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S.H. 1.2.90

~~Mr. Lee Clegg~~
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[Original to Tamesworth]

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Case of Private Clegg

Implications for the Peace Process

1. The current campaign for the release of Pt. Clegg raises a number of issues. Any unilateral decision by the British to release Clegg would clearly be resented by the nationalist community. This would see it as making a mockery of British claims of accountability for members of the security forces. The contrast with British obduracy regarding paramilitary prisoners could hardly be more stark.
2. Nevertheless the British Government are clearly under considerable domestic pressure on the issue. The question arises, if release is inevitable, what price can we exact in return. At first glance an obvious counterpart would be release (or referral back to the Appeal Court) of Kane/Timmons/Kelly. This might be presented by the British as a "balanced" response, disposing of two miscarriages of justice. While the release of Kane/Timmons/Kelly would be generally welcomed by nationalists, the case is not a priority for Sinn Féin. There would also be criticism that the release of Clegg so soon after the Lords decision was too high a price.
3. Overall, it would seem preferable to situate the Clegg case in the wider context of prisoners, rather than cases of wrongful conviction. [Sinn Féin are on record as not excluding security forces from future releases]. By allowing that many on all sides are serving sentences who would not be in prison but for the unique circumstances of the past twenty five years, it should be possible to encourage acceptance that with the ending of violence the position of all such prisoners needs to be addressed. In short, if the Clegg case can serve as cover for British flexibility in this area we can promise understanding.

Background

4. The House of Lords last week rejected the appeal by Pt. Lee Clegg (Parachute Regiment) against his conviction for murder arising from the killing of 18 year old Karen Reilly in West Belfast in 1990. In brief, the court ruled that one of four shots fired by Clegg were discharged after the car in which Ms. O'Reilly was travelling had passed his position, and therefore could not be justified on grounds of self defence.
5. Only one other member of the British Army has been convicted of murder linked to service in Northern Ireland. Private Ian Thain was convicted in 1984 of the murder of a catholic youth, Thomas Reilly. Two and a half years into his sentence Thain was released from prison and reinstated in his old regiment.

Release Campaign

6. A "Clegg Committee" comprising senior ex-Paras has been formed to campaign for Clegg's release. The issue has been taken up by the Telegraph and Mail groups, with readers urged to send coupons calling for action to the Prime Minister. More than 60 MP's have signed a Commons motion calling for his release.

British Government Response

7. The NIO have pointed out, that with the exhaustion of the normal appeal process, two avenues remain open:
 - the SOS can refer the case back to the Court of Appeal in the event of new evidence, or
 - he has discretion to release Clegg, who is serving a mandatory life sentence, at any time on licence.
8. Clearly inspired press reports indicate that Defence Secretary Rifkind favours a NIO decision to release on licence; it is also reported that the Home Secretary is willing to have responsibility transferred from the NIO to his Department (Clegg is currently at a prison in Great Britain) and would deal "sympathically" with the matter. In response to intervention in the Commons this afternoon the PM said that any evidence should be brought to the Secretary of State's attention.

Murder/Manslaughter: Legal Charges

9. Among the points made by Clegg's supporters is that the law should be changed so that soldiers using excessive force might be charged with manslaughter, rather than the present obligatory murder charge. The irony is that exactly this change has been urged by us, and many legal and human rights bodies for many years. It has heretofore been resisted by the Army on the grounds that it would (as we hoped) lead to charges being preferred in a larger number of lethal force cases. They preferred to allow a small number of ~~small~~ cases, confident of their capacity to avoid convictions. Their record of success speaks for itself.

RK
Anglo-Irish Division
24 January 1995

**Security Force Killings
Table of Prosecutions and their outcomes**

Date	Case	Force	Victim	Incident & Date	Outcome
1974	R v Foxford	Army	Kevin Heatley	Shot fired in Newry at night (Feb 1973)	Conviction for manslaughter quashed on appeal
1974	R v Ross	Army	Anthony Mitchell	Shot by patrol in Belfast (June 1973)	Acquitted
1974	R v Spencer	Army	Samuel Martin	Shot near barracks in S. Armagh (March 1973)	Acquitted of manslaughter
1975	R v Nicholl	Army	Alex Howell	Shot during affray at pub in Belfast (Dec 1973)	Acquitted of manslaughter
1975	R v Jones	Army	Patrick McElhone	Suspect ran off during farm search in Co. Tyrone (Aug 1974)	Acquitted
1975	R v Fury	Army	Hugh Devine	Shot by patrol in Strabane (June 1974)	Acquitted
1976	R v Scott	Army	Anthony Gallagher	Shot on bus in Derry (May 1976)	Acquitted
1977	R v Williams	Army	Majella O'Hare	Shot in lane in S. Armagh (Aug 1976)	Acquitted
1979	R v Bohan & Temperley	Army	John Boyle	Ambush at graveyard arms cache in Dunloy, Co. Antrim (June 1978)	Acquitted
1981	R v Davidson	Army	Theresa Donaghy	Shot in car at border checkpoint in Strabane (April 1980)	Convicted of manslaughter
1981	R v McKeown	RUC	Michael McCartan	Shot painting wall slogans in W Belfast (July 1980)	Acquitted
1982	R v Bailey	Army	Eamonn Bradley	Shot running off after challenge in Derry (Aug 1982)	Acquitted
1984	R v Robinson	RUC	Seamus Grew & Roddie Carroll	INLA suspects shot at roadblock near Armagh (Dec 1982)	Acquitted
1984	R v Robinson Montgomery & Brannigan	RUC	Gervais McKerr Eugene Toman & Sean Burns	IRA suspects shot at planned roadblock in N. Armagh (Nov 1982)	Acquitted

1984	R v Thain	- Army	Thomas Reilly	Youth ran off after street altercation in W Belfast (Aug 1983)	Convicted of murder
1984	R v Baird	UDR	Martin Malone	Shot during altercation in Armagh (July 1983)	Acquitted of manslaughter
1987	R v Hegarty	RUC	John Downes	Shot by plastic bullet in fracas at rally in W Belfast (August 1984)	Acquitted of manslaughter
1988	R v Holden	Army	Aidan McAnespie	Shot at border checkpoint near Aughnacloy (Feb 1988)	Manslaughter charge withdrawn
1993	R v Clegg, Boustead and Aindow	Army	Karen Reilly & Martin Peake	Joyriders shot at roadblock in W Belfast (Sept 1990)	Clegg convicted of murder, Aindow of attempted murder, (subsequently reduced to malicious wounding, on appeal). Boustead acquitted. Clegg's appeals denied.
1993	R v Elkington & Callaghan	Army	Fergal Caraher	Shot after passing roadblock in S Armagh (December 1990)	Acquitted
1993	R v Hanley	RUC	Kevin McGovern	Shot by patrol in Strabane (Sept 1991)	Acquitted
1994	R v Wright & Fisher	Army	Peter McBride	Shot as he ran away from patrol in N Belfast (Sept 1992)	Murder charge Judgement awaited