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Summary of BBC Northern Ireland "Rough Justice"  
programme, Thursday, 1 April, 1993

Presented by John Ware

The programme opens with film of a black taxi shot from a British Army helicopter on 19 March, 1988 in which the programme presenter says two Army Corporals are being savagely beaten before being shot by IRA gunmen.

The next film shows footage of the occurrences sometime earlier in the sports ground and highlights a man in a green jacket (Patrick Kane) who "knew nothing about the taxi or the IRA gunmen, and he was not present when the soldiers were shot". The programme presenter says that the film demonstrates that Patrick Kane's conviction is manifestly unjust.

The presenter says "the RUC launched its biggest ever murder inquiry. Forty-one people were tried on charges from assault to murder in nine trials over four years. But has the clamour to bring the real culprits to justice itself led to a miscarriage? Tonight Rough Justice presents new evidence to suggest that's what's happened to Patrick Kane".

Footage of funeral of IRA men prior to the murders (as previously shown on TV).

Footage of IRA killers running from the scene of the later shooting.

Kane denied in Court that he had been in Casement Park at any stage. Film is shown which the prosecutors purport demonstrates that he helped to manhandle the two Corporals towards the Park, that he had gone into the Park and that he had been an active participant there.

Presenter "In Northern Irish Courts, the Judge is omnipotent. He decides everything, both law and fact, without a jury because successive Governments have decided that, given the present conflict, juries there cannot be relied upon to give impartial judgement in terrorist cases". The Judge in this case, Mr. Justice Carswell, found Kane and his two co-accused guilty of counselling and procuring the murders of the two Corporals, and sentenced them to life imprisonment. The Judge said that they had been part of a "common purpose" to murder the soldiers, helping to imprison the two defenceless men realising that they would be shot. He dismissed Kane's claim that he had been pressurised into making false admissions to the Police.

Presenter "Although Kane was twenty-nine, according to one of the country's leading forensic psychologists, he has a mental age of an eleven-year old. He had also never been in trouble with the Police before".

Cardinal Daly (Referring to the conviction and sentencing) "it just to me does not make sense".

The presenter explains the law of common purpose.

Presenter Mr. Justice Carswell (explaining the conviction) said "it must have been quite clear within a very short time of the soldiers being taken into Casement Park that they were going to be shot".

The presenter argues that not everyone would agree with the Judge's depiction of the funeral as a gathering of IRA and supporters which they would say was partial and misleading. This is supported by Cardinal Daly who says that such funerals are not private or family occasions.

Footage of funerals of three IRA men some days previously (who were shot dead by the SAS in Gibraltar), and the gun and grenade attack in the cemetery. The attack was carried out by Loyalist Michael Stone; three mourners were killed and thirty injured. Cardinal Daly is interviewed again and says that the incident had a devastating impact in the community. At the subsequent funerals the RUC agreed to stay away. The whole of West Belfast was said to be on edge. It was into this cauldron of anxiety that the two Corporals drove at speed and, according to Cardinal Daly, this had all the appearances of a recurrence of the Michael Stone atrocity in the minds of bystanders. When the driver produced a gun, fear and anger erupted into mob hysteria.

Presenter "According to one psychologist who has studied mob behaviour and who has examined the film, the sudden arrival of the car provoked a classic example of what is called "de-individuation" where the individual loses control and conforms in a sheep-like way to the actions of the crowd (Dr. Andrew Colman, Leicester University). In the case of Kane, Dr. Colman says that de-individuation would have further reduced his ability to contemplate future scenarios (and it was his ability to contemplate future scenarios on which his conviction depended)".

Dr. Colman's evidence had already been ruled inadmissible at a previous Casement Park trial when the Judge said he could form his own conclusions about psychological factors, without the help of an expert. Mr. Justice Carswell appears to have made no allowance at all to the psychology of mourners, simply referring to them as a hostile crowd. However, Dr. Colman argues that you have to be absolutely certain (in the case of someone who did not take part in the murder) of what was in that person's mind, if you are going to convict them under the law of common purpose. He argues that the whole matter rests on this psychological point.

Cardinal Daly argues that the incident should be looked at as it occurred and not "reading the end back into the beginning or assuming that anyone who was there or was in the vicinity had a clear picture of how this was going to end or had the opportunity of detaching himself from it - that is not how it happened at all".

Presenter "It seems therefore that the Judge was not justified in asserting that as soon as Pat Kane went into Casement Park, he must have realised that the two men would be shot. So at what point might it have become clear to him that they were going to be murdered?".

Further analysis of "heli-telly" footage. The presenter accepts that "the man in green" appears to be part of a group holding the men in Casement Park but "can we be certain that he was lending his support to something that he might end in murder?". This is not necessarily accepted by Dr. Colman.

Quote from Mr. Justice Carswell "if this (the proposed murder) was not crystal clear to Kane when the soldiers were first held in Casement Park, it must, in my opinion, have become so when they were stripped of their clothing" (some two and a half minutes later).

Presenter "The prosecution's case against Pat Kane after this point seems over-whelming. They produced Kane's statement that he had kicked one of the half naked soldiers and had obeyed an IRA order to eject the Priest who was trying to protect them. This, the Crown said, proved that Kane was still a willing participant in the common purpose at a point when, according to the Justice, he must have known the soldiers might be murdered. However, the Crown's case collapses at this point".

Kane said that he kicked one of the soldiers; however, the video film shows nothing of the sort. It is quite clear that at no point did he kick anyone. Yet in his judgement, Mr. Justice Carswell makes no reference at all to this crucial point. Kane's statement also said that he had helped eject the Priest from the vicinity. Again the video film seems to prove this wrong. Fr. Reid confirmed that the person who lifted him from his position where he was protecting the two soldiers shouted "get up or I'll f...ing well shoot you". He then threw Fr. Reid to someone else saying "take him away".

Presenter The video film actually corroborates the heart of Patrick Kane's defence, the part which said he wanted to disassociate himself from the common purpose after the soldiers were stripped. Kane's statement said that when he saw the Priest praying beside the two soldiers, he realised that "something bad was happening or going to happen" and decided that he wanted out. The video film seems to corroborate this.

However, Justice Carswell found that Kane lied to escape the consequences of his actions. "The written statement is based on false foundations from the very beginning" (i.e. that he was not in Casement Park). However, the presenter points out that when it came to finding that Kane was "the green man" in Casement Park, the Judge relied whole-heartedly on these admissions.

The presenter is confused as to why Kane admitted to kicking the soldier and helping to remove the Priest, when this apparently did not happen. However, he points out that Kane was interviewed some nine months later, for seven hours, without access to a lawyer. Oliver Kelly, Patrick Kane's solicitor, says that Kane would not be "the most intelligent or clever fellow ever to visit a police station or to be interviewed...putting it politely...he might not even have been capable of understanding intelligent conversation or

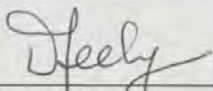


language, or difficult language...he is vulnerable on that score...whose intellectual development was impaired throughout his life by impaired hearing".

The presenter says we may well ask why the case against Patrick Kane was ever brought at all. What did the evidence amount to? A series of admissions from an acutely anxious man with the mentality of a child, and some helicopter film which in any case destroyed the most incriminating part of those admissions. However, the Northern Ireland Court of Appeal did not see it that way.

On 5 July, 1991 the Court rejected Kane's appeal. The Court did not accept as even a "reasonable possibility" the fact that Kane wanted to disassociate himself from the common purpose. However, ironically, one of the three Appeal Court Judges, Lord Justice MacDermot, the same day that he upheld Kane's conviction, delivered his trial judgement in regard to the taxi driver involved in the case. Whereas the Judge found that Kane had contemplated that the soldiers would be killed, he found that the taxi driver had not contemplated the possibility of murder.

Presenter: "Pat Kane has now exhausted all the avenues offered by the British legal system. However, he can petition the Secretary of State Sir Patrick Mayhew". The presenter concludes "Sir Patrick has the discretion to act in the case of Patrick Kane. We think he should exercise it now".



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Derek Feely

4 April, 1993