

The Killings of Peter Clancy, Sean Farrell, Kevin Barry O'Donnell and Patrick Vincent











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# Sunday 16 February 1992

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"Impunity... keeps the events present in the collective memory and stands in the way of rebuilding the social fabric."

Inter-American Court of Human Rights judgement on Plan De Sanchez Massacre in Guatemala.



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Report commissioned by the surviving families of Peter Clancy, Kevin Barry O'Donnell, Sean O'Farrell and Patrick Vincent.

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## Introduction

n February 16<sup>th</sup> 1992 at Clonoe in Coalisland, County Tyrone, north of Ireland, the Special Air Service (SAS) of the British army ambushed and killed IRA<sup>1</sup> Volunteers Kevin Barry O'Donnell, Peter Clancy, Sean O'Farrell, and Patrick Vincent in a pre-planned military operation that also involved the RUC<sup>2</sup>.

In 2002 in Cookstown, County Tyrone, the preliminary scheduling of the inquests into the killings officially opened.

A further 10 years later in 2012 and after over 20 preliminary hearings to establish the nature, scope and remit of the inquests they have yet to be officially convened. The story of the killings in Clonoe in 1992 is the story of British state impunity.

Apart from being morally wrong and illegal, International Courts have recognised that impunity is also a barrier to healing<sup>3</sup>.

This report marks the 20<sup>th</sup> anniversary of these killings in the hope that it will assist the process of internationalising the families' struggle for justice telling the outside world of their experience and seeking support for the truth; outlining as it does the current legal position of the families; highlighting the legal failings that have led to that position; and recommending remedy. Relatives for Justice were commissioned to compile this report by the relatives of those killed at Clonoe. Relatives for Justice have supported the families since the incident in 1992.

I Irish Republican Army

<sup>2</sup> Royal Ulster Constabulary

<sup>3</sup> IACHR Case of the Plan de Sánchez Massacre v. Guatemala November 19, 2004

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## The Harassment of Kevin Barry O'Donnell and Sean O'Farrell

Kevin Barry O'Donnell and Sean O'Farrell had both been subjected to a constant pattern of harassment leading inevitably to unsubstantiated charges being brought against the two by the RUC. In April 1991 the two men appeared in court and were remanded in custody charged with having a rocket warhead and a rifle. They had been singled out for arrest by the RUC at Brackaville GAA<sup>4</sup> club in Coalisland from a gathering of over 200 people after the find of these weapons nearby. However, at a subsequent hearing in May 1991 the charges were dropped when the RUC failed to provide any form of evidence against the two men.

The practice whereby the RUC brought charges and held people on remand for lengthy periods knowing that no basis for prosecutions existed was not uncommon. This was known within the community as a form of 'detention' or 'internment'. This was Barry's second experience of detention having previously been found guilty of possession but acquitted of intent at the Old Bailey in London on March 1991. He had been charged with possession of two loaded Kalashnikov rifles with intent to endanger life on May 20th, 1990 being detained for almost a year.

The O'Farrell and O'Donnell families claim that Barry and Sean were harassed on a daily basis in the period leading up to their deaths.

Outside Belfast Magistrate Court Barry O'Donnell said that state forces were waging a 'vendetta' against him. He claimed that 'they have told me that I am a marked man and that if they don't get me in court then I'll be taken care of by the loyalist paramilitaries. It is clear I can't stick around here any longer or I'll be taken care of.'5

After Barry returned to the north of Ireland after having been deported from England following the Old Bailey arms trial, he got a 'particularly hard time' according to his family. He was regularly stopped and searched, and occasionally arrested.

Family members say that after Barry and Sean's acquittal at the Belfast Magistrates Court the two men, as well as other family members, were repeatedly threatened by the RUC and British army, often citing that the two were 'marked men' and that 'they had been put on the list' a reference to loyalist paramilitary death lists.

### **Clonoe 16th February 1992**

On Sunday 16<sup>th</sup> February 1992 at 10:45 p.m. members of the Irish Republican Army (IRA), among them Kevin Barry O'Donnell (21 Years), Peter Clancy (21 years), Sean O'Farrell (23 years) and Patrick Vincent (20 years) carried out an attack on Coalisland RUC Station.

They had mounted a 12.7-mm Russian-made (Dagtyarev) heavy machine gun on a hijacked lorry and had also taken several AK 47 rifles with them in another car. The IRA opened fire on the RUC station using the machine gun as well as the rifles. They shot at least 30 rounds at the RUC station and caused minimal damage to the building but no injuries. The concrete behind the red-brick cladding of the station is approximately a metre thick and a steel mesh encases this fortified military installation.

After the attack was finished the IRA men left the area and drove to the car park of St. Patrick's Church in Clonoe, which is approximately 2 miles away to dismantle the gun, put the gun and the rifles into one car, which was supposed to bring the weapons to a safe place, and then disperse themselves into waiting cars from the car park. The cars would then have had to exit the Church car park on one of the two streets leading to and from the car park.

Although the IRA men fired at least 30 shots at the RUC station there was neither a return of fire from the RUC station nor were they pursued by RUC or British army members after they left the scene. It was later revealed that covert British soldiers patrolling the area in cars were ordered to stay away. The area of Washingbay and

- 4 Gaelic Athletic Association Irish sporting organisation
- 5 The Sunday Times, 23rd February 1992, Liam Clarke.









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south Coalisland had apparently been cleared over six hours before the shooting of all regular 'security force' patrols and movements.

However, when the IRA men reached the Church car park at approximately 10:45 p.m. they had no opportunity to follow their plan of disposing of the weapons and leaving in getaway cars. Members of the British army, which according to newspaper articles belonged to the SAS and 14<sup>th</sup> Intelligence Company<sup>6</sup>, were lying in wait behind the hedges, which at the time framed the parameter of the car park area. According to statements from these British army units they had been in place from approximately 7pm on the evening of February 16<sup>th</sup> 1992.



When the IRA men arrived at the car park the SAS opened fire before the lorry stopped. Witnesses described the shooting as sustained gunfire. It was said that the shooting went on for a long time and that there had been tracer bullets lighting the sky. A total of 514 spent cartridges were later to be recovered at the scene, all of which were declared to be belonging to the British soldiers' weapons.

The SAS soldiers gave no warnings and therefore left the IRA men no chance to surrender. This belief has been fuelled by the evasive behaviour of British 'Security Minister' at the time, Brian Mawhinney, who answered the question of whether the IRA men were actually given the chance to surrender only by referring to the extent of the weaponry removed from the scene<sup>7</sup> as well as claiming that the IRA men had been on a "murder mission". In addition villagers heard the first shots within seconds of the lorry arriving at the church<sup>8</sup>.

Patrick Vincent who had been the driver was shot 5 times in the cab of the lorry. Peter Clancy and Kevin Barry O'Donnell who had been on the back of the lorry were shot ten and two times respectively and their bodies were found on the ground close beside the lorry. Kevin Barry O'Donnell had a screwdriver in his hand as he was dismantling the machine gun as the lorry entered the carpark. Peter Clancy's body was found next to the lorry feet away from Barry O'Donnell in the church ground.

<sup>6</sup> The Sunday Times, 23 February 1992, Liam Clarke and Michael Prescott, 'It started with a hit and run attack on an RUC fortress. Its bloody end came when the IRA stumbled...Inside the 'killing zone".

<sup>7</sup> The Irish News, February 18, 1992, Liz MacPherson, 'Mawhinney defends soldiers, but says a full investigation will be carried out'.

<sup>8</sup> See supra note 26

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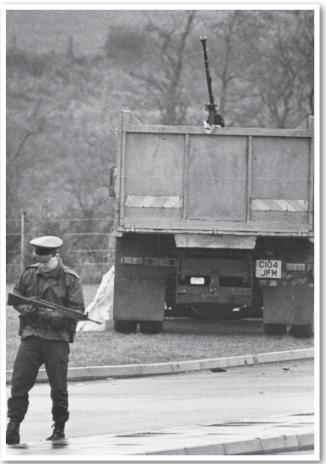
Sean O'Farrell although already injured had attempted to flee the scene. He managed to run in front of the church towards the main road. It is believed that he was shot five more times at the other side of the road.

Two other men seated in cars in the chapel car park were also injured. They were later charged with attempted murder of RUC members at Coalisland RUC station and with possession of firearms with intent but received suspended sentences in return for pleading guilty, which led to the case not being heard in court. Prosecuting the case would have necessitated a full hearing and would have brought centre stage a focus on the SAS covert operation and its purpose - shoot-to-kill. It was therefore in the state's interest that any focus on this operation be avoided and kept to a minimum.

The roof of the church was also badly damaged in a fire after tracer bullets, fired by the SAS struck a heating fuel tank and set the building alight.

Although the RUC reported that there was an exchange of gunfire at the Clonoe church car park<sup>10</sup> nothing had been found to indicate that any of the firearms from the lorry had been discharged in the car park at Clonoe Church. This was confirmed by documentation released to the families.<sup>11</sup>

Witnesses spoke of a heavy security presence immediately after the shooting. Local parish Priest Fr. Kieran McKeone spoke publicly and gave a statement to the RUC about that presence, "I met a white car blocking the Mountjoy Road at Dernagh Crossroads. ... I could see a soldier dressed in full army uniform, that soldier was standing beside or near the white car. I could see maybe half a dozen men come towards the car from the direction of the Chapel and go away again several times. These men were wearing small peaked caps with army written across the front of



the caps... I could see these men were wearing camouflage trousers and anoraks... I took these men to be SAS. Some of these men were carrying very long guns about 2 feet long." Fr. McKeone went on to state that, "the soldier standing at the car wouldn't let me past... the soldier would not answer any of my questions." After some considerable time of waiting the fire brigade arrived and Fr. McKeone was permitted to enter the Chapel grounds with the fire brigade. By this time the Chapel was ablaze due to the tracer bullets fired by the British army. After attending an injured man Fr. McKeone was alerted to other casualties, "A policeman told me a man was in the cab of the lorry and two others were outside the lorry on the grass... I went over to two men lying on the grass beside the lorry. One man was lying on his back and the other man was lying face down. I gave both men the last rites. I then recall going to the passenger side of the cab of the lorry. The passenger door was open on the lorry and I saw a man lying across the inside of the cab with his head almost on the passenger footwell... I gave that man the last rites also... At that stage a policeman, who I think was with me all the time, told me there was another body on the Mountjoy Road across the road from the Chapel. That policeman brought me down to a body. There was light where that body was lying. The body was on the grass verge. His feet were on

<sup>9</sup> Bullet cases were found beside his body

<sup>10</sup> E.g. Ulster News Letter, February 18, 1992, Harry Robinson, Richard Sullivan and Martin Crawford, 'RUC outlines build-up to deaths'.

<sup>11</sup> Scenes of Crime Officers Report released to the families.









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the roadway and he was face up lying on his back. He was on the right of the road a few yards from McGraths shed, between the shed and the bottom gates giving access to the front of the Chapel. I could see that man had blood about his face. I gave that man the last rites. I didn't move or disturb the bodies in anyway except to anoint them with my thumb on each forehead." Fr. McKeone finished his statement saying; "...when the police and army arrived the white car and the first people I saw disappeared quickly." Statements to the *Irish News* suggested that up to 10 heavily armed SAS men similar in description to that given by Fr. McKeone were openly seen afterwards prowling around the Chapel grounds. It was also reported that as many as seven cars and two vans were used in the covert operation by the SAS<sup>13</sup>. The Dungannon based *Democrat* reported a witness who was stopped prior to the killing by the 'security forces' and with reference to the configuration of RUC and British military activity cited in relation to the killings a British army "set-up" 14.

More than twelve hours after the ambush the families of the four young men killed had yet to be officially informed of the deaths<sup>15</sup>. In fact the bereaved families of all four men were never officially informed at any time about the killings.

In recent times film footage of the scene has been uncovered. Bought at a loyalist market it is filmed in the aftermath of the killings clearly identifying all of the bodies as they lie on the ground shot dead. Only members of the British army could have taken this film. In an Abu Grahib style format the bereaved families see this action as those responsible for the killings making a trophy of the execution of their loved ones. This has further added insult to injury and greatly exacerbated their trauma. Obvious anxiety now exists concerning how after killing the men they denigrated them by making this video and circulating it.

<sup>12</sup> Statement by Fr. Kieran McKeone to the RUC.

<sup>13</sup> Irish News article 18th/2nd/1992.

<sup>14</sup> The Democrat, February 20, 1992, 'Undercover S.A.S. Kill Four – Ambush of Death'

<sup>5</sup> The Democrat, February 20, 1992, 'Undercover S.A.S. Kill Four – Ambush of Death'.

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### The Funerals

The late 1980s saw the emergence of a British policy to seek to prevent republican funerals. Tactics of militarised saturation, intimidation and physical violence were used to further criminalise and humiliate the republican dead. It was a tactic designed to isolate republican families from their own communities. The families in Clonoe did not escape this further tactic of state repression concerning burial and the threat of violence. To add insult to injury the British state intentionally used British army, RUC and military helicopters to intimidate the funeral processions, the services and the burials.

Peter Clancy and Patrick Vincent were buried on the 19<sup>th</sup> February 1992. The joint funerals of Barry O'Donnell and Sean O'Farrell were held the following day. There was heavy RUC and British army presence at the funerals. At Peter Clancy's funeral there were around 350 RUC members in full riot gear and up to 70 landrovers as well as helicopters.



At the funeral of Sean O'Farrell and Barry O'Donnell there were also hundreds of RUC members wearing visor helmets, leather knee and shin pads and carrying plastic bullet guns in addition to other automatic and handguns. There were several helicopters also. The noise of the helicopters hovering above the funeral made it quite difficult for the mourners to hear the prayers and burial ceremony, and the orations thereafter. The funeral was also delayed because high-ranking RUC officers refused to allow Barry O'Donnell's coffin out of his home until they received assurances that there would be no republican tributes. During the walk from the house to the church and to the graveyard the procession stopped several times in which negotiations between the RUC and family members took place. Six hours after leaving their homes, Barry O'Donnell and Sean O'Farrell were finally buried.

Speaking about the saturation of military and RUC personnel at the funeral Roisín Uí Mhuirí, sister of Kevin Barry O'Donnell said: "They dictated the pace of the funeral, they corralled it, they stopped it, they harassed those around the militarised perimeter they created and they sought to impose an indignity upon all of us. It wasn't good enough just to kill the men even in death they sought to humiliate us. However it was us who were dignified."

Speaking at the graveside Barry's sister Caoimhe, aged 20, a year younger than the brother she was burying, read a statement on behalf of the families, which could hardly be heard above the sound of British army vehicles and helicopters, but which is still remembered to this day. The statement was directed at Conservative Party 'Security Minister' Brian Mawhinney.

"You ask us why our sons were there, and who sent them? Nobody sent them. They were there of their own free will. Why? Maybe because they have known nothing but alienation and war. Maybe because they were daily humiliated, taunted and harassed by the security forces. Maybe, because they have buried so many of their friends and neighbours, whose lives were seen to have a lesser human value than others. Maybe, because society put no value on their lives either. Maybe, because despite our dreams, they saw no other future for themselves in Northern Ireland in 1992.







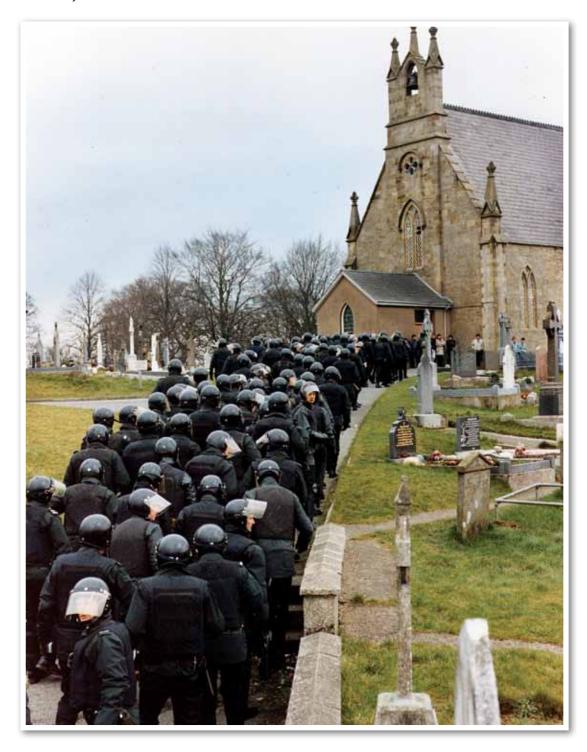


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"Mr Mawhinney can you honestly tell us that there was? Can you explain to us what exactly happened in the church grounds in Clonoe? Can you stop the RUC from mocking our grief outside our doors and using the death of our children to taunt and humiliate the children of our neighbours? Who sends them out? What cause does their inhumanity serve?

"As we watch many young people come to pay their respects to our homes, we fear for their future, and their lives, as they too become part of the spiral of war.

"The responsibility for ending this war does not lie with our relatives, it lies with you. You must negotiate peace before you kill all our children."



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### **Pre-Meditated and Pre-Planned**

The RUC carried out an investigation into these killings and a decision was reached that there would be no prosecutions. That decision was made on October 15, 1992 even though some of the British soldiers involved in the shooting that night did not make statements until December 1992.

This incident has raised many questions of the legality of the operation of the state forces. The issue of the existence of a shoot-to-kill policy employed by the British state was brought up again and given further attention.

It has become apparent that state forces had exact knowledge of the IRA plan to attack the RUC station and then drive to the church car park in order to dismantle the gun and get away to safe places.

The obvious question would therefore be why the state made no attempt to arrest the IRA men. Members of the families claim that it was common knowledge that IRA operations like this one would usually have the following pattern. After dismantling the machine gun the IRA would have discharged the weapons into the boot of one car - get themselves into other cars and drive off. As there are only two ways out of the car park state forces could have erected roadblocks and checkpoints on these roads stopping and arresting the men. Because the guns were usually hidden in one car in order to be brought to an arms dump, the RUC/British army would not have faced a risk by arresting the IRA unit after they had finished their operation. Two occasions existed when the men were unarmed and could have been arrested prior to making the attack or at any time during the dismantling and disposing of the weapons. Ideally the entire incident could and should have been avoided.

The deployment of SAS soldiers, noted solely for their ambush and execution methods rather than effectively securing and making arrests in accordance with international standards, adds to the concern that the aim of this operation had indeed been to kill the IRA men and not to arrest them.

This view seems to be confirmed by the fact that several car teams (a-h) were in position by 8 p.m. and told by C/S 40 (SAS operational codes on material obtained by the families) to hold off until the IRA men had reached the car park of the Clonoe Chapel and then move along designated routes towards the target location as soon as contact was initiated by the ground team.

Concerns are also raised by the fact that an ammunition magazine was found under the body of Sean O'Farrell. Sean had fled some 100 yards before he was shot dead. This would suggest that although already shot and injured and running for his life during the ambush Sean had time to lift up and run with the magazine. This incident has raised the question of whether the magazine was planted there to 'justify' the killing of Sean O'Farrell at a different location. A key question for any inquest is whether or not Sean was shot whilst on the ground.

Documents disclosed at a preliminary inquest hearing clearly demonstrate that the authorities had prior knowledge of the planned IRA attack. This included the gun to be used and that it had been moved for this purpose from a different location in the county, including of its whereabouts, prior to the attack on Coalisland RUC station.

The documents that the authors have seen clearly demonstrate that whilst this information was in intelligence reports and briefing documents that in addition the SAS were also planning their operation 36 hrs in advance of the killings.

Linked to these intelligence documents of 12<sup>th</sup> February 1992 and some 4 days before the killings it states, "intelligence indicates that Coalisland PIRA have carried out recces of Coalisland RUC Station and some sort of attack may be imminent". The document further comments that "Divisional authorities appraised".

Hand written intelligence documents from 15th February, the day before the attack, identify Kevin Barry





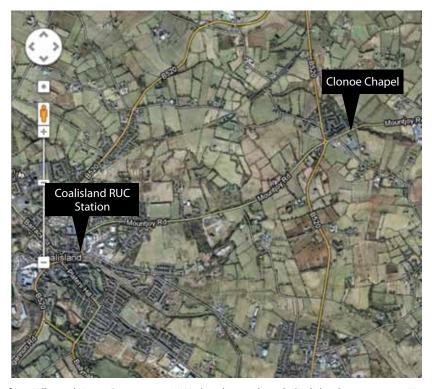




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O'Donnell and Patrick Vincent and three other men as IRA suspects involved in attacks. The same document also states that the intelligence operatives knew that the heavy gun was to be mounted on a lorry and driven from Clonoe Chapel carpark and then to attack the RUC station and that three armed men were to be on the lorry.

On the day of the shootings a British army Sergeant, John Gorman McLaughlin, of Queens Lancashire Regiment and a Team Commander had



been dropped by helicopter from Killymeal House Dungannon in Washingbay and south Coalisland areas at 0800. He and his unit set up a vehicle check point and at about 1600hrs he received a radio message from 8 UDR Operations' Room detailing an "Out of Bounds" area. In disclosures made in advance of the inquest Sgt McLaughlin says:

"On checking my map I realised that I was in the middle of this area so I informed the Ops Room that I would move my troops East and inform them when I was out of the area in order for a helicopter to pick us up."

What he states next is key to the case.

Further evidence of this intention is that in British army intelligence radio logs of the day of 16<sup>th</sup> February Kevin Barry O'Donnell was clearly identified by undercover soldiers in Clonoe carpark at 20:47hrs. Two hours before the attack on the RUC station.

This information gives a clear and consistent picture. There was ample opportunity for arrest of all of the men and that the attack on the RUC station could have been avoided. The loss of life was undoubtedly avoidable. Indeed more effort was required to take these four lives than would have been required to make safe and effective arrest within the rule of law without the loss of life, or risk of injury to anybody else. But this was never an arrest operation. This was not a response to an IRA action on an RUC station. This was a pre-planned pre-meditated state ambush and assassination of IRA volunteers.

<sup>16</sup> Name redacted

<sup>17</sup> Statement of Sgt John Gorman McLaughlin, Queens Lancashire Regiment. 16th June 1992.

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## Belfast High Court finds shootings "unjustified"

In October 2011 in a civil action brought against the British Ministry of Defence (MoD) by Adian McKeever who was one of those shot and injured in the attack, the High Court in Belfast found that the actions of the soldiers on that evening were "unjustified".

During this civil action Soldier 'A', the soldier in charge that night and involved in killing the four men, gave evidence that was described by Justice Treacy as 'utterly implausible'.

Consequently the British MoD withdrew several SAS soldiers listed to provide evidence from which inference was drawn in their refusal to take the stand.

Under cross examination Soldier 'A' told the court that there were extensive briefing and planning documents concerning their role prior to the SAS ambush. These documents have yet to be disclosed to the families' legal teams.

Part of the evidence provided by the British soldiers in this case stated that there was an operational plan in place that night, including reconnaissance operations, and that they had seen this plan as part of the preplanning of their operation.

The following is a summary of the judgement by High Court Judge Justice Treacy

"Mr Justice Treacy, sitting in the High Court, found that the shooting of Aidan McKeever by an undercover army unit in 1992 was not justified. He consequently approved the award of £75,000 damages which had been agreed between the parties.....

"McKeever, the main issue was whether or not the trespass to his person had been justified as either reasonable force used in self-defence or the defence of others or reasonable force in preventing a crime or attempting to apprehend a person engaged in serious terrorist crime. The law states that once an action of trespass to the person is admitted or proved, the onus is on the defendant (in this case the Ministry of Defence) to justify the trespass if he can and to show he acted with lawful excuse. The judge said the Ministry of Defence would therefore have to prove that:

- The force used by the soldiers was reasonably necessary in the circumstances of the case;
- The soldier(s) who shot Mr McKeever was/were justified, on the balance of probabilities, in doing so on the basis of what they believed were the relevant facts at the time of the shooting.

The judge said that four soldiers admitted firing shots at Mr McKeever but it was not possible to determine which bullets from which soldiers actually struck him. Only one of the soldiers, Soldier A, was called by the Ministry of Defence to give evidence in Court although all four were initially available. After his evidence was given the remaining soldier witnesses, who had been prepared to give evidence the week before, were no longer prepared to do so despite the special measures that had been secured to protect their anonymity. No reason was given to the court for this decision.

Mr Justice Treacy said that it was therefore open to the Court to draw an adverse inference from the failure or refusal of witnesses to testify in circumstances in which they might be expected to give relevant and important evidence. He noted that the soldier witnesses were aware that part of the case being made by Mr McKeever was that this military operation was a "shoot to kill" operation and not, as the Ministry of Defence claimed, an arrest operation. The judge said that no explanation had been given for their "dramatic" U-turn in refusing to give evidence, nor did the Ministry of Defence take any steps to compel them to do so. He therefore inferred from these circumstances that the soldiers' evidence is likely to have been unhelpful to the Ministry of Defence.









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Mr Justice Treacy stated that the Ministry of Defence had failed to call evidence in the proceedings to satisfy the Court that the shooting of Mr McKeever was justified:

"It has failed to discharge the onus placed upon it that the soldier(s) who fired the shots which caused [Mr McKeever's] injuries subjectively believed that he/they were justified in so doing."

The judge was critical of the account given by Soldier A which he said he found "utterly implausible". Soldier A claimed that Mr McKeever got on his knees at the front of his car, presented his head and shoulders above the bonnet and adopted a firing stance. The judge said that Soldier A tried to justify this by referring to the fact that he didn't know that Mr McKeever was unarmed. He noted, however, that Mr McKeever knew that he was unarmed and it would have been insane for an unarmed man, whether wounded or not, to have presented himself in the way described by Soldier A. He added that for Mr McKeever to have behaved in the way alleged by Soldier A was "contrary to reason and the instinct for self-preservation".

Mr Justice Treacy concluded that the shooting had not been justified and did not amend the damages already agreed between Mr McKeever and the Ministry of Defence.

Justice Treacy has stated that he is forwarding the transcripts of these proceedings to the Coroner.

For the families this was clearly a very important development. Outside of the formal investigatory processes the domestic legislature has determined the actions taken that evening were unjustified in respect of one of those injured and that this person was awarded reparations. This too is relevant when concerning the killing of all the men and in particular the shooting of Sean O'Farrell who was also unarmed when shot.

It is clearly incredulous that the British state should continue to prevaricate on holding a fully compliant inquest into the shootings of the four men killed on that night when the matters relating to one of the injured have been adjudicated upon.

In light of all the information, and also considering the judgement by Justice Treacy it would clearly suggest that excessive and unreasonable force was used, constituting a policy of shoot-to-kill. There can be no doubt that the four men could have been arrested and that this was not as claimed by the MoD an arrest operation.

Evidence given to the court by Professor Ray Murphy, an expert in military techniques and tactics, further exposed the British army operation as very clearly being one of 'Shoot-to-kill'. The facts show that this was an ambush and assassination operation in which impunity was extended to those who planned and perpetrated the killings.

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## Who sanctioned the killings in Clonoe?

The process by which the SAS are normally deployed involves the British military, RUC and the British Secretary of State for the north of Ireland.

Political approval is normally sought from briefings provided to the British Secretary of State, including other NIO<sup>18</sup> ministers usually the 'security' minister, by 'security' personnel including MI5 that at the time of the conflict were based in Stormont Castle with the British Secretary of State and 'Security Minister.'

Under the umbrella of the Task Coordinating Group (TCG) this collective of military, security, policing, and political are tasked with the decisions to deploy covert operations involving the RUC Special Branch, the British army's 14<sup>th</sup> Intelligence Unit, the Force Research Unit (FRU), the SAS and other specialist covert operations pertaining to the conflict.

In County Tyrone that deployment was made on a number of occasions in regard to the IRA and on each occasion it was with deadly consequences. In December 1983 Colm McGirr and Brian Campbell were ambushed and killed yards from where the four men were killed at Clonoe; in July 1984 Willie Price was ambushed and killed at Ardboe; in February 1985 Charles Breslin and brothers Michael and David Devine were ambushed and killed at Plumbridge Road, Strabane; at Loughgall in May 1987 eight IRA Volunteers were ambushed and killed, a civilian was also killed in that attack and another man badly injured; brothers Gerard and Martin Harte and Brian Mullin were ambushed and killed in August 1988 at Drumnakilly, Carrickmore; Dessie Grew and Martin McCaughey were ambushed and killed in Loughgall in October 1990; and at Coagh in June 1991 Pete Ryan, Tony Doris and Laurence McNally were ambushed and killed.

A further observation is that despite the roaming of nationalist and republican areas by loyalist death squads and the numerous sectarian and political assassinations carried out by these same gangs there was never any deployment of the SAS or covert operations that prevented their ability to operate freely despite even the notoriety of these killers. In 1991 the IRA killed 17 civilians and in 1992 they killed 18 civilians. By contrast loyalist paramilitaries killed 49 civilians in 1991 and 39 in 1992. Not that we are advocating that the SAS should have been deployed against loyalists but whilst the British government position was that it was "countering terrorism" and claiming to do everything to prevent attacks they stand exposed in their one-sided military approach concerning only one combatant force. For many families bereaved by loyalists and state actions and for many observers of the conflict the reality was that the intelligence and the apparatus of the British military and political establishment was deployed in assisting, arming, controlling and directing loyalism rather than combatting it.

Indeed in one instance in which loyalists killed a 76 year-old pensioner, Roseanne Mallon, at her home on the outskirts of Dungannon, County Tyrone, it was later revealed that a British army undercover unit observed the attack and yet did not intervene<sup>19</sup>.

It was also disclosed that this covert unit was part of a number of covert units secreted around the Mallon home, which was at the time of the attack subject to a major surveillance operation that had been in place for weeks. It was also disclosed that the covert operation had recorded and transmitted footage to their command at Mahon Barracks, Portadown, of the Mallon home. On the night of the attack the covert operation reported suspicious activity, the gunmen, then the shooting and were instructed 'not to react'. They had earlier been instructed to switch off their covert cameras<sup>20</sup>. Other recorded footage, vital to the murder investigation, was withheld and then allegedly destroyed.

Members of the Mallon family had been threatened by the RUC and in particular that the Special Branch would have members of their family murdered by loyalists<sup>21</sup>.

This pattern of threat by the RUC to republicans was widespread and many relatives of republicans, including republican activists, were targeted and killed west of the Bann in the bordering counties of east Tyrone, south Derry and north Armagh.

- 18 Northern Ireland Office
- 19 Disclosures by the MoD from civil action taken by the Mallon family in respect of the killing
- 20 Further disclosures pertaining to civil action
- 21 Details of these threats on file with lawyer Martin Donaghy, RFJ and Amnesty International









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This deepened existing suspicions of collusion between loyalists and the state.

The RIR<sup>22</sup> in east Tyrone were working closely with the RUC and Special Branch. Formerly the UDR the RIR are implicated in numerous acts of collusion and in sectarian killings. It is widely believed that a UVF<sup>23</sup> gang active in the Mid-Ulster area up until its ceasefire in October 1994 were largely comprised of former and serving UDR/RIR members.

The fact that the deployment of British covert forces including the SAS was only against republicans merely illustrates the relationship that existed between loyalists and the state.

It also highlighted the combined policies of using loyalists on one hand and the SAS on the other when the state felt that it could entrap the IRA and therefore kill them and then seek to justify these actions.

Those within Task Co-ordinating Group (TCG) took all of these decisions and the hierarchical command structure was the Joint Intelligence Committee (JIC) and General Command Headquarters (GCHQ) in London. The stated mission of Joint Intelligence Committee is "The JIC is part of the Cabinet Office and is responsible for providing Ministers and senior officials with co-ordinated interdepartmental intelligence assessments on a range of issues of immediate and long-term importance to national interests, primarily in the fields of security, defence and foreign affairs."

Membership of the JIC is currently "... senior officials in the Foreign & Commonwealth Office, Ministry of Defence (including the Chief of Defence Intelligence), Home Office, Department of Trade and Industry, Department for International Development, Treasury and Cabinet Office, the Heads of the three intelligence Agencies and the Chief of the Assessments Staff."

Decision making at this level is not and was not separate to government cabinet.

More recently during the Smithwick Tribunal<sup>24</sup> concerning the killing of two RUC officers by the IRA it had been described how former British Secretary of State, Tom King, had been angry and thumped a table during a briefing meeting with the then head of RUC Special Branch for Newry demanding the arrest of a senior south Armagh republican.<sup>25</sup>

Such micro management in terms of an arrest provides an insight into the nature and hands on approach and thus the focus required when deploying the SAS and a wider intelligence operation that would inevitably end in the killing of republicans would have then undoubtedly also required a hands on.

The British Secretary of State at the time of the Clonoe killings was Peter Brook, and the British 'Security' Minister was Brian Mawhinney, the head of MI5 was Sir Patrick Walker, the General Officer Commanding (GOC) was General Sir John Wilsey, the Commander of Land Forces was General Sir Charles John Waters, who had previously served as GOC in the north of Ireland, the Chief of General Staff was General Sir Peter Inge who had taken the post only two days before Clonoe from General Sir John Chapple, The RUC Chief Constable was Hugh Annesley, the head of RUC Special Branch was ACC Ronnie Flanagan.

The bereaved families of Clonoe seek information concerning the authorising of the deployment of the SAS and the wider intelligence, policing and military operation, and of who was central to such meetings and decisions at a militarily and politically level including within the RUC.

<sup>22</sup> Royal Irish Regiment

<sup>23</sup> Ulster Volunteer Force

<sup>24</sup> Tribunal of Inquiry into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20th March, 1989. The Smithwick Tribunal was established by Resolutions passed by Dail Eireann and Seanad Eireann on the 23rd and 24th March 2005 respectively, and by Instrument entitled Tribunals of Inquiry Evidence Act 1921 (Establishment of Tribunal) Instrument 2005.

<sup>25</sup> September 8th 2011 RTE News report - Smithwick told of RUC clandestine operations

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There can be absolutely no doubt that the operation overall that led to the killings would have been significantly and quantifiably much greater than any operation that would have been required to arrest the men.

An arrest situation would have been measurably less in terms of the political authorisation and approval required. Arguably, and legally, an arrest would not have warranted political approval. However, the operation that led to the killings did.

Noting threats to the men by the RUC and in particular to Barry O'Donnell and Sean O'Farrell the families feel that if the SAS had not killed the men then loyalists would have been used.

In respect of this view the families cite a number of loyalist killings of republicans in the area including the killing of four men, three of who were IRA Volunteers Dwayne O'Donnell (no relation to Barry O'Donnell), Malcolm Nugent, and John Quinn at Boyles Bar, Cappagh, County Tyrone on March 3<sup>rd</sup> 1991. This attack also claimed the life of Thomas Armstrong. Loyalists had been supplied with the weapons used in the attack by MI5 and prior to the attack there had been a heavy British army and RUC presence in this rural and isolated area that included helicopters. The loyalists who carried out the attack had travelled some 27 miles from Portadown and through the military cordon that had been around the area and then back to Portadown after the attack.

### **Shoot-To-Kill Policy**

As the families were coming to terms with the emerging facts about what happened to their loved ones at Clonoe the awful reality was that four families would join the many other families affected by the policy of shoot-to-kill.

In incidents where the state took lives there has been an absence of proper investigations compliant with international standards as laid down in international law and agreements. This has inevitably resulted in the failure to hold state perpetrators to account. In this context the investigative procedures and the inquest system in north of Ireland was seen as a by word for impunity protecting the state from any scrutiny or exposure of what can only be determined as officially sanctioned policies of shoot-to-kill and collusion with state-run death squads.

These policies, including that of impunity, are borne out in the statistical data of the approximately 370<sup>26</sup> people killed directly by the state during the course of the conflict in Ireland and the resulting non-prosecutions in all but a handful of cases. 79<sup>27</sup> of those killed directly by the state were children. The vast majority of those killed overall were unarmed civilians, and of those killed that were combatants to the conflict many were also killed whilst unarmed and their deaths occurred with great controversy. In situations were combatants were armed conflicting accounts exist and deliberate misinformation clouded the facts and it would suggest that many of the killings could well have been avoided. In addition the planning and ferocity of the many state ambushes clearly suggest that the intent was to kill outright and therefore in direct violation of Article 2 - The Right to Life - of the European Convention on Human Rights. This ferocity too was evident at Clonoe.

Fewer than 20 prosecutions have been initiated these having been entered into very reluctantly in the face of mass public and international pressure. With regard to these prosecutions they have largely failed to secure convictions.

In response to public outcry concerning shoot-to-kill allegations John Stalker<sup>28</sup>, the then Deputy Chief Constable of Greater Manchester, was appointed by the British government to investigate three incidents that in the space of matter of weeks in late 1982 had claimed six lives. Prosecutions were initiated as a result of Stalker's

<sup>26</sup> A number of killings in which republicans and state forces engaged each other have not been officially attributed.

<sup>27</sup> Applying the United Nations definition of children.

<sup>28</sup> John Stalker was appointed to investigate allegations of shoot-to-kill following the shooting dead of 6 unarmed men in 3 separate incidents within a 12-week period in 1982. He was forced off the investigation through a series of allegations and smears about his reputation when it became clear he was intent on conducting the investigation as opposed to a cosmetic exercise. He was also obstructed by the RUC. Colin Sampson replaced him. The details of their findings have yet to be made public. The allegations against Stalker and which led to his removal from the investigation were later proved bogus.









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investigation but he remained unsatisfied and was thwarted at every opportunity by senior RUC officers. The then RUC Chief Constable Sir John Hermon met with Stalker and in what was seen as an attempt at warning him off references were also made to the religion of his ancestry. As part of his enquiries Stalker had also discussed the killings with solicitor Pat Finucane who was representing some of the bereaved families of these shoot-to-kill operations. Senior RUC officers then approached Stalker rebuking him for talking to Pat Finucane and making scurrilous remarks against Pat's good character.

In April 1984 RUC Constable John Robinson went on trial in connection with the killing of two unarmed INLA men Seamus Grew and Roddy Carroll. Robinson told the court that he was ordered by his superiors to give false evidence about the killings. Astonishingly he was acquitted and those who he claimed ordered him to provide false evidence were not identified or held to account.

In late May 1984 three other RUC officers went on trial for the murder of Eugene Toman. The trial concluded on the 5th of June 1984 and again all were acquitted. The judge, Lord Justice Maurice Gibson, was highly critical of "those who prompted this prosecution". (Two other men Gervaise McKerr and Sean Burns were also killed with Eugene Toman and the three were unarmed).

Stalker later told Michael Unger, the then Editor of the *Manchester Evening News*, on May 17<sup>th</sup> 1985, and later published in the London *Guardian* January 1988 under the *Unger Dairies*, that: "Policemen are committing murder and I am unable to get to them."

Members of the RUC involved in shoot-to-kill and the subsequent conspiracy to conceal the facts from British police chief John Stalker in the early eighties were provided with an amnesty by the then British Attorney General Sir Patrick Mayhew.

On January 1988 Sir Patrick Mayhew told the British Parliament that: "... there was evidence of a conspiracy to pervert the course of justice, but it would not be in the national interest to proceed with prosecutions.' There was no mention of the fact that a number of people were shot dead. Patrick Mayhew would later become the British Secretary for State in the north of Ireland.

The British government controversially removed John Stalker during his investigation into the 1982 shoot-to-kill incidents before he had concluded his investigations. His findings and those of Colin Sampson who replaced him have never been made public. Stalker was later to say that: "The killings had a common feature; each left a strong impression that someone had led these men to their deaths. The circumstances of those killings pointed to a police inclination, if not policy, to shoot suspects dead without warning rather than to arrest them". 29

From these killings in 1982 pre-planned lethal ambush operations in which excessive and unreasonable force was regularly used and where arrests were evidently possible became termed 'shoot-to-kill.'

In 1983 in their annual report Amnesty International reported on "allegations that the police had undertaken a "shoot-to-kill" policy to eliminate supporters of these (IRA and INLA) groups by killing them rather than by arrest."<sup>30</sup>

In January 1985 an "International Lawyers Inquiry into the lethal use of firearms by the Security Forces in Northern Ireland" chaired by the late Kadar Asmal and comprising of six lawyers from Britain, the United States and France, made damning findings and conclusions. Not the least of which was "The British government has failed to protect the people of Northern Ireland. No adequate machinery exists to investigate, prosecute or punish wrongs committed by members of the security forces. Its absence inevitably weakens respect for the law in Northern Ireland."<sup>31</sup>

In his book "Unfinished Business" Bill Rolston explains some of the experiences that families endured as a result of this policy in an interview with Eleanor McKerr, the wife of Gervaise McKerr, killed by the RUC in a shoot-to-

<sup>29</sup> Justice Under Fire: The Abuse of Civil Liberties in Northern Ireland. Jennings, A. Pluto Press, 1988

<sup>30</sup> Amnesty International Report for 1983 p.290

<sup>31</sup> Shoot to Kill? International Lawyers' Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland. Asmal, K Mercier Press 1985 p129

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kill operation in 1982. This interview gives an insight to the battle which faced family members following the state taking their loved ones' lives. Just one of the lines from the interview states "I'm still fighting on for the truth to be known and for justice. Sometimes I felt like giving up, but someone else would be killed in similar circumstances, so I was determined to carry on for justice." A battle which continues to this day for the McKerr family and for those affected in Clonoe.

Only three incidents have seen convictions secured for state murder and have been related to the British army only. However, after brief campaigns by the British political and military establishment and right-wing media, principally in London, those culpable were all released significantly early into their sentences and reinstated back into their British army regiments to continue their service. Two were promoted. One subsequently had his conviction overturned due to the continued efforts of the British establishment.

This has sharpened the case that for the victims of British state and state sponsored violence there can be no justice under the domestic legal framework. Indeed it would be fair to say that the term British justice is a contradiction in terms in this regard. There has never been a conviction in relation to state killings within County Tyrone.

However, in sharp contrast the very same energy and resources of the state, regularly deployed to prevent the emergence of facts about its own activities, has been continually employed including the use of draconian Emergency Legislation and Anti-Terror laws in order to secure conviction of those suspected or involved in incidents that have been directed against state forces.

All of these practices have sought to manufacture a false hierarchy of victim-hood juxtapose to the propagated view by the state that responsibility for the conflict rests with those convicted and imprisoned through its system, and that their role is one of 'peacekeeper' as opposed to being centrally involved in the conflict. Undoubtedly the combination of state violence and the deliberate failure for public accountability has contributed to, fuelled, and sustained the conflict and this is referenced in the statement read by Caoimhe O'Donnell at the graveside of her brother.

The failure of the domestic legal system to adhere to internationally acceptable standards whereby transparency and accountability are provided, not just for the bereaved but also in the wider public interest, demonstrate the lengths and determination to which the British government will go to prevent the truth about its activities in Ireland from coming to light and adds further to the widely held view that these policies were indeed widespread. In short the British state has used, and continues to use, their sovereignty as a shield about its activities in the conflict and in which human rights violations have occurred. In the interests of justice and democracy we all need to shine a light into these darkest of corners and especially during this transitional period of our history.

#### Kadar Asmal further wrote:

"The whole administration of justice is perverted and the vocabulary of dissent is itself prostituted. The use of special courts, where 10,000 people have been prosecuted and found guilty from 1973 to 1988, the use of supergrasses, the deliberate adoption by the administration of what one judge in Northern Ireland called 'the final court of appeal' - the lethal use of firearms to remove people who are embarrassments to the policies of the administration; all of these measures have been criticised or condemned by a series of governmental or unofficial international inquiries or by the invocation of international standards. The British government has used a sophisticated version of the famous Coercion Acts of the nineteenth century in order to deal with the situation in the north of Ireland. The British government has shown scant regard for international opinion and international and domestic legal standards. My contention is that the United Kingdom is behaving and has behaved in the north of Ireland in the same way that colonial powers exerted their sovereignty in the old fashioned empires."

Arguably the onus rests with the British government in ensuring that the current criminal justice system, including the coronial process, no longer reflect the experiences as referred to by Kadar Asmal and his colleagues.

<sup>32</sup> Unfinished Business, State Killings and the Quest for Truth. Rolston, B. Beyond the pale Publications 2000 Chpt 8









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Challenging impunity must underpin and be at the heart of how cases such as Clonoe are now addressed.

As the table below identifies the first international allegation of a policy of shoot-to-kill was in the case of the killing of Burns, McKerr and Toman in 1982. Shoot-to-kill operations took many lives in the intervening period from when first identified as a policy to when the lives of the four men in Clonoe were taken.

The following list are of all those killed by the RUC and British army in planned shoot-to-kill ambush operations between 1982 and 1992 and in instances of the use of lethal force in summary executions.

This table does not include state killings before 1982 where such a policy undoubtedly existed but had not received public spotlight with the same term shoot-to-kill.

### Shoot-to-kill victims killed by RUC/British Army between 1982 and 1992

Sean Burns         11/11/1982         RUC           Eugene Toman         11/11/1982         RUC           Gervaise McKerr         11/11/1982         RUC           Michael Tighe         24/11/1982         RUC           Seamus Grew         12/12/1982         RUC           Roderick Carroll         12/12/1982         RUC           Francis Joseph McColgan         19/01/1983         RUC           William James Millar         16/03/1983         RUC           John Anthony O'Hare         26/07/1983         RUC           Brendan Convery         13/08/1983         RUC           James Mullan         13/08/1983         RUC           Brigid Foster         28/11/1983         RUC           Tony Dawson         12/12/1983         RUC           Seamus Patrick Fitzsimmons         14/04/1984         RUC           Seamus Patrick Fitzsimmons         14/04/1984         RUC           Paul McCann         15/06/1984         RUC           Seam McIlvenna         17/12/1984         RUC           Gerard Logue         08/02/1985         RUC           Keith White         14/04/1986         RUC           Keith White         14/04/1996         RUC           Co			
Gervaise McKerr         11/11/1982         RUC           Michael Tighe         24/11/1982         RUC           Seamus Grew         12/12/1982         RUC           Roderick Carroll         12/12/1982         RUC           Francis Joseph McColgan         19/01/1983         RUC           William James Millar         16/03/1983         RUC           John Anthony O'Hare         26/07/1983         RUC           Brendan Convery         13/08/1983         RUC           James Mullan         13/08/1983         RUC           Brigid Foster         28/11/1983         RUC           Tony Dawson         12/12/1983         RUC           Seamus Patrick Fitzsimmons         14/04/1984         RUC           Seamus Patrick Fitzsimmons         14/04/1984         RUC           John Downes         12/08/1984         RUC           Sean McIlvenna         17/12/1984         RUC           Gerard Logue         08/02/1985         RUC           Keith White         14/04/1986         RUC           Colum Marks         10/04/1991         RUC           Kevin McGovern         29/09/1991         RUC           Gerard Martin Maginn         03/11/1991         RUC	Sean Burns	11/11/1982	RUC
Michael Tighe         24/11/1982         RUC           Seamus Grew         12/12/1982         RUC           Roderick Carroll         12/12/1982         RUC           Francis Joseph McColgan         19/01/1983         RUC           William James Millar         16/03/1983         RUC           John Anthony O'Hare         26/07/1983         RUC           Brendan Convery         13/08/1983         RUC           James Mullan         13/08/1983         RUC           Brigid Foster         28/11/1983         RUC           Tony Dawson         12/12/1983         RUC           Seamus Patrick Fitzsimmons         14/04/1984         RUC           Paul McCann         15/06/1984         RUC           John Downes         12/08/1984         RUC           Sean McIlvenna         17/12/1984         RUC           Gerard Logue         08/02/1985         RUC           Keith White         14/04/1986         RUC           Colum Marks         10/04/1991         RUC           Kevin McGovern         29/09/1991         RUC           Gerard Martin Maginn         03/11/1991         RUC           Pat McBride         04/02/1992         RUC           Paddy Lou	Eugene Toman	11/11/1982	RUC
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Colm McGirr         04/12/1983         British Army           Mark Marron         30/01/1984         British Army	Thomas Reilly	09/08/1983	British Army
Mark Marron 30/01/1984 British Army	Brian Campbell	04/12/1983	British Army
	Colm McGirr	04/12/1983	British Army
Henry Hogan21/02/1984British Army	Mark Marron	30/01/1984	British Army
	Henry Hogan	21/02/1984	British Army

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Declan Martin	21/02/1984	British Army
William Alfred Price	13/07/1984	British Army
Antoin Mac Giolla Bhride	02/12/1984	British Army
Kieran Fleming	02/12/1984	British Army
William Fleming	06/12/1984	British Army
Daniel Doherty	06/12/1984	British Army
Charles Breslin	23/02/1985	British Army
Michael Devine	23/02/1985	British Army
David Devine	23/02/1985	British Army
Francis Bradley	18/02/1986	British Army
Tony Gough	22/02/1986	British Army
Seamus Turlough McElwaine	26/04/1986	British Army
James McKernan	14/09/1986	British Army
Patrick Kelly	08/05/1987	British Army
Declan Arthurs	08/05/1987	British Army
Seamus Donnelly	08/05/1987	British Army
Anthony Gormley	08/05/1987	British Army
Eugene Kelly	08/05/1987	British Army
James Lynagh	08/05/1987	British Army
Patrick McKearney	08/05/1987	British Army
Anthony Hughes	08/05/1987	British Army
Gerard O'Callaghan	08/05/1987	British Army
Aidan McAnespie	21/02/1988	British Army
Mairead Farrell	06/03/1988	British Army
Sean Savage	06/03/1988	British Army
Danny McCann	06/03/1988	British Army
Kevin McCracken	14/03/1988	British Army
James McPhilemy	10/08/1988	British Army
Gerard Harte	30/08/1988	British Army
Martin Harte	30/08/1988	British Army
Brian Mullin	30/08/1988	British Army
Brian Robinson	02/09/1989	British Army
Peter Thompson	13/01/1990	British Army
Edward Hale	13/01/1990	British Army
John Joseph McNeill	13/01/1990	British Army
Martin Corrigan	18/04/1990	British Army
Karen Reilly	30/09/1990	British Army
Martin Peake	30/09/1990	British Army
Martin McCaughey	09/10/1990	British Army
Dessie Grew	09/10/1990	British Army
Martin Keenan	01/11/1990	British Army
Alexander Patterson	12/11/1990	British Army
Fergal Caraher	30/12/1990	British Army
Lawrence McNally	03/06/1991	British Army
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Peter Ryan	03/06/1991	British Army
Tony Doris	03/06/1991	British Army
Barry O'Donnell	16/02/1992	British Army
Sean O'Farrell	16/02/1992	British Army
Peter Clancy	16/02/1992	British Army
Patrick Vincent	16/02/1992	British Army
Peter McBride	4/9/1992	British Army

It is absolutely certain that once a decision was taken to deploy the SAS then the deaths of these four men were certain.

From the available disclosures in these killings it is abundantly clear that ample opportunity existed to make safe and effective arrests within the rule of law and without the loss of life. The decision to deploy the SAS as part of a much wider covert and intelligence operation was sanctioned at the highest political, military and policing levels in the north at the time and the outcome of this deployment would have been patently inevitable.

The deceased were under surveillance well in advance of any planned attack and intelligence documents also reveal the movement of weapons, reconnaissance missions by the deceased, and precise details of a planned IRA operation. At no point during this considerable period is mention made or consideration given to preventing an attack or arresting the men.

Some of the men were stopped in the hours leading up to the IRA operation and unusually let go adding to the view that they were intentionally led to their deaths.

For families faced with a state engaged in military actions, with total control of the legal apparatus, even asking questions about the legitimacy of these actions was virtually impossible. The voices of the bereaved were largely ignored outside of their immediate community.

However that does not mean to say that the actions went unchallenged.

In its annual report to the United Nations Human Rights Committee in 1993 International Human Rights NGO Human Rights Watch raised the killings at Clonoe and stated that "Questions were raised as to whether the men could have been arrested, rather than killed"<sup>33</sup>.

However at that time remedy seemed very far away.

<sup>3</sup> Human Rights Watch, Human Rights Watch World Report 1993 - United Kingdom, 1 January 1993, available at: http://www.unhcr.org/refworld/docid/467fca71c.html

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### **International Intervention**

On 10<sup>th</sup> June 2003 the families, supported by Relatives for Justice, wrote to the United Nations Special Rapporteur on Summary and Arbitrary Executions to examine these deaths, including six other killings in County Tyrone invloving the SAS and Loyalists.

In a statement to the media to announce this request Róisín Uí Mhuirí, the sister of Kevin Barry O'Donnell said:

"This county has suffered disproportionately from shoot-to-kill and state collusion with loyalist death squads, the vast majority of which has gone unresolved and unaccounted for. There were active British government policies of shoot-to-kill and collusion in operation in Tyrone throughout the conflict.

"The attempts to carry on with inquest hearings that do not meet Article 2 standards will not determine the full facts nor will it bring to public attention exactly what happened when 10 lives were violently taken<sup>34</sup>. This is precisely the aim of the British government. In this context it should never have been the case that the state investigated itself.

"With this past experience, and in the context of ongoing refusal of the British government to comply with their legal obligations that would allow for proper impartial investigations into the killings of our loved ones, we have drawn on each other and examined other mechanisms where we might best find the facts and establish clearly what occurred.

"That search has led us to the United Nations and the office of the Special Rapporteur on Summary or Arbitrary Executions who has a mandate to independently examine the killings of our loved ones." 35

The post of Rapporteur is an important instrument in the upholding of international human rights.

In October of 2011 as part of the their annual report the Rapporteur made the following comments which underlines the relevance of this office to the events which took place in Clonoe in 1992.

NEW YORK – (20 October 2011): States must respect international standards on the use of lethal force during arrest, said the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns.

"International standards provide adequate room for States to pursue their legitimate security interests, both at home and abroad. Abusing them to meet short-term needs, especially in counter-terrorism operations, could do long-term damage to the protection of human rights," said Heyns while presenting to the United Nations General Assembly his report on the use of force by law enforcement officers during arrest or situations where arrest is a reasonable possibility.

He added that life may be taken by the State only in order to protect life.....

"While it is correct that lethal force should not be used unless there is a reasonable suspicion that the suspect has committed a crime involving serious violence, or has threatened to do so, that is not enough. For deadly force to be used by the police, there must be an immediate or ongoing threat to the public if the person were to escape," he said.<sup>36</sup>

As part of the 20<sup>th</sup> anniversary and in recognition of the continued frustration of due process at inquest the families have once again written to the Office of the Special Rapporteur to examine the issues surrounding these cases. While these cases remain unexamined by independent or effective investigation they remain live and relevant to the interests of the international community.

<sup>34</sup> The invitation to the UN Special Rapporteur also concerned the killings of three IRA Volunteers also by the SAS at Coagh in County Tyrone and that of Tyrone pensioner Roseanne Mallon killed by the UVF.

<sup>35</sup> Relatives for Justice statement by Róisín Uí Mhuirí 10/06/2003

<sup>36</sup> http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11516&LangID=E









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### **HUMAN RIGHTS**

### **New opportunities**

The late 1990s saw new opportunities for families to raise their concerns.

In 1998 the Human Rights Act ensured that the European Convention on Human Rights became part of domestic law.

For these families who had yet to have had their inquests heard this was an opportunity to ensure that an inquest would meet human rights standards, rather than British state needs.

In parallel, other families affected by Shoot-to-Kill operations had brought their cases to the European Court of Human Rights citing violations of positive obligations of Article 2 of the European Convention of Human Rights.

In 1995 the European Court of Human Rights found that the killings of three unarmed IRA members Mairead Farrell, Dan McCann and Sean Savage in Gibraltar in 1988 by the SAS was a disproportionate use of violence.<sup>37</sup> This was the one of the most significant findings in the European Court since the 1976 findings of Britain being guilty of "inhuman and degrading treatment" of arrested suspects in one of the very few inter-governmental cases to be taken. The 1995 ruling showed that the British states role in the conflict could be held to account in Europe. However what was significant and ground breaking was that the families themselves took this case. Taking on the might of the British establishment these three families showed that even in the most controversial of circumstances that human rights standards could be invoked and that states had legal obligations.

In May 2001 more families affected by British state violence and collusion and supported by Relatives for Justice received a judgement on the issues surrounding the deaths of their loved ones. These families changed the legal territory and consequently the legal landscape that families affected by state violence now take.

### International Standards

In order to understand the legal challenges facing the families and the importance of the ruling in 2001 it is important to understand the legal standards that frame the issues these killings have raised.

Some people who have heard of these cases will have heard the term "Article 2" spoken about. This refers to Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 the text of which is below.

#### Article 2 - Right to Life

- Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save
  in the execution of a sentence of a court following his conviction of a crime for which this penalty is
  provided by law.
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

<sup>37</sup> McCann and others vs the United Kingdom Application no. 18984/9; European Court of Human Rights 27 September 1995

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This initial Article was developed further by ratifying states with Protocol No6 in 1963 which agreed the abolition of the death penalty to which no ratifying states could put forward a reservation. This was made legally binding in 2003 in Vilnius when every member State of the Council of Europe agreed the first legally binding instrument to provide for the abolition of the death penalty.

This Article essentially places an obligation on a state **not** to take a life, except in very determinate circumstances, which is known as a **negative** obligation.

However the practice of international case law has seen the development of **positive** obligations of the state regarding the right to life. Basically what they must **do** to prevent a life being taken or what they must **do** when the state is implicated in the taking of a life.

This is what is termed Article 2 being "engaged".

These obligations are well explained in the European Council's Guidelines on Positive Obligations as quoted below:

In the Nachova case the European Court set forth an obligation to provide suitable training for members of the police and security services, who "must be trained to assess whether or not there is an **absolute necessity** to use firearms not only on the basis of the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value".

The supervision of police operations implies, secondly, preparation and control of such operations "so as to minimise, to the greatest extent possible, recourse to lethal force".

This requirement generally leads the Court to examine "extremely closely" the general context of the operation, the forces deployed and the measures taken, the orders given and the information supplied to agents in the field and, more broadly, the links between them and the hierarchy, the conduct of operations etc. If shortcomings are noted, it will inevitably conclude that there was no "absolute necessity" for the use of force within the meaning of Article 2 paragraph 2 of the Convention and that this provision has therefore been violated. (All of this is particularly relevant in Clonoe). Examples are Ergi v. Turkey, 28 July 1998; Nachova and Makaratzis.<sup>38</sup>

### **Investigative Standards**

The principles applicable here are common. The investigation required by Articles 2 and 3 – and potentially by Article 4 – must be "effective". This is so if three conditions are met. The first is that the persons responsible for the investigation and those carrying out the inquiries are **independent** (Author's own highlighting) of those involved in the events, which presupposes "not only a lack of hierarchical or institutional connection but also a practical independence".<sup>39</sup>

The second condition is that the investigation be **prompt, speedy and thorough**. On this point, even though it has stated that it is not possible to reduce the range of situations that may arise to a mere list of acts of investigation or other simplified criteria, the Court does not hesitate to verify in detail the measures taken by investigators, from which it is easy to deduce by elimination what operations should be conducted according to the circumstances.

We shall simply note that the European Court requires this investigation to comply with European standards and, in particular, where death has been caused by public officials, to adopt the criterion of "absolute necessity" which is a condition, under Article 2, of the legitimate use of lethal force.

The last condition is that the investigation must lead to the **identification and punishment of the persons responsible**. This, according to the Court, "is not an obligation of result, but of means".<sup>40</sup> (Again there was no independent investigation and the DPP at the time decided not to prosecute the soldiers responsible despite not being in possession of all the statements).

Positive Obligations under the European Convention on Human Rights; A Guide to the Implementation on the European Convention on Human Rights

Akandii-Kombe, F. Human Rights Handbook No7 Council of Europe Human Rights Handbooks Series

<sup>39</sup> Ibid p34

<sup>40</sup> Ibid p34









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## **Families developing Article 2 Standards**

On 4<sup>th</sup> May 2001 Irish families affected by direct British state killings including were collusion was evidenced received a verdict at the European Court of Human Rights which has now become known as the "Article 2 Ruling".<sup>41</sup> This ruling made findings that the British state was in violation of its positive obligations regarding its Article 2 legal responsibilities. The investigatory procedures in cases involving state agents were in particular at fault.

For the families affected in Clonoe this was a landmark judgement.

The European Court made particular reference to the nature, and deliberate shortcomings of investigations not complying with the need for independence and impartiality given the role of the state in the killings and of state collusion with illegal paramilitaries in other killings. The ruling also addressed the role of the Director of Public Prosecutions (DPP) in not making public any reasons for failing to prosecute state agents, and the inquest court in being restrictive in its powers to examine killings fully and whereby juries are prohibited from delivering verdicts principally pertaining to findings of unlawful killings.

### **Inquests**

There have been over 20 preliminary inquest hearings concerning the killings at Clonoe and significant changes have been made to inquests in the north of Ireland following the rulings by the European Court. These rulings came almost a decade after the Clonoe killings which wrong footed the British government given that the process of significant delay in holding inquests, which was standard practice in killings by the authorities, now means that the bereaved families should technically avail of an inquest which must be Article 2 compliant.

Previously inquests could not compel members of the British army or the RUC responsible for killings to attend inquests and it was routine that statements given after debriefings and legal advices by MoD and police lawyers were submitted instead. Many of these statements were also routinely provided to the RUC as part of the perfunctory process of 'investigation' before any formal interview of those responsible. In some instances statements were changed to correspond with emerging forensic and ballistic evidence.

Inquests could not deliver verdicts in this jurisdiction or apportion blame and were restricted to the basic facts of who the deceased was, when and where they were killed, and how they met their deaths.

The ECHR unanimously found the British government in default of their domestic investigative mechanisms in the north of Ireland. These related to the failure to independently conduct investigations concerning state killings, including where allegations of collusion existed; the role of the then Director of Public Prosecutions (DPP) and the Coroners Inquest Court as outlined above; and that the DPP reserved jurisdiction concerning any civil proceedings arising from such cases that the bereaved and injured might initiate given the failings overall.

Post the ECHR ruling the bereaved of Clonoe have been engaged in a series of legal hearings concerning the inquests.

They are not alone in this process of which there are just fewer that 50 cases awaiting inquest in which an Article 2 hearing is either required or being sought. Delay and prevarication can only describe the manner in which the British government have responded domestically to complying with the provision of information, witnesses within its 'security forces', and in cooperating with the coronial process, which has underwent change comparatively to years gone by such is the scrutiny internationally. However, this has yet to be fully tested as none of the Art 2 inquests have begun proper.

<sup>41</sup> McKerr and others vs United Kingdom; Shanaghan vs United Kingdom; Jordan vs United Kingdom; Kelly and others vs United Kingdom: Conseil D'Europe 04 May 2001 http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=united%20%7C%20kingdom%20%7C%20McKerr&ses sionid=86121540&skin=hudoc-en

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Internationally the Committee to the Council of Ministers of Europe has responsibility for ensuring that the British government implements the necessary measures of remedy and that they comply with their legal obligations concerning in particular the investigative procedures highlighted in the judgements.

In response the British government have presented the PSNI's Historical Enquiries Team (HET) as a model to address such cases. However, amongst the composition of the HET are a significant proportion of former members of the RUC and former British soldiers. The HET is accountable to the serious crime section of the PSNI's C2 which sits alongside the intelligence section of C3 and it is not independent in regard to cases such as those ruled on by the ECHR. Moreover recent disclosures have shown that hundreds of former members of the RUC and who were involved in intelligence and covert operations have rejoined the PSNI after having availed of significant financial packages under policing reform which were specifically designed to effect progressive change and normalise policing.

Many of these former officers have been re-employed as 'civilian' staff and as 'consultants' working in sensitive areas of the PSNI concerning legacy cases such as Clonoe. Set into context it could well be that information sought by the Coroner's Court, and by the families' legal teams, will rest with some of these former officers and there has been great difficulties to date in Coroners being provided with information concerning very serious incidents involving the role of the 'security forces' in numerous killings which have significantly held up inquests. These too have involved the PSNI Chief Constable and MoD seeking to challenge decisions requesting information and the whereabouts of 'security force' personnel responsible and where the threat of Public interest Immunity looms.

In this regard the British government continue to be in violation of its international obligations pertaining to these investigative procedures. They have failed to put in place compliant procedures. Procedures that should have the confidence of the bereaved and public, and establish the truth of what actually occurred including holding to account those who killed the four men as stipulated in the Investigative Standards of Art 2

It is our view that the British government continues to implement a minimalist approach in respect of the findings of the ECHR judgements. However whether the British state meets its obligations on Article 2 remains very much an open question as far as the Council of Europe is concerned.

The British government are still subject to formal reporting on whether they have met the standards or expectations to redress the failings found in this judgement. The Committee to the Council of Europe continues to examine whether Britain has executed adequately and appropriately the findings of the Court. Relatives for Justice have again recently submitted to the Committee to the Council of Ministers for Europe that they maintain their scrutiny of the British government in this regard.

The families' continued insistence on Article 2 compliant inquests, and continued challenging of the state prevarication ensures that the meaning and application of the Right to Life is developed and insisted upon.

European Foreign Ministers and the European Court of Human Rights continue to follow these inquests with real and active interest – a testament to the courage and determination of the families.









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## The Right to Legal Representation

A further obstacle for many families facing inquests is that of funding of legal representation. Obtaining funding can be quite difficult and is oftentimes initially refused requiring appeals. In some situations grant aid certificates are awarded which are limited. Comparatively the state has an unlimited purse from public funds to deploy numerous legal representatives and expert witnesses. The challenge in these inquests also exists in terms of equality of resources for the families, their legal teams and expert witnesses without bureaucratic delay.

### **Conclusion**

The legacy of impunity resulting from state policies of violence leaves the bereaved suspended both emotionally and in terms of justice and thus without culpability also denies them recognition of being wronged. Added to this is the knock on effect within wider society where denial seeks currency becoming further clouded in the accompanying policy of media management and misinformation. In its extreme form this leads to the vilification of those seeking and struggling for justice attempting to isolate, marginalise and silence efforts aimed at legal redress. Actions of harassment by state forces in the aftermath of killings that focused on the bereaved were common place. Routine stop and search, raids on homes, threats, taunting and mocking their dead relatives, desecrating graves, all occurrences in the years immediately after the killings. This was to wear down through physical and psychological threat those determined to speak out. Sometimes it was easier to just give up and keep quiet. In this jurisdiction this form of harassment has extended beyond families affected by state actions to their legal representatives. Two lawyers were murdered by the state in collusion with loyalists and many more were threatened. The bereaved of Clonoe have firsthand experience and know only too well the nature of what they face in terms of seeking justice. This can often be a long and lonely journey. This harassment was paralleled by the tactic of delay in holding inquests post the decision by the DPP not prosecute the soldiers responsible. In this period of delay several of the parents have passed away. These families have at all times carried themselves with great dignity and respect and renewed hope in new generations proudly shoulder against this steady weight in the pursuit of justice and in ending impunity. In the pursuit of justice and in ensuring that human rights are paramount and protected we should all recognise these families.

There were active British government policies of shoot-to-kill and collusion in operation in Tyrone throughout the conflict. This legacy must be fully accounted for and resolved for many reasons not least for personal journeys of healing and recovery for the bereaved and injured, and for the contribution towards the creation of a new society based on the foundations of participative democracy, human rights, transparency and accountability.

The manner in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights. Very often, a Government's declared commitment to respect human rights is contradicted in practice by an alternating cycle of violations and impunity. "International Criminal Court – Human Rights a Priority" <a href="http://www.un.org/rights/HRToday/hrconfl.htm">http://www.un.org/rights/HRToday/hrconfl.htm</a>





# **Key Points:**

- At least 4 days prior knowledge existed that could have prevented any attack on Coalisland RUC station;
- This included knowledge of the principal weapon to be used and specifically its movement for the purpose of an attack;
- That the SAS were deployed at least 36 hours in advance of an attack;
- That an out of bounds cordon was created during this period;
- That at several times prior to the attack the men were covertly observed unarmed and yet no interventions were made;
- That no efforts were made to arrest the four men;
- That no warnings were given just prior to the SAS ambush;
- That the force used was excessive and unreasonable;
- That misinformation concerning the killings was disseminated claiming there had been a gun-battle which was untrue;
- There were no shots fired by the four men;
- That a recent ruling at Belfast High Court determined that the shooting of one man who survived the SAS ambush was 'unjustified' further stating that evidence provided by the lead SAS soldier, known as 'soldier A', was 'utterly implausible';
- That despite not being in possession of all of the statements from the SAS soldiers present that night and involved in the killings the DPP decided not to prosecute any of the soldiers;
- That after 20 years there has yet to be an inquest into these killings.









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# The Families make the following calls:

- That the British Ministry of Defence and PSNI move immediately to meet the requirements from the Coroner and the families legal representatives for full disclosure of all material evidence and co-operation;
- That the Coroner gives due consideration of the exacerbated trauma caused by the inordinate delay. Several of the parents have since passed away;
- That the full inquest hearings begin before more trauma is caused to the families;
- That all the British soldiers involved in the killings, planning and overall operation are called to give evidence at the inquest;
- That this too be extended to the RUC/PSNI and to political representatives in the NIO and British government of the time including civil servants;
- That the families are afforded full legal aid representation equal to that of state;
- That costs of expert witnesses for the families also be made available;
- That the Inquest Jury have the ability to return verdicts including that of unlawful killing;
- That observers from Irish government attend the Inquest;
- That the Irish government join the families in the lobby for observers from the
  offices of the United Nations Special Rapporteur on truth and the office of the
  United Nations Special Rapporteur on summary and arbitrary execution to
  attend the inquest;
- That the families are afforded the type of support and conditions afforded to victims of non-state atrocities during the course of the inquest;
- That the new Director of the PPS reviews the case in light of the existing documentation which in our view lends considerably to the facts that our loved ones could and should have been arrested;
- That both the inquest and the PPS take cognisance of the recent ruling by Justice Treacy.

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## PATRICK VINCENT



**Patrick** was the second child of Danny and Rose Vincent. He was born on the 17<sup>th</sup> July 1972 in the S.T.H Dungannon. He attended Edendork Primary school and on to St Joseph's High School Coalisland. He was never keen on school but preferred to be working and from a young age helped in his uncle's garage, with a keen interest in mechanics. He also operated a

crane and was well known in this capacity throughout Tyrone and further afield.

Patrick is well remembered for enjoying the craic on nights out, and enjoyed his time with his friends.

Patrick is fondly remembered by his brother Paul and sister Anne as working on cars in the garage he built out back of the house, and playing with the dog which would always have been around the house. His younger sister Marian has different memories because she was only four when he died. She remembers him playing football with her and spending time with her. Patrick's death came as a big shock to the Vincent family as they were completely oblivious to his involvement in the Republican Movement. Patrick is buried in a family plot in Edendork Chapel.

## BARRY O' DONNELL

Kevin Barry O' Donnell was born on the 24th March 1970. He was the third



in a family of seven, having three brothers and three sisters. Christened Kevin Barry on an Easter Sunday by his parents, Jim and Celine, he was known as Barry to family and friends. Barry, an avid reader, was interested in nature and this was evident in his choice of career. While he was studying in England, Barry was arrested in May 1990 and charged with possession with

intent. After 10 months in Brixton prison, he was released and deported. He endured constant harassment and death threats from the R.U.C., British army and the U.D.R. on a daily basis and despite it all, he remained a dedicated volunteer fighting for a united Ireland.

Barry was a popular lad who enjoyed a pint or two and the craic with his many friends and comrades. Barry was a fluent Irish speaker and enjoyed Gaelic football supporting his county team, Tyrone and also had played as a youth for his local teams. The last family occasion, and the proudest time for Barry was the christening of his son, Ruairí who was born a month before he died.









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## Sean O'Farrell



**Sean O Farrell** was born on 20th September 1969, one of a family of two sisters Kim and Eileen, and two brothers, David and his twin Austin. The family home was in Coalisland. Sean was educated at the local primary school and later at St. Joseph's Secondary. When he left school he took employment as a fitter welder, later moving on to start work with a local

building suppliers, but still continuing his trade. Sean enjoyed life to the full with a particular interest in music and Irish culture. He was a familiar and popular face at the local sessions, giving a tune himself in the back room of Mc Girrs. He had an active social life attending many dances and discos.

From a young age, Sean had shown a keen interest in the political situation developing around him, and he played an active part in the struggle to free Ireland. In May 1991 Sean and Barry were arrested, and remanded in gaol, on a charge which was later dropped. He immediately returned to active service on his release from gaol, undeterred and more committed than ever. He was shot dead by the SAS at Clonoe chapel on February 16th 1992 and is laid to rest in the Republican Plot in Coalisland alongside his comrades and life-long friends Tony Doris and Barry O'Donnell.

## PETER CLANCY



Peter Clancy Peter Clancy was born on the 31st October 1970. He was the youngest of six boys and two girls. He first went to Aughamullan primary school and then attended St. Joseph's High School, Coalisland. Peter worked for Masterscreen International where he was popular with his fellow workers. When Peter was six years old, raids on his family home by the

state forces were a common occurrence. From an early age he was educated enough to know the struggle in which he became involved was morally right and justifiable, and he had no illusions about what joining the IRA might entail. All those he came in contact with held him in high regard. After sustaining an injury on active service he re-dedicated himself to full involvement in the struggle, proving his unfaltering commitment. An active participant in all sports, Peter especially loved Gaelic football and was a life long member of Clonoe O' Rahilly's G.A.A. club. Members of the club formed a Guard of Honour at his funeral. Peter is buried in the cemetery adjacent to Clonoe chapel.

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## **Acknowledgements**

On this 20<sup>th</sup> anniversary the families wish to thank all of those who supported them at the time and since. The ordinary people who stood with them at a time when to do so was not only an act of compassion and solidarity but also one of courage.

The families also wish to thank researchers Antonia Modlmayr and Dominic Mueller who came to them as Relatives for Justice interns while Masters students from the Human Rights Centre NUI Galway to research the Clonoe case and the cases of Roseanne Mallon, killed by the UVF on 8<sup>th</sup> May 1994 and the killings of Pete Ryan, Tony Doris and Lawrence McNally in Coagh in 1991. Antonia and Dominic remain firm friends as they have gone on to pursue successful and prestigious legal careers in Germany.

The families would also like to acknowledge and thank Oistín Mac Bride for his kind permission to reprint a number of his photographs and to Mark Dawson of AP/RN for their permission also in reproducing photographs.

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