



THE KILLING OF JOHN LAVERTY

A horizontal banner with a black border. On the left and right sides are square boxes containing a white Celtic knot. In the center, the text "THE KILLING OF JOHN LAVERTY" is written in a bold, all-caps sans-serif font.

DIED: 11th AUGUST 1971



AUGUST 2011

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FOREWORD

Relatives for Justice (RFJ) is a Non-Governmental Organisation working with persons bereaved and injured as a result of the recent conflict in Ireland.

The purpose of Relatives for Justice (RFJ) is to provide appropriate therapeutic and developmental based support for the bereaved and injured of the conflict within a safe environment. To examine and develop transitional justice and truth recovery mechanisms assisting with individual healing, contributing to positive societal change, ensuring the effective promotion and protection of human rights, social justice, and reconciliation in the context of an emerging participative democracy post conflict.

This support brought me into contact with the relatives of 11 people killed during the 9th-11th August 1971. These families' experiences, like all victims of our conflict, are individual, unique and complex. But equally their reserves and talents are formidable and deep.

Now with so much accomplished, it feels like we all always knew of the events in Ballymurphy, West Belfast over those few days. Yet in 2007 when these families first met in RFJ the world nor indeed the local community had not yet had the privilege of hearing the testimony of these incredibly brave people.

Together RFJ and the families built a narrative of the events over those days, and just as importantly the years that followed. This was such an important part of the process. The long term effects of the killings and the subsequent impunity cannot be separated from the forensic details of how these brutal killings occurred.

I was privileged to meet the survivors, but was reminded often of those other victims who died as a result of the Ballymurphy Massacre. The parents who died of broken hearts, the partners who passed away in physical and mental anguish and the children who died from self-medication as a result of a life irrevocably altered.

What has been achieved since those 4 short years is remarkable. Undoubtedly had their story been told earlier theirs would have been a campaign considered as part of the negotiations from which our peace process evolved. That they

have achieved so much outside of those opportunities is a testament to the families and the incredibly grave nature of the issues to be addressed.

These two reports commissioned by two of the families, indicate the wide ranging and complex issues that need to be grappled regarding these killings.

What these families have demanded is modest. The British state which was responsible for the deaths, for their cover up, and for the contemptible treatment of the families in the years that followed must not easily dismiss these demands under the cover of the needs of the many.

We will all benefit from acknowledging with our past. The truth would indeed set us free in our present. It will definitely contribute to building a just and peaceful future.

“Truth will come to light; murder cannot be hid long..., but at the length truth will out.” – Merchant of Venice, William Shakespeare

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Gaolta ar Son na Córa

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1. INTRODUCTION

- 1.1 British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.
- 1.2 On the early morning of 11th August 1971, John Laverty was killed by a British soldier in Belfast. John was just 20 years old. The killing of John Laverty was the seventh death in what has since become known as the Ballymurphy Internment Massacre which lasted from 9th and 11th August 1971 resulting in the killings of 11 innocent civilians (two of the victims were severely wounded and died weeks later). The victims were Father Hugh Mullan, Frank Quinn, Noel Phillips, Joan Connolly, Daniel Teggart, Joseph Murphy, Eddie Doherty, John Laverty and Joseph Corr, Paddy McCarthy and John McKerr. John Laverty and his brother Terence (Terry) had been out in Ballymurphy in the early hours of 11th August 1971 following two days of violence and killings by the British army. In one version of events John and his brother Terry argued about which way to go home so they split up and John ended up being killed. In another version, John left the house and this was the last time he was seen by his younger brother Terry (see further below at section 9). The massacre took place six months before a similar event occurred on 30th January 1972 in Derry when British soldiers - including troops from the Parachute Regiment (the Paras) who were deployed in Ballymurphy - killed 13¹ innocent civilians on what became known as Bloody Sunday.
- 1.3 Unlike the events in Derry on Bloody Sunday, which lead to an extensive second public inquiry followed by an apology by Prime Minister David Cameron², what happened to John Laverty and the other 10 people who were killed by British soldiers between 9th and 11th August 1971 has never received the anxious scrutiny it deserves. The Ballymurphy Internment Massacre, as it has become known, was with the benefit of

¹ Another man died four and a half months later of wounds attributed to being shot on the same day

² Prime Minister David Cameron's full statement of 15th June 2010 can be read at <http://www.bbc.co.uk/news/10322295>

hindsight the precursor of Bloody Sunday and cemented military impunity regarding the shooting of civilians in Northern Ireland. In addition to the killing of John Lavery and the other innocent victims, a number of Ballymurphy residents were injured and some were detained by the army and subjected to brutal interrogations, a significant factor contributing to the intensification of the conflict following years of Protestant discrimination against Catholics in Northern Ireland and a shift in the local perception of the role of the British army. The Bloody Sunday Inquiry concluded that such behaviour was the norm when it came to the Paras:

“On the basis of the evidence we have considered, there were instances where soldiers used excessive force when arresting people in the Eden Place waste ground, as well as seriously assaulting them for no good reason while in their custody. We consider such conduct to be unjustifiable. It suggests to us, rather than that a few individuals overstepped the mark in isolated cases, that such behaviour was closer to the norm than the exception among soldiers of 1 PARA.”³

- 1.4 John's family were distraught at his death. Carmel Quinn (one of John's sisters) recollected how the loss of her brother and the treatment of Terry devastated her family. "It was desperate. I will never experience a Christmas like that again. Terry was jailed for six months for riotous behaviour over Christmas, so both brothers were missing. My mummy and daddy were just heartbroken."⁴ Many of the relatives of the victims formed a Ballymurphy Massacre Committee (in association with the NGO Relatives for Justice) in 1998. The Committee campaigns to establish the truth about what happened between the 9th and 11th August 1971 in Ballymurphy.
- 1.5 Latterly, the Committee has found support in the USA and through engagement with the relatives of the Bloody Sunday victims. The Committee has secured many eyewitness accounts to the events in August 1971 in addition to undertaking valuable research. The Committee has secured meetings with Westminster politicians and brought the massacre to much wider attention including before the US Congress and in the Houses of Parliament. The campaign also has the support of the Department of Foreign Affairs (DFA) in Dublin. The campaign of the Committee continues and this report, commissioned by the family of John Lavery, is a contribution to it.⁵

³ Bloody Sunday Inquiry Report, June 2010, Chapter 44, paragraph 1 – see also Chapter 160, paragraphs 106, 107, and 169

⁴ Carmel Quinn reported at <http://irish-nationalism.net/archive/index.php/t-13603.html>

⁵ BIRW has also been commissioned to provide a similar style of report for the family of Frank Quinn who was killed on 9th August 1971. BIRW notes the support of the Committee on the Administration of Justice during the initial stages of this project.

- 1.6 The Ballymurphy Massacre Committee, which includes the relatives of John Lavery, have the following demands. They want an independent international investigation examining the circumstances surrounding all of the deaths. They want the British government to issue a statement of innocence. They want the British government to issue a public apology.⁶ These requirements are no more than any victims' families would be due when 11 innocent civilians have been killed by soldiers serving in the British army. So far the government has refused to accept that any wrong has been done, thus deepening the families' feelings of grief and injustice, as survivors of a forgotten tragedy.
- 1.7 This report sets out what we know about John Lavery's killing and the context in which it took place. Because the available information is in part fragmentary, the report will inevitably raise more questions than it answers. Nevertheless, we hope that it will contribute to the process that helps to establish the truth about John Lavery's death and to the vindication, however belatedly, of his human rights. For despite the passage of time it remains important that John Lavery's death is understood and that his human rights are respected by an investigation that reveals the truth. There can be no statute of limitation available to those responsible for John Lavery's death, nor any time limit placed on his family's quest for justice.

2. **THE SHORT LIFE OF JOHN LAVERTY**

- 2.1 John Lavery was born on 3rd April 1951.⁷ He was the son of Thomas and Mary Lavery. John had ten siblings: Matilda, Susan, Tommy, Rita (deceased still born), Mary, Terence, Martin, Gerard (deceased), Rita and Carmel.⁸ John lived with his family at 17 Whitecliffe Parade, Ballymurphy, west Belfast. John Lavery worked as a labourer for Belfast Corporation.⁹ He was unmarried at the time of his death.:

“John Lavery, the 20, had wanted to buy a motorbike. His father thought it far too dangerous and talked him into taking driving lessons instead. The photo for his licence was the last one ever taken of him.”¹⁰

⁶ See the Ballymurphy Massacre Committee website at <http://www.ballymurphy massacre.com/campaign.htm>

⁷ Police Report Concerning Death of John Lavery, 9th September 1971

⁸ Instructions of Terence Lavery to Kevin R Winters and Co Solicitors, (undated) page 1

⁹ David McKittrick, Seamus Kelters, Brian Feeney, Chris Thornton and David McVea *Lost Lives: The Stories of the men and women who died as a result of the Northern Ireland troubles* (London and Edinburg: Mainstream Publishing, 2004) entry 99 pages 88-89. See also Police Report Concerning Death 9th September 1971.

¹⁰ Suzanne Breen, “Ghosts of a Forgotten Massacre”, *Sunday Tribune*, 1st August 2010

2.2 John Laverty was 20 when he was killed.

3. **BALLYMURPHY UP TO 1971**

3.1 John Laverty and his family lived in a small tightly-knit community of some 12,000 people spread over eight housing estates in one square mile of west Belfast. The whole area is collectively known as Ballymurphy, Greater Ballymurphy or the Upper Springfield. Its epicentre is the Ballymurphy Estate, often referred to colloquially as 'the 'Murph'.

3.2 According to Ciarán de Baróid in his book "Ballymurphy and the Irish War", "In Ireland Ballymurphy is a name guaranteed to evoke strong reactions directly betraying the listeners' politics."¹¹

3.3 The Ballymurphy story begins in May 1947 when the Estates Committee of Belfast Corporation acquired some 59 acres of land for house-building at the foot of Black Mountain which, along with Divis and Cavehill, forms the 1,200ft escarpment that curtails the city's westward expansion. Eventually 501 houses were built. The start was not auspicious:
"The management of the estate reflected an appalling incompetence and lack of understanding of how human beings and the environment in which they live interact with one another. In the first place, most of the residents allocated to Ballymurphy in its infant days were young married couples, many of them ex-soldiers and their wives who had either, or were soon to have, large numbers of children, creating a population bulge that was to last a quarter of a century. This, coupled with a complete lack of recreational and play facilities, was to give rise to serious problems of vandalism. Further, to add to the difficulties of coping with streets full of bored youngsters, there were no shopping facilities, nor was there a church or primary school."¹²

3.4 Poverty too was endemic in Ballymurphy with half of the families subsisting on state benefits. The estate rapidly became the home of many Catholic families. In the 1950s Northern Ireland was run by the unionist community for their own benefit, and their discriminatory policies on housing, which was one of the matters that led to the formation of the Northern Ireland Civil Rights Association (NICRA) in the 1970s¹³, meant that a poverty-

¹¹ Ciarán de Baróid *Ballymurphy and the Irish War* (1989: Pluto Press, London) page xiii

¹² Ibid. pages 9-10

¹³ NICRA did not challenge partition - probably in an attempt to draw as much cross-community support as possible - although the membership remained predominantly Catholic. See http://www.bbc.co.uk/history/recent/troubles/the_troubles_article_03.shtml

stricken estate like Ballymurphy soon became consigned to members of the Catholic community, many of whom were nationalists.

- 3.5 By 1955 two acres of land, which had been reserved for a Protestant school, had been sold to the Catholic Church. By the late 1950s, Ballymurphy had become a transitory estate primarily for the Protestant community, from which the more ambitious Protestant families moved out as soon as possible, leaving behind impoverished Catholics and Protestants. This resulted in constant community instability in the area, which, because of its poverty and lack of facilities together with its reputation for vandalism, earned it a bad name.
- 3.6 A spark of hope was seen in the founding of the Ballymurphy Tenants' Association (BTA) in 1963. Through raising money the BTA self-financed projects including a community centre, a school bus and a children's playground. It put pressure on the Belfast Corporation to undertake major repairs and refurbishment programmes. There were signs of change in Ballymurphy.¹⁴ The BTA and its work heralded some progress in Ballymurphy and the development of community cohesion which was then shattered by the internment killings.
- 3.7 By 1969 "the Troubles", as the conflict is popularly described, had come to Ballymurphy. Contemporary photographs show that Ballymurphy and the Falls resembled a war zone, with many houses damaged by rioting and many buildings gutted by fire as people from both sides of the community had been burned out of their homes.
- 3.8 However, whatever the problems in Ballymurphy, things were worse in other parts of west Belfast and Ballymurphy became increasingly seen as a haven by many on the Falls Road and surrounding areas. Hundreds from the Falls Road and Ardoyne flocked into Ballymurphy for safety. A group of Ballymurphy residents met to organise relief for these families arriving and also to establish basic defence mechanisms. Barricades went up around the estates.¹⁵ The group realised that a few loyalist families in the area would need to be approached individually and assured of protection by the local people. Such was the nature of community cohesion on the estate at this time.
- 3.9 Between 1969 and 1971 the situation in Northern Ireland began to deteriorate as the security situation grew worse and the IRA began to grow in influence over the Catholic community. Initially, many in the Catholic community had welcomed the presence of the British army as a

¹⁴ As documented by Michael Farrell *Northern Ireland: The Orange State* (1976: Pluto Press, London), pages 291-2

¹⁵ *Ballymurphy and the Irish War*, page 51. See also David Barzilay *The British Army in Ulster: Volume 1* (1973: Century Books, Belfast), page 26.

force of protection,¹⁶ but as time went on the tactics of the army to maintain civil order became more aggressive including the use of CS gas and rubber bullets.¹⁷ There was increasing tension between the Catholic and Protestant communities. The police and the army were, at this point at least, in the thick of this.¹⁸

- 3.10 At this point the government commissioned Lord Hunt to examine the structure of policing in Northern Ireland.

“On Tuesday, 26th August 1969, we were appointed by the Minister of Home Affairs of the Government of Northern Ireland to 'examine the recruitment, organisation, structure and composition of the Royal Ulster Constabulary and the Ulster Special Constabulary and their respective functions and to recommend as necessary what changes are required to provide for the efficient enforcement of law and order in Northern Ireland.’”¹⁹

- 3.11 Lord Hunt recommended that the Royal Ulster Constabulary (RUC) be disarmed²⁰ and the notoriously partisan 'B' Specials²¹ be disbanded.²²

¹⁶ Terry Lavery noted “The British Army arriving into the Ballymurphy estate in 1969/1971 was welcomed at first. I remember my brother John bringing them tea and sandwiches. However, the behaviour of the soldiers created a heated atmosphere. I remember protestant neighbours rioting alongside Catholic, in response to the behaviour of British troop. But the early reaction of the whole community started to fracture along sectarian lines.” Instructions of Terrence Lavery to Kevin R Winters and Co Solicitors (undated) page 2.

¹⁷ Father (later Monsignor) Denis Faul and Father (later Monsignor) Raymond Murray *Plastic Bullets – Plastic Government* (1982: Denis Faul, Belfast). See also *The British Army in Ulster: Volume 1*” ibid

¹⁸ Initially “They (British soldiers) were accepted as impartial guardians of a law and order that would redress the grievances which had developed under the repressive rule of the Ulster Protestants ... It was widely assumed that the presence of the British Army would put an end to excesses of brutality and that the Labour Government might itself intervene directly to meet the modest demands of the civil rights movement.” Russell Stetler, *Monthly Review*, November 1970.

¹⁹ *Report of the Advisory Committee on Police in Northern Ireland* Cmd. 535 (Belfast: HMSO, 1969) available at <http://cain.ulst.ac.uk/hmso/hunt.htm>

²⁰ A recommendation which was never implemented

When some of these recommendations were implemented, Protestants rioted.

- 3.12 Things were changing. The Springfield Joint Committee, comprising representatives of Ballymurphy, Turf Lodge, Moyard, New Barnsley (all of which were mainly Catholic) and Highfield (which was mainly Protestant) had managed to keep the peace between both sides of the Springfield Road since the previous August. But now there was a programme of spiralling violence. Riots intensified with Protestants attacking Catholic enclaves, often accompanied by the burning of homes and sniper fire.
- 3.13 On 26th June 1970 violence came to Ballymurphy when the loyalist Orange Lodge No 9 District marched down the Springfield Road protected by the British army. As previously noted, until relatively recently the Catholic community had still believed that the British army was there to protect them.²³ Inevitably, the parade was attacked by the nationalist elements of the Catholic community who now felt threatened. The angry crowd then turned on the RUC barracks. At this point the area became swamped with hundreds of troops, Land Rovers and armoured vehicles. CS gas was used. Military historian and journalist David Barzilay describes the events from the British army's point of view:
- "The trouble started on the Springfield Road on the Saturday, June 28th [sic], only a short while before large a large Orange parade was due to enter the road from Mayo Street. Catholic crowds began singing Republican songs and Protestant youths replied with cat-calls and the waving of Union Jacks. The trouble then started and for almost an hour the rival crowds fought running battles up and down the Springfield Road; eventually the Army was called in and the two factions separated. Ballymurphy, the scene of the riots in April, became another trouble spot and a crowd occupied the lower floor of an RUC station at New Barnsley. They were ejected after CS gas was used."²⁴

²¹ The B-Specials were officially known as the Ulster Special Constabulary. They were overwhelmingly drawn from the Protestant community and they were infamous for their brutality against Catholics.

²² "Report of the Advisory Committee on Police in Northern Ireland" paragraph 183(1) available at <http://cain.ulst.ac.uk/hmsso/hunt.htm>

²³ See for example contemporary BBC news coverage:
http://news.bbc.co.uk/onthisday/hi/dates/stories/august/14/newsid_4075000/4075437.stm

²⁴ *The British Army in Ulster: Volume*, pages 9-10

- 3.14 Over the next few days this became known as “the “Falls Curfew” which lasted from the 3rd to the 5th of July 1971.²⁵ Homes were destroyed, four people were killed, a dozen were wounded by gunfire, and over 300 were arrested.²⁶ The tensions in Ballymurphy lasted for seven months until January 1971. On 14th January 1971, 700 troops conducted house-to-house searches of the estate. On 6th February 1971 the then Prime Minister of Northern Ireland James Chichester-Clarke announced on television that “Northern Ireland is at war with the Irish Republican Army Provisionals.”²⁷
- 3.15 At 4.30am on 9th August 1971, British troops, supported by heavy armour, swept into Catholic areas to arrest the first 342 internees.²⁸ In Ballymurphy somebody went onto the Whiterock Road two days later and daubed along the cemetery wall, “Is There Life Before Death?” Later that night John Lavery, aged 20, was dead. Seven innocent civilians had already been killed since the 9th August and four more, including John Lavery, would likewise die.

4. THE POLITICAL CONTEXT

- 4.1 In addition to the tragedy brought upon the family of John Lavery, the killings marked a new phase in the nature of the military intervention in Northern Ireland which would further lead to the fateful events in Derry on Bloody Sunday, 30th January 1972. Sadly this chapter apparently started in Ballymurphy with the enforcement of internment and the indiscriminate taking of the life of John Lavery and others through lethal force. Before undertaking a detailed analysis of the events surrounding the brutal killing of John Lavery, this report addresses the political and military context prevailing in Northern Ireland prior to his death. This is important in that it provides a form of sad rationale for why an innocent victim such John Lavery was killed in such a way and the circumstances of John Lavery's

²⁵ *The Anderstown News* “ The Curfew That Sparked A War”, 5th July 2010. See also *An Phoblacht*, “The Falls Curfew”, 5th July 2007 and <http://cain.ulst.ac.uk/othelem/chron/ch70.htm#Jul> which provides a useful chronology of events (the University of Ulster Conflict and Politics in Northern Ireland website)

²⁶ Another 60 civilians suffered gunshot wounds, as did 15 soldiers, 3 more of whom were wounded by stones or petrol bombs. A total 337 people, including Official IRA leader Billy McMillen were also arrested. See Brian Hanley and Scott Miller “The Lost Revolution: The Story of the Official IRA and the Workers' Party” (2009: Penguin Ireland, Dublin), page 159.

²⁷ *Ballymurphy and the Irish War* page 60 and in David McKittrick and David McVeigh *Making Sense of the Troubles* (2000: Blackstaff Press, Belfast), page 251

²⁸ *The British Army in Ulster: Volume 1*, page 26 and *Ballymurphy and the Irish War*, page 72

life on the Ballymurphy Estate prior to his death and how he became caught up in something beyond his control leading to his death.

- 4.2 The descent into violence in Northern Ireland can be marked by what some have called the Battle of the Bogside²⁹ in Derry between the 12th and 14th August 1969. The Protestant Apprentice Boys of Derry were permitted to march in Derry sparking a full-scale uprising by the Catholic residents of the Bogside area near to the city centre. The RUC were denied entry to the Bogside. The RUC responded to petrol bombs and bricks by using CS gas. In effect the RUC lost control of a substantial part of Derry.
- 4.3 This trouble now spread to Belfast where there was tension between the Catholic and Protestant communities particularly along the sectarian boundary which fell somewhere between the Catholic Falls Road and the Protestant Shankill Road by deign of an almost historical and geographical circumstance.³⁰ Between the Shankill Road and the Falls Road there was what would later be called an interface, but at the time more akin to a sectarian boundary.³¹ The RUC staged baton charges and eight people died four of them killed by the RUC and another by the 'B' Specials in Armagh³².
- 4.4 Northern Ireland Prime Minister James Chichester-Clarke now asked for the British army to be deployed. This altered the political balance between Belfast and London as the army was not under the control of Stormont but of Westminster. The British Home Secretary James Callaghan took a very hands-on approach to his Northern Ireland brief. Unionists objected to Callaghan's close involvement and to the fact that in their eyes he took the nationalist side. As previously noted the Prime Minister Harold Wilson and James Callaghan reforms of the Labour government in the wake of the Hunt Report on the Northern Ireland's policing system, which recommended the disbandment of the 'B' Specials, lead to loyalist violence on the Shankill Road.³³

²⁹ On the Battle of the Bogside see the Museum of Free Derry website at <http://www.museumoffreederry.org/history-battle01.html>. See also Russell Stetler *The Battle of the Bogside: The Politics of Violence in Northern Ireland* (London and Sydney: Sheed and Ward, 1970) Chapter 3, also available on line at <http://cain.ulst.ac.uk/events/battlebogside/stetler/stetler70.htm#august>.

³⁰ A phrase used by McKittrick and McVeigh in *Making Sense of the Troubles*, page 55

³¹ See the contemporary interface map which resembles much as it would have looked like in 1971 at <http://www.belfastinterfaceproject.org/interface%20map.html>

³² Another Catholic was killed by loyalists and two Protestants were killed by republicans

³³ *Making Sense of the Troubles*, pages 55-56

- 4.5 At this juncture a new player arrived on the political stage: the government of the Republic of Ireland. Taoiseach Jack Lynch had not made much of a priority of Northern Ireland until the violence of August 1969. The Irish Republic was now confronted with the unfinished business of partition and the demands of Catholic nationalists from Northern Ireland. There was talk of deploying the Irish Army to Northern Ireland. Lynch announced the setting up of field hospitals close to the border to treat the injured fleeing Northern Ireland. Whilst there was support for the nationalists in Northern Ireland, the first aim for the Irish Republic was to protect itself against becoming physically embroiled in the conflagration in Northern Ireland. However, weapons were sent up to the border between the two countries and £100,000 found by the Irish government for "the relief of distress".³⁴
- 4.5 The Labour administration lost the 1970 general election in the UK. The violence continued in Northern Ireland unabated. The new Home Secretary Reginald Maudling is attributed as infamously remarking that IRA violence might be reduced to "an acceptable level" widely interpreted as a fatalistic acknowledgment that violence in Northern Ireland might never end.³⁵ He percipiently added that a lasting solution "cannot be achieved by military action alone."³⁶ As the unionist movement became more hard-line, Chichester-Clark warned that Stormont faced closure, meaning the imposition of direct rule from Westminster. Chichester-Clarke resigned as the violence intensified in 1971 and British Prime Minister Edward Heath refused further support save in the form of more troops. The landowning member of the unionist gentry Chichester-Clark was succeeded by unionist career politician Brian Faulkner. It was Faulkner who saw internment without trial as:
- “(A) panacea which would halt the violence and in time provide the atmosphere for political progress. Others saw internment as a means of circumventing the rule of law and abandoning legal procedures”³⁷
- 4.6 In which ever way it was viewed the process of internment bought terror to Ballymurphy and the killing of John Lavery and other innocent civilians. To implement internment without trial required a precise military operation to which we now turn, starting with the military context, which lead to the

³⁴ Ibid. pages 57-58 and W. J. McCormack and Patrick Gillan (eds.) *The Blackwell companion to modern Irish culture* (Oxford; Blackwell Publishers, 1999) entry by James Downie on the Arms Trial, 5th May 1970, at page 30

³⁵ *Making Sense of the Troubles*, page 62. See also *Time Magazine* at <http://www.time.com/time/magazine/article/0,9171,905596,00.html>

³⁶ *Time Magazine* *ibid.*

³⁷ A view expressed by the authors of *Making Sense of the Troubles*, page 67

Ballymurphy Internment massacre and the killing of John Lavery by the British army.

5. THE MILITARY CONTEXT

5.1 When violence erupted in Derry 12th August 1969 following the Apprentice Boys March, it was two days before the first British troops were deployed on the streets following the failure of the RUC to control the situation. 1st Battalion the Prince of Wales's Own Regiment of Yorkshire was deployed to separate what were now becoming identified less as Catholics and Protestants but more as nationalists and loyalists. Ten rifle companies were present that day. They were reinforced the following day by the Spearhead Battalion 3rd Battalion the Light Infantry. According to the Ministry of Defence's (MoD) own retrospective analysis:

"The Army was deployed to interpose itself between protestant and catholic areas. Catholics viewed its arrival with a mixture of suspicion and relief. Most of them felt it was there to protect them, but the republican perception was that the British army was an army of occupation, which reflected myths and legends about the Easter Rising."³⁸

5.2 Between 29th and 31st March 1970, following the violence sparked by the Easter Orange Order Marches, the Royal Engineers dismantled barricades which had been erected. There was further use of CS gas by the army. As the MoD report notes:

"During the late summer of 1970 the situation gradually deteriorated. Soldiers expressed genuine sympathy for the population as a whole. Many were astonished at what they saw as the squalor and narrow-mindedness that was common to so many of the population in the urban areas in which they were deployed."³⁹

5.3 The first British soldier to be killed in the conflict died on 6th February 1971. By the time of the Ballymurphy Internment Massacre, ten soldiers had been killed altogether. It is not unreasonable to speculate that these deaths would have significantly affected the attitude of those troops serving in Northern Ireland towards the local population, and particularly towards the nationalist community. It would also have affected the mind set of those troops about to be deployed to Northern Ireland.

5.4 In 1970 Brigadier Frank Kitson was deployed to Northern Ireland commanding 39 Airborne Brigade. In 1971 Kitson published *Low intensity operations: Subversion, Insurgency and Peacekeeping*.⁴⁰ It can

³⁸ Ministry of Defence *Operation Banner: An Analysis of Military Operations in Northern Ireland*, Army Code 71842 (2006), page 2-4

³⁹ *Ibid* at 2-6

⁴⁰ (London: Faber and Faber, 1971)

be argued that Kitson's presence after serving in Kenya during the Mau Mau uprising and in Malaya during the emergency there points to a shift in military thinking toward viewing the violence in Northern Ireland as a counter-insurgency operation. Internment without trial became a weapon in the counter-insurgency tactics of the army, starting with Ballymurphy and the implementation of Operation Demetrius, the army's code name for internment.

5.5 Internment: Operation Demetrius

5.5.1 Internment had been used several times before, most recently between 1957 and 1962, at the time Border Campaign.⁴¹ In 1971 internment was introduced against military advice.⁴² The army opposed it because of the outdated intelligence information available in relation to suspects, poor preparation of the British army and the RUC and the inadequacy of appropriate holding facilities.⁴³ In the event the army subjected a number of those interned to the notorious deep interrogation techniques which were later ruled to amount to inhuman and degrading treatment when the Irish Republic took the British government to the European Court of Human Rights (ECtHR) in the interstate case of *Ireland v UK*.⁴⁴ The so-called five (conditioning) techniques of interrogation⁴⁵, which in fact amount to inhuman and degrading treatment (and possibly torture), were wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink. They had been developed in counter-insurgency operations by the British army in Burma, Malaya, Kenya and Aden.⁴⁶ As McKittrick and McVea note:

⁴¹ The Border Campaign (12th December 1956 -26th February 1962) was a campaign of guerrilla warfare (codenamed Operation Harvest) carried out by the IRA against targets in Northern Ireland with the aim of overthrowing British rule and creating a united Ireland. See Richard English *Armed Struggle: The History of the IRA*, (London: Pan, 2004)

⁴² *Operation Banner: An Analysis of Military Operations in Northern Ireland*, at page 2-7 and page 4-2

⁴³ In a secret memorandum to the Private Secretary of the Prime Minister, Edward Heath (P L Gregson) from a civil servant in at the Ministry of Defence in Whitehall it is noted that "The view of the GOC, with which the Defence Secretary entirely agrees, is that the arguments against resorting to internment remain very strong" PREM 15/4/78, London Public Record Office.

⁴⁴ [1978] 2 EHHR 25 (Application no. 5310/71)

⁴⁵ Which have re-emerged under the euphemism of "conditioning" in the wars in Iraq and Afghanistan

⁴⁶ In 2009 the Baha Mousa Inquiry commenced in London investigating claims that Iraqi civilian Baha Mousa died as a result of being subjected to interrogation by British forces stationed in Basra, southern Iraq. The Terms of Reference of the inquiry are as follows: "To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion, The Queen's Lancashire Regiment in Iraq in

“The troops who were sent to make arrests often found themselves at the wrong house, or finding not an IRA suspect but his father or brother. Many of these were nonetheless taken in for ‘screening’. Allegations that soldiers had in the process often used brutal methods were denied by the authorities but often substantiated by later inquiries and court proceedings. Many of those held were released within hours or days, often traumatised, radicalised and infuriated by the experience. It later emerged that more than a dozen suspects had been given special experimental interrogation treatment. They were subject to sensory deprivation techniques which included the denial of sleep and food and being forced to stand spread eagled against a wall for long periods. Taped electronic ‘white noise’ sound was continuously played to complete the disorientation.”⁴⁷

5.5.2 On 17th November 1991 *The Independent* newspaper reported “The late Reginald Maudling wrote later: ‘No one could be certain what would be the consequences, yet the question was simply this: what other measures could be taken?’” *The Independent* continued:

“Today with hindsight, it is clear how awful the consequences were. The experience of internment from 1971 to 1972 was by almost universal consent an unmitigated disaster which has left an indelible mark on the history of Northern Ireland. In 1971 it was opposed to in principle because it did not conform to international human rights standards; because many of the wrong people were picked up; and because it was accompanied by casual brutality during and after the arrests. It was also seen as an illegitimate weapon in that part of the reason for using it was to prop up an ailing Unionist government.”⁴⁸

2003, and to make recommendations.” See <http://www.bahamousainquiry.org/>. The opening statement by the lead counsel to inquiry, Gerard Elias QC, frequently mentioned the use of these techniques in Northern Ireland. *The Report of the Baha Mousa Inquiry* devotes 49 pages to these techniques at Volume II pages 411 – 460 HC 1452-II (2011). See http://www.bahamousainquiry.org/f_report/vol%20ii/Part%20IV/Part%20IV.pdf

⁴⁷ *Making Sense of the Troubles*, page 68. It is interesting to note the military perception of the five techniques: “The methods were inevitably frightening and psychologically disorientating, and intentionally so. But they did not involve physical force nor was any physical injury inflicted. Much later, Britain was put in the dock in the ECtHR which, in the rarified atmosphere of a courtroom, was bound to find against the practice. In practice the Army had used highly sophisticated and clinical, though admittedly, and intentionally, very frightening methods to get vital information from evil men.” Michael Dewar *The British Army in Northern Ireland*, (London: Arms and Armour Press, 1996), page 55

⁴⁸ *The Independent*, 17th November 1991

5.5.3 The legal basis for internment was the Civil Authorities (Special Powers) Act 1922. It remained in force until the British government assumed direct rule in 1972 and continued until 1975. The Act was emergency legislation, the sort of law to which Northern Ireland has always been and continues to be subjected. The Act enabled indefinite detention without trial in addition to other draconian measures. The Act contained a catch-all provision in case any loophole could be found, at section 2(4):

“If any person does any act of such a nature as to be calculated to be prejudicial to the preservation of the peace or maintenance of order in Northern Ireland and not specifically provided for in the regulations, he shall be deemed to be guilty of an offence against the regulations.”⁴⁹

5.5.4 The emergency provisions applying to Northern Ireland should be contrasted with provisions in England and Wales. Before 1967 the common law required “apparent necessity” before an “officer of justice” might use deadly force. Therefore, until the 1967 Criminal Law Act, English common law was not dissimilar to, although weaker than the Article 2 right to life provision of the European Convention on Human Rights which imposes a test of “absolute necessity” on the use of force.⁵⁰ “Absolute necessity” or “apparent necessity” was needed to justify any killing by the security forces. But the difference between “apparent” and “absolute” is vital in the distinction between common law and Strasbourg jurisprudence, as “absolute” cannot be derogated from or subject to discretion. However, the Criminal Law Act (Northern Ireland) 1967 at section 3(1) provided:

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

5.5.5 Thus, protection against the use of lethal force was moved even further from the Article 2 standard of “absolute necessity” and replaced by the far frailer test of “reasonable force”.

5.5.6 There was no statutory definition of the circumstances in which deadly force could be employed by the security forces or by any other persons. This led Professor Leonard Leigh of the London School of Economics to note: “It seems a pity that when the law was changed the legislation did

⁴⁹ The Act can be found at: <http://cain.ulst.ac.uk/hms0/spa1922.htm>

⁵⁰ This states that everyone's right to life shall be protected by law. It goes on to state that deprivations 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.

not elucidate criteria governing the use of deadly force.”⁵¹ It could only be concluded that the wording of section 3(1) was so vague and ambiguous that it did not provide a legitimate grounds for departing from the principles of international, European or even the common law.

- 5.5.7 Operation Demetrius, the introduction of internment, was in practice what the military establishment called an operational reverse in that it did not achieve what had been intended and serve only to intensify violence.⁵² 400 suspected IRA terrorists were interned between July and December 1971. In retrospect, given the negative reaction to the practice, the MoD considered internment a major mistake.⁵³ In his evidence to the Bloody Sunday Inquiry, General Sir Robert Ford commented on the policy of internment:

“This was a major decision and in my opinion the totally wrong one. I backed it at the time because I thought it was the right way. Now I know it was dead wrong.”⁵⁴

- 5.5.8 In a note of a discussion about the Bloody Sunday Inquiry between Ford and the Chief of the General Staff on 5th June 1998, Ford was recorded as saying, “Internment starting point [for Bloody Sunday] and a disaster.”⁵⁵

- 5.5.9 Internment became universally regarded as a misjudgement of historic proportions which inflicted tremendous damage both politically and in terms of fatalities. The fact that this was clearly a highly inefficient operation was demonstrated by the number of early releases and, most of all, by an eruption of violence on the streets. As McKittrick and McVea cite one author’s description (unattributed) regarding the situation in Belfast at the time:

“The city was in turmoil, with confusion, distress and fear on all sides. Local people were erecting improvised barricades to seal off entry to Catholic areas, which were becoming increasingly isolated and cut off. Public transport had broken down. There was ominous rattling of hundreds of bin-lids as communities sent out a call for arms and for defenders to man the ramparts. Buses were being hijacked on all sides, cars were dragged from burned-out showrooms, builders’ skips, rubble anything was being used to make barriers. Milk vans were being commandeered and the

⁵¹ Leonard Leigh, *Police Powers in England and Wales*, (London: Butterworths, 1975) page 46

⁵² *Operation Banner: An Analysis of Military Operations in Northern Ireland*, at para 220 page 2-7

⁵³ *ibid*

⁵⁴ At

<http://webarchive.nationalarchives.gov.uk/20101103103930/http://report.bloody-sunday-inquiry.org/transcripts/Archive/Ts253.htm>

(Day 253 29th October 2002) page 10

⁵⁵ Bloody Sunday evidence classification 1209-108

bottles used to make petrol bombs, pavements were being ripped up for missiles and to build barricades. Smoke, fire, disorder, noise and impending disaster were everywhere."⁵⁶

5.5.10 The flashpoint in Operation Demetrius were the streets of west Belfast and specifically Ballymurphy. John Lavery and others were not interned; they were killed in what can be seen as indiscriminate acts of violence by a section of the British army which had apparently been given a licence to kill by its superiors. Far from abiding by their own rules as set out in the Yellow Card (see further below at 5.7), the British army in Ballymurphy over three days shot on sight. Whilst the introduction of internment was still being considered Northern Ireland Prime Minister Faulkner stated on 25th May 1971 that "Any soldier seeing a person with a weapon or acting suspiciously may, depending on the circumstances, fire to warn or with effect without waiting for orders."⁵⁷

5.5.11 John Lavery and the others killed during the Ballymurphy Internment massacre were their victims. The actions of the British army can be interpreted as viewing civilians as ceasing to be innocent civilian bystanders but becoming legitimate targets. Sadly, they had not been the first: in the two days before the Ballymurphy internment swoop, Harry Thornton was shot dead by a soldier when the vehicle he was driving backfired. We examine this sad event as a precursor to the killing of John Lavery a little while later.

5.6 Internment: The Reluctance to Intern Loyalists

5.6.1 In September 1971, the British Home Secretary stated the aim of the internment policy was "to hold in safety, where they can do no further harm, active members of the IRA, and secondly to obtain more information about their activities, their conspiracies and their organisation to help the security forces in their job of protecting the population as a whole"⁵⁸. Violence by both nationalist and loyalist paramilitaries was on the increase: 171 people died in the conflict in 1971, compared to 26 in 1970. Loyalists were responsible for 21 of those deaths, 15 of them

⁵⁶ *Making Sense of the Troubles*, page 69. See also the extensive number of sworn statements made by those who were interrogated and given to the Association for Legal Justice (ALJ). Amnesty International also took statements to the same effect available in *Report of an Amnesty International Mission to Northern Ireland* (28th November–6th December 1977) at <http://cain.ulst.ac.uk/issues/police/docs/amnesty78.htm>.

⁵⁷ Tim Pat Coogan, *The Troubles: Ireland's ordeal, 1966-1996, and the search for peace*, (Basingstoke: MacMillan Palgrave, 2002), page 146. See also <http://www.tlemea.com/proni/essay6.asp>

⁵⁸ Hansard HC (Series 5) volume 823 column 8 22 September 1971

occurring in the McGurk's Bar bombing.⁵⁹ Yet loyalists were, with two rare exceptions, not interned until 1973.

- 5.6.2 It was not until late 1972 that interning loyalists came under consideration. On 6th November 1972, William Whitelaw MP, the Secretary of State for Northern Ireland (Direct Rule having been re-established following Bloody Sunday), wrote to the army's General Officer Commanding (GOC) in Northern Ireland, Sir Harry Tuzo, setting out his policy in relation to internment. In his letter, the Secretary of State said: "In view of recent developments, Protestant terrorists may fall to be dealt with under the new [internment] Order."⁶⁰
- 5.6.3 On 29th November 1972, a Ministry of Defence memorandum recorded the fact that the GOC had been asked to "draft an arrest policy covering the UVF and other extreme loyalist elements, though not the UDA per se."⁶¹
- 5.6.4 In December 1972 a Ministry of Defence (MoD) memorandum marked "SECRET" and headed "ARREST POLICY" remarked:
"The problem is to decide whether, and if so, in what form, our arrest policy should be adjusted in respect of Protestants." It went on: "The policy does not therefore provide for the arrest of Protestant terrorists except with the object of bringing a criminal charge. Protestants are not, as the policy stands, arrested with a view to there being made subject to Interim Custody Orders (ICJs) [internment] and brought before the Commissioners."⁶²
- 5.6.5 However, Ministers were not yet ready to intern loyalists. Not only was there no political will to intern loyalists, there was very little willingness to even acknowledge that loyalist violence existed.
- 5.6.6 In a further MoD memorandum, again marked "SECRET" and entitled "ARREST POLICY FOR PROTESTANTS", the author noted: "Ministers have judged that the time is not ripe for an extension of the arrest policy in respect of Protestants. The object of this note is however to suggest a

⁵⁹ <http://cain.ulst.ac.uk/sutton/tables/Year.html>

⁶⁰ DEFE 24/824, London Public Record Office
http://www.patfinucanecentre.org/images/defe_3.gif

⁶¹ DEFE 24/824, London Public Record Office
http://www.patfinucanecentre.org/images/defe_7.gif

⁶² DEFE 24/824, London Public Record Office
http://www.patfinucanecentre.org/declassified/defe_1.pdf

- form of words which can be incorporated in the Arrest Policy Instructions when the time comes for such an extension."⁶³
- 5.6.7 If the time was not ripe to intern loyalists in late 1972, then the seed had not even set in August 1971, when the Ballymurphy Internment Massacre took place.
- 5.6.8 On the 17th December 1971 a secret army Situation Report (SITREP) said:
"Unarmed vigilante groups in the Protestant housing areas, such as the Shankill, already receive a measure of ad hoc recognition from the security forces – in that they are given police and Army telephone numbers to which they should ring if they have anything to report. It seems doubtful whether it would be wise to formalise their existence very much more than this – as Mr. Faulkner now appears anxious to do."⁶⁴
- 5.6.9 This suggests that the Stormont government was prepared to give some kind of formal recognition to loyalists.
- 5.6.10 In a note of an informal discussion that month between Secretary of State William Whitelaw and Sir Patrick Macrory⁶⁵, it was reported that: "The Secretary of State said that assassinations by Protestants still seemed to be confined to the criminal element."⁶⁶
- 5.6.11 We have noted that the Irish government took the UK government to the ECtHR over internment and the interrogation techniques used against those interned. During this process, counsel for the UK asked a number of questions to enable him to prepare for the case. One of these questions was discussed by representatives of the Northern Ireland Office, the Attorney-General's Office, the Treasury Solicitor's Office, the Foreign and Commonwealth Office, the Home Office and the Ministry of Defence, at a meeting on 13th November 1974:
"Mr. de Winton said that another question from Counsel was why only Roman Catholics had been interned before 1973. Mr. Hall said that in [the] view of the security forces there was no serious Protestant threat in that period of a kind which led to death and serious injuries."⁶⁷ [Underlining as in the original]

⁶³ DEFE 24/824, London Public Record Office
http://www.patfinucanecentre.org/declassified/defe_2.pdf

⁶⁴ DEFE 13/817, London Public Record Office
⁶⁵ Who chaired the Review Body on Local Government in Northern Ireland in 1970

⁶⁶ PREM15/10106, London Public Record Office

⁶⁷ See http://www.patfinucanecentre.org/images/1974_09.jpg

5.6.12 There is compelling evidence that loyalists were tolerated within the ranks of the locally-recruited Ulster Defence Regiments in the early 1970s.⁶⁸

5.6.13 Thus, when the residents of Ballymurphy rioted in response to internment without trial, they were responding not only to the injustice inherent in such a practice, but also to the one-sidedness of it. They correctly perceived that the whole of the Catholic/nationalist community was being branded as being potential members of the IRA, even though many of those who were interned were not involved in paramilitary violence. They also correctly recognised that loyalist violence was not, at that time, an issue for the Stormont government, the RUC or even the army, which had originally been deployed to protect the Catholics from such violence.

5.7 **Warning before Firing: The Yellow Card and Shoot to Kill**

5.7.1 Despite the events at Ballymurphy in August 1971 when John Lavery was killed and in Derry in January 1972 and other incidents of the abuse of lethal force, not a single soldier was prosecuted before 1974. As we will see the judicial attitude toward such killings (including the opinion of the Attorney-General for Northern Ireland)⁶⁹ and the rules of engagement legitimated the actions of soldiers in killing innocent civilians with total impunity. Taken together with the statements of politicians such as Faulkner and senior military officers such as Tuzo and Ford, a clear message was being sent to ground troops and their commanders that such actions would not lead to criminal responsibility. A key document here is the Yellow Card.

5.7.2 As identified by judges, lawyers and civil rights organisations, the wording of the Criminal Law Act (Northern Ireland) 1967 at section 3(1) was so vague and ambiguous that it could not provide legitimate grounds for departing from the principles of international and domestic common law. Nevertheless, its authority became central to the Yellow Card developed by the British army (and also applied to the RUC). The reference to the

⁶⁸ "The Security Forces and the UDA" at <http://www.patfinucanecentre.org/>

⁶⁹ A declassified document obtained by the Pat Finucane Centre of a meeting between officials from the MoD Office and the Attorney-General for Northern Ireland Basil Kelly QC MP on 1st December 1971, states "Mr Parkin discussed the legal position of soldiers in Northern Ireland and explained why it was important that Ministers should be given as much advance notice as possible of any prosecution of a member of the Armed Forces. He said that morale was delicate in Northern Ireland and would be seriously damaged if soldiers were prosecuted for actions committed on duty in good faith. The Attorney-General said he was aware of these considerations and that he took particular care when deciding to prosecute a soldier or policeman." J. M. Parkin was Head of C2 at HQNI (British Army HQ) (AG 1971 page 2 and AG 1971 page 3). Available at http://www.patfinucanecentre.org/declassified/ag1971p2_3.pdf.

Yellow Card was to the (yellow) booklet headed "Instructions by the Director of Operations for Opening Fire in Northern Ireland." It was issued to every soldier serving in Northern Ireland and contained instructions as to when a soldier could use lethal force.

5.7.3 The Yellow Card was first issued in September 1969. It was periodically revised in light of the developing situation, so as to leave soldiers in no doubt as to the circumstances in which they might use firearms. The revised instructions continued to lay emphasis on using the minimum force necessary. Revisions in January 1971 authorised a soldier to fire at a person carrying a firearm and *thought* to be about to use it and refusing to halt; at a person throwing a petrol bomb; and in certain other circumstances. In each circumstance listed it was specified that a warning must be given before opening fire. Use of a firearm without issuing a warning was limited to situations where a person was himself firing at the soldier or if that person was *thought* to be about to use a firearm or throw a petrol bomb with intent to endanger life. The contents of the Yellow Card provided guidelines for soldiers but did not have legal force, in the sense that they "did not define the legal rights and obligations of the forces under statute or common law".⁷⁰ This meant, among other things, that a soldier firing contrary to the Yellow Card would not necessarily be breaking the law.⁷¹ However, Northern Ireland Lord Chief Justice Lowry in *R v McNaughton* also said that

"On reading the Yellow Card one may say that in some ways (the security forces) are intended To be more tightly restricted by the instructions they are given than by the ordinary law."⁷²

5.7.4 Lord Justice MacDermott criticised the Yellow Card in *R v Jones* (1975) during a criminal trial in Belfast Crown Court: "For my part, I consider this card to be something which exists for some reason of policy and is intended to lay down guidelines to the forces but in my view it does not define the legal rights of the members of the security forces."⁷³ This judgment came close to saying that the Yellow Card may well have been a useful document in theory but that, in practice, soldiers could not be expected to keep to it.

5.7.5 It was certainly clear from the evidence of Soldier A given to the Bloody Sunday Inquiry on 12th April 2000 that members of the Parachute Regiment had been trained to shoot to kill.⁷⁴ It was also clear that the most senior

⁷⁰ *R v McNaughton* [1975] NI 203 at 206 per Sir Robert Lowry LCJ cited *Shoot to Kill? The International Lawyers' Inquiry into Lethal Use of Firearms in Northern Ireland*, (1985: Mercier Press, Cork and Dublin,) page 77, paragraph 101

⁷¹ http://report.bloody-sunday-inquiry.org/evidence/K/KH_0004.pdf#page=4

⁷² *Shoot to Kill?*, page 77, paragraph 101

⁷³ *ibid*

⁷⁴ See Kim Sengupta, "'I shot to kill', para tells Bloody Sunday Inquiry", *The Independent*, 12th April 2000

army officer in Northern Ireland regarded the Yellow Card as optional. A month before Bloody Sunday General Harry Tuzo, General Officer Commanding (GOC) had stated to Cabinet that, "A choice had to be made between accepting that Creggan and Bogside were areas where the army was not able to go, or to mount a major operation which would involve, at some stage, shooting at unarmed civilians."⁷⁵

5.7.6 The officer in day-to-day command of troops in Northern Ireland had recommended to his superior that the army adopt a policy of shooting rioters three weeks before Bloody Sunday. The Commander Land Forces (CLF), Major General Robert Ford, recommended to General Harry Tuzo that:

"The minimum force necessary to achieve a restoration of law and order is to shoot selected ringleaders among the DYH [Derry Young Hooligans], after clear warnings have been given."⁷⁶

5.7.7 In his evidence to the Bloody Sunday Inquiry, General Sir Robert Ford (as he had become) stated this again but he maintained that the policy was never sanctioned.

5.7.8 However, in examination Counsel to the Bloody Sunday Inquiry Christopher Clarke QC asked Ford, "It is right, is it not, that 21 soldiers are taught to 'shoot to kill'". General Ford replied, "Yes, with a 7.62 [bullet]."⁷⁷ (7.62mm calibre bullets were standard issue to troops in Ballymurphy and on Bloody Sunday.) Arthur Harvey QC drew out Ford further on this point later in his evidence, when they had the following exchange:

"Harvey: One of the questions in relation to soldiers is that soldiers are not policemen, they are soldiers; that is correct?"

Ford: That is absolutely correct, yes.

Harvey: They are trained to kill?"

Ford: They are.

Harvey: They are trained in terms that the enemy they will engage are likely to be in a warfare situation where there is no such thing as beyond maximum force, you are there to destroy,

⁷⁵ Quoted by Eamon McCann, *If innocent citizens were deliberately killed by servants of the state we all need to know*, *The Scotsman*, 17th January 2002

⁷⁶ See John Mullin, "Shoot to Kill – army's general's plan before Bloody Sunday", *The Guardian*, 13th March 2000

⁷⁷ At <http://webarchive.nationalarchives.gov.uk/20101103103930/http://report.bloody-sunday-inquiry.org/transcripts/Archive/Ts253.htm> (Day 253, 29th October 2002), page 56

annihilate?

Ford: That is true."⁷⁸

5.7.9 A further connection is that General Ford was involved in the secret preparations for the introduction of internment in August 1971.⁷⁹ The Bloody Sunday Inquiry Report criticised General Ford's decision to deploy 1 Para as an arrest force as they were known to have a reputation for using excessive physical violence.⁸⁰ Ford stated:

"I told the Permanent Secretary, because he was asking me about the reputation of the 1 Para, which was his personal concern, that I had seen them, (a) in action at internment and on other occasions, and (b) on the range when they gave me, apparently, a demonstration of snap shooting, that is to say advancing fast and snap shooting; and I told him how impressed I was by this battalion and that therefore he wants to take that into account when he heard these rumours which were circulating about the reputation of 1 Para."⁸¹

5.7.10 General Ford was also criticised for suggesting shooting selected ring leaders.⁸²

5.7.11 The Bloody Sunday Inquiry Report said that:

"As to the actions of the soldiers themselves, it was submitted that those who fired did so because of a 'culture' that had grown up among soldiers at the time in Northern Ireland, to the effect that they could fire with impunity, secure in the knowledge that the arrangements then in force (arrangements later criticised by the Lord Chief Justice of Northern Ireland) meant that their actions would not be investigated by the RUC, but by the Royal Military Police (the Army's own police force), who would be sympathetic to the soldiers and who would not conduct a proper investigation. In support of these submissions it was alleged that before Bloody

⁷⁸ Ibid, Day 254, page 42

⁷⁹ Staff and agencies "Bloody Sunday para 'did not shoot to kill'", *The Guardian*, 29th October 2002

⁸⁰ This view was taken at the time by some elements in the British Army as reported in by Simon Hoggart, *Army call to bar paratroopers*, *The Guardian*, 25th January 1972,: "At least two British Army units in Belfast have made informal requests to brigade headquarters for the Parachute Regiment to be kept out of their areas."

⁸¹ <http://webarchive.nationalarchives.gov.uk/20101103103930/http://report.bloody-sunday-inquiry.org/transcripts/Archive/Ts253.htm> (Day 260, 12th November 2002), page 43

⁸² *Principal Conclusions and Overall Assessment of the Bloody Sunday Inquiry*, 15th June 2010 HC30, page 51

Sunday there were many previous unjustified shooting incidents by soldiers in Northern Ireland."⁸³

5.7.12 The 1985 Report *Shoot to Kill? International Lawyers' Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland* concluded that the number of civilians shot dead by the security forces in Northern Ireland was unacceptable. The Inquiry considered that at least 155 of the 269 persons killed by the security forces since 1969 were civilians with no known connection to paramilitary organisations or activities. "The failure of the British government to curb these killings supports the view that a certain level of death, violence and public resentment if officially regarded as acceptable, on condition it is primarily confined to one section of the community in Northern Ireland."⁸⁴ The Inquiry further concluded that the attitude of some judges in Northern Ireland amounted to the endorsement of martial law.⁸⁵

5.7.13 Of the victims of the Ballymurphy Internment Massacre Noel Phillips, Daniel Taggart, Joan Connolly, Father Hugh Mullan, Edward Doherty, and Joseph Corr are recorded in Annex A as Civilians Shot Dead in Disputed Circumstances by Members of the Security Forces in Northern Ireland in "Shoot to Kill? International Lawyers' Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland."⁸⁶ Apart from John Lavery, whose death was classified as an accident by the MoD, the other listed victims were classified as rioters.⁸⁷ The MOD accused John Lavery of being armed (see further below).

5.7.14 John Lavery's name must be cleared of any smear or alleged wrongdoing made against him in a campaign to deny the truth of the facts behind his killing. This would be to go some way to ensuring that, albeit after the event, his human rights are recognised.

6. THE SHOOTING OF HARRY THORNTON

6.1 Before we analyse the events leading to the killing of John Lavery on 11th August 1971 it is relevant to look at the killing of Harry Thornton four days earlier. It is pertinent because this incident provides an insight into the heightened sense of tension on the part of the army which led to the indiscriminate shooting.

⁸³ Ibid. page 50

⁸⁴ *Shoot to Kill*, page 125

⁸⁵ Ibid.

⁸⁶ Ibid. pages 137-138

⁸⁷ Ibid. at Appendix A 'Civilians Shot Dead in Disputed Circumstances by Members of the Security Forces in Northern Ireland' compiled from information submitted to the inquiry by the Irish Information Partnership by Mr Steven C Greer and the Association for Legal Justice (ALJ), pages 135-150

- 6.2 Harry Thornton was temporarily resident in west Belfast when on the 7th August 1971 he was shot by a member of the Parachute Regiment. Harry Thornton was a 28-year-old Catholic man. He had a wife and six children. He was in his van at the junction of the Springfield Road and Falls Road. When his van backfired outside the Springfield Road RUC station, a soldier either came out of the building or opened fire. Alternatively he was shot by a soldier stationed on the roof of the RUC station. Harry was with a workmate and it was 7:30am on a Saturday morning. Louis McGuinness, a public works contractor and employer of Harry Thornton, said:
- “He appeared to have been shot through the throat. It looked to me as if an army marksman had opened fire from a window above a shop on the left-hand side of the road between the traffic lights, but it happened very quickly.”⁸⁸
- 6.3 Mr McGuinness went on to say:
- “I saw the soldier coming down the footpath who had apparently fired the shots and told him not to shoot any more. The soldier said a bloke out of the van there had just shot one of our men. He added that if you don't get out of the way I will shoot you too.”⁸⁹
- 6.4 By early afternoon local republicans were handing out leaflets headed “Murder, murder”. Brigadier Marston Tickell told a press conference, “In the army's view the soldiers concerned in the incident had good grounds for believing that their post had been fired at from a van, and acted correctly in accordance with their instructions.”⁹⁰
- 6.5 Harry Thornton's companion in the van, Arthur Murphy, was arrested and taken to a police station.⁹¹ An angry crowd gathered outside, demanding Arthur Murphy's release. When Arthur Murphy was finally released some hours later his face was swollen and bandaged. A police investigation into Arthur Murphy's beating ensued. Mr Murphy was suffering from multiple cuts and bruises. At the Mater Hospital it transpired that his jaw had been broken. The incident attracted media attention and public outrage with demands for an independent investigation into the actions of the army and the police.⁹² The Central Citizens' Defence Committee (CCDC) had been established in Leeson Street in the Falls Road area as a coordinating body for nationalist districts in 1970. The CCDC issued a statement into the killing:
- “The killing of an innocent person by a British soldier on the Springfield Road on Saturday marks the possibility of a new and more terrible phase in the Northern Ireland situation. There had

⁸⁸ *Lost Lives*, entry 81 page 78

⁸⁹ *Irish News*, 9th August 1971

⁹⁰ *Lost Lives*, entry 81 page 78

⁹¹ *Irish News*, 9th August 1971

⁹² *Ibid.*

been no riot, no crowds – there was an obvious ghastly mistake by a soldier who may or may not have panicked when apparently a car backfired. We have said so often that violence is wrong but killing is an indelible act of violence – the killing of a completely innocent father of six children who was peacefully going to work is a tragedy of the gravest nature and cannot fail to have far reaching repercussions.”⁹³

- 6.6 The inquest into the death of Harry Thornton was held in October 1971. The inquest was told that no weapon or anything of an offensive nature was found in the van. A paratrooper, referred to as Soldier C, told the inquest he had seen what he looked to be a weapon protruding from the driver's open window of the van as it passed the RUC station. Another soldier, described as Soldier A, said he was the NCO on desk duty when he heard the sound of two shots. He said he went into the street with his rifle and was told by the sentry that shots had come from a small grey van. Soldier A dropped on one knee and fired two shots at it. At no point was there any evidence of a warning being called out. The coroner told the inquest jury that an open verdict was the only possible one they could return since the law in Northern Ireland did not allow them to bring in other verdicts such as justifiable homicide. He added: “It may be that the law should be amended in this respect,” although the circumstances clearly did not point to any justification for the shooting. The MOD classified the killing of Harry Thornton as a consequence of riot, which was clearly untrue.
- 6.7 In June 1974 the Ministry of Defence awarded Harry Thornton's wife £27,000 in compensation.⁹⁴ This was a clear admission of culpability.
- 6.8 Two days later this incident would be replicated on a larger scale, with virtually the same tragic conclusions and absence of acceptance of responsibility or apology. One of its victims would be John Laverty, killed as a result of both military and political impunity and labelled, in his death, as an armed criminal rioter.

7. THE INTERNMENT SWOOP ON BALLYMURPHY

- 7.1 Internment had been expected. So called 'dummy raids' had been practiced in the previous weeks.⁹⁵ On 9th July 1971 Northern Ireland's Prime Minister Brian Faulkner had telephoned Prime Minister Edward

⁹³ ibid

⁹⁴ *Lost Lives*, entry 81 page 78

⁹⁵ Interview with eye witness Hugh McAldran conducted by Paul McMahon on 23rd March 1999. See also Stephen Pittam, “Behind the New Barnsley Barricades”, *Peace News*, 20th August, 1971. Stephen Pittam was a Quaker youth worker volunteering over the summer with the Nottingham University Peace Corps.

Heath. "I must be able to intern now" he demanded. Accordingly, with some reluctance, a 'dry run' was agreed upon. At dawn on 23 July, 1,800 troops and RUC raided Republican houses throughout the province, searching for documents. They got enough to encourage them. The decision to intern was only a matter of time then, despite army objections.⁹⁶

7.2 As we have noted, despite the tight political timescale, it was clear that the government intended the process of internment to be a strategically planned operation so as to guarantee success. The number of troops arriving in Northern Ireland must surely have alerted elements of the Catholic/nationalist community of what was about to occur. However, the Provisional IRA had also received other more direct information 48 hours in advance of the military raid. Joe Cahill, Officer Commanding the Provisional IRA's Belfast Brigade stated "after Brian Faulkner had arrived back in London, we got a tip-off from a political contact on the unionist side."⁹⁷

7.3 Military historian and journalist David Barzilay provides a useful account of the swoop (or what he describes the British Army as calling "The Lift") and usefully identifies the deployment of the army units involved.

"On the day of internment the house tasked to 2 Para were divided into areas and made the responsibility of sub-units. Tactical HQ remained at Springfield Road RUC station. For the operation 54 Battery RA [Royal Artillery], B Squadron 15/19 Royal Hussars, two troops of the Parachute Squadron RAC [Royal Armoured Corps] and C Company 1 Para were placed under the command of 2 Para, Areas were allocated as follows:

A Coy [Company]: North Suffolk.
B Coy: Ballymurphy and Turf Lodge.
D Coy: Clonard and Cavendish.
Sp [Support] Coy: Whiterock, Beechmount and St James.
54 Bty. [Battery] RA [Royal Artillery]: Andersonstown.
B Squadron 15/19 H[ussars]: Malone Road area.
C Coy 1 Para: South Suffolk."⁹⁸

7.4 Thus, the 2nd Battalion of the Parachute Regiment were in overall command of the operation, which included the infamous Support Company of 1 Para, who later caused all the loss of life on Bloody

⁹⁶ See John McGuffin *Internment*, (Tralee: Anvil Books, 1973), chapter 7. Also available at <http://cain.ulst.ac.uk/events/intern/docs/jmcg73.htm#chap7>. See also BIRW Research Note *Internment in Northern Ireland: Incapacitation of the Enemy*, 30th September 2010.

⁹⁷ *Ballymurphy and the Irish War*, page 74

⁹⁸ *The British Army in Ulster: Volume 1*, pages 217-218

Sunday.⁹⁹ The mind set of the soldiers involved is described in a Historical Enquiries Team (HET) internal research document on file with BIRW and RFJ called *Killing Zone (undated)*. The report commences:

“The author states that on 2nd January 1971 he joined the 2nd Battalion of the Parachute Regiment.” He continues that when they learnt of the death of three Scottish soldiers by the IRA at Ligoneil “there was no outburst of anger, just silence. He states that he looked at the faces of the other soldiers around him and read the same thing on all of them, ‘Just wait until we get across’”¹⁰⁰

7.5 Barzilay then notes:

“The arrest squads arrived by 4.30am 9th August 1971 and all detainees were on their way to the police holding centres within 45 minutes. Some houses required a forced entry and this was done by forcing the lock or breaking a window. All detainees were taken without the use of force, except for two minor incidents. It was not necessary to bind the hands or gag any of the detainees. The only incident worthy of note was that a crowd of about 40, mainly women, attempted to stop a truck leaving a pick-up point at the junction of the Donegall Road/M1 roundabout by lying in front of its wheels.”¹⁰¹

7.6 Barzilay describes the reaction to the internment swoop in the following terms, which set the tone for the military reaction to what occurred next:

“The reaction to internment built-up [sic] from bin-lid bashing and missile throwing across the sectarian interface, as happened almost immediately in Clonard, to street battles involving firearms between rival groups and wide scale sniping at the Security Forces. Both D and Sp. Companies were engaging snipers in the Kashmir Road/Bombay Street Areas. The snipers were armed with automatic weapons. Barricades went up along the Springfield Road and crowds gathered stoning and petrol bombing. Lowden and Partners, a paint factory, was set alight, as was Maguire and Patterson's match factory. A group of youths attacked Mackie's factory offices with nail bombs killing a night watchman.”¹⁰²

⁹⁹ *The Principal Conclusions and Overall Assessment of the Bloody Sunday Inquiry*, Chapter 4

¹⁰⁰ Historical Enquiries Team Internal Research Report *Killing Zone*, unsigned and undated. See also Witness Statement of Private Byron Lewis (incomplete), 17th November 1972 (in the case of *R v Rodney Todd Irvin*) and interview with Private Byron Lewis, 4th November 1972 on the same point. Byron Lewis was a Private in 1st Battalion Parachute Regiment.

¹⁰¹ *The British Army in Ulster Volume 1*, page 218

¹⁰² *Ibid.*

- 7.7 The night watchman was William Atwell, a 40-year-old Protestant¹⁰³.
- 7.8 From the way in which Barzilay presents it the internment swoop in Ballymurphy of 9th August 1971 became a battle between troops and armed republican rioters. As we shall see later in this report, the matter of armed republican rioters became central to the testimony given by the troops on the ground to the Royal Military Police (RMP) Special Investigations Branch (SIB). However, out of the 342 men arrested on 9th August 1971 only 32 were members of the IRA. All others had heeded to the warning from local IRA leaders to find safety outside Ballymurphy. The other 310 men were either political and/or community activists or old-time republicans no longer active in the organisation.¹⁰⁴ The absence of significant numbers of army casualties suggests that there were very few armed gunmen on the streets of Ballymurphy. By the evening of 9th August 1971 after a day of intense encounters between the people of Ballymurphy and the British army, the shooting started and the death toll began to rise, starting with the killings of Father Hugh Mullan and Frank Quinn.
- 7.9 In Ballymurphy, as in other Catholic areas throughout Northern Ireland, the first clear indication that internment had arrived came in the form of army raiding parties. Numerous eye-witness accounts attest to a frightening picture. Families in every street woke up to the sound of splintering wood and glass as their front doors were kicked in. Whole families were assaulted and clubbed as arrested men were dragged into the street. Outside, Ballymurphy was swamped with soldiers, all on foot so as not arouse the community with the sound of invading military vehicles. For example see the statements taken by the Association for Legal Justice (ALJ) including that of Mrs M McHugh of 29 New Barnsley Drive Belfast 12 regarding the arrest of Robert Bryson of New Barnsley Drive two days later:¹⁰⁵
- “At approx. 6.30pm on 11th August 1971, I was standing at my front door. Nearly every one [sic] else in the street were at their own doors, as dustbins had been rattled and soldiers were shouting. They, the soldiers, were coming in the street from Springfield Road; and through the back gardens of the houses. They were yelling

¹⁰³ <http://cain.ulst.ac.uk/sutton/chron/1971.html>.

See also *Lost Lives*, entry 91, pages 84-85.

¹⁰⁴ *Ballymurphy and the Irish War*, page 75 citing Joe Cahill O/C of the Provo Belfast Brigade. See also *Internment*, chapter 8 where John McGuffin states “The initial internment sweep on 9th August 1971 was, militarily, a complete failure. The IRA had known of it for some time and as a result virtually every senior IRA man was billeted away from home.”

¹⁰⁵ The Association for Legal Justice (ALJ) was a Northern Irish group, founded by Father (later Monsignor) Denis Faul amongst others, in order to monitor the workings of the justice and security system in Northern Ireland, with particular reference to discrimination against Catholics. Source: Daily Telegraph, 22nd June 2006

'Fenian bastards, get in' get in; close your doors or you'll be shot.' Bobby Bryson was turning into his house, but was not quick enough. Three soldiers grabbed him. I went up to the front bedroom, and was able to see everything that happened. By the time I reached the window, the soldiers had Bobby Bryson on the ground. He was curled up, trying to protect himself. The three soldiers were kicking him in the face, head, and body. One soldier pushed the gun into his necked [sic] and screamed at him."

7.10 Mrs McHugh continued:

"The three soldiers lit cigarettes and started to rub them out on Bobby's face. On soldier walked backwards and forwards over him about 5 times; he then got his rifle and placed the butt on his neck and pushed heavily."¹⁰⁶

7.11 The ALJ statements of those interned confirm the brutality of the methods used by the British army. For example, the ALJ statement of Michael Joseph Donnelly describes his arrests in Derry on the 9th August 1971 "I was arrested at home. The military were the only people involved. I am not sure of the regiment. They burst into the house. I was in bed. The first I knew of their presence was about six soldiers in the bedroom. One of them was pointing an S.L.R (self-loading rifle) at my head as I lay in bed."¹⁰⁷ Similarly the ALJ statement of Patrick Kavanagh describes his arrest in Belfast on 10th August 1971 "The soldiers pushed us to the front of the vehicle as it was driven along St. Catherine Street and threatened to shoot us if anybody fired on them. We were taken to Hastings Street Barracks, where we were interrogated and made to do physical exercises for what seems hours. When we failed to do the exercises we were kicked and beaten with batons."¹⁰⁸

7.12 Within minutes of the first arrests, the area was in uproar. Large numbers of people, mainly women, poured out of their homes, confused and frightened by the intensity of the operation. As we have noted from the accounts taken by the Association for Legal Justice those arrested were kicked and beaten through the streets toward the Henry Taggart Memorial Hall, now an army post following the departure of the Protestant community including the Presbyterian minister.¹⁰⁹ Ciarán de Baróid

¹⁰⁶ Association for Legal Justice (ALJ) statement of Mrs M McHugh of 27 New Barnsley Drive, Belfast 12, dated 15th August 1971

¹⁰⁷ ALJ statement of Michael Joseph Donnelly of 91 William Street, Derry, dated 20th August 1971

¹⁰⁸ ALJ statement of Patrick Kavanagh of 9 Henrietta Street, Belfast, dated 19th August 1971

¹⁰⁹ *Ballymurphy and the Irish War*, page 75 in addition to *Making Sense of the Troubles*, pages 68-69 and Bobby Clarke *The Story of Bobby Clarke* (2010: The Wave centre: Belfast), page 11. For a military account see for example the RMP Statement of Soldier C, 15th August 1971.

comments that in some cases men were dragged from their homes with sacks over their heads and cotton wool stuffed in their mouths.¹¹⁰ Several lorries took the men from the Henry Taggart Memorial Hall to Girdwood Barracks next to Crumlin Road Gaol to be detained.

8. THE EVENTS LEADING TO THE KILLING OF JOHN LAVERTY

- 8.1 It is generally agreed by the numerous available sources (civilian and military) that the internment operation in Ballymurphy commenced at 4:30am on 9th August 1971.¹¹¹ The presence of the army in the district was announced by the traditional banging of bin lids by local residents.¹¹² Within a very short space of time 342 men had been rounded up and taken away in lorries. This was when the protest against the military action commenced and was the start of a series of events which would result in the death of John Lavery on the 11th August.¹¹³
- 8.2 From the evening of 9th August to the time of John Lavery's death in the early hours of the 11th August, the British army killed seven innocent civilians in its internment operation. Father Hugh Mullen¹¹⁴ and Frank Quinn¹¹⁵ were the first to be killed on the summer's evening of the 9th August 1971. Joe Millen and Robert (Bobby) Clarke were wounded. Noel Phillips was shot almost at the same time. Joan Connolly¹¹⁶, a mother of eight children, who had gone to the assistance of Noel Phillips, was killed on the Manse Field. When a British Saracen pulled into the field Noel Phillips¹¹⁷ was shot again. Daniel Teggart¹¹⁸, a father of 13 was shot 14 times and Joseph Murphy¹¹⁹ was shot in the leg. He was taken into custody and died of his wounds three weeks later. Eddie Doherty¹²⁰ was making his way home along the Whiterock Road on the 10th August when a British army digger and Saracen moved into dismantle a barricade that had been erected. From the digger a member of the Parachute Regiment shot Eddie in the back, he did not receive any medical

¹¹⁰ *Ballymurphy and the Irish War*, page 75

¹¹¹ See also the statements taken by the ALJ *Brutality During Arrests*, 11th August 1971" describing events from 9th August 1971, particularly that of Michael Joseph Donnelly

¹¹² Interview with eye witness Hugh McAldran conducted by Paul McMahon on 23rd February 1999

¹¹³ See the chronology of Malcolm Sutton *An Index of Deaths from the Conflict in Northern Ireland* on the University of Ulster Conflict and Politics in Northern Ireland (CAIN) website at <http://cain.ulst.ac.uk/sutton/index.html>

¹¹⁴ *Lost Lives*, entry 86, pages 82-83

¹¹⁵ *Ibid.* entry 87, page 83

¹¹⁶ *Ibid.* entry 88, pages 83-84

¹¹⁷ *Ibid.* entry 89, page 84

¹¹⁸ *Ibid.* entry 90, page 84

¹¹⁹ *Ibid.* entry 111, page 92

¹²⁰ *Ibid.* entry 98, page 87

attention and died of his wounds. Later, at his inquest a soldier in a written statement that he had shot Eddie Doherty as he was throwing a petrol bomb; a civilian witness said that Eddie Doherty was running away from the barricade when he was shot.¹²¹

8.3 Terry Lavery commented on the killing of Noel Phillips:

“A number of people were murdered by Paras outside the Henry Taggart base, on an area called the Manse. A teenager, aged 19, Noel Phillips, who lived opposite our house, was murdered. We were receiving bits and pieces of information about killings in the immediate district of our home. Our whole family was terrified. I was badly affected by hearing of Noel's death. He was a lovely lad, and we had been having a Coke in Duffy's shop around the corner only three hours before he was killed. I felt so sad over Noel and horrified. He was definitely not a member of any paramilitary group and he was my mate.”¹²²

8.4 On the 10th August 1971 more Catholics from mixed areas in Belfast moved into Ballymurphy for safety despite the events which had taken place there over the previous two days.¹²³ At the Taggart the military were still firing rubber bullets, CS gas and live rounds as groups of youths attacked the base with petrol bombs and nail bombs.¹²⁴ The CAIN website notes in its chronology for 1971:

“During the 9th August 1971 and the early hours of the 10th August Northern Ireland experienced the worst violence since August 1969. [Over the following days thousands of people (estimated at 7,000), the majority of them Catholics, were forced to flee their homes. Many Catholic 'refugees' moved to the Republic of Ireland, and have never returned to Northern Ireland.]”¹²⁵

8.5 Terry Lavery noted that:

“Nothing was normal. There was no routine. Shops started to close on the 10th August and people could not get to work without risking their lives. The Paras had created a climate of fear, and the area was under siege. On the evening of the 10th August 1971 my mother went over to Noel Phillips' mother's house to pay her condolences. That would have been about 10pm, because she

¹²¹ Ibid.

¹²² Instructions of Terence Lavery to Kevin R Winters and Co Solicitors, (undated), page 2

¹²³ *Ballymurphy and the Irish War*”, page 86

¹²⁴ Ibid.

¹²⁵ Available at <http://cain.ulst.ac.uk/othelem/chron/ch71.htm>

made sure all her children were home before she crossed the street to visit Mrs. Phillips."¹²⁶

9. THE KILLING OF JOHN LAVERTY

9.1 Community leaders in Ballymurphy were organising for the children in the area to be taken to the Republic of Ireland. "In the community centre, behind heavily fortified barricades, Paddy McCarthy and the Ballymurphy Tenants Association chairperson, Frances McMullan, were co-ordinating a massive exodus of terrified and uncomprehending children, fleeing south."¹²⁷

9.2 Because of the obvious danger to those living in Ballymurphy following the internment swoop by the British army and the mounting death toll of innocent civilians, on the 10th August 1971 John Laverty took his sisters to the Whiterock Community Centre from where they got on a bus to take them to a refugee camp in County Kildare in the Republic of Ireland.¹²⁸

"Hours earlier he had put his three sisters on a bus to take them to a refugee camp in Kildare. 'It was the last time I saw our John', says his sister Carmel Quinn. 'I was crying and said I didn't want to leave. He hugged me and told me not to worry, that I'd be back home in no time and life would be normal again.'¹²⁹

9.3 Later on in the evening of the 10th August 1971 people had begun to come out onto the streets of Ballymurphy expecting another internment swoop. They had come out to bang bin lids and blow whistles to warn local residents that the army was coming.¹³⁰ In the early hours of 11th August, John Laverty and his brother Terry fatefully left their house to see what was happening. In one statement Terry Laverty stated that he and his brother John were woken by their younger brother Martin at about

¹²⁶ Instructions of Terence Laverty to Kevin R Winters and Co Solicitors, (undated) page 2

¹²⁷ *Ballymurphy and the Irish War*, page 86. Paddy McCarthy would later be stopped by soldiers on the 11th August 1971 and severely beaten, dying later after a massive heart attack, *Lost Lives*, entry 104 page 90.

¹²⁸ Suzanne Breen, "Ghosts of a Forgotten Massacre", *Sunday Tribune*, 1st August 2010 quoting Carmel Quinn (John Laverty's younger sister). Also statement to Christopher Stanley (BIRW) from Rita Bonner (another of John Laverty's younger sister) of 11th April 2011. See also Lt Col. M. O'Malley *Gormanston Camp 1917–1986* and the Irish government's statement at <http://www.defence.ie/WebSite.nsf/Speech+ID/9A75B4DFE516AA6F80256C5D0047627B?OpenDocument>

¹²⁹ *Sunday Tribune*, 1st August 2010

¹³⁰ "Ballymurphy and the Irish War", page 87

3.30am because of the noise outside.¹³¹ John's father Thomas Laverty stated that at 3.30am John Laverty left the house having been awakened by the rattling of bin lids on the estate. His father understood that he intended to buy cigarettes from a house in Ballymurphy Crescent.¹³² Terry Laverty explained that their mother did not want them to go outside.¹³³ "My parents would not let us across the door and I have to admit that I was tempted to join the other younger boys who were throwing bricks and bottles at the soldiers."¹³⁴ He continued:

"While she was at the wake¹³⁵ we went to bed. I shared a room with Martin, aged 14 at the time and John aged 20 at the time. I was 18 years at the time. By this stage me and John were angry. It seemed like the Parachute Regiment were on a murder spree. Noel, our mate, had been murdered for nothing (that we could be sure of) and we were unable to contain our feelings anymore. We wanted to go out that evening, when mother went to bed and riot against the army if we could find a riot."

- 9.4 It is important to clarify that in his Inquest Deposition of 12th October 1972 Terry Laverty stated that he and his brother had been at the home of their sister Matilda Branney in Turf Lodge since around 11.00pm on the 10th August 1971 and at 4:10am on the 11th August 1971 left this house. Terry and John Laverty argued about which way to go home to their house and John Laverty went alone onto the Springfield Road where he was shot. Terry Laverty confirmed this at the time in his statement to his solicitor Paschal O'Hare (undated) at the time. In his recent statement given to Kevin R Winters and Co Solicitors Terry Laverty clarified his account:

"At the time I told the inquest that John and I had gone to check on my sister Matilda who lived in Turf Lodge. This was not true. I was afraid to admit to my parents that I had gone looking for a riot

¹³¹ Instructions of Terence Laverty to Kevin R Winters and Co Solicitors (undated) pages 2-3; in an interview with Paul McMahan dated 23rd February 1999 Terry Laverty stated that at 3.50am he and his brother were awoken by their younger brother Martin because of the banging of bin lids outside. John Laverty left the house by the bathroom window as his mother did not want him to go outside.

¹³² Inquest Deposition of Thomas Laverty, dated, 12th October 1972

¹³³ Interview conducted with Paul McMahan 23rd February 1999

¹³⁴ Instructions of Terence Laverty to Kevin R Winters and Co Solicitors (undated), page 1

¹³⁵ This was the wake of Noel Phillips. The traditional Irish Wake was commonplace around Ireland up until about the 1970's. This was the process of laying out the body of a departed relative in the house where they lived and/or died. All of the family and quite a few of the deceased ones neighbours and friends would gather at the house. The body was usually in a coffin in the parlour of the house or living room. See Seán Ó Súilleabháin, *Irish Wake Amusements*, (1967: The Mercier Press, Cork).

when Martin heard banging of bin lids. Let me reiterate I never found that riot because one did not happen."¹³⁶

9.5 Terry Lavery continued:

"At about 3:45am in the early hours of Wednesday the 11th August 1971 Martin woke us up to say the bin lids were sounding. This was a well established warning that the Army had entered the area. We decided to try and slip out the front door but our mother appeared at the bottom of the stairs, facing the bottom of the stairs. John went into the bathroom and closed the door behind him. After a couple of minutes, my mother rapped the door and there was no answer. As she turned her attention from me, I took my opportunity to run past her and out the front door. The last memory I have of John, alive, was him going into the bathroom."¹³⁷

9.6 According to the account given in *Lost Lives*, John Lavery was shot by the British army on the Whiterock Road south of the junction with Springfield Road he tried to make his way home to Whitecliffe Parade. He was killed at a derelict corporation yard on the Whiterock Road. The account continues:

"A soldier said in a statement read at the inquest that an army patrol moving down the Whiterock Road came under fire at the Springfield Road junction. He said he saw three or four men crawling along the Whiterock Road toward his position, one firing a machine gun and the other a pistol. The soldier said he fired six shots and hit one of the men. He said: 'I know I hit one of them because I heard him moaning and crying for help.' The soldier found a man lying face downwards. The single round which killed John Lavery had entered through his back."¹³⁸

9.7 The accounts of the soldiers on duty need to be examined carefully. First, because the majority of them were given well after the event, sometimes months later. Second, because of the nature of the RMP SIB investigations at the time (see further below at section 11). For example, the statement of Soldier B given at Aldershot, presumably to the SIB and possibly around 20th July 1972 (because on that date he was shown a photograph of Joseph Corr who was killed at the same time as John Lavery) stated the following:

"On 10th and 11th August 1971, I was employed on IS [internal security] duties with my unit in Belfast, Northern Ireland. I was

¹³⁶ I Instructions of Terence Lavery to Kevin R Winters and Co Solicitors (undated), page 7. Terry Lavery also gave the correct version in his interview with Paul McMahon dated 23rd February 1999.

¹³⁷ Instructions of Terence Lavery to Kevin R Winters and Co Solicitors (undated), page 3.

¹³⁸ *Lost Lives*, entry 99, pages 87-88

deployed in the Whiterock Road area. About 04.15 hrs, 11 August, I was point man in a foot patrol proceeding down Whiterock Road toward Springfield Road.¹³⁹ I took up position in a pathway of one of the houses on the uneven numbers side of Whiterock Road. I saw 3 or 4 males crawling up the Whiterock rd toward my position. As I was observing these males 2 of them fired past my position straight up Whiterock Road. One of them was firing a machine gun on automatic fire, similar to an issue 9mm sub machine gun. The other was firing a pistol. When they stopped firing, they stood up and started to retreat down Whiterock Road toward Springfield Road. I stepped out from behind the hedge from which I been observing these persons intending to call on them to halt but before I could shout to them the one carrying the machine gun brought it up to an aim position. I immediately fired 6 x 7.62 rounds at those persons and they all dropped to the ground. As I did this I was fired upon from the Springfield Road junction. I immediately went for cover. I know I must have hit at least one of them because I could hear him moaning and shouting to someone for help. Shortly afterwards when the firing had stopped I made my way down to where these persons had fired from and I saw one male person lying on the pavement face down. I also saw a trail of blood leading away from that spot up a pathway to one of the houses and off into a garden."¹⁴⁰

9.6 This account by Soldier B of 1st Battalion Parachute Regiment¹⁴¹ mentions the army being shot at. Terry Laverty reported two shots being fired at the soldiers when he was detained a little while later.¹⁴² It is Soldier B's account of four men crawling up Whiterock Road with weapons which is corroborated in the account in *Lost Lives* which we argue, given the surrounding evidence, is a false statement and misleading account of to the actual events

9.7 Civilian eye-witness Eileen Corr gave a different version of events. At 4:30am she and her husband Joseph heard bin lids being banged. She and her husband Joseph got out of bed and walked toward a crowd of people on the Springfield Road at the top of Divismore Crescent. The Corr's lived in Divismore Crescent off the Springfield Road.¹⁴³ "Shooting

¹³⁹ A point man is a soldier who is assigned to a position some distance ahead of a patrol as a lookout.

¹⁴⁰ Statement of Soldier B 1 Para at Aldershot (undated but possibly 20th July 1972 provided to the SIB as this was date he was shown a photograph of John Laverty).

¹⁴¹ As stated at the top of his statement and contrary to what Terry Laverty said in his interview with Paul McMahon on 23rd February 2009.

¹⁴² Instructions of Terence Laverty to Kevin R Winters and Co Solicitors (undated), page 4

¹⁴³ *Lost Lives*, entry 115, page 95

started and I believe this shooting was coming from the army"¹⁴⁴ Eye-witness Joe Corr stated that the shooting started coming from the army.¹⁴⁵ According to the Police Report concerning the death of Joseph Corr he was found by the military on the Whiterock Road suffering from injuries to his stomach. He later died of these injuries at the Musgrave Park Military Hospital on 27th August 1971.¹⁴⁶ We contend that Joseph Corr's body was dragged into a garden of a house on the Whiterock Road north of the junction with Springfield Road (Soldier B notes "I also saw a trail of blood leading away from that spot up a pathway to one of the houses and off into the garden.")¹⁴⁷ We argue that Soldier B dragged Joseph Corr's body.

9.8 Eye-witness Edward Mc Court lived in Dermott Hill Park, to the west of the northern section of the Whiterock Road. He saw two paratroopers sitting in his garden at around 4.30am. He saw a man lying on the road (the Whiterock Road) who was then dragged into the garden of a house.¹⁴⁸ We contend that the two paratroopers then moved off back down the Whiterock Road and over the junction when Soldier B then shot John Lavery at the derelict corporation yard on Whiterock Road south of the junction with Springfield Road. This position was identified by the postmistress at the post office overlooking the junction of the Whiterock Road and the Springfield Road.¹⁴⁹ Soldier B indeed notes that "I continued my advance down the Whiterock Road past the barricade and across the Springfield Road."¹⁵⁰

9.9 Terry Lavery reported the following (he was in the company of Jed Canavan):

"At the end of the railings and while still on the path, but not yet on the Whiterock Road pavement, I heard an English voice coming from the direction of the old corporation yard (now the site of the Silabh Dubh Bar). The person was shouting, very forcefully, telling us to 'Come here, come here!' Jed ran toward towards where the old chalet bungalows were, which is now the road up to the Whiterock Leisure Centre. I froze. Then the next order I received from the same person was 'Come here you bastard.' I did as I was told. I was very afraid. It was still dark. I crossed the Whiterock Road and two soldiers were there. These soldiers later identified themselves in

¹⁴⁴ Inquest Deposition of Eileen Corr, 25th October 1972

¹⁴⁵ Interview with Joe Corr conducted by Paul McMahon, 23rd March 1999.

¹⁴⁶ Police Report Concerning the Death of Joseph Corr, 31st August 1971

¹⁴⁷ Statement of Soldier B 1 Para at Aldershot (undated but possibly 20th July 1972

¹⁴⁸ Interview conducted by Paul McMahon with Edward McCourt, 25th May 1999.

¹⁴⁹ Provided by Carmel Quinn to Christopher Stanley of BIRW on 21st September 2011

¹⁵⁰ Statement of Soldier B ibid

court proceedings as members of the 1st battalion Parachute Regiment."¹⁵¹

9.10 Terry Lavery continued:

"Hardy [a soldier who gave evidence against Terry Lavery at his criminal trial for riotous behaviour] was the instigator of most of the violence and verbal abuse. I was repeatedly called 'Irish fucking bastard, Paddy cunt.' The blows I received were punches only. They were the only soldiers in that vicinity. There were no other military vehicles or soldiers that I could see. I was punched so often that I lost count. I was scared out of my wits."¹⁵²

9.11 Soldiers A (Farrell) and B (Hardy) came under fire from the direction of St. Aidan's Primary School¹⁵³ and Soldier B (Hardy) used Terry Lavery as a human shield. He fired two shots over his body and said "'If any of our men get shot you're dead, you Irish bastard.' I could not speak, I was totally in shock. Then he said, 'Fuck it I've already shot one Irish bastard dead, another won't matter.'"¹⁵⁴ We contend that Soldier B identified as Private Hardy was referring to killing John Lavery earlier.

9.12 The other soldiers also provide conflicting accounts to that of Private Hardy, Soldier B. Soldier A notes the following (*Soldier A is a different Soldier A, who is Corporal Farrell, to the soldier in attendance with Soldier B, Private Hardy*):

"I am an NCO at present serving with my unit at Aldershot. On 10th and 11th August 1971, I was on duty as Medical Orderly to C Company 1 Para, who were operating in the Whiterock Road area. My company was in a static location at a pathway leading onto Black Mountain. I was called forward by a member of my unit, I cannot remember who this was, to proceed down Whiterock Road toward Springfield Road and to attend two male persons who it was believed had been shot by elements of the C Coy 1 Para. I moved down the left hand side of the road, and I came across the body of a male person lying on the pavement, face downwards. I turned him over onto his back, and felt for his pulse, which was non

¹⁵¹ Instructions of Terence Lavery to Kevin R Winters and Co Solicitors (undated), page 4

¹⁵² Ibid. See also interview conducted by Paul McMahon with Terry Lavery on 23rd February 1999

¹⁵³ Statement of Soldier B, *ibid.* St Aidan's School was south of Whiterock Rd and on the Springfield Road near the junction of Springfield Road and Whiterock Road.

¹⁵⁴ Instructions of Terence Lavery to Kevin R Winters and Co Solicitors (undated), page 4 *Ibid.* See also interview conducted by Paul McMahon with Terry Lavery on 23rd February 1999

existent. I then cut his shirt and put my ear to his chest to listen for a heart beat, which was very faint."¹⁵⁵

- 9.13 On the 20th July 1972 Soldier A, the NCO Medical Orderly to C Company 1 Para, identified a photograph of the person he had attended. It was John Laverty. According to this Soldier A, John Laverty was shot in the back, there is no evidence of a weapon and he was still alive at this point.¹⁵⁶ A similar account is provided by Soldier D (on his Inquest Deposition his name is handwritten and can be deciphered as Sergeant John Edwards):

"On Wednesday 11th August 1971 I was engaged on internal security duties in the Ballymurphy Estate area of Belfast, Northern Ireland. At that time I was the Medical Sergeant of the 1st Battalion, The Parachute Regiment. I think that it was between 0400 and 0430 hours on 11th August 1971 that I moved forward with elements of the tactical Headquarters. We moved from the direction of the Black Mountain, toward Whiterock Road and towards Springfield Road, and arrived at a point about 25 to 30 metres from the junction of Springfield Road. The actual time of arrival at this point was 0400-0439 hours, but the move down from the Black Mountain commenced about one hour before. As we approached the point about 25-30 metres from the Springfield Road I was informed that there were two persons in front who required medical attention. I was on foot at this time and I walked to the point mentioned on the left hand side of the road. I saw two men lying on the pavement at the top of raised bank. Both men were dressed in civilian clothes, and at this time they were in the care of Soldier A RAMC, the Medical Orderly of C Company.¹⁵⁷ I had come to this point with Soldier C, RAMC the unit Medical Officer who examined both men and said that one man was dead. He also said the second man was seriously injured and administered morphine. About 20 or 30 minutes later, the unit ambulance came to our location."¹⁵⁸

- 9.14 Soldier D confirmed that a photograph of the dead man was that of John Laverty and that he had been shot in the chest [sic] but that there was no evidence of a weapon. Soldier D travelled in the ambulance with the two bodies accompanied by Soldier F of 1 Para.¹⁵⁹ The injured man was Joseph Corr, who died of his injuries on 27th August 1971.¹⁶⁰

¹⁵⁵ Inquest Deposition of Soldier A (undated but possibly 20th July 1972 provided to the SIB as he states that this was the date he was shown a photograph of John Laverty)

¹⁵⁶ Inquest deposition of Soldier A, undated but Soldier A has been scored through and the name Corporal Graham Leonard Fisher is handwritten

¹⁵⁸ Inquest Deposition of Soldier D, dated 12th October 1972

¹⁵⁹ Ibid.

¹⁶⁰ *Lost Lives*, entry 115, page 95

9.15 The RUC Duty Officers Report for the 24 hours ending at 8.00am on Wednesday 11th August 1971 states:
“At 4:45am the Army shot dead a sniper on the Whiterock Road near Kelly’s Bar (junction of Whiterock Road and Springfield Road. Body being taken to Morgue. Not identifiable to date.”¹⁶¹

9.16 The dead man, the alleged sniper with no weapon, was John Lavery.

10. THE AFTERMATH OF THE KILLING OF JOHN LAVERTY

10.1 An army ambulance arrived to remove the bodies at about 5:00am that morning. It had not been possible to have the ambulance arrive earlier because, according to Soldier D “the area was still being fired on.”¹⁶² By this stage, according to Soldier D, John Lavery was dead. Joseph Corr was seriously injured. Soldier D continued:

“I assisted in photographing the dead man by lifting his head from the stretcher and holding it in position while the photograph was taken. Both men were then placed in the ambulance and I travelled in the vehicle with the driver and Soldier F 1 para to the Military Wing of Musgrave Park Hospital, Belfast. I am unable to give an accurate time of our arrival at the hospital, apart from that it was after daylight. On arrival at the hospital, I handed both men over to the hospital reception staff, and passed on the details of the treatment administered to the injured man.”¹⁶³

10.2 There was no log kept of the time of arrival of the ambulance. Captain Whitfield, Military Wing Musgrave Park Hospital pronounced John Lavery dead: “Was found dead on waste ground on Whiterock Road suffering from gun shot wounds.” (our emphasis)¹⁶⁴. It remains unclear why John Lavery was taken to the Musgrave Park hospital and not the nearer Royal Victoria hospital on the Falls Road.

10.3 At 10:00am on 12th August 1971 RUC Detective Sergeant J D Wilson reports that Richard Lavery identified the body of John Lavery at Laganbank Mortuary and that DS Wilson then identified the body to Dr Derek Carson the state pathologist who conducted the autopsy.¹⁶⁵ The autopsy

¹⁶¹ RUC Duty Officers Report for the 24 hours ending 8.00am on Wednesday 11th August 1971. RUC Duty Officer’s reports were résumés of the events of the previous 24 hours and were compiled from a variety of reports received from individual RUC officers.

¹⁶² Inquest Deposition of Soldier D, dated, 12th October 1972

¹⁶³ Ibid. As we examine below at section 11, civilians shot by soldiers were not treated in the same way as other deaths. There was no scene of crime investigation and bodies were quickly removed for the purpose of identification.

¹⁶⁴ Police Report Concerning Death of John Lavery 9th September 1971

¹⁶⁵ Inquest Deposition of RUC DS J D Wilson, dated, 12th October 1972. Richard Lavery was John Lavery’s uncle (Inquest Deposition of Richard Lavery, dated 12th October 1972).

determined the cause of death as a gun shot wound to the trunk with a 7.62mm bullet and a gun shot wound to the right thigh leaving the body between the 7th and 8th rib.¹⁶⁶ The autopsy report continued:

“Autopsy revealed an entrance gunshot wound on the right flank and exit wound on the back of the left lower chest. These were connected by a track passing through the subcutaneous tissues and muscles and direction of track being from left to right and upwards at an angle of 45 degrees to the vertical and backwards at an angle of about 10 degrees to the coronal plane.”¹⁶⁷

“There was another entrance wound on the outer side of the right thigh and a spent bullet was found beneath the skin on the left side of the chest. From the entrance wound the bullet had passed upwards and to the left at an angle of about 35 degrees vertical, through the tissues of the thigh into the pelvis. It had then perforated the bladder and the intestines and had lacerated the right kidney, spleen, diaphragm and left lung before leaving the left chest cavity between the seventh and eighth left ribs. *Death was due to internal bleeding, from the injuries caused by this bullet.*”¹⁶⁸ (Our emphasis)

- 10.4 Terry Lavery was taken from Gridwood Barracks to Belfast magistrates' court charged with riotous behaviour. The court record notes “Defendant on 11th August at Whiterock Road in the County Borough of Belfast was guilty of behaviour in a public place contrary to section 9 Criminal Justice (Miscellaneous Provisions) Act (N.I.) 1968.”¹⁶⁹ Soldier A was identified as Corporal Farrell and Soldier B was identified as Private Hardy both of the 1st Battalion of the Parachute Regiment. Terry was bailed. He later served six months at the Crumlin Road Gaol having been sentenced on 19th August 1971.¹⁷⁰
- 10.5 On the 16th August 1971 the funeral took place of John Lavery at Corpus Christ Church in Ballymurphy¹⁷¹
- 10.6 On 12th October 1972 the inquest into the death of John Lavery took place at the County Courthouse, Belfast before Mr J H S Elliot and a jury. The cause of death was noted as “internal haemorrhage due to

¹⁶⁶ Report of Autopsy John Lavery by Dr Derek Carson, 12th August 1971 at 4:30pm

¹⁶⁷ A coronal plane (also known as the frontal plane) is any vertical plane that divides the body into ventral and dorsal (belly and back) sections

Report of Report of Autopsy John Lavery by Dr Derek Carson, 12th August 1971 at 4:30pm *ibid.*

¹⁶⁹ Court Record, 19th August 1971

¹⁷⁰ Interview conducted by Paul McMahan with Terry Lavery on 23rd February 1999. See also Barry McCaffrey “Search for Justice”, *Irish News*, 11th August 2010.

¹⁷¹ Research by Rita Bonner (sister of John Lavery)

laceration of bladder, right kidney, spleen and left lung due to gun shot (7.62mm) wound of [sic] trunk."¹⁷² There was no mention of the other gun shot wound, whereas the autopsy report clearly identified the bullet entering through the right thigh as the cause of death. An open verdict was recorded.¹⁷³

- 10.7 Soldier B gave a written statement to RMP SIB Corporal Martin Carroll on 21st July 1972 at Aldershot. Corporal Carroll stated "Soldier B made a written statement which I now read out. I now hand the Coroner an envelope containing the name of Soldier B." Such was the practice of the time for the names of the soldier to be handed to the coroner to be then destroyed.¹⁷⁴
- 10.8 Terry Lavery attended the inquest into his brother's death. Terry was able to identify Soldier A as Corporal Farrell and Soldier B as Private Hardy. Terry knew the identities of these two soldiers as they had given evidence against him when he was charged with riotous behaviour and taken to the Belfast magistrates court on the 12th August 1971 after being taken to Gridwood Barracks from Whiterock Road, as we have previously noted. Terry noted:
- "When he (Soldier B) appeared at the inquest into John's death I was shocked and horrified. It was obvious to me then, that he had killed my brother and within minutes tortured me.¹⁷⁵ At no point in his statement to the Coroner did he ever mention a riot taking place at the Whiterock Road. In the Magistrate's court he said I was part of a riotous crowd throwing stones. This is not mentioned at all in his statement to the inquest."¹⁷⁶

¹⁷² Verdict on Inquest of John Lavery dated 12th October 1972

¹⁷³ An open verdict meant that the jury were unable to determine the truth about the cause of death.

¹⁷⁴ Inquest Deposition of Corporal Martin Carroll, dated, 12th October 1972 (there is an anonymised version of Corporal Carroll's deposition also on the inquest file)

¹⁷⁵ In his instructions to Kevin R Winters and Co Solicitors (undated) Terry Lavery describes his ill-treatment in detention at pages 5-7. See also Peter Taylor *Beating the Terrorists? Interrogation in Omagh, Gough and Castlereagh*, (1980: Penguin Books, Harmondsworth). See also the statements taken by the ALJ *Brutality During Arrests, 11th August 1971* describing events from 9th August 1971. *The Report of the Enquiry into allegations against the security forces of physical brutality in Northern Ireland arising out of events on the 9th August 1971* (Sir Edmund Compton) Cmd. 4823, November 1971, page 73 lists 40 complainants.

¹⁷⁶ Instructions of Terence Lavery to Kevin R Winters and Co Solicitors (undated), page 7

- 10.9 It was later confirmed that the bullet that killed John Lavery was standard British army issue.¹⁷⁷
- 10.10 In his judgment of 21st March 1977 into the Lavery family's claim for compensation following the killing of their relative John, Lord Chief Justice Lord Lowry commented: "It is fairly clear that he (John Lavery) was shot by the army." Lord Lowry went on to examine the evidence a Mr B who BIRW suggests is Soldier B having, by then, left the army:
- "I am in some doubt as to how far I ought to attribute the evidence of Mr B as to his shooting at gunmen to deaths of Mr Corr and Mr Lavery. The positions in which they were found after the shooting had subsided would suggest that they may have been gunmen, but for the fact they were shot in the back. Whereas Mr B said the men at whom he shot were facing him, would tend to the conclusion that the deceased were not gunmen. Taking into account the trail of blood which led from the area and the absence any guns on or about the persons of the men when the Army eventually reached them, I think that on the balance of probabilities is against either of them having a gun."¹⁷⁸

11. THE ARMY INVESTIGATION INTO THE KILLING OF JOHN LAVERTY

- 11.1 The Royal Military Police (RMP) in the early 1970s took responsibility for investigating all shootings carried out by British soldiers. Specifically, the Special Investigation Branch (SIB) of the RMP, whose officers were all of the rank of sergeant or above, took on this role. Their normal job was the enforcement of military law within the army and they saw themselves as the equivalent of the Criminal Investigation Department (CID) within the RUC. However, an RMP officer who joined the SIB received only 18 weeks' training.¹⁷⁹ Soldiers were not interviewed under caution and were treated only as eyewitnesses. According to INQ3, a former RMP officer who gave evidence at the Bloody Sunday Inquiry, "It was not a very formal procedure ... we usually discussed the incident over sandwiches and tea." Not surprisingly, therefore, soldiers were not prosecuted for the killing of civilians during this period. INQ3 states that the period in which this agreement applied was early 1970 until November 1972, during which time the British army was responsible for 123 deaths.

¹⁷⁷ Report of Leo Rossi, forensic scientist, commissioned by the Historical Enquiries Team, 30th September 2009

¹⁷⁸ Judgment of Lord Chief Justice Lord Lowry in *John Lavery (deceased) v Secretary of State for Northern Ireland*, 21st March 1977. Compensation was not awarded as Lord Lowry concluded that both John Lavery and Joseph Corr had been engaged in a riot.

¹⁷⁹ First statement of WO1 (Warrant Officer 1st Class) Wood to the Bloody Sunday Inquiry, dated, 15 May 2000, paragraph 2

- 11.2 In 2003 the legality of the use of the RMP to investigate lethal force incidents was successfully challenged by the family of Kathleen Thompson, a mother of six children who was killed by the British Army in 1971. In the High Court in Northern Ireland, Mr Justice Kerr concluded that, judged by the standards that applied at the time, the interview by the RMP of the soldier who shot Mrs Thompson did not satisfy compliance with the procedural requirements of Article 2 of European Convention, which protects the right to life.¹⁸⁰ Clearly, the RMP Investigation into the death of John Lavery would have been woefully inadequate and would not have met the standard of an effective investigation implied by Article 2 and which the Supreme Court has recently ruled would have applied at the time of John Lavery's death.¹⁸¹
- 11.3 The nature of an investigation by the RMP, and particularly the work of its Special Investigation Branch (SIB), is described in great detail in both the oral and written evidence of Warrant Officer 1st Class John Wood (WO1 Wood) to the Bloody Sunday Inquiry on Day 382, 14th October 2003 and in his three accompanying statements made to the Inquiry.¹⁸² WO1 Wood was a member of the 178 Provost Company and served in Northern Ireland between July 1970 and July 1972. His commanding officer was the Assistant Provost Marshall for Northern Ireland.¹⁸³ All SIB officers were of the rank of sergeant or above. However, Private Hardy's statement given to the SIB was taken by a corporal. As previously noted, WO1 Wood received only 18 weeks training (paragraph 2, 1st statement). At paragraph 5 of his first statement WO1 Wood states "Given the circumstances the SIB actions could not be said to constitute a full and exhaustive investigation." The Historical Enquiries Team in its report into the killing of Majella O'Hare by a British soldier in 1976 commented that such investigations "negated any possibility of independence and is questionable whether the Chief Constable had the legal authority to devolve his responsibilities in this manner".¹⁸⁴
- 11.4 Initial, or "contact", statements taken by such SIB officers from a soldier who had killed someone were not taken under caution¹⁸⁵. Although RMP

¹⁸⁰ *In the matter of an application by Mary Louise Thompson for Judicial Review* [2003] NIQB 80: "I am satisfied that such procedural safeguards as were required to ensure that Article 2 was complied with were not fully implemented by the respondent in this case."

¹⁸¹ *In the matter of an application by Brigid McCaughey and others for Judicial Review (Northern Ireland)* [2011] UKSC 20

¹⁸² See the oral evidence of WO1 Wood and his statement at: http://webarchive.nationalarchives.gov.uk/20101103103930/http://report.bloody-sunday-inquiry.org/evidence/CW/CW_0001.pdf

¹⁸³ Second statement of WO1 Wood to the Bloody Sunday Inquiry, dated, 15th May 2000, paragraph 4

¹⁸⁴ Historical Enquiries Team *Review Summary Report Concerning the Death of Majella O'Hare*, 2011, pages 30-31.

¹⁸⁵ First statement of WO1 Wood to the Bloody Sunday Inquiry, dated, 15th May 2000,

Officers had to be of at least the rank of sergeant, statements were normally taken by one of a sub-unit of six junior NCOs, none of whom had received any training in law or investigative procedures (as we noted in relation to the statement of Private Hardy at 11.3 above).¹⁸⁶

- 11.5 The SIB anonymised soldiers by the use of ciphers (Soldier 'A' etc) for external use (including the RUC) and these ciphers were logged in what was called the Blue Book, whilst the names of actual serving soldiers were recorded by the army in what was called the Red Book, kept by the Assistant Provost Marshall (APM) at Head Quarters Northern Ireland (HQNI). Assuming that the same systems was in operation six months before Bloody Sunday, in Ballymurphy, then the names of all the soldiers involved in giving contact report statements would have been similarly recorded in the Red Book. WO1 Wood having been stationed in Northern Ireland since July 1970, it is highly probable that the full names were so recorded. In a telling comment at paragraph 57, WO1 Wood describes:

“As a general rule, if the information that a witness gave us was contradictory, we would question him on it; we would not simply accept and write down what he told us. However, in relation to the events of that day [Bloody Sunday] we had to work under great pressure of time and confined ourselves to compiling the normal contact reports.”

- 11.6 The same would appear to have been true at the time of internment.
- 11.7 On the publication of the Widgery Report in 1972, WO1 Wood was reported at paragraph 63 of his first statement as saying that:

“The residual impression I had was the sense that the Paras had been given a large discretion – their training was so good that it was not believed necessary to tell them what do to – they were told to go and deal with things and exercise their soldierly skills.”

- 11.8 This sentiment echoed a broadcast made by the Commander Land Forces (CLF) in Northern Ireland, Major General Ford, in a broadcast he made in the immediate aftermath of Bloody Sunday, and in which he referred to the Paras' time in Belfast:

“1 Para was the reserve battalion for 39 Brigade and the only battalion totally uncommitted. I agree that when I chose them - and I did choose them - I had in mind they were highly experienced. I had in mind the fact that their reputation in Belfast must have spread to Londonderry. And one platoon of 1 Para could do what one company of any

¹⁸⁶ paragraph 5
Third statement of WO1 Wood to the Bloody Sunday Inquiry, dated, 12th March 2003, Annex 2, *The military investigative resource*, paragraph 5

other battalion could do in Belfast.

I can remember after internment being caught in a street in cross-fire. There I was with my little tactical group and we were absolutely stuck. I thought 'My Gods This is doing to take two companies to sort this out' They would have to go right through all the houses and get the terrorists. Not a bit of it. Round the corner came a platoon of 1 Para who tumbled out of their vehicles and went down the street and everything stopped. Everyone disappeared. The terrorists were frightened of 1Para. That was another factor... their reputation.

...

1 Para had been deliberately trained by Frank Kitson to develop this reputation - as a stabiliser - in his brigade area. So that when things went wrong they came and were tough."¹⁸⁷

- 11.9 WO1 Wood was invited by the Bloody Sunday Inquiry to make a supplementary statement dated 12th March 2003 in response to the testimony of other witnesses to the Inquiry. WO1 Wood described the investigation into the shooting by a member of the army of a petrol bomber. At paragraph 4 WO1 Wood noted, "The inability of the Army to issue an immediate and fully comprehensive explanation of the incident was damaging to relations with the community."
- 11.10 WO1 Wood described the relationship between the army and the RUC. First, there was no formal Status Agreement prescribing how complaints against soldiers were to be investigated and where military offenders were to be prosecuted (paragraph 6). Second, the question of prosecution and venue was not discussed, "It was outside my remit" (paragraph 7). Third, the principal Belfast Coroner, Dr Elliott, agreed that soldiers would not need to give evidence at inquests into shooting incidents and that their statements would be read into the inquest proceedings by the investigator who had interviewed them. All identifying detail would be omitted and a cipher allocated. Further, as to the relationship between the army and the RUC, WO1 Wood noted: "Liaison to be maintained with the RUC in the event that they required any additional information or wishes to interview military personnel in accordance with normal procedure – i.e. with the safeguards of the Judges' Rules. Any such interview to be carried out with the SIB or unit officers present" (paragraph

¹⁸⁷ BBC interview with Major General Ford, broadcast on 30th January 1972 and considered in evidence by the Bloody Sunday Inquiry

12).¹⁸⁸ WO1 Wood said at paragraph 14 of his supplementary statement that:

"I formed the opinion from personal experience and from comments made by me by my staff that the RUC were not very interested in following up statements given to them. Because of this we subsequently began to undertake our own investigations."

11.11 When undertaking investigations SIB officers worked in plain clothes, offered tea and cigarettes and sometimes sandwiches, and did their best to create a relaxed atmosphere (paragraph 57).

11.12 Appended to WO1 Wood's supplementary statement is a *Brief for Investigators Engaged on Inquiries into IS Matters in Northern Ireland* (IS standing for internal security) and signed by him and dated 14th July 1971.¹⁸⁹ This document describes the purpose of an SIB enquiry as twofold. First, to inform the higher military command of what happened and second, to make evidence available if required to settle any future claim or for a Coroner's Inquest. In other words, SIB enquiries were not orientated toward criminal investigations in any way. The Brief continued:

"It is now accepted practice in Coroner's proceedings that any soldier who fires and who have may have caused the death of the subject of the inquest, does not appear in court. This also applies to anyone who authorized the soldier to open fire or who was in command at the scene of the shooting. Statements taken from these persons are produced at the Coroner's Inquest proceedings by the investigator who took them."

11.13 In his aide memoir to SIB investigators, WO1 Wood remarks, "Having soldiers seen by SIB avoids the need for them to be interviewed by RUC and ensures that the identity of a soldier who may have killed/injured someone is not divulged outside a very close military circle." Further he instructs that, "Assessment of criminal responsibility is not your task in these enquiries." On the Yellow Card, which was examined earlier in this report, WO1 Wood explains that, "They are for guidance only and do not amount to a death warrant" and that "In general, the 'Yellow Card' or 'Instructions by the Director of Operations for Opening Fire in Northern Ireland' should not be mentioned in statements taken from soldiers". Regarding the anonymity of those under question the aide memoir advises that, "When a soldier has fired upon and killed, or claims to have

¹⁸⁸ The Judges' Rules are a set of guidelines about police questioning and the acceptability of the resulting statements and confessions as evidence in court. Originally issued in 1912 the Rules became a Code of Practice codified as Code C made under the Police and Criminal Evidence Act 1984.

¹⁸⁹ Second statement of WO1 Wood to the Bloody Sunday Inquiry, dated, 2nd August 2000, paragraph 5

killed/injured, a civilian there must be maximum security cover given to prevent his name or identifying details becoming known.”

11.14 SIB investigators were advised not to trace or interview any civilian witnesses. Therefore, in the absence of the RUC conducting any form of investigation which would involve civilian witnesses, the narrative of a fatal shooting by a member of the British army would be almost completely determined by the perspective of the SIB investigator, over tea, cigarettes and sometimes sandwiches. It is apparent from these documents that the army's attitudes towards any soldier who shot someone were very defensive and protective.

11.15 In his oral evidence to the Bloody Sunday Inquiry, WO1 Wood said:

“Service investigators received no instructions before an IS enquiry. After production of the Brief and the aide memoir, none were necessary. They were not told much beyond, say, that a patrol of X Company or Y regiment had opened fire on some civilians and claimed to have hit them.”¹⁹⁰

11.16 A Major known to the Bloody Sunday Inquiry only as Major INQ 3, provided the Inquiry with a copy of a lecture he gave to the Provost Marshall's Study Period in Chichester in November 1973 entitled “RMP and the legal consequences of the Army's involvement in Northern Ireland”. At paragraph 12 of his paper, he said:

“Back in 1970 a decision was reached between the GOC [General Officer Commanding] and the Chief Constable whereby the RMP would tend to military witnesses and the RUC to civilian witnesses in the investigation of offences and incidents. With both RMP and RUC sympathetic towards the soldier, who was after all doing an incredibly difficult job, he was unlikely to make a statement incriminating himself, for the RMP investigator was out for information for managerial, not criminal purposes, and, using their powers of discretion, it was equally unlikely that the RUC would prefer charges against soldiers except in the most extreme circumstances.”¹⁹¹

11.17 The Bloody Sunday Inquiry found several instances where soldiers had lied to the RMP and these lies had been passed on to the RUC. The lies concerned the identification of alleged rioters and the descriptions of their alleged activities.¹⁹² Indeed, BIRW has been told by a member of the Paras who was on duty in Belfast in 1971 that army “snatch” squads would arrest people at random. The next day soldiers would give sworn

¹⁹⁰ Third statement of WO1 Wood to the Bloody Sunday Inquiry, dated, 12th March 2003, paragraph 34

¹⁹¹ *Report of the Bloody Sunday Inquiry*, June 2010, Chapter 173, paragraph 22

¹⁹² *Ibid*, Chapter 66, paragraphs 43 – 46

testimony in court that they had seen people rioting when in fact the first time they had laid eyes on the accused was that morning in court.

11.18 Prior to John Laverty's death, the army had killed 21 people in Northern Ireland (including the seven victims of the first two days of the Ballymurphy massacre). No soldier was prosecuted for shooting anyone until 1974.¹⁹³

11.19 Indeed, there was extreme reluctance to prosecute any soldier for killing someone in the early 1970s. In 1971 it fell to Basil (later Sir Basil) Kelly, the Attorney-General and a unionist politician who later became a Diplock judge, to consider the issue in relation to the death of William McGreanery. William McGreanery was shot by a member of the 1st Battalion Grenadier Guards in Derry on 15th September 1971. He was unarmed and posing no threat. On 23rd December 1971 Basil Kelly was of the opinion that:

"If Soldier A was guilty of any crime in this case¹⁹⁴, it would be manslaughter and not murder. Soldier A whether he acted wrongly or not, was at all times acting in the course of his duty and I cannot see how the malice, express or implied, necessary to constitute murder could be applied to his conduct."¹⁹⁵

11.20 As we have previously noted at paragraph 5.6.1 footnote 60, earlier that month, on 6th December 1971, Mr M Parkin, described as Head of C2 (AD)¹⁹⁶, reported on a meeting he had attended with Basil Kelly on 1st December which showed a deep reluctance to prosecute soldiers who fired while on duty:

"I have no doubt the Attorney-General is doing all within his power to protect the security forces against criminal proceedings in respect of actions on duty."

11.21 The memo continues...

¹⁹³ *R v Jones* (1975) 2 NIJB

¹⁹⁴ In fact, Soldier A was not prosecuted for any offence

¹⁹⁵ Quoted in Historical Enquiries Team Review Summary *Report Concerning the Death of William Francis McGreanery*, June, 2010. On 13th September 2011 following the publication of the HET Review Summary, The Chief of the General Staff of the British Army, Sir Peter Wall, issued an official apology to the family of William McGreanery. Soldier A was never prosecuted on the advice of the Attorney-General, who said "whether he acted wrongly or not, the soldier was at all times acting in the course of his duty." An excerpt from the HET Review Summary said "An examination of the original case file reveals that there were clear doubts over the veracity of Soldier A's account yet nothing was done to challenge it or investigate further" at page 46 *BBC News Northern Ireland*, "Billy McGreanery family – Army in official apology for shooting", 13th September 2011

¹⁹⁶ An administrative division of the Ministry of Defence dealing with Northern Ireland

"I am however satisfied that there is no need to remind him of the dangers to morale inherent in prosecutions of soldiers or policemen."

11.22 The Attorney-General promised to advise the British Army in advance if soldiers were to be prosecuted.¹⁹⁷ In this climate it would have therefore been very doubtful whether those responsible for killing John Laverty would ever have been brought to justice. This is despite the strong evidence that Private Hardy - Soldier B - was criminally liable for his death, having shot and unarmed and defenceless man.

12. **CONCLUSION: QUESTIONS REMAINING REGARDING THE KILLING OF JOHN LAVERTY**

12.1 BIRW is of the firm belief that John Laverty was an innocent man killed in an act of abuse of lethal force by a member of the British army now identified as Private Hardy, Soldier B. Private Hardy shot John Laverty in the back in the early hours of 11th August 1971. John Laverty posed no threat to anyone and he was unarmed. He was not engaged in any form of illegal behaviour and even though he may have gone in search of trouble because of the killing of his friend Noel Phillips, he did not find a riot. It is evident that the Private Hardy, Soldier B, who shot John Laverty, lied in his statement to RMP SIB investigators which was submitted to the Coroner's Court conducting the inquest into the killing of John Laverty. It was impossible at that time in Northern Ireland for an effective investigation to be conducted into the killing of a civilian such as John Laverty given that such investigations were undertaken by the army in a manner skewed toward protecting the perpetrators of such acts of abuse of lethal force and positively endorsed by those in political power. There was no scene of crime investigation and bodies were moved swiftly away for photographing. With hindsight John Laverty's human rights and his absolute right to life were fatally violated by the acts of the British army on the early morning of 11th August 1971. That violation demanded an effective Article 2 compliant investigation into the circumstances of his death which has never been delivered. The work of this report is a contribution to the demands of the family of John Laverty for answers to their questions as to why their loved one was killed in such a way.

12.2 As was noted at paragraph 5 at the start of this report into the killing of John Laverty, more questions arise than answers. BIRW and the family of John Laverty identified the following series of questions:

12.2.1 What briefings did the troops receive prior to going into Ballymurphy?

¹⁹⁷ Papers discovered in the London Public Record Office London by the Pat Finucane Centre (PFC) and displayed under the heading *Declassified Documents* on their website www.serve.com/pfc

- 12.2.2 Who was the army officer in overall control of the Ballymurphy operation?
- 12.2.3 Who was the RUC officer in overall control of the Ballymurphy operation?
Why was there no RUC investigation?
- 12.2.4 After the internment arrests, what orders were given to the soldiers on the ground in Ballymurphy?
- 12.2.5 In the soldiers' statements given to the RMP why were some not taken until nearly a year after these events? If WO1 Wood's description of the SIB investigation is correct then contact reports should have been taken immediately. Why was this not done in some cases?
- 12.2.6 Have the Red and Blue Books that would have recorded the actual and ciphered names of those questioned by SIB been preserved, and if so, where are they?
- 12.2.7 Why is the statement of Private Hardy, Soldier B, not recorded on an RMP SIB official statement form?
- 12.2.8 Why is there no Inquest Deposition from Private Hardy, Soldier B? Why is there no RMP Statement or Inquest Deposition of Soldier A (Corporal Farrell)?
- 12.2.9 Soldier A, an NCO Medical Orderly, attended the body of John Lavery. Did he administer medical treatment on detecting a weak heart beat and if not, why not?
- 12.2.10 Why did Soldier C pronounce John Lavery dead if Soldier A had detected a weak heart beat?
- 12.2.11 Why was there a delay in the ambulance arriving when the principle gunfire was coming from the British army?
- 12.2.12 Why were the body of John Lavery and injured body of Joseph Corr taken to the Military Wing of the Musgrave Park Hospital which was twenty minutes further away than the Royal Victoria Hospital on the nearby Falls Road? Why was the time of arrival of the ambulance not logged? If both John Lavery and Joseph Corr were still alive was the intent to intern them at the Musgrave Park Hospital?
- 12.2.13 Why did Soldier D, who travelled in the ambulance, say that John Lavery had been shot in the chest when it was clear that he had been shot in the back?
- 12.2.14 Why is there no statement from Soldier F who was in the ambulance?

12.2.15 Why is there a discrepancy between the cause of death on the autopsy report and the verdict on inquest? The autopsy report clearly states that the thigh wound was the cause of John Lavery's death.

12.3 This report by BIRW is a contribution to the campaign of the family of John Lavery and of the Ballymurphy Massacre Committee generally. As we noted¹⁹⁸ the Committee have the following demands:

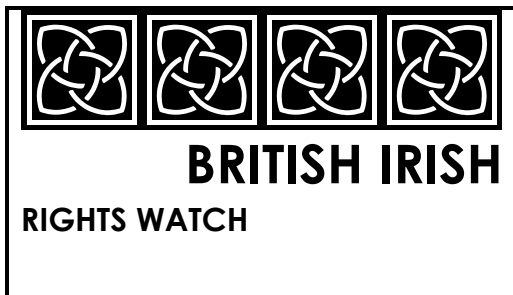
- an independent international investigation examining the circumstances surrounding all of the deaths between 9th and 11th August 1971;
- that the British government issues a statement of innocence;
- that the British government issues a public apology.

12.4 In the fortieth anniversary year of the killing of John Lavery, BIRW endorses these demands.

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¹⁹⁸ Please see paragraph 1.6 above

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