said he would supply the car at 4 p.m. on the following day. Next day, 13th, I reported to Colonel Costello, accompanied by two men. He brought us to a Ford car which was waiting outside the barracks and handed the car over to me. I then drove to Kildare and picked up Bergin, whom I placed under arrest. I drove him to an empty house at Thomastown cross-roads, where I interrogated him, as instructed, during which he made a statement admitting his connection with the Irregulars. At this stage he was searched, and a large number of despatches addressed to the prisoners' O.C.'s at the Internment Camps were found in his pockets. Also a personal note from Irregular Director of Intelligence. Bergin was then shot, and his body taken to Milltown Bridge and thrown into the canal.

"The car was then driven back to Dublin, where it was left outside the guard-room at Crown Alley. I then reported to Colonel Costello at Portobello Barracks, at the same time handing over to him, unopened, all of the captured papers.

"Later in the day I sent him a typewritten report confirming my verbal report made that morning.

"I again saw Colonel Costello on the same afternoon, and he informed me that the body had been found and identified. I did not take very much notice of this, as I thought that the job was one of the usual unoffical executions. Nothing of importance transpired between this and Sunday afternoon, when I saw him at G.H.Q. He then informed me that the Civic Guard were well on the track, and stated that the position was getting very serious.

"Under these circumstances I suggested that I should go away on seven days' leave, and, if necessary, stop away in order that he should not be embarrassed by my being arrested. This step was agreed to on condition that he should look after my wife and family during my absence. My part of this agreement has been loyally adhered to; but, as he has refused to fulfil his, I do not see why I should any longer shoulder the responsibility alone.

"Signed

J. MURRAY, CAPT.

"Witness,

M. MURRAY, ex-Comdt."

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