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## The Case of Private Lee Clegg

### Background

1. The original incident occurred on 30 September 1990, on the Glen Road, in West Belfast. A patrol from 3rd Battalion, Parachute Regiment accompanied by an RUC officer set up a 'rolling checkpoint' along the road. A stolen car containing three West Belfast teenagers drove through the checkpoint, coming under fire from the patrol. Two of the occupants of the car, 18 year old Karen Reilly and 17 year old Martin Peake were killed as a result. 32 rounds were fired at the car in the incident.
2. 6 soldiers from the patrol were charged in connection with the incident on July 31 1991. Private Lee Clegg was charged with the murder of Karen Reilly, attempted murder of Martin Peake and wounding with intent to cause grievous bodily harm to Martin Peake. Private Barry Aindow was charged with attempted murder of Peake, attempted wounding of Peake with intent to cause grievous bodily harm, obstructing the RUC investigation and conspiracy to and perverting the course of justice. Private Stephen Boustead was also charged with attempted murder. The remaining officers were charged with obstructing the investigation and perverting the course of justice.

### Legal background to the Case

1. The case came to trial on 9th March 1993 presided over by Justice Campbell. Private Clegg was convicted of the murder of Karen Reilly in June 1993. He was acquitted of the attempted murder of Martin Peake, since it was unclear whether to commit murder had been his intention. He was also cleared of obstructing the investigation and

perverting the course of justice. Private Aindow was convicted of attempted murder, conspiracy to pervert and perverting the course of justice. He was acquitted of obstructing the investigation. The other four soldiers were cleared of the charges.

2. Justice Campbell convicted Private Clegg on the basis that the fourth and final shot he fired at the stolen car, as it passed through the checkpoint, was unlawful as the car no longer constituted any threat to the patrol.
3. Privates Clegg and Aindow appealed their convictions in February-April 1994. The case was heard by LCJ Hutton. Private Aindow's conviction was reduced to malicious wounding. The convictions for conspiracy to and perverting the course of justice were upheld. (He has since completed his sentence). The arguments forwarded by Private Clegg's defence were that:
  - (i) the decision that the fourth shot fired by Private Clegg entered the rear of the car (rather than the side as Private Clegg claimed) was unsafe. The defence maintained that this could not be proven beyond a reasonable doubt.
  - (ii) the decision that Private Clegg's intention in firing the fourth shot was to kill or cause grievous bodily harm was unsafe. The defence maintained that Private Clegg may have fired instinctively, without intent.
  - (iii) the judge had erred in saying that there was insufficient evidence to raise the defence that Private Clegg had fired in order to arrest the driver of the car.

The conviction was upheld. Judge Hutton concluded that "the force was clearly unreasonable" and "grossly disproportionate to the mischief to be averted". The

judge recommended that the 'Yellow Card' guidelines be redrafted to clarify the rules in respect of firing on a car which has injured another person. He asserted that a minor injury caused by a car containing joyriders did not justify firing to kill.

He also recommended that the law of murder be amended to allow for charges of manslaughter to be brought against soldiers in such circumstances. (This has been consistently opposed by the British army, arguably because of an expected increase in the number of cases which would be brought.) This was the suggestion of the Attorney General for Northern Ireland's Reference in 1977. The Attorney General, at the time, also advocated that such soldiers convicted of murder for unlawful firing should serve shorter sentences than those convicted of who acted out of malice.

4. Private Clegg appealed the case to the House of Lords. Judgement was returned on 19th January 1995 and the conviction was upheld. The Law Lords concluded that it was not within their remit, but rather that of the legislature to amend the murder law. As matters stood, the soldiers involved must be convicted of murder.
5. In the aftermath of the Law Lord's rejection of Private Clegg's appeal, a concerted campaign for Clegg's release has been initiated in Britain. The campaign is concentrated on the assertion that Private Clegg acted correctly under the circumstances of the terrorist campaign in Northern Ireland. As a result of this campaign, during which 1 million signatures have been sent to the British Prime Minister urging Clegg's release, British government ministers and the NIO have made various statements regarding the current status of the conviction.
6. The British Attorney General, Sir Nicholas Lyell

dismissed accusations that the appeal rejection by the Law Lords was a politically motivated action to preserve the peace process.

7. The Northern Ireland Office issued a statement on 23 January outlining a number of options open in the case:
  - (i) The Secretary of State has the option to refer the case back to the Court of Appeal if he considers there to be new evidence.
  - (ii) Under the regime for prisoners serving life sentences the Secretary of State has the power to release Private Clegg on licence, taking into account the views of the trial judge, the Lord Chief Justice, the Life Sentence Review Board and all the circumstances of the case.
8. A 'senior Whitehall source' was quoted in the media as saying that jurisdiction over Private Clegg could be transferred from the Secretary of State to the British Home Secretary in order to accelerate his release. According to newspaper articles, Clegg has been offered a permanent move to Home Office jurisdiction. Home Office sources have been quoted as saying the Home Secretary is 'very keen' to arrange a speedy release on licence for Private Clegg.
9. The British Prime Minister stated in the House of Commons on 24 January, that the Secretary of State must review any new evidence in the case and decide whether it is sufficient to warrant a further referral to the Court of Appeal.
10. The British Home Secretary, Michael Howard, announced on 24 January that the law on murder is to be reviewed in light of the concerns expressed by the Law Lords in their judgement.

11. A full internal review of the case is being carried out to determine when it should go to the Life Sentence Review Board. Furthermore, the British side understand that no new evidence has been offered to support a referral back to the Court of Appeal.

It appears from comments in recent days that Private Clegg's legal advisers are more prepared to accept the fact of his conviction and pursue his release now within the mechanism available to the Secretary of State. However, Clegg's legal adviser, Simon McKay, has expressed disappointment following confirmation that the NIO internal review was simply to determine when the case should be referred to the Life Sentence Review Board.

The Home Affairs Committee heard recommendations from former Lord Chief Justice, Lord Lane on 8 February to the effect that the mandatory life sentence for murder should be abolished. He referred to the Clegg case in regard to setting different sentences depending on the manner of the crime committed. However, he rejected suggestions that different categorisation of offences should be introduced for security force members as opposed to members of the public. His recommendations were supported by Lord Windlesham, former Home Office minister and chairman of the Parole Board.

11. Lethal Force

There have been over 350 fatal shootings by the RUC and army since 1962. 32 prosecutions have been brought (7 against the RUC), 5 of which have resulted in convictions. Two of these convictions have been for murder, against Private Clegg and Private Ian Thain

(who was released and readmitted into the army after 26 months imprisonment despite receiving the mandatory life sentence).

Major concerns surrounding the use of lethal force are :

- (i) The tightening of rules governing its use
- (ii) A need for independent investigation into controversial cases.
- (iii) The introduction of a wider range of offences with which suspects can be charged, thus potentially increasing the numbers who could be tried in relation to lethal force offences.

Anglo-Irish Division

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