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Death on the Streets of Derry

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National Council for Civil Liberties

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Introduction

This pamphlet focuses on two short episodes in April 1981, in which three young men lost their lives. On 15 April Paul Whitters, aged 15, was shot in the head by a plastic bullet fired by an officer of the Royal Ulster Constabulary. He died ten days later. On Easter Sunday, 19 April, Gary English, aged 19, and James Brown, aged 18, were run over and killed by a Land Rover driven by a Lance Corporal of the Royal Anglian Regiment.

Both incidents have caused bitter resentment among Derry people against the security forces. While they were separate, they raised common questions. What is the real nature of the so-called 'minimum force' policy of the security forces in Northern Ireland? What restraints are there in practice upon the use of lethal weapons in situations of tension? What faith can the community have in the processes of investigation and judicial hearing?

The questions are all the more pressing because of events in Great Britain in the summer of 1981. The plastic bullet gun which killed Paul Whitters is now in the armoury of every police force. The alleged use of a police vehicle for driving at a crowd was the subject of a manslaughter prosecution in Liverpool.

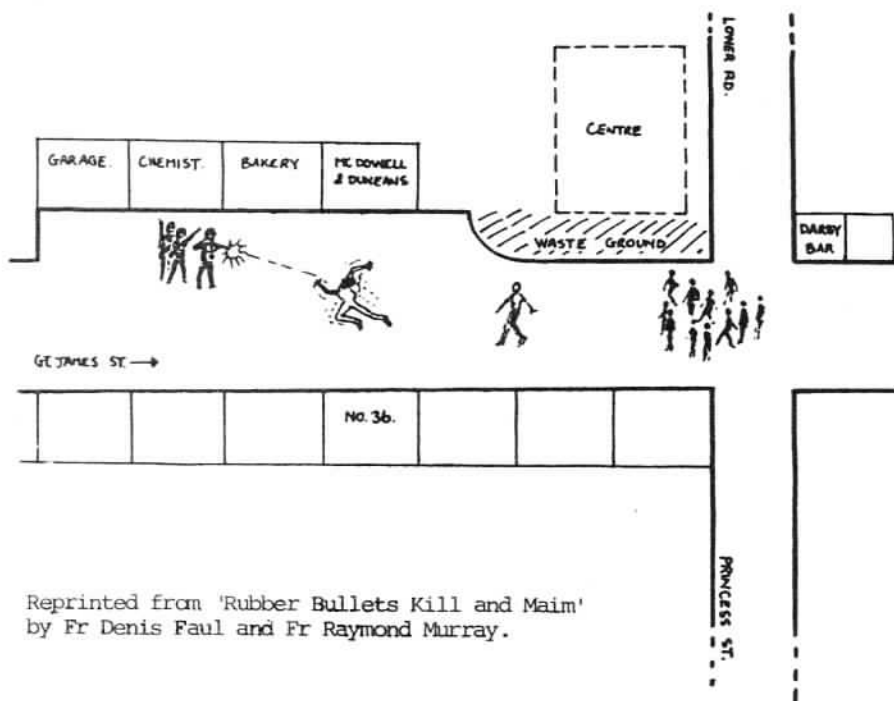
My conclusions come from two visits to Derry on behalf of NOCL, during which I spoke at length to eye-witnesses and visited the scenes of the fatal incidents. Publication had to be delayed pending the trial of two soldiers in the Belfast Crown Court in January 1982, for causing the deaths of Gary English and James Brown by reckless driving. They were acquitted, and the verdict has done nothing to allay public concern about the incident.

In August 1982, a complaint was lodged with the European Human Rights Commission on behalf of Mrs Stewart, whose son Brian died after being shot with a plastic bullet in 1976. Her action against the Ministry of Defence for compensation was dismissed earlier in 1982.

The death of Paul Whitters

Paul Whitters was shot in Great James Street, in the Bogside area of Derry. The street contains the back entrance to a bakery yard. Access to the yard is through a large door, in which there is a smaller pedestrian door. The yard is known to be used by police officers on patrol.

At a crossroads about 100 yards up from the bakery, about 20 youths had gathered. Three of them came down towards the bakery entrance and threw stones at the windows above it. Evidently they knew that police were inside. Two of the youths moved back towards the crossroads, leaving Paul on his own. He was wearing a balaclava. There was a pause while a car drove off from opposite the bakery. Paul held up his hand to allow the car to go. Paul remained standing, just up the road from the bakery entrance, and about eight yards from it.



Reprinted from 'Rubber Bullets Kill and Maim'
by Fr Denis Faul and Fr Raymond Murray.

Mr Peter McKenzie was on the ground floor of number 36 Great James Street, opposite and about 10 yards along from the bakery entrance. He described what happened next:

'The young boy bent down and appeared to pick something up off the ground, I presumed it was a stone, and went as if to throw it through the window of McDowell and Duncan. Just then four policemen came running out of the small gate at the bakery beside McDowell and Duncan. The lead policeman had a plastic bullet gun with him. The policeman with the plastic bullet gun ran towards the boy and fired directly at his head; the plastic bullet hit the boy in the face and he fell immediately. The policeman was approximately 15 to 16 feet away from the boy when he fired the plastic bullet; he made no attempt to bounce the bullet off the ground or to fire at the boy's legs, but fired directly at his head, and from that range he could not miss. The policeman made no attempt to catch the boy, and as there were four of them there and the boy was on his own they could easily have done so. The policeman who hit the boy with the plastic bullet started to laugh, and made a sign, presumably to the crowd at the top of the street, though I could not be sure. The policeman then dragged the boy into the bakery.'

There were a number of other witnesses, who have made statements and have been seen by me. Ms Mary Mullan, a part-time teacher, was watching from the first floor of number 36. With her was her sister Ms Carmel Mullan, and Mr and Mrs Mulhern. Mr McGilles was at the door of number 34. Mrs Rooney was downstairs in number 40. Mrs O'Kane had followed the boys down the street, trying to persuade them not to go down. These were impressive witnesses, several of whom would make a strong impression on the sceptical listener.

The witnesses did not disagree in giving the same account of the shooting as Mr McKenzie, except that some did not agree that Paul was about to throw a stone. Sometimes an incident is so confused and crowded that witnesses can differ wildly in their recollection. But this incident was so brief and isolated that there was little to be confused about.

A number of significant points emerge from the witnesses' accounts:

- First, the police could easily have arrested Paul, who was on his own with help a long way off.
- Secondly, no shout or warning was given.
- Thirdly, the police made no attempt to size up the situation, but shot immediately.
- Fourthly, the shot was head high and, it would seem, aimed.
- Fifthly, the range was very close, at the most ten yards.

There has been no hint of any action by the police. Mr Whitters asked what had happened to his son, and was told by a police officer: 'what do you expect when people are getting hit by petrol bombs?' The Deputy Chief Superintendent of the Derry police, Mr Stanley Irwin, said to a local community worker, who spoke to him of the strength of the evidence: 'we have as many police witnesses who will say that it was self-defence.' He showed no concern that there was anything to investigate.

There has been no inquest, even though 16 months have passed, and an inquest must by law be held. But inquests are considered to be of little use as a means of getting at the truth. The rules in Northern Ireland provide for a 'finding' which excludes any apportionment of blame. There is no verdict of unlawful killing, as in England. The members of security forces involved in a death are usually not called, but written statements from them are accepted in evidence.

WAS PAUL WHITTERS MURDERED?

The definition of murder is causing the death of another, with the intention of killing him or of causing him really serious bodily harm. What was the intention of the officer who fired at Paul? Evidently to hit him, and thereby at least to cause him serious injury. There was no other target, no distraction, no grounds for pleading that this was in some way an accident.

To act in self-defence, or in reasonable execution of a police officer's duty, is a defence to murder. But how could the firing at Paul be reasonable? Probably the officers could see him from the inside of the door, before they came out. Even if not, they would have been aware that the activity outside was stone-throwing. There had been no firing of any gun. There was nothing in Paul's hand which could be mistaken for a gun. Firing in those circumstances, with a weapon which is known to be highly lethal at that range, was an act of murder for which I can see no possible defence.

PLASTIC BULLETS - WEAPONS OF DEATH

The death of Paul Whitters was not an isolated plastic bullet fatality. The evidence has been recently gathered in two pamphlets, one by Fathers Denis Paul and Raymond Murray Rubber and Plastic Bullets Kill and Maim, prepared for the International Tribunal of Inquiry into deaths and serious injuries caused by rubber and plastic bullets in Northern Ireland, held in August 1981; and the other They Shoot Children, published by Information on Ireland. (1)

The most important facts are these:

- Fourteen people have been killed by rubber and plastic bullets fired in Northern Ireland since 1972.
- Seven of those killed were children aged between ten and 15 years.

- There have been hundreds of injuries, including blindness and brain damage. A report by four surgeons, suppressed for many years, on 90 Belfast victims of rubber bullets in 1970-2, listed one death, two cases of total blindness, seven of blindness in one eye, five of severe loss of vision, four of facial disfigurement.
- The normal plastic bullet is a cylinder 3¼ inches long and 1½ inches in diameter. But sharpened versions, and encased torch batteries, have been picked up and fired by Royal Marine Commandos in 1981.

The accounts of the most recent plastic bullet fatalities are significant. Besides Paul Whitters, seven have died since April 1981. They are:

Julie Livingstone, aged 14, from Belfast, struck in the head on 12 May 1981. The bullet was fired from a British Army armoured vehicle. Her 16-year-old friend said: 'Just after 6 pm we went with a message to my sister's. On our way back up again a Saracen came in. Everyone started to run - there were about 40 to 50 people around, mainly women and children. We ran behind the hedge of a sort of field. When we went to get up, Julie couldn't get up.'

Carol Anne Kelly, aged 12, from Belfast, struck in the head on 19 May 1981. The bullet was fired by a soldier in a British Army jeep. Carol Anne was walking home with a carton of milk in her hand.

Henry Duffy, a widower with seven children, from Derry, struck in the chest and left temple, 22 May 1981. There were no eye-witness accounts. This was a night of major disturbances following the death of a Derry hunger striker Patsy O'Hara.

Nora McCabe, aged 30, mother of three children, from Belfast, hit at close range by a RUC officer from a Land Rover, 8 July 1981. She died from head injuries on the following day. She was with her friend Karen McGlennon, who said: 'We were going down Linden Street towards the Falls to get some cigarettes. A police jeep came round the corner, off the Falls Road, and stopped at the corner of Linden Street. Almost as it stopped, as we approached closer to it, Nora suddenly fell to the ground. I couldn't believe she'd been hit.'

Peter Doherty, aged 40, shot on 24 July 1981 while standing in the kitchen of his flat in West Belfast.

Peter Magennis, aged 41, struck in the chest, in Belfast on 9 August 1981. He had come out with his wife to protest about the actions of rioters outside. Two RUC Land Rovers appeared, and the rioters ran off. A Land Rover drew alongside Mr & Mrs Magennis, and an officer shot at point blank range.

Stephen McConomy, aged 11, shot by a soldier in Derry, 16 April 1982. He had been struck in the back of the head, while running away. He died on 19 April.

No prosecutions have resulted from any of these shootings.

BAN THE PLASTIC BULLET

The plastic bullet replaced its rubber predecessor in 1975, because the disability and serious injury rate were 'not considered acceptable', according to Jane's Infantry Weapons 1976. Jonathan Rosenhead, of the British Society for Social Responsibility in Science, accurately predicted in 1976 that 'plastic bullets will be more dangerous', being lighter, harder, faster, and more easy to aim (2). They are fired from an anti-riot gun which can be accurate at up to 70 metres. Over most of that range the impact of the bullet is in 'the severe damage region' - a term used by US Army experts after extensive tests on such weapons.

During 1981 a staggering total of 29,761 of these bullets were fired in Northern Ireland, according to the Government's own figures. (3)

The instructions for their use are revealing. The Rules of Engagement for PVC Baton Rounds, issued to the British Army, provide:

1. Baton rounds may be used to disperse a crowd whenever it is judged to be minimum and reasonable force in the circumstances.
2. The Rounds must be fired at selected persons and not indiscriminately at the crowd. They should be aimed so that they strike the lower part of the body directly (i.e. without bouncing).
3. The authority to use these rounds is delegated to the commander on the spot.
4. Rounds must not be fired at a range of less than 20 metres, except when the safety of soldiers or others is seriously threatened.'

Rules 1 and 3 give enormous scope for subjective interpretation and therefore for dangerous abuse. Rules 2 and 4 show that even if used 'legally', the bullets are designed to strike the target direct, and at a range which can cause lethal damage.

The evidence of the Paul Whitters case, and of many of the cases described by Fathers Paul and Murray, is that the plastic bullet gun, when in the hands of a young, frightened, soldier or policeman, is used as a pre-emptive weapon, to keep people at bay, rather than as a defensive weapon in response to a commensurate attack.

An example of this took place before my own eyes, while I was inspecting the relevant locations in Derry for the purpose of this investigation. Two police vehicles had been collecting a stolen vehicle. They drove off, but after a few yards the tow-rope snapped. Someone in the crowd of bystanders laughed. At once a policeman

rushed from the front vehicle towards the crowd, and fired head-high. At that point, and only then, were missiles thrown at the police.

WHAT THE GOVERNMENT SAYS

The Government's defence was put in a letter to Eric Heffer MP from Secretary of State James Prior on 12 December 1981:

'In the course of the year the security forces have had to withstand sustained attack by petrol, acid, blast and nail bombs and other missiles. In addition the riots are sometimes used as a cover for gunmen - on one occasion for a rocket attack on a police vehicle in which one constable was killed and another seriously injured. The consequences of failing to withstand these attacks could have been disastrous for the community at large. The Government supports the judgement of the Chief Constable and the GOC that the controlled use of baton rounds where necessary is the best method of saving lives and maintaining law and order consistent with the principle of minimum force. The baton round remains the best alternative to other more severe methods which the security forces might otherwise be obliged to adopt and which give rise to greater loss of life.'

The early part of this statement is a gross distortion, if it is intended by it to indicate that plastic bullets are only used in cases of attack on security forces with lethal weapons such as bombs. The period from April to August 1981 was the time of maximum use of the plastic bullet; but as David Beresford observed in the Guardian: 'So far as is known, no members of the security forces have been seriously injured as a direct result of rioting during that period.' (4).

But even if and when a crowd is using lethal missiles such as petrol bombs, the use of the plastic bullet cannot be accepted. Mr Prior's letter implies that the 'baton round' is a better alternative to the rifle. That is not the point. No gun, whether firing lead or plastic bullets, should be fired at a crowd.

This is not the place for a full examination of how to deal with riots. British and Irish experience alike tells us that a society can only avoid communal disorder by dealing with the grievances which inflame and alienate the community. And one of the most bitter grievances is the death of innocent children.

To police forces and military commanders who demand more and more lethal crowd control weapons, those in authority must be firm, on this principle at the very least: that no weapon which causes death or maiming to those whom it hits should ever be used as a means of dispersing a crowd.

Israel and Spain (under fascism) are countries which are known to have used these weapons. South Africa, Iran under the Shah, and Portugal under dictatorship, have purchased stocks, almost

certainly from British manufacturers. The USA and European democracies have rejected them as too dangerous.

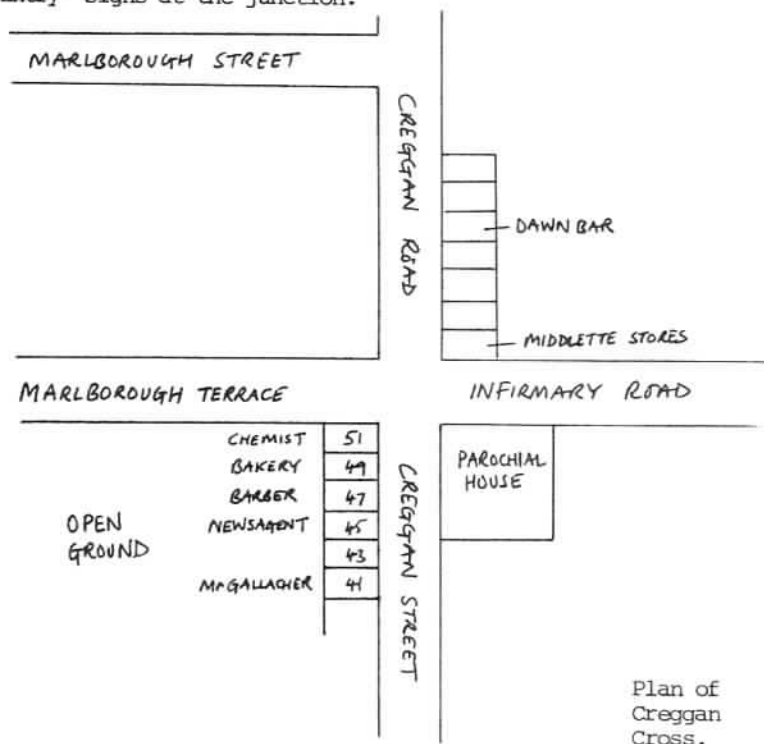
The Tribunal of Inquiry, which included legal and scientific experts from Britain, USA and France, called for the banning of plastic bullets, and if this did not happen, for a further International Commission under UN auspices to be brought to Northern Ireland. (5). The European Parliament has condemned their use, and not for the first time, Britain is facing international condemnation for its methods of maintaining 'law and order' in Northern Ireland.

Yet far from being reduced or stopped, the use of plastic bullets is being extended. On 16 July 1981 the Home Secretary announced that plastic bullet guns would be available for all British police forces 'as a means of last resort'. MPs have been reassured that 'safeguards will be attached to their use'.

The Northern Ireland experience shows how utterly unrealistic it is to talk in this way. There is no way of 'safeguarding' the use of the plastic bullet. It must be banned completely, in Northern Ireland and Great Britain, before it kills more people.

The death of Gary English and James Brown

The scene was Creggan Cross, a junction of four roads on the hill which separates the Bogside from Creggan. Creggan Road descends steeply towards the junction; the slope begins to level out on the junction and below. Creggan Street is a one way street, with 'No Entry' signs at the junction.



I was shown photographs of the general scene taken shortly before the two Army Land Rovers came down Creggan Road and hit the two young men. Army vehicles had been parked in Infirmary Road, next to the junction. A crowd of 60 to 100 youths was clustered about the junction, many throwing stones at the soldiers. They tore down a part of an advertising hoarding to use as a shield. The hunger strike by Bobby Sands was in its last days, and tensions between the Catholic community and the security forces were high.

The Army vehicles withdrew about 20 yards into Infirmary Road, causing the crowd to be drawn across the junction and into the mouth of Infirmary Road. As we shall see, this was a deliberate tactic, designed to draw the stone-throwers forward.

At this moment two Army three-quarter-ton Land Rovers, armoured with fibre glass plate, came down Creggan Road from the top of the hill. The driver of the leading vehicle was Lance Corporal Buzzard, under the command of Colour Sergeant Smith in the passenger seat. Buzzard was put on trial on a charge of causing death by reckless driving, and Smith on a charge of aiding and abetting Buzzard to commit the offence.

THE EYE-WITNESSES

Evidence about the descent of the two Land Rovers was given at the Belfast Crown Court by ten eye-witnesses, of whom five had a particularly good vantage point. Mr Paul Clements, a journalist working for the BBC, was standing on the pavement near the Marlborough Terrace/Creggan Road corner - the upper left corner on the plan. Mr and Mrs Henderson were in a car which had stopped in Creggan Road, close to Marlborough Street, where the view is very clear down the hill to the junction. Mr McCusker was in another car, near to the Hendersons. Mr Tom Kehoe was standing in Creggan Road, by the Dawn Bar.

The position of these witnesses was important. The key questions concern the manner of driving of the two Land Rovers down the hill and into the junction. There were other witnesses, in Marlborough Terrace, or further down in Creggan Street, who would have had a momentary view of the crossing of the junction and of the impact just below it. But the five mentioned above had the clearest picture from points at or above the junction itself.

Of the five, Mr Clements was there doing his job as a reporter. He had no reason to be biased; on the contrary he was trained, over five years as a journalist, to observe objectively. Mr Henderson was a local businessman who told me that he had been neutral in his view of the Army's role in Northern Ireland, before this incident. He had travelled immediately to the barracks nearby to make a statement about what he had seen. Mr McCusker was also seen by me, and I noted how full and clear was his account. He too made a statement at the RUC barracks directly after the event.

This was Mr Clements' evidence about the fatal incident:

'The first thing I heard was a very high pitched whine of the Land Rovers. I looked round and saw the jeeps. They were coming down the hill one in front of the other at a very fast speed. They were rocking slightly to the side. I could see nothing to indicate that they would be stopping. To my mind as they came down the hill they gathered momentum and speed. Ahead of them was the group of rioters and other who were still milling around. All their activity was concentrated in the direction of Infirmary Road. I saw the first Land Rover going into the crowd, driving straight into the crowd, and I saw one young boy being hurled into the air by the force of the impact when he was hit. That happened about three yards down Creggan Street.'

In cross-examination it was suggested to him that there was stoning of the Land Rovers from the mouth of Marlborough Terrace. His answer was:

'I could certainly see the mouth clearly. That was in front of me and there was no stoning in that direction.'

Question: 'I am suggesting youths then ran out as the Land Rovers arrived from Infirmary Road, on the left hand side of the Land Rovers, across them.'

Answer: 'No, that is not true. That didn't happen.'

In his statement to the police Mr Clements had estimated the speed of the Land Rovers to be 50 mph at least, but curiously no one asked him to give his estimate at the trial.

Mr Henderson described how he had just pulled out of Marlborough Street to go up Creggan Hill, when he heard a high pitched roar:

'Before I could do anything else they were whizzing past. Two Land Rovers. They were going very, very fast. I knew they were not going to stop because they could not have stopped, because they were going too fast. I couldn't help but turn round and look out the back window of the car. I heard the impact two or three times of hitting the crowd, as I thought. It sounded like running into something heavy. It was. . .just the weight of the Land Rovers hitting people.'

'Creggan Hill is a very deep street. You normally go down there with your brakes on, and in a low gear, but I saw no signs of braking. . .'

Question: 'You saw the brake lights working?'

Answer: 'Yes. They went on after the accident.' (My emphasis).

Mrs Henderson was also clear about the brake lights. 'No Land Rover that passed me put brake lights on.' Until the vehicles stopped, below the Parochial House by the Cathedral gate. 'That is when I saw the brake lights come on. There is the side gate and the Land Rover was angled like that bearing to the left and that is when the brake lights came on.'

Mrs Henderson gave this impression of the speed of the driving:

'With me being a driver you know a vehicle passing you, and I never sensed this feeling of a driver behind the wheel wanting to slow up. It was speed all the way.'

Mr McCusker, from a similar position on Creggan Hill, described the driver and the scene before him:

'I could see the driver in the first Land Rover very clear and he was in a crouched position, crouched up tight to the wind-screen. . .There were about 50 people on the actual square, you know, and they just hadn't the time to get out of the way.'

Mr Kehoe estimated the speed of the Land Rovers at 60 mph. He thought that the first one accelerated as it came to Marlborough Street. He too, looking from above, saw no brake light until the vehicles stopped. After the impact Mr Kehoe overheard the NCO in charge of the first vehicle say to the driver: 'I have a good mind to batter your brains in for that, you bastard.'

The impact with the two young men happened just below the junction. Gary English was struck by the front near side of the first Land Rover. His body came to rest in the middle of the road. James Brown was struck at the off side, and his body was flung through the air down the hill. A third man Mr Mulhern was hit by the side of the Land Rover, but was not knocked down. He was one of many who were running from the junction. He did not see the Land Rover until the impact.

The forensic expert gave evidence of the damage to the Land Rover. The offside front bumper support was cracked, which would need a 'very severe force'. The near side headlamp surround was dented. From fabric traces it was clear that these were the points of impact.

Witnesses below the junction had a less clear view of the approach of the vehicles, but saw the impact and an appalling event which followed. After stopping, one of the Land Rovers reversed back over Gary English's body. There is no doubt about this. Mr Brown, opposite the Cathedral gate, and Mr Gallacher, in his house at 41 Creggan Street, saw it from close by. So did Mr McCusker and Mr Kehoe. And Professor Marshall, who performed the autopsies, described on Gary English's body 'a broad abrasion across the back of the chest which could have been made by a tyre.' Inside the body, the damage to the heart, kidney and lung suggested 'a crushing injury rather than an impact injury.' Professor Marshall's conclusion was that: 'I think it is possible that a wheel passed over the trunk, in fact perhaps probable that a wheel passed over the trunk.'

It was the second Land Rover, whose driver was not on trial, which had been driven over the body. What then was the cause of death? Professor Marshall's opinion was that the crushing of the body had not contributed to the death. One of the main injuries was the tearing of the aorta at a point which was characteristic of a violent impact, and 'that was sufficient to cause his death'. This opinion was not questioned, and one wonders how certain it was. Gary English may at least have had a chance of survival if he had not been crushed by the weight of the second vehicle.

There were some discrepancies between the eye-witnesses, particularly in their recollection of where the vehicles stopped. Some said it was a few yards below the junction, others said further down by the Cathedral gate. One witness thought that the two Land Rovers were side by side when they hit the crowd; whereas most said that they followed each other but were side by side when they pulled up. The defence, and the judge, put a lot of emphasis on these differences. But anyone who has heard evidence about an incident of this sort knows how memories vary. What is remarkable, on reading the transcript, is the clarity and consistency of the evidence on the key

questions which the defence disputed: that the two Land Rovers came down the hill at a very fast speed; that they did not brake before the junction; that the junction was full of people; and that the crowd had no chance to clear the road in safety.

THE ARMY'S CASE

Evidence was given by the two defendants, Lance Corporal Buzzard and Colour Sergeant Smith, the driver and front passenger of the leading Land Rover. They said that they were part of a 'quick reaction force' being held in support of the ground base (the Army vehicles in Infirmary Road). They were ordered to drive down Creggan Road to the junction, to block off the entrance to Infirmary Road and conduct an 'arrest operation' in conjunction with the ground base.

According to Buzzard, 'the whole thing was to block Infirmary Road with two Land Rovers trapping the rioters between the Army base line in Infirmary Road and our Land Rovers, and then we could get out and try to arrest some of the rioters.'

Buzzard said that there was stoning from Marlborough Terrace as they approached the junction. He was driving at 35 mph. 'I was braking as I approached the junction.' Smith then told him to 'move across the junction', and he obeyed. Rioters from Infirmary Road ran across his path, and there was an impact. In cross-examination he was confused. He agreed that there were people in the junction as he came down the hill, and there was a danger of a collision if he did not stop. But he claimed that when he reached the junction there was no one there. They had moved back into Marlborough Terrace. 'If I did not think it was safe I would not have gone across it.'

Colour Sergeant Smith said that the Land Rover had 'nearly come to a standstill' as it approached the junction. He looked to his right and saw 'some youths, about 30 of them, throwing stones and whatever they could get their hands on, throwing it at the vehicle.' He thought it dangerous to stop and ordered the driver to go over the junction. Then he saw a group of youths running from the left and there was an impact.

Smith told the jury that as they came down the hill, 'there was no one in the junction of the road.' This was contrary to the evidence of Buzzard and of the only other Army witness, Private Spring in the second Land Rover who, as they came down the hill, saw 'about 70 youths running from Infirmary Road into the Longmoor Road' (i.e. Marlborough Terrace).

THE CONDUCT OF THE PROSECUTION

The evidence of the eye-witnesses justified far more serious charges than were actually laid. They had seen a vehicle career into a crowded junction, having made no attempt to stop. There was evidence from which the jury could conclude that those in control of the

vehicle must have intended really serious harm to those in the crowd. If so, the proper charge would be murder. If the jury were not sure that such an intention was proved, they could convict of manslaughter.

By not bringing these charges, the prosecution were caught in a dilemma which the judge successfully exploited. During the cross-examination of Buzzard the judge intervened:

'Now I take it that you were not suggesting that as the lance corporal drove down the hill he was intending simply to run into rioters. Mr McCollum (the Crown QC) made it clear that this was not the Crown case.'

Mr O'Reilly (the Crown junior counsel): 'That is exactly the position that the Crown has adopted consistently. I did not suggest that nor did I at any stage.'

The judge returned to this point in his summing-up. Since the Crown did not dispute that the soldiers' intention was to seal off the junction, 'you are entitled to go on the basis that that was the purpose for which the Land Rovers were coming down.' If so, the judge continued:

'What is the point, if you are going to seal that junction, of coming down so fast that you have to shoot over the junction, and then presumably reverse back up with time for the rioters to get away?'

Thus a concession which the prosecution should never have made became a telling argument for the defence.

The prosecution had been represented by Mr McCollum QC, assisted by a junior barrister, Mr O'Reilly. On the fourth day, when the defence was about to start, Mr McCollum was absent. No reason was given to the jury and he never returned. Mr O'Reilly was left to conduct the cross-examination of the defendants, probably the most difficult job for the Crown in the trial, and to make the final speech.

It is permissible for a QC, with the agreement of the client, to leave a case before the end and in Northern Ireland it happens often. But the impression left with the relatives of the dead youths, and perhaps with the jury as well, was that the prosecution had lost interest in the case.

THE ROLE OF THE JUDGE

In summing up to the jury, the judge's task is to direct the jury on the law, particularly on the legal definition of the crime, and to remind them of the evidence. The judge is allowed to make comments, provided that the jury is reminded that they are entitled to disregard the comments if they do not agree with them.

Mr Justice Hutton made full use of his right to make comments. When he came to the prosecution evidence, he summarised the key witnesses in five paragraphs, and then set about a long series of comments and observations, which stretch over six pages of the transcript,

consisting entirely of points for the defence:

'It is entirely for you to consider whether you think that perhaps unconsciously some of the witnesses called for the Crown had a tendency somewhat to strengthen their evidence against the Army. . .'

In relation to Mr Clements' evidence:

'Mr Campbell (the defence QC) made the point that no one person could see everything that happened. Even a person who is entirely honest may perhaps tend to think that something could not have happened if he did not see it. In other words, that a conscientious intelligent person thinking carefully about what he saw may rather come perhaps unconsciously to adopt an attitude, well, I didn't see that and therefore, it didn't happen. And you have to bear that point in mind.'

'The point Mr Campbell made to you was this. He said to you quite accurately that there was a great variation in the evidence of Crown witnesses as to where the first Land Rover stopped.'

'What Mr Campbell says on behalf of the accused is this, that if you are presented with a whole lot of estimates as to where the first Land Rover stopped, you have to give the benefit of the doubt to the accused. . .'

On whether the Land Rovers were stoned:

'Might it not seem that there might have been some stoning, perhaps not very much, because people didn't have much time to do it, but do you think that the Land Rovers coming down and going over the junction in the vicinity of a riotous crowd, that the Land Rovers weren't stoned at all until they got over the junction, or do you think that Buzzard and Smith are right when they say that they were stoned?'

There was no attempt made to point out the strengths of the prosecution case. The analysis of the evidence was all one way.

Even more remarkable was the judge's directions of the law of reckless driving. There has recently been a decision of the House of Lords (6), binding on the Northern Irish courts, on the definition of reckless driving.

Lord Diplock said: 'An appropriate instruction to the jury on what is meant by driving recklessly would be that they must be satisfied of two things: first, that the defendant was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road, or of doing substantial damage to property; and, second, that in driving in that manner the defendant did so without having given any thought to the possibility of there being any such risk or, having recognised that there was some risk involved, had none the less gone on to take it.'

Mr Justice Hutton took the first of these ingredients, but added in a second one which was quite different. His direction was that the jury had to be satisfied of three matters:

'First of all that the accused in this case, Lance Corporal Buzzard, was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person. Secondly, that in driving in that manner the accused took a risk which it was unreasonable for him to take in the circumstances. And thirdly, that the driving of the accused caused the death of the person named in the charge.' (My emphasis).

Having given this direction, the judge was then able to draw attention to all the factors which the jury should bear in mind in considering whether the soldiers took an 'unreasonable' risk. Again I quote his words:

'The first principle is this: it is the duty of soldiers to seek to suppress riots and to seek to arrest rioters. . .'

'That is the balance, risk against risk. It has to be weighed up by the accused in the brief second or two which the accused had to decide and under all the stresses to which they were exposed. . . That is the test you have to apply in deciding whether a risk they took - if you think a risk was taken - was reasonable in the circumstances.'

'When you are considering whether, in the circumstances, that was an unreasonable risk for Lance Corporal Buzzard to take, you are entitled to take into account and you should take into account that Sergeant Smith ordered him to go on. . .'

And in the last paragraph of the summing up:

'Before you can convict you must be satisfied beyond a reasonable doubt that any risk which was taken by them was unreasonable having regard to all the circumstances. If you accept this evidence, or if you think they have raised a doubt about it, having regard to the points that they make that they were concerned for the safety of the men in the jeep and particularly the man standing up looking out through the roof.'

The jury acquitted both defendants, by a majority verdict. Perhaps they believed the soldiers who said that they had come almost to a halt, although the evidence to the contrary was overwhelming. More probably, after the judge's summing up, they thought that to drive into a crowd of rioters was 'reasonable'.

THE ACTIONS OF THE ARMY

The manoeuvre which the soldiers claimed to be carrying out requires some attention. It was an 'arrest operation' designed to trap as many as possible between the Land Rovers and the 'ground base'. It could only succeed if the Land Rovers came down fast enough to surprise

the people in Infirmary Road before they could escape across the junction.

Further light is shed by the Army communications which were monitored on the radio by a man who has made a habit of listening in and interpreting the Army's calls. He gave me this account of what he had heard between 'Hotel 29' (a commanding officer stationed somewhere out of the riot area, 'Hotel 33' (a soldier at the ground base), and '34 Charlie' (in the Land Rovers). Hotel 33 was keeping Hotel 29 informed of the stoning at the junction. Hotel 29 commented 'good, I hope they break a few of Dr Daly's windows'. (Dr Daly is the Bishop of Derry, living in the Parochial House on the corner). The key exchanges were:

Hotel 29: are there many in the centre?

Hotel 33: no

Hotel 29: don't move until plenty of them are stretched across the centre

After a while:

Hotel 33: the crowd is thick in the middle of the road

Hotel 29: are you sure?

Hotel 33: yes, across to the Middlette Stores

Hotel 29: (to Charlie 34) go, go, go

After some confusion:

Charlie 34: we have doggo, we have doggo

Hotel 29: good, well done

Doggo is known as a word for a corpse.

Looking at all that is known, there are two possible explanations. Either the intention was to drive down and stop, to carry out the arrest operation. If so, there was a change of plan. Not because the vehicles were stoned, for I am sure that they were not: the people in the junction were escaping, and those down Marlborough Terrace would not see the vehicles in time. Why then? It may be because the driver and his superior had realised that the operation would not succeed, as everyone was on the run and would escape.

The other, horrific, possibility, is that there was no arrest operation at all; but simply a calculated decision to drive into the junction, at a time when it was known to be full of people, in order to cause the maximum of intimidation and havoc.

Both of these explanations reveal a frightening degree of recklessness, of contempt for the people in the street, both in their planning and their execution. The arrest operation, even on the account given by the Army witnesses, would have been a highly dangerous manoeuvre. It depended on speed and surprise, on arriving and stopping in the shortest possible time. People could easily be run down in the process.

The actual manoeuvre left everyone who saw it appalled, and with reason. The speed was inexcusable, and there was, I am sure, no attempt to slow or stop at the junction. The junction was full of people, as even Army witnesses admit. Someone was bound to be hit, with the force of a three-quarter ton vehicle at speed.

The jury were directed to ignore the evidence that the second Land Rover drove over Gary English's body - no doubt because its driver was not on trial. Whether or not it contributed to death, this action is a further example of the heedlessness, if not callousness, of those at the wheel.

The tragedy can be seen as an example of what happens when security forces treat discontented civilians as the enemy. The manoeuvres which have been analysed would be more appropriate to a battle against a foreign army, than to the policing of a local community. Those who drove the Land Rovers, like those who fire the plastic bullets, have dehumanised the people they are meant to be serving. They generate a responding hatred in the Catholic communities. The alienation, on both sides, is complete.

THE JUDICIAL PROCESS

Jury trial only survives in Northern Ireland for offences, like reckless driving, which are not on the list of 'scheduled offences'. Most crimes of violence involving murder and manslaughter, are tried in the 'Diplock Courts' by a judge sitting alone.

But the acquittal of Lance Corporal Buzzard and Colour Sergeant Smith should not be seen as a reason for abrogating jury trial in Northern Ireland. A fair trial under the jury system demands that the case is fully argued on both sides, and that the trial judge presides impartially. When this happens, there can still be an erroneous or a sympathy verdict. But the worst injustices, whether convictions or acquittals, flow from the inequalities in the trial which favour the party who wins.

Often it is the defendant who is unfairly treated. In this case the defence was unfairly favoured:

first, because the charges laid were trivial: on the evidence of Mr Clements, Mr Henderson and others, both murder and manslaughter would have been proper charges to lay;

secondly, because the judge did his utmost to favour the defence. He allowed the verdict to be given by the jury, but only after a thoroughly one-sided analysis of the evidence, and a wrong direction on the law.

In those circumstances the relatives of the dead youths were justified in saying that the trial was a travesty of justice. There might have been an acquittal, even after a properly conducted trial. But the real sense of bitterness which persists stems from the feeling that

the authorities have compounded their own crime. One arm of authority causes death in the streets. Another arm of authority treats it as a traffic offence, and even then shows none of the zeal which is shown towards 'normal' criminals. Such double standards of justice make a mockery of the values which the security forces are supposed to secure.

FOOTNOTES

- 1 Obtainable from Box 189, 32 Ivor Place, London N W 1
- 2 New Scientist, 16th December 1976
- 3 Written Answer, 19th November 1981, col. 200. The figure is to 11th November 1981
- 4 28th September 1981
- 5 For details of the Tribunal's findings, see Dr. Tim Shallice, "The harmless bullet that kills", New Statesman, 14th August 1981
- 6 R. v. Lawrence (1981): 1 All England Reports, p.974.

Appendix

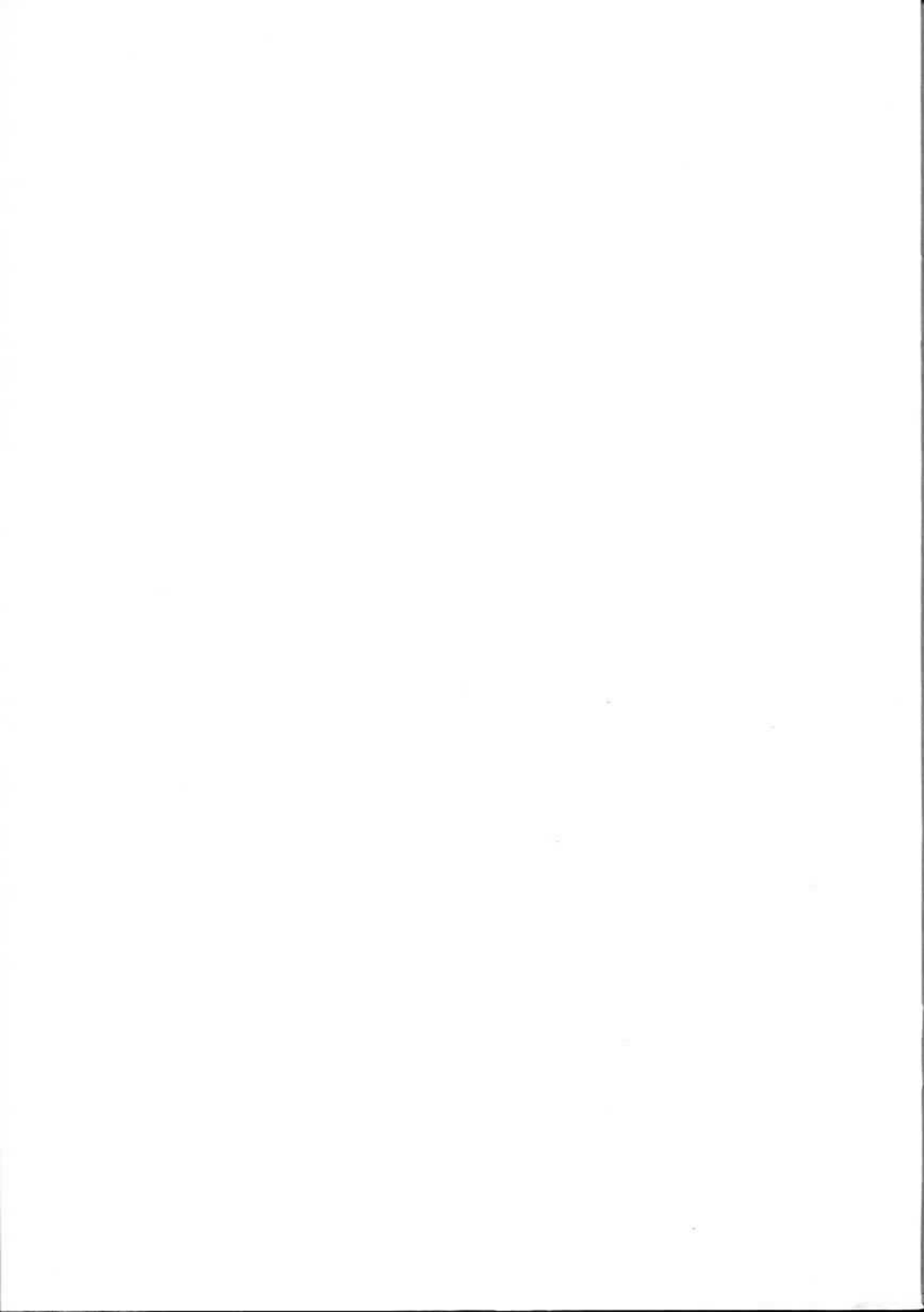
The plastic bullet has been the Army's standard riot control weapon since 1975, when it replaced the rubber bullet. The plastic 'baton round' weighs a little under five ounces, and is fired with a muzzle velocity of between 130 and 170 miles per hour. For comparison, it is about the same weight as a cricket ball, harder and is projected at up to twice the speed of the fastest fast bowler and at shorter ranges.

Both the death and injury ratio from plastic bullets have quite outstripped their rubber predecessors. Rubber bullets caused three deaths, but plastic bullets have now caused ten. In terms of the number fired, rubber bullets caused one death for every 18,000 firings, while the plastic bullet death rate is one for every 4,000. The injury rate too is up by nearly the same proportion. This is no accident: indeed it was predicted as long ago as 1976 by Jonathan Rosenhead of the British Society for Social Responsibility in Science (*op cit.*, footnote 2, p. 21). The pain, and also the danger, inflicted by impact weapons comes from the transfer of energy from the projectile to the victim. The plastic bullet is a little lighter than the rubber bullet and has a similar velocity. But it does not use up any of its energy in bouncing off the ground, and as it is harder uses up less energy in distorting on impact. It is therefore inherently more dangerous than the rubber bullet.

Just how dangerous these weapons are can be judged not only from the trail of death and injury in Ireland, but also from US Army research available to the British Government from 1974 onwards. This showed that impacts with energy above 90 ft lbs (the energy of a three pound weight after it has been dropped from 30 feet) are in the 'severe damage region'. The energy of a plastic bullet at five yards range is 210 ft lbs, and even at its extreme range of 50 yards its energy is 110 ft lbs. The British Society for Social Responsibility in Science has described it as the most dangerous 'less lethal' riot control weapon in service with national security forces anywhere in the world.

*Jonathan Rosenhead
British Society for Social Responsibility in Science.*







This pamphlet concentrates on two brief episodes in Derry, Northern Ireland, in April 1981 in which three young men lost their lives. On 15 April Paul Whitters, aged 15, was shot in the head by a plastic bullet fired by an RUC officer. He died ten days later. On 19 April Gary English, aged 19, and James Brown, aged 18, were run over and killed by an Army Land Rover.

Both incidents caused bitter local resentment against the security forces. Although they were separate they raise common questions, all the more pressing since the plastic bullet gun which killed Paul Whitters is now available to every police force in the UK.

Lord Gifford QC visited Northern Ireland on behalf of the National Council for Civil Liberties to conduct an independent investigation into the three deaths. His conclusions about the real nature of the so-called 'minimum force' policy of the security forces, the restraints on the use of lethal weapons and the processes of investigation and judicial hearing have extremely serious consequences for those who seek solutions to the problems of Northern Ireland.

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