# SHOT AT DAWN

## REPORT INTO THE COURTS-MARTIAL AND EXECUTION OF TWENTY SIX IRISH SOLDIERS BY THE BRITISH ARMY DURING WORLD WAR 1

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**THE DEPARTMENT OF FOREIGN AFFAIRS**
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**EXECUTIVE SUMMARY**

1. The Shot at Dawn (Ireland) Campaign, coordinated by Mr Peter Mulvany, lobbied the Irish Government to support their call to the British Government to pardon retrospectively 306 British soldiers executed during World War 1 for military offences. Twenty-six of these soldiers are believed to be from Ireland, and the offences under which they were sentenced to death and subsequently executed were repealed in 1928 and 1930.

2. A thorough review of the issue identified a number of supportive points for the objectives of the Shot at Dawn Campaign. The Minister for Foreign Affairs, Mr Brian Cowen, T.D., announced Government support for the Campaign on 14 November 2003. A meeting at official level with the British Ministry of Defence subsequently took place in London on 6 February 2004 to discuss the matter with a view to finding a satisfactory resolution.

3. It was agreed at this meeting that the British side would forward the courts-martial files of the twenty five Irish soldiers in their possession (the other courts-martial file is in the possession of the Canadian authorities), and the Irish side would review these documents and submit an official paper on the matter. The review of these files make for difficult reading, and corroborate the argument in favour of retrospective pardons for the men in question on a number of fronts:

   - The offences under which each soldier was executed, such as desertion, striking an officer and disobedience, were the subject of much parliamentary discourse as early as 1915, and intensified until 1928 and 1930 when the Government repealed the death penalty for these particular offences. This indicates the level of parliamentary and public uneasiness surrounding these executions at the time of the war, and dispels the notion that today's standards are being used to judge the past. The closure of the case files of those shot at dawn for 75 years by the British military also indicates an awareness of the sensitivity which was afforded the matter in the aftermath of the war.

   - The courts-martial files indicate a trend among the accused of a lack of even a rudimentary understanding of their rights under military law. The absence of a 'prisoner's friend' in the majority of cases, to safeguard those rights, further undermines the assertion that those facing courts-martial were afforded their legally entitled rights.

   - A comparison of recruitment figures and subsequent death sentences suggests a disparity in the treatment of Irish soldiers in comparison with those from other countries in the British army. For example, the number of men recruited in Ireland was similar to that of New Zealand, however there were ten times the level of condemnations in the Irish Regiments[1] despite the New Zealand regiments being notoriously harsh with discipline.

[1] Dr Gerard Oram, Worthless Men, Page 59

- The treatment of the lower ranks at courts-martial, in comparison to officers and higher ranks, indicates a degree of class bias that is incompatible with an impartial system of justice. The treatments meted out to officers and upper echelons tended to be at the lower end of the disciplinary scale, whereas lower ranks were often afforded little, if any, leniency.

- The revelation that King George V retrospectively pardoned those in the higher ranks both during and after the war following petitions and appeals signed by military personnel with significant influence, further demonstrates this partiality.

- The case files include some shocking omissions by those presiding at courts-martial with regard to medical ailments and extenuating circumstances. In a number of cases there is clear evidence of ignoring medical conditions and personal circumstances that may have accounted for the actions of the accused, and could reasonably have been interpreted as mitigating factors.

- The confirmation process presents clear evidence that some soldiers were executed for example, to deter others from committing a similar crime, and not because they deserved their fate. Frequent character references as to the fighting qualities of the accused, although not always recorded, were sufficiently common to assume they hindered the possibility of receiving leniency from those in a position to confirm, or commute, the sentence.

4. It is our belief that the above points, singly or cumulatively, represent sufficient grounds to merit the initiation of a process by the British Government through which retrospective pardons can be granted to the soldiers concerned. The support for retrospective pardons for these men both in Ireland and the UK is demonstrated by the Shot at Dawn Campaign's long-term attraction of support since the early 1990's, despite only recently receiving the media attention the subject deserves. The cross community Bill in the House of Commons in 1999, sponsored by Ian Paisley and John Hume, demonstrates the depth of feeling of both sides of the community in Ireland, north and south, with regard to the treatment of those executed.

5. The passage of the Pardons for Soldiers of the Great War Act 2000 in New Zealand represented a significant step forward for those supporting the Campaign, and may provide a basis with which to revisit this sensitive but important matter from a British perspective. Furthermore, the recent release of information regarding King George V providing pardons to officers both during and after the war can surely be utilised as a legal precedent with which to move forward and finally recognise the ultimate sacrifice made by all those who fought and died. The 90$^{th}$ anniversary of the outbreak of the war in 2004 will allow people around the world the opportunity to reflect on the devastation and loss caused by the Great War. It is a fitting time to finally resolve the controversy that surrounds those shot at dawn and, by finally removing the stigma of condemnation, provide a long sought for peace of mind to their families.

## INTRODUCTION

### The Shot at Dawn Campaign (UK)

6. The Shot at Dawn Pardons Campaign (UK), based in Britain, has been working for pardons for 306 British and Commonwealth soldiers who it is claimed were unjustifiably executed following Field General Courts-Martial (FGCM) during World War I. In 1981, while the documents relating to the courts-martial of these men were still closed to the public by the British Government, Mr Justice Babington was granted privileged access for the purposes of writing a book on the subject. The resulting publication in 1983 of *For the Sake of Example* caused much publicity and has since been complimented by numerous military historian publications also supporting the view that many of the courts-martial convictions at the time were unsafe.

7. Andrew Mackinley, Labour MP for Thurrock, began a campaign in the 1990s for the granting of a blanket pardon for the 306 men allegedly unjustly executed by the British authorities. Consequently, in 1997, the newly elected Labour Government began a promised review of cases, examining files of those court-martialled, with a view to that pardon being granted. A year later, on 24 July 1998, the Armed Forces Minister, Dr John Reid, reported to the House of Commons that, "the passage of time means that the grounds for a blanket legal pardon on the basis of unsafe conviction just do not exist."

8. The Shot at Dawn Campaign, initiated in 1990 in the UK by Mr John Hipkin, and coordinated in Ireland by Mr Peter Mulvany, do not accept the British Military response and continue to fight for what they perceive as a military injustice toward those executed.

### Contact with The Shot at Dawn Campaign (Ireland)

9. The Shot at Dawn Campaign (Ireland) has been actively campaigning for pardons for 26 soldiers born in Ireland and executed while serving in the British Army during WWI. The campaign is being coordinated by Mr Peter Mulvany who, through a strong sense of dedication and determination, has successfully raised public awareness of this issue. A number of articles in the major Irish and UK papers during 2002, 2003 and 2004 were favourable to his efforts, and he has received the support of numerous T.D.'s and MP's. In addition, he has to date successfully obtained the endorsement of SIPTU, Cardinal O'Connell, Church of Ireland, Dublin City Council, Limerick City Council, Cork City Council, Dublin Trades Council, Banbridge District Council, Newry and Mourne District Council and the Liberal Democrats, to name but a few.

10. The campaign in Ireland has gained in momentum recently in part as a corollary to the acceptance that service in the British Army prior to Independence is a legitimate part of our national heritage. This acceptance emerged in the late 1980s with official representation at memorial services on Armistice Day. It has been further boosted by the peace process (e.g. the cross community cooperation surrounding Messine). Sinn Féin has moved to embrace this acknowledgement with its then Lord Mayor of Belfast, Alex Maskey, laying a wreath at the Belfast Cenotaph in 2002. The SDLP Belfast Lord Mayor, Martin Morgan, has gone one further step by launching the Poppy

Day Campaign in 2003. The next logical step to this acceptance of British Army service is concern for the treatment of those men.

11. Mr Mulvany had been asking the Government to make a representation to the British Government seeking pardons for the 26 Irish men who allegedly were unjustifiably executed in World War I. The Shot at Dawn Campaign (Ireland) are focussed only on those 26 Irish men executed for military offences that were repealed in the British Army and Air Force Acts of 1928 and 1930 (cowardice, desertion, falling asleep at post etc) and not those responsible for civilian 'high crimes' such as rape, treason or murder.

12. A cross community private members Bill, which would have allowed the granting of such posthumous pardons, was introduced into the British Parliament in 1999 but was allowed to run out of time. The Bill demonstrated that support on this issue comes from nationalists and unionists alike, and was sponsored at the time by John Hume, Ian Paisley and David Steele.

13. Following a thorough review of the issue in 2003 it was agreed by the Irish Government that there is sufficient evidence available to question the validity of the courts-martial verdicts and subsequent sentences. The Minister for Foreign Affairs, Mr Brian Cowen, T.D., announced support for the Shot at Dawn Campaign objectives on 14 November 2003, and called for the 26 executed Irish men to be retrospectively pardoned and granted a dignity in death that was not afforded them in life. A copy of the Minister's Press Release is attached as Annex 1. A meeting at official level with the British Ministry of Defence subsequently took place in London on 6 February 2004, at which each side set out their respective positions. At that meeting it was agreed that the Irish Government would officially submit its position in writing to the British side. This report is therefore fulfilment of that obligation.

## THE MILITARY SYSTEM OF JUSTICE

14. More than 3,000 British soldiers were sentenced to death during the Great War, with almost 11 per cent of the sentences actually carried out. The sentences of death were handed down by a Field General Courts-Martial (FGCM), a fast track system designed for maximum expediency in wartime environments. It consisted of a military trial convened in the field with a minimum of three officers, one at rank of Captain or above acting as president. A number of sentences were available depending on the seriousness of the offence, but a sentence of death could not be passed without the unanimous agreement of all those on the panel. Each defendant was entitled to a 'prisoner's friend', normally an officer who would represent the accused, who was granted all the rights of a professional counsel.

15. According to the Rules of Procedure in place at the time, every accused must be afforded a proper opportunity of preparing his defence, and must have the freest communication with his witnesses which was consistent with good order and military discipline.

16. After the prosecution case had been completed the prisoner was entitled either to give evidence on oath or to make an un-sworn statement, if he chose to do so. He could also call witnesses for the defence.

17. The court was then closed whilst the members considered their findings. The court was then reopened when a decision had been reached and if the verdict was not guilty, it was disclosed immediately. If the finding of the court was guilty, the President stated that the court had no findings to announce, and they proceeded to hear evidence with regard to the prisoner's character.

18. Finally, the prisoner could make a plea in mitigation of the sentence, and the court once again closed to consider the sentence. Although the accused was well aware of the fact if he had been found guilty, he remained in ignorance of the sentence which had been passed on him until promulgation took place days or weeks later.

19. Once sentence had been passed, a soldier's commanding officers had the option of recommending leniency through the confirmation of sentence process. Although each superior officer of the accused had the opportunity to recommend whether the finding of the court should be carried out, the ultimate decision lay with the supreme commander (Field Marshal Haig from 1915 onwards), who confirmed the sentences once the Judge Advocate General had signed off on the legalities of the case.

20. The fighting character of the accused, the prevailing discipline in his battalion, and, in cases of desertion, the opinion of the commanding officer on whether he thought the offence was intentionally committed to avoid a particular service, were forwarded up the chain of command along with the courts-martial file.

21. If the Commander in Chief confirmed a death sentence the announcement normally took place at a parade of the condemned man's unit on the evening prior to his execution. At the parade, attended by the prisoner under escort, his

adjutant read out extracts from the evidence at his trial, the findings and sentence of the court and the order of confirmation by the Commander in Chief. The sentence was then duly carried out the following morning, sometimes by men in the prisoner's battalion. An officer was always on hand with a revolver to impart the killing shot if the firing squad missed their target, which was a common occurrence.

## GROUNDS FOR GRANTING RETROSPECTIVE PARDONS

### Current and Contemporaneous Grounds

22. The British Ministry of Defence, at the forefront of opposition to the Shot at Dawn Campaign, has stoutly defended the integrity of the military system of justice and the sentences which emerged from it. Furthermore, it argues that today's standards cannot be used to judge the past. This is fundamentally flawed because it is erroneously predicated on the assumption that public opinion about the execution of British soldiers during the First World War endorsed the decision to kill the men, or was at odds with today's criticism. This is simply incorrect - a fact that was confidentially acknowledged by the Army itself in 1919 as evidenced in the following extract from Public Record Office File: WO32/5479 *Suspension of the Death Penalty: 1918-19*:

> "Even during the continuance of hostilities there was very strong feeling both in the country and in the House of Commons against the infliction of the death penalty for military offences. Now that hostilities have ceased it can confidently be stated that the effect on this country of a death penalty might lead to an agitation which might be difficult to control and in all probability would jeopardise the prospects of maintaining the death penalty for military offences in time of peace when the Annual Army (Act) comes before the Houses of Parliament". 2 March 1919 D.P.S. [i.e. Director of Personal Services, Brigadier General Sir Wyndham Childs, Department of the Adjutant-General]

23. It is quite clear that contemporaneous concerns about the executions generated a tenacious campaign that began in the wake of the war. Throughout the 1920's, Ernest Thurtle, a Labour MP and war veteran, led the parliamentary campaign to abolish capital punishment for military crimes because of his experiences as a serving soldier[2]. The following quote give some sense of his passion for this cause and of the prevailing support at the time:

> "The movement for the abolition of the Death Penalty for military offences is growing rapidly, as the recent debate and division in the House of Commons demonstrated. There is no doubt that these shootings in cold blood of men for desertion and cowardice (so-called) are repugnant to the great majority of the people of the country. Offences of this kind are almost entirely manifestations of nerve failure in one form or another and to the average man and woman, it is an outrage of justice that for such failure men should be shot by their own comrades, in accordance with the provisions of existing Military Law".

24. That he enjoyed contemporary support is evident by the fact that in 1928 he scored a major victory when the Government abolished the death penalty for eight offences, including striking superior officers, disobedience and sleeping on posts. However, the two offences which had caused most of the executions during World War One retained the death penalty: desertion and cowardice.

[2] Thurtle initially volunteered and joined the lower ranks, was then commissioned to rank of Captain in the Territorials of London Regiment, and served throughout war with the 7th Battalion until a forced discharge through injury in 1917.

25. In 1929, Thurtle's bill to abolish military capital punishment was initially restricted to offences involving cowardice and quitting of posts, but Thurtle lobbied his colleagues to include desertion. When the bill reached the House of Lords, they rejected the proposals after speeches from several retired military figures such as Lord Allenby. The House of Commons overrode the Lord's rejection, and Royal Assent was granted on 29 April 1930. Therefore, following 1930, British military personnel could not be sentenced to death for offences such as desertion and cowardice.

26. It might well be argued that the very fact of the passage of these two Army and Air Force Acts, representing the withdrawal of powers hitherto enjoyed by the British Army, were effectively votes of no confidence in the system of military justice and, moreover, were in themselves *ex post facto* exonerations of those executed.

27. Finally, even if it is accepted that current standards are being applied, the argument has been rejected by the British criminal justice system. Mr Justice Babington, author of 'For the Sake of Example' wrote in 2000

> "the decision in *Regina Vs Johnson* would seem to indicate the spirit in which the Government should consider whether to pardon the soldiers convicted of cowardice or desertion and executed during the First World War. The Court of Appeal in this instance stated *'In considering the safety of a conviction, the Court of Appeal had to apply the standards considered appropriate today rather than those viewed as appropriate at the time of the original trial'*. I would urge the Government to have these cases looked at again in light of the Court of Appeals decision".

**Disparity in the treatment of Irish Soldiers**

28. Field General Courts-Martial were used almost universally for trials on the Western Front during the four years of the Great War, and they imposed a total of over 3,000 death sentences, around 11 per cent of which were actually confirmed and carried out. There were twenty-six executions of soldiers serving in Irish regiments for desertion (23), striking an officer (1), quitting a post (1) and disobedience (1). This might not seem many, but given the size of the Irish regiments it is an extraordinarily high number.

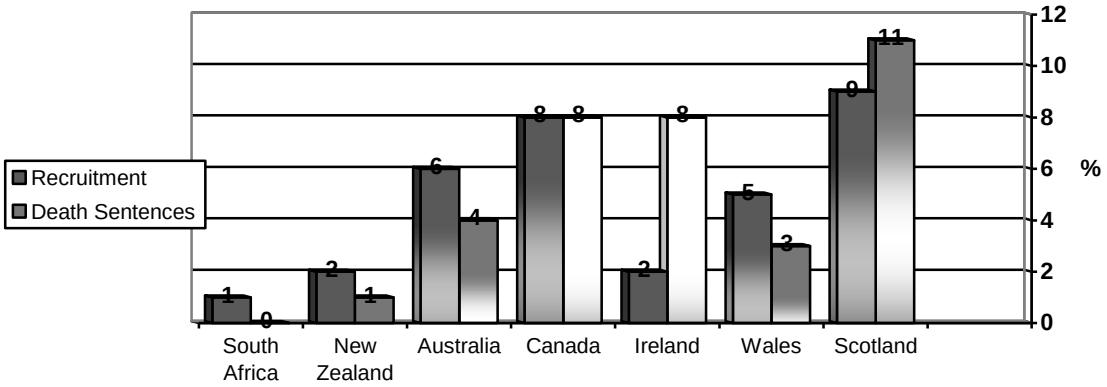
29. Death sentences can be grouped into countries by reference to the regiment in which each soldier was serving, thus enabling a comparison with the numbers recruited. What this information reveals is that there is a close relationship between the number of men recruited in each country, and the number of death sentences passed on regiments from those countries. Most death sentences (65%) were passed on men serving in English regiments, which is remarkably similar to the proportion of men recruited in England (67%). Similarities exist for other countries:

- Scottish soldiers were the subject of 11% of death sentences
- Welsh soldiers were the subject of 3% of death sentences
- Australian soldiers were the subject of 4% of death sentences
- Canadian soldiers were the subject of 8% of death sentences

- New Zealanders and South Africans were the subject of approximately 1% each

30. In all these cases the similarities between the proportion of death sentences and recruiting ratios are striking. However, there is one remarkable exception to this: Ireland. The proportion of death sentences passed on Irish soldiers is far in excess of the proportion recruited in Ireland. The recruitment in Ireland had been problematic, and the numbers eventually recruited were in the range of 130,000 to 140,000. This figure is comparable to the number of men recruited in New Zealand, yet the number of death sentences passed on men serving with Irish regiments was almost ten times that of soldiers in New Zealand units (239 to 23), even though discipline in New Zealand units was renowned for being especially harsh.

31. Wales provided roughly twice as many men to the army as Ireland, however the number of death sentences passed on Welsh soldiers is almost one third of the Irish total[3]. This is clear from the chart below which depicts the % of total army from each country, and the respective % of death sentences[4]:




England figures are 67% recruitment, 65% death sentences

32. Differing battle experience is an unsatisfactory explanation for these statistics. An analysis of Irish units serving in regular divisions together with other British units suggests that within those divisions death sentences were more common in the Irish units than the English, Scottish or Welsh units. There were five Regular Army divisions containing Irish and non-Irish battalions: The Guards Division, 4 Division, 7 Division, 8 Division and 29 Division. Irish units in these divisions consistently came off worse than others. The overall average for English, Scottish or Welsh units in these divisions is four death sentences per battalion. However, the overall average for the Irish units in these divisions is seven per battalion.

33. In most British formations, one in every 2-3,000 troops was sentenced to death. Yet one in fewer than every 600 Irishmen to enlist in the British army was sentenced to death by courts-martial. Interestingly, the number of condemnations in the 'loyalist' 36th (Ulster) Division is comparable to the

[3] Worthless Men, Race, Eugenics and the death penalty in the British Army during the first World War - Dr Gerard Oram, Page 59
[4] Worthless Men, Race, Eugenics and the death penalty in the British Army during the first World War - Dr Gerard Oram, Page 123

other Irish divisions. This indicates that there was no religious basis for the disparity in Irish condemnations.

34. There is nothing to indicate a deliberate policy against the Irish ranks in the transcripts of the trials themselves. However, the pervading British attitude towards the Irish at the time is well documented as one of mistrust and suspicion. Literature of the time hints at the anti-Irish feeling of many in British society, especially in the upper class. Efforts to improve recruitment figures in Ireland by Redmond in the south, and Craig in the North, for differing reasons, did little to dispel this attitude.

35. The stock distinction between English and Irish at the time of WW1 could not have been expressed more succinctly than in the conclusion of the Southborough Committee in 1922, set up to investigate the condition known as shellshock. The Committee heard evidence that questioned the soldiering abilities of certain races, including the Irish, and concluded that, although shellshock did not recognise an individual's background, the Irish, among others, were more prone to it. Racial characteristics were cited as a predisposing cause together with 'education and social conditions and environments' in that order[5].

**The Courts-Martial of Officers in comparison to Lower Ranks**

36. Many of those executed were young working class soldiers. They were not tried by their peers but by men of a different social class imbued with the prejudices of the military subculture of which they were a part. As in peacetime magistrate's courts, so in wartime courts-martial did the Edwardian middle and upper classes pass judgement on the behaviour of the lower orders. Even in the cases of the more enlightened officers there was pressure to be stringent. To do otherwise was to solicit censure for lacking appropriate disciplinary zeal, and occasionally provoked a dressing down from a superior officer. A number of junior officers made mention of this pressure.

37. That the entire military judicial system was staffed and controlled by officers from the upper reaches of society was typical of the European armies at the time. A public school education or attendance at a university was virtually mandatory, even for "temporary gentlemen" who were granted wartime commissions. The extent to which the influence of British public schools was exerted is evident. The proliferation of officers from public schools may be exemplified by one of the most famous, Eton College:

| | |
|---|---|
| Admirals | 2 |
| Field Marshals | 2 |
| Generals | 3 |
| Lieutenant Generals | 12 |
| Major Generals | 43 |
| Brigadier Generals | 151 |
| Lieutenant Colonels & Brevet Colonels | 90 |
| Lieutenant Colonels | 666 |

[5] Report of the Committee of Enquiry into Shellshock (HMSO) 1922, Page 96

38. Nor is it surprising that the perspective of this narrow social elite dominated attitudes within the army. Indeed it is the common public perception, literary response and academic consensus that the casual waste of human lives in the Great War was the product of this elite's stubborn adherence to anachronistic tactics which had failed to adjust to the new technologies of war.

39. However, the extent to which this class perspective distorted the system of military justice has not featured to any great extent, largely because of the reluctance to release the files on field courts-martial and the associated punishments. The extent of the distortion, as illustrated by the table below, is startling and speaks for itself.

**Punishment:**

| **Officers:** | | **Other Ranks:** | |
|---|---|---|---|
| Death | 3 | Death | 343 |
| Life Penal Servitude | 0 | Life Penal Servitude | 143 |
| 15 Years Penal Servitude | 0 | 15 Years Penal Servitude | 461 |
| Penal Servitude: (3-12 years) | 8 | Penal Servitude: (3-12 years) | 6812 |
| Imprisonment/Hard Labour: (6-24 months) | 46 | Imprisonment/Hard Labour: (6-24 months) | 38041 |
| Imprisonment (6-24 months) | 24 | Imprisonment (6-24 months) | 1873 |
| Detention (3 months; 6 months; 6 months+) | 0 | Detention (3 months; 6 months; 6 months+) | 105231 |
| Field Punishment No.1 | 0 | Field Punishment No.1 | 60210 |
| Field Punishment No.2 | 0 | Field Punishment No.2 | 20759 |
| Discharged with Ignominy | 0 | Discharged with Ignominy | 970 |
| Cashiered | 377 | Cashiered | 0 |
| Dismissed | 1085 | Dismissed | 0 |
| Forfeiture/Seniority/Rank | 954 | Forfeiture/Seniority/Rank | 27639 |
| Reprimand | 2638 | Reprimand | 0 |
| Fines/Stoppages | 34 | Fines/Stoppages | 33469 |
| Quashed/Not Confirmed/Remitted | 86 | Quashed/Not Confirmed/Remitted | 4900 |
| Suspended | 0 | Suspended | 9468 |

(Only one Indian soldier is recorded as having been sentenced to death - all others were tried under the provisions of the Indian Army Act - records of which were kept separately and have not survived.)

40. It is clear from this table that the most common punishments for officers were at the lower end of the scale involving dismissal or reprimand, while that for enlisted men was death, imprisonment or field punishment. Although officers were not subjected to the same rigid military law as the lower ranks, not being

subjected to field punishments for example, it is evident that they were afforded a type of treatment and avenue of appeal that was unavailable to the lower ranks.

41. For example, at around the same time as the courts-martial and execution of Rifleman James Crozier for desertion in February 1916, an officer was courts-martialled for the same offence. Second Lieutenant A.J. Annadale was, however, more fortunate than Rifleman Crozier. Annadale was also convicted, but managed to get off when 'influential friends' queried the legality of his conviction. In the words of Lt Colonel Percy Crozier in his book, *The men I killed*, "the least said about this (the Annadale case) the better, except to remark that had justice been done according to our code regrets would have been fewer than in the case of Crockett (Rifleman Crozier)"

42. The recent release of information uncovered by historians Dr Gerard Oram and Julian Putkowski from their soon to be published book further substantiates the argument that officers received differential treatment at courts-martial than the lower ranks. Data from official military files detail how the then King, George V, pardoned five officers outright as well as numerous other actions. The details of the eight overseas trials that highlight these retrospective actions by the King are described in the following table:

| Name | Regiment | Date of Courts-Martial | Offence Charged | Location | Sentence | Action by King | Ref |
|---|---|---|---|---|---|---|---|
| Lt Col JF Elkington | 1 Royal Warwicks | 12/10/14 | Shameful Conduct | Chouy | Cashiered[4] | Remitted 22/08/1916 | WO 90/ 6/28 |
| Lt Col AE Mainwaring | 2 Royal Dublin Fusiliers | 12/10/14 | Shameful Conduct | Chouy | Cashiered | Remitted 22/08/1916 | WO 90/ 6/28 |
| Lt GDC Tracey | 1/7 Gordon Highlander | 11/06/15 | Cowardice | Cornet Malo | Cashiered | Conditional Pardon 05/12/23 | WO 90/ 6/32 |
| Major Lincoln Sandwith | APM Indian Army Cav Corp | 17/08/15 | S41[1]/ Scandalous Conduct | St Omer | Cashiered | Committed 30/11/1915 | WO 90/ 6/33 |
| Major Eric Norman | 15 West Yorkshire Regiment | 07/04/16 | Drunk | Bus Les Artois | Dismissal | Pardoned & reinstated 15/04/1919 | WO 90/ 6/52 |
| Major G Langdon | Army Service Corps | 28/01/18 | S25[2] (1a)x5/ S40[3] | In Field | Dismissal | Pardoned & reinstated | WO 90/ 8/15 |
| T/ Lt GT Bennet | 10 Royal Hampshire | 26/11/18 | Absence/ Drunk | In Field | Dismissal | Committed to Forfeiture of Service[5] | WO 90/ 8/46 |
| A/Maj Sir DJ Wernher | Royal Army Service Corps | 21/02/19 | S41/ S41x2 | In Field | Cashiered | Quashed to Dismissal | WO 90/ 8/60 |

[1] S41 Scandalous Conduct/ Murder/ Treason/ Rape
[2] S25 Uttering False statements/ Falsifying Documents/ Fraud
[3] S40 Conduct Prejudicial to good order and military discipline
[4] Cashiered: Discharged in disgrace
[5] Forfeiture of Service: Docking time in any given rank thereby reducing pay and pension

43. This information does not cover the full extent of the material uncovered by Oram and Putkowski, but provides an indication of the influence of the upper members of the military hierarchy in petitioning King George V to pardon those officers dismissed or cashiered in disgrace. Twenty six Irish men were not afforded the opportunity of an appeal to the King, had no military commanders pleading for pardons on their behalf, and received no retrospective leniency for their actions, no matter how deserving they may or may not have been. A military system of law that provides one form of justice to the lower ranked troops on the front line, and another to the officers and upper echelons, cannot be deemed to be just and must be seen for what it evidently was: biased[6].

[6] Shot at Dawn, Putkowski & Sykes, page 11

## OTHER THEMES FROM COURTS-MARTIAL CASE FILES REVIEWS

### Consideration of medical conditions and extenuating circumstances

44. In the face of the horrible reality of the trenches of the Western Front, the weak and the strong cracked in much the same manner. Erratic, uncontrollable behaviour and irrational actions were regular occurrences. There was no shortage of negative stimuli to spark off an attack of what came to be known as 'shellshock' – the trauma induced by the impact and consequences of a heavy barrage - later known as battle fatigue and nowadays known as post traumatic stress disorder. The response of most soldiers to the overwhelming awfulness of the trenches was to grow an extra layer of skin and get on with whatever was required of them. Some were unable to do so. Some took their own lives; others succumbed to temporary or permanent insanity.

45. Many in the military establishment were suspicious of what appeared to be simple, rank cowardice to them. There was an impression that many of those exhibiting signs of trauma were simply malingering. But then many senior officers never got close enough to exploding shells to suffer the consequences. The rejection of a shell-shock defence in three of the eighteen executions for cowardice reflected the widely held belief in the British army that it was pernicious to take such claims too seriously to prevent what they believed may have become a potential epidemic[7]. This was unwittingly expressed by Douglas Haig when he appended the remark 'how can we ever win if this plea is allowed?' in response to a recommendation for mercy in the case of a nerve-shaken soldier during the Battle of the Somme[8].

46. As the war went on the results of shellshock could not continue to be ignored as more experienced regular soldiers showed signs of affliction, and not just the young inexperienced conscripts and volunteers. The phenomenon became so widespread that by the end of the war, as many as 80,000 officers and men had been unable to continue in the trenches, and many had been invalided out of the army altogether for nervous disorders. The real figures however must be higher, as medical officers were told not to diagnose lower ranks as shell-shocked[9].

47. Jack Campbell, a Dubliner with the 1st Battalion, the Royal Highlanders, spent four years in the firing line and saw many men crumble:

> "People have said that a lot of the fellows that were suffering from shellshock were only kidding on that they were suffering to get away from the trenches. That's all wrong, because I had to help many a poor fellow that had shell shock. They were insane, let's face it. As a matter of fact I don't think anyone who came through the '14-18 war was really mentally steady"[10].

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[7] PRO WO93/49

[8] Case of Private Arthur Earp, 1/5 Royal Warwickshire Regiment. PRO WO 71/485 – Courtesy of Dr Gerard Oram.

[9] "In no circumstances whatever will the expression 'shell-shock' be used verbally or be recorded in any regimental or other casualty report, or in any hospital or other medical document". British army General Routine Order No. 2384, issued on 7 June 1917 in France.

[10] 'Irish Soldiers and the Great War', Miles Dungan, Page 87

48. Special centres were set up in 1917 to deal with victims, which were known as 'Not Yet Diagnosed (Nervous)' centres (NYDN). Prior to the establishment of these centres, mental illness was not confronted with any semblance of treatment, and the absence of an obvious physical injury more often than not resulted in the soldier being declared fit for duty and returned to his unit. Treatments for shellshock varied following its acceptance as a legitimate illness, but tended to focus primarily on rest and recuperation as it was thought that exhaustion was one of the main, contributory factors in the breakdown seen in the men.

49. Lord Moran, author of *'The Anatomy of Courage'* wrote "When a soldiers resistance to fear has been lowered by sickness or by a wound the balance has been tilted against him and his control is in jeopardy at any rate for a time. The wounded soldier has just visualised danger in a new and very personal way". A number of the case files of the Irish soldiers make mention of previous illness and wounds, but these are not investigated further by the court, nor are they taken into consideration before reaching a conclusion and declaring a sentence.

50. Throughout the duration of the war, the British Under-Secretary for War repeated in parliament the assurance that "the suspicion of shellshock at a courts-martial results in every possible medical advice being sought"[11]. As evidenced in the summary of the case files of the twenty five Irish soldiers, this was most definitely not the case. There are clear examples in which mental instability, and other injuries, were recognised by a soldier's commanding officer, but were ignored by the court and the confirmation process. An example of some of the comments that clearly illustrated concerns regarding the mental health of some of the twenty six executed men is provided below.

> "He was of an insubordinate and morose disposition and I question whether he is entirely responsible for what he does – he was without a sense of discipline and would not in my opinion be capable of considering the consequences of his actions – I do not think he was at all the kind of man to consider his own safety at that time or any others".
>
> "I lose my head in the trenches at times, and I do not know what I am doing at all. My family is afflicted the same way. My father committed suicide over it. My brother's death in the Phoenix Park 5 years ago on 17 March 1916 was due to the same thing".

51. In addition to medical conditions being considered risibly, the courts-martial procedure ignored clear extenuating circumstances in which the actions of the accused were directly contributable to a particular private or family circumstance which caused significant emotional stress.

52. There are four cases regarding Irish soldiers where extenuating circumstances, such as the death of family members or concern with regard to an illness at home, is not considered as a contributory factor in the crimes supposedly committed by those facing courts-martial. In one case, a soldier was shot despite pleading that he had been upset at hearing that his three brothers had been killed in the war. In another, a soldier twice deserted three months after

[11] Various Hansard debates during the Great War

hearing that his child was very ill and no further news was forthcoming. The lack of understanding on behalf of the military authorities toward the impossible situation faced by some of these men is very clear from the transcripts of the courts-martial files.

**Exemplary Justice and the Confirmation Process**

53. The very nature of military discipline at the time of the Great War was determined by social thought and ideas about punishments, as much as it was by perceived military requirements. The principle of deterrent was a major feature of English criminal law and Britain remained relatively untouched by the abolition movement that had made inroads into the law in most western countries.

54. Unlike other major European armies the British army was recruited on a voluntary basis. Paradoxically, this was a major factor in the comparative harshness of punishments. Volunteers for the army were regarded by many to have a lowly rather than an elevated status. Army commanders were often doubtful about the loyalty of working-class recruits: colliers who had joined the Territorial Force were not issued with rifles or ammunition when so deployed. These doubts persisted well into the First World War, but so too did the unerring faith in the value of the death penalty as an effective weapon against indiscipline.

55. In many ways military punishments reflected attitudes already present in the British criminal code. Capital punishment was less frequent than flogging, branding, or discharging soldiers in the military, but it was still inflicted with surprising regularity. The army executed thirty-seven men between 1865 and 1898 - a period punctuated by frequent colonial wars - and another four during the Boer War (1898 - 1902).

56. All this points to a system of military discipline firmly rooted in the principle of deterrence not unlike the continued reliance on the death penalty in the criminal code was thought to act as a deterrent to murder. The steady increase in the number of soldiers condemned to death during the war (85 in 1914; 591 in 1915; 856 in 1916 and 904 in 1917) highlights the increasing reliance on capital punishments by the British army in the absence of viable alternatives. In 1918 the number of condemnations fell to 515, the result of conscripts (who by this time represented the bulk of the army) being handled with greater caution, in addition to long overdue changes within the army as it modernised.

57. In the majority of the twenty five Irish courts-martial files there is evidence that the confirmation procedure of the courts-martial sentence was followed extensively, with a number of hand-written comments mainly on the fighting character of the accused and the state of discipline in his battalion, although other relevant notes such as medical forms are at times also included. There is no evidence to suggest that information has been lost and it appears that the confirmation of the sentences was based on the information currently contained in the files.

58. It is clear that the military hierarchy were interested mainly in two things when deciding on the fate of the accused; the state of discipline in the battalion to which the accused belonged, and the fighting character of the accused when in

battle. There are eleven clear cases where, during the confirmation process, an example was thought to be necessary because of the bad discipline in the battalion of the accused man. This meant that some men were effectively executed simply to deter their colleagues from contemplating a similar crime, and not because they deserved their fate. The quotes below from the case files give an indication of the severity of some of these comments, and the influence they must have had on those in a position to quash or confirm the extreme penalty.

> "There have been far too many cases already of desertion in this Battalion. An example is needed as there are many men in the Battalion who never wished to be soldiers".

> "I consider that, in the interests of discipline, the sentence as awarded should be carried out".

> "(I recommend) the extreme example be carried out as a deterrent to other men committing a similar offence".

> "the state of discipline of the unit as a whole is good, but there are individuals (such as the accused) in the unit who take advantage of leniency and for whom an example is needed".

> "under ordinary circumstances I would have hesitated to recommend the capital sentence awarded be put into effect as a plea of guilty has been erroneously accepted by the court, but the condition of discipline in the Battalion is such as to render an exemplary punishment highly desirable and I therefore hope that the Commander in Chief will see fit to approve the sentence of death in this instance".

59. As referred to by numerous military historians since the release of the case files in the 1990's, the preponderance of cases in which soldiers were shot for the sake of example undermines the very fabric of the military law to which these men were expected to adhere so rigidly. How can a system of law justify the execution of one soldier and not another, simply on the basis of the behaviour of soldiers other than the accused?

60. In addition, comments appended during the confirmation process on a man's fighting ability could sometimes effectively condemn the man to be shot – describing a man's ability as a soldier as 'useless' was in some instances the clear determining consideration in deciding his fate. Again, the quotes below give an indication of the injustice of some of these comments.

> "I consider him (to be) an insubordinate man of low class"

> "(The accused) is a determined shirker during a time of war and unworthy of being a soldier or Englishman".

> "this man's value as a fighting soldier is NIL"

61. Furthermore, it is clear from the twenty five case files that these two factors had much less of a positive influence in the confirmation process, if any, when

the discipline in the battalion was good and the man was thought to be a good soldier. In some instances the confirmation process up the ranks even reveals divergent opinions by commanding officers on whether to confirm the death sentence, which did not affect the outcome.

62. There are other compelling factors that must also be considered when reviewing the files. In two cases there are clear references to discrimination against the lower ranks, and in another there is evidence of the court mistakenly accepting a guilty plea, thereby permitting the accused to effectively sign his own death warrant in ignorance of the consequences. As in the latter case, there are a number of cases where it is evident that those presiding at courts-martial did not fully understand the process, or even bother to apply a sense of notional justice.

**The Pardons for Soldiers of the Great War Act 2000**

63. The New Zealand Pardon for Soldiers of the Great War Act 2000 had its genesis in a Private Members Bill presented to Parliament in 1998 by the NZ Labour MP for Invercargill, Mark Peck. Peck had worked closely for a number of years with the families of two of the executed soldiers, Private Victor Spencer and Private Jack Braithwaite. Initially the Returned Services Association (RSA) was supportive of the campaign. However when Peck's bill was published the RSA withdrew support because it applied to a limited number of soldiers.

64. When the Bill was introduced in 1998, Peck was in opposition. The conservative National Party Government decided to set up an independent inquiry under the retired High Court judge Sir Edward Somers. Somers examined all extant documentation including the personal files and court martial records and concluded that shell-shock or other stress-related disorders were a likely cause of the men's actions. Despite this finding, Somers was unable to conclude that there was sufficient evidence of a miscarriage of justice.

65. The National Party Government accepted Somers' findings and there the matter seemed set to rest. However in late 1999 the NZ Labour Party was elected to office under the leadership of Helen Clark. Her Government reviewed the matter and she announced in April 2000 that "…*our conscience wouldn't rest if we didn't do something to retrospectively pardon those soldiers…..It's just so pitiful that men who were sick, drunk, epileptic, shell-shocked ended up being executed*". The Peck Bill then proceeded through Parliament and into law.

66. The purpose of the Pardons for Soldiers of the Great War Act 2000 was to pardon the five New Zealanders executed during WWI to remove, so far as practicable, the dishonour that the executions brought to the soldiers and their families. The NZ Government stated in Section 5 of their preamble that "their execution was not a fate that they deserved, but was one that resulted from the harsh discipline that was believed at the time to be required; the application of the death penalty for military offences being seen at that time as an essential part of military discipline".

67. The approach adopted by the New Zealand Government was cognisant to the fact that the history of those shot at dawn cannot be rewritten. Granting a pardon would not, unless specifically stated to the contrary, vacate the original verdict of courts-martial. The Act judiciously identified each soldier by name, rank and number, restated the charge, verdict and sentence and then concluded by granting each individual soldier a pardon.

## THE CURRENT BRITISH POSITION

68. The case against pardons is led by a number of military historians and former military personnel. Arguments put forward have ranged from the contention that some of the men were cowards and mutineers and deserved to be treated as such, to the less contentious line currently taken by the British Government that the lack of surviving evidence would make it unlikely that a pardon could be recommended, and consequently may result in those executed being re-condemned.

69. The British position, as set out in a statement to the House of Commons in July 1998 by the then Minister for the Armed Forces, Dr. John Reid, is somewhat contradictory. On the one hand he recognises all those executed as victims of the war and advises that their names be added to memorials. On the other hand, he accepts the integrity of the military system of justice. He rules out a general pardon because of the passage of time. And he rules out individual pardons because of the lack of new or sufficient evidence with the consequence that many judgements would be simply re-confirmed.

### Rebuttal of Current British Position

*We have considered the legal basis for the trials by field general courts martial. The review has confirmed that procedures for the courts martial were correct, given the law as it stood at the time.*[12]

70. Military justice in the field was dispensed in terms of simplistic philosophy; a soldier was dependable, or he was a funk, either he performed his duties at the front or he shirked them. The only factors which may mitigate a death sentence were either the prisoners good service record at the front, or the prospect that he would develop into a good fighting man in the future – peacetime values, as such, were almost entirely disregarded.

71. The opinions of the condemned soldier's commanding officers were hugely significant when the case came to be decided upon by the Commander in Chief. Informed by the need to intimidate troops for the sake of example, confirming officers selected who was to be executed according to their military character, or lack of. The comments appended to the case files during the confirmation of sentence process could effectively condemn a man to be shot, without allowing the individual to dispute these frequent character assassinations. In addition, there are a number of instances where circumstances beyond the control of the individual soldier were ignored.

72. The disparity toward Irish recruits and the divergent sentences passed on officers compared to enlisted men clearly undermine the claim of impartiality of the military system of justice.

73. The Darling Committee Report in 1919 effectively gave a clean bill of health to the courts-martial system of the time. Notwithstanding this, three Committee members refused to sign the report and instead submitted their own report which differed from the majority in many areas. Specifically, they complained that investigations into miscarriages of justice were blocked and although such

[12] Italics indicate a direct quote from Dr. Reid's House of Commons statement, July 1998.

instances were evident, they were unable to investigate further. They also concluded that there had been too many courts-martial during the war, courts-martial panel members should be more legally trained to remove the confirmation of sentence process, and that a right of appeal should be introduced.

74. The depth of feeling on the unjustness of military law was evident from Parliamentary debates as far back as 1915, and escalated until the point in 1930 when the Government accepted the will of its parliamentary members and repealed the death penalty in respect of the particular offences under which each of those 'shot at dawn' were convicted and executed.

*The review also considered medical evidence. Clearly, if those who were executed could be medically examined now, it might be judged that the effects of their trauma meant that some should not have been considered culpable; but we cannot examine them now. We are left with only the records, and in most cases there is no implicit or explicit reference in the records to nervous, or other psychological or medical, disorders. Moreover, while it seems reasonable to assume that medical considerations may have been taken into account in the 90 per cent of cases where sentences were commuted, there is no direct evidence of that, either, as almost all the records of those commuted cases have long since been destroyed.*

75. The prohibition on applying the condition of shell-shock to enlisted men explains the absence of references to this or associated nervous disorders. The absence of such consideration in the extant files to medical conditions that were known at the time would strongly suggest that the judgements were rendered without regard to these ameliorating factors. Rather than being a matter of regret or an argument on the futility of reviewing individual files, this should be seen for what it is – a failure of due process and a fatal flaw in the credibility of the death sentences passed and carried out.

76. It does not seem reasonable to assume that medical considerations may have been taken into account in the 90% of commuted cases, because it is evident that they were not taken into account for the more serious cases for which records do exist.

77. Judge Anthony Babington detailed numerous examples from the records that plainly showed how medical and nervous dispositions were ignored. i.e.,

- A Private told the court he had reason to doubt his sanity as his mother, brother and sister had all been troubled by mental illness. The medical officer found nothing wrong with him but proposed a fuller examination by a specialist in lunacy. The Commander in Chief confirmed his death sentence without the benefit of these additional reports.

- Another soldier claimed to be suffering from a wandering mind. His Commanding Officer stated 'I consider he is not of normal medical development… he should be carefully examined by a specialist in mental diseases'. The soldier was never examined despite this statement, and was executed the day before the Somme offensive.

In Babington's own words, "there can be little doubt that many soldiers were executed without any attempt being made to assess the degree of responsibility they might have had for their own behaviour at the time of their offences".

*However frustrating, the passage of time means that the grounds for a blanket legal pardon on the basis of unsafe conviction just do not exist. We have therefore considered the cases individually.*

78. The passage of time has little or no bearing in terms of the arguments for a blanket legal pardon. The record of both ethnic and class bias, combined with the failure to consider medical conditions are clear and compelling grounds for a blanket pardon on the basis that the judgements were flawed.

79. The fact that there is no mention here that the files were sealed from public viewing for 75 years is a telling one. The repeal of the grounds on which executions were carried out in the wake of the war was a reflection of contemporary concerns about the safety of the convictions, and in effect a vote of no confidence in the system of military justice, even without the details of the case files being available at that time.

*…..for each individual case, there must be some concrete evidence for overturning the decision of a legally constituted court, which was charged with examining the evidence in those serious offences…… Regrettably, many of the records contain little more than the minimum prescribed for this type of court martial--a form recording administrative details and a summary--not a transcript--of the evidence. Sometimes it amounts only to one or two handwritten pages….. I have accepted legal advice that, in the vast majority of cases, there is little to be gleaned from the fragments of the stories that would provide serious grounds for a legal pardon…. In short, most would be left condemned, or in some cases re-condemned, 80 years after the event.*

80. Irrespective of the broader argument that the system as a whole was flawed, each individual case could have been overturned if the review was based on agreed standards, for example, the absence of proof of due consideration of medical conditions. Moreover, applying the criminal justice standard of new evidence would seem to be very questionable given that the field courts martial were in no way comparable to the normal courts at the time in terms of the protection afforded to a defendant's rights.

81. Finally, the argument for a case-by-case review was strong since the evidence used to condemn the men and the comments of all concerned with their deaths remains as it was when Field Marshals French and Haig confirmed the order for the men's executions. If it is the case that there was sufficient evidence at the time to confirm the convictions of the men, then it follows that there must be enough evidence to allow a full review.

*Today, there are four things that we can do in this House, which sanctioned and passed the laws under which these men were executed.*

82. The absence in this statement of any reference to the repeal of the grounds on which the men were executed in the Acts of 1928 and 1930 is a telling one since the repeals stand as one of the strongest arguments for a general pardon.

*First, with the knowledge now available to us, we can express our deep sense of regret at the loss of life.*

83. This would seem to be an apology but for what is unclear in the absence of a general pardon, a confirmation of the integrity of the military court system at the time, and the rejection of a case-by-case review.

*I ask hon. Members to join me in recognising those who were executed for what they were--the victims, with millions of others, of a cataclysmic and ghastly war.*

84. Again the grounds for this assertion would seem to contradict the official position that the death penalty convictions should stand.

*….we hope that others outside the House will recognise all that, and that they will consider allowing the missing names to be added to books of remembrance and war memorials throughout the land.*

85. Yet again, the inclusion of men convicted and executed in effectively the public's role of honour would seem to be contradictory. Moreover, it asks of others what the British Government is not prepared to do – in effect exonerate those executed.

*May those who were executed, with the many, many others who were victims of war, finally rest in peace.*

86. Since they still remain officially convicted, it is difficult to see from when springs their final rest in peace.

**SYNOPSIS OF THE CASE FILES OF THE COURTS-MARTIAL OF IRISH SOLDIERS**[13]

## Private A Smythe – 1st Irish Guards

**Information on File**
At FGCM on 19 January 1915 Private Smythe was charged with deserting when on active service in that on 1 November 1914 he absented himself from 1st Battalion Irish Guards until apprehended on 15 January 1915.

Sgt Johnstone, witness for the prosecution, stated that on 1 November the accused was absent for roll call. A military police witness stated that on 15 January, acting on information received from the Mayor of Clioques, (?) he went to a farm in the town searching for two soldiers (the other happened to be Private T Cummings – see next entry). When questioning the owner of the farm the MP became suspicious and after making further enquiries found Private Smythe in the loft of a barn on the property.

In his defence Private Smythe stated that on the evening of November 1 his Battalion was under heavy shell fire and he volunteered to go and help carry some wounded men back to dressing stations and then to the front again – during this service they were fired upon in the dark and the men became separated from one another. After walking for most of the night he met some French troops but they could not help him with the whereabouts of any British troops so he could report back. After spending some time with them he met a British Private who told him that he would find British Divisions in La Bassee. He attempted to find them and came upon the farm where he was apprehended. He stated that he was only resting at the farm, and planned to leave that night there to find the Irish Guards. In his defence he stated "I had no intention of deserting, I had a complete set of equipment".

No conduct sheet was available for the court, but the Major in the Irish Guards provided a reference as to his character as a fighting man. States "Enlisted in 1909. He was made a Lt Corporal early in 1910, reduced for drunkenness soon after, and then gave himself up as a deserter from the 3rd Dragoon Guards – **He received the King's Pardon and remained in the regiment** (emphasis added). In 1912 he was made a machine gunner and gave satisfaction until the Battalion was at Soupir, when he was returned to duty. I have known this man all his service personally and since he obtained the King's Pardon during peace he did very well – but since he came on active service he has not done well".

Private Smythe's sentence was confirmed, and he was executed on 28 January 1915.

## Private T Cummings – 1st Irish Guards

**Information on File**
At FGCM on 19 January 1915 Private Cummings was charged with deserting his majesty's service when on active service in that on 6 November 1914 he absented himself until apprehended on 15 January 1915. Private Fitzelle, for the prosecution, stated that on 5 November he saw the accused and on 6 November the Company came under heavy fighting with very few survivors left as a result. On 7 November the

[13] The case file of Private James H Wilson has been lost by the Canadian authorities, and is therefore not summarised here.

accused was one of the many of the 1st Irish Guards absent from roll call. The same MP as detailed above in the case of Private Smythe apprehended Private Cummings in the same place and same time.

In his defence Cummings stated that during the heavy fighting on 6 November he became separated from the rest of the men and lost his way. He met a group of French troops and stayed with them for some time while attempting to locate his Battalion. The day before being apprehended he heard that there may be Irish Guards in La Bassee and was intending to go there to find them.

Again, no conduct sheet etc was available to the court for Private Cummings – the same Major gave evidence as to character as in the case of Private Smythe. He stated "Enlisted in 1904 – he was a signaller… all his service of 8 years. He went to the Army Reserve in 1912 with an exemplary character – he came back off the Army Reserve in August 1914 and did duty up to the time he deserted. I knew him well and have always considered him an excellent man".

In confirming sentence on both Cummings and Smythe, the Brigadier General stated "I do not think they made any effort to rejoin their unit. There is nothing to show how they met each other. I regret I can find no grounds for any recommendation to mercy".

This recommendation was agreed with by the Commander in Chief and Private Cummings was executed on 28 January 1915.

**Comment**
The courts-martial of both Private Smythe and Private Cummings indicate a casual approach by the court and the officers confirming the subsequent sentence – the Brigadier General's comment that he did not think they made any effort to rejoin their unit highlights this casualness. Given the very high casualty rate of the 1st Irish Guards at the time both men claim to have been separated from the others, it is not beyond reason to attach a level of credence to their version of events – how can you rejoin your Company if the vast majority of the men you served with are dead? In this instance, and taking into consideration the ultimately fatal consequences for both men, it seems remarkable that no checks were made to verify their story.

No credence is given to the deteriorating weather conditions known to have hit Ypres in November 1914, which is described by Kipling in his history of the Irish Guards as 'a cold that froze the water in men's bottles'. Neither is weight given to the fighting character or the long periods of service of both men, and Private Cummings particularly given him being described as an excellent man. In addition, there is no reference to the discipline in the 1st Irish Guards at that time, or to the possible impact that losing so many colleagues had on their mental stability when they were alleged to have deserted.

## Private T Hope – 2nd Leinster Regiment

**Information on File**

At FGCM on 14 February 1915 Private Hope was charged with deserting his Majesty's service, drunkenness and conduct prejudice to good conduct and military discipline. The court heard evidence alleging that on 23 December 1914 Private Hope was assigned to a ration party along with three other men. Hope was seen performing his duty before another soldier assisting him reported him absent later that evening. On February 9 1915 Private Hope was arrested when drunk, wearing a police badge and when asked for his name provided Lance Corporal Stout.

In his defence Private Hope stated that on the night of 23 December 1914 he was very upset owing to the news of the death of two of his brothers. "I had no intention of going absent when I left the trenches. It was a sudden impulse". He further stated that he had by mistake entered German trenches later that night where he was kept some days before being taken to Lille. During an attack he managed to escape and got into the French trenches where he stayed for some days before moving on and trying to find his own regiment.

The confirmation process of Hope's sentence states "the prisoner has brought no evidence in proof of his very improbable statement". The General Commanding 2nd Army in confirming the sentence stated "The Brigade discipline is 2nd worst of the Battalion. Discipline also 2nd worst in the Army. The case is a very bad one indeed and I recommend that the extreme penalty be carried out". Private Hope was executed on 2 March 1915.

**Comment**
The file and the confirmation process particularly, indicate that Private Hope's story, including the death of two brothers, was not verified by the court even though it would have been easy to do so in the latter instance given that the names and regiments of Private Hope's brothers were known. However improbable his story may seem, it is the purpose of the court to ascertain the truth – was there an attack on German positions in Lille toward the end of 1914?

The discipline in Private Hope's unit proved to be the fatal factor in the deliberations of the court, and those who subsequently confirmed his death sentence.

## Driver J Bell – 57th Battery Royal Field Artillery

**Information on File**
Tried by FGCM with another member of his Battery on 17 April 1915, Driver Bell was charged with three counts of desertion, in that in the field on 20 October 1914 he absented himself until brought back by the Military Police on 10 February 1915. The other two charges seem to relate to attempts by Bell to escape custody once apprehended, although the dates are somewhat confusing and there is mention on the file that one of these charges was later dismissed.

The prosecution alleged that on 20 October 1914, both Bell and his associate Wilkinson were ordered to march with a dismounted party. On arriving at billets that evening both men were reported absent, and not seen again by their Battery until 10 February 1915. Bell cross examined the main prosecution witness by asking if he had heard the request for him to fall out, to which the witness replied that it was dark and the wagons made a great deal of noise so he did not hear any such request. The men were arrested by French authorities on 15 December, and handed back to the British on 18 December, and it was alleged that during this time they tried to break away

three times. It seems that Bell then again went absent on 26 December, and was apprehended again on 20 January 1915, and again on 26 January and apprehended again on 27 January.

In his defence Driver Bell stated that on 20 October 1914 he had asked to fall out, which was granted, and upon returning 10 minutes later he found the Battery had moved on without him. He spent the night at a French billet and the next day reported himself to the 1st Division HQ – he was told the Officers were too busy to see him but that his battery would be informed he had reported himself. Bell then reported to the Belgian HQ and two soldiers there thought they knew where his Battery was and so walked with them for a time before heading back. They reached the frontier and decided to get back to base by train but found themselves closer to Paris than their intended destination of Boulogne. It was as they attempted to get to Boulogne that they were apprehended. Bell argued that he did not try to get away when arrested, and that if they had wanted to desert they would simply not have allowed themselves to be taken. As regards the third charge Bell stated that he was unhappy about being placed with German prisoners and had asked to be sent back to his Battery with no success.

There is no conduct sheet on file for Driver Bell, but the confirmation process has a number of detrimental comments by Bells superiors. The Major General recommended that the death sentence should be carried out in both cases, but General of 1st Army disagreed in that he recommended Wilkinson be given a chance to alter his ways. He stated "Driver Bell is a determined shirker during a time of war and unworthy of being a soldier or Englishman". Driver Bell was executed on 25 April 1915. Driver Wilkinson had his sentence commuted to five years penal servitude by Commander in Chief Haig.

**Comment**
There is a note on file that stated Wilkinson assisted in putting out a fire which may well explain his sentence being commuted – on the charge sheet it states that his sentence was commuted as he was greatly influenced by Driver Bell, although there is no evidence on file to support this assumption. The comments of 1st Army General proved to be very influential in this case, and point to a disparity of treatment between the two soldiers being courts-martialled. There is no indication that any aspect of their version of events were investigated by the court, even though they insisted that they reported themselves on a number of occasions in an attempt to find their battalion.

## Private T Davis – 1st Royal Munster Fusiliers

**Information on File**
At FGCM on 22 June 1915 Private Davis faced a charge of quitting his post without permission. The court heard that on the morning of 20 June Private Davis was posted to sentry duty at 1am, due to finish at 3am. When checked at 2.30am his superior could find no sign of him, and he was not seen until approximately 5am that same morning.

In his defence Private Davis stated that around 2.15am he got a bad cramp in his stomach and had to visit the latrine. He was there about two hours and upon leaving had another attack and had to return. The court further heard that Private Davis had previously been sentenced to be shot earlier that year but had his sentence commuted – he had also be sentenced to 28 days field punishment number 1.

The verdict of the court was guilty, with a sentence of death being imposed. Private Davis was executed on 2 July 1915.

**Comment**
There is no evidence on file as to Private Davis' character as a fighting man, and there are no comments available from the confirmation process as is the norm with other files. It seems that by being missing for 45 minutes of his assigned duty, because of bad stomach cramps, Private Davis was executed without so much as a second thought by the military hierarchy. Dysentery was rampant at the time, so this would not have been an unreasonable excuse.

## Lance Corporal P Sands – 1st Battalion Royal Irish Rifles

**Information on File**
Having joined in 1906, Lance Corporal Sands was granted 4 days leave from his Battalion in France on 26 February 1915, but did not return on 1st March as arranged. He was subsequently arrested in Belfast on 7 July 1915, and was then returned to his Battalion in the field for courts-martial.

In his defence, Sands stated that he reported to Belfast Depot on 2 March 1915 as he had lost his warrant card and could not return to France without a new one. He spoke to a Corporal who was unable to help, so he then went back home. Sands stated that had he wanted to desert he would have made an effort to blend in by wearing plain clothes, but in the 4 months he spent in Belfast he always wore his uniform.

In confirming the death sentence of the court, the Brigadier General notes that Sands CO gives him an excellent character reference, both as a fighting man and in normal situations. He also states that while it is not possible to say that the offence was deliberate, he did miss heavy fighting in May, and was gone for over 4 months. In confirming the sentence, Haig stated that "this is a bad case and I recommend that the extreme penalty be carried out". Lance Corporal Sands was subsequently executed on 15 September 1915.

**Comment**
There is a casual approach evident from the file in dealing with this case. Firstly, it is not clear why Sands was returned to France for Fields General Courts-Martial when a more formal setting could have easily taken place in Belfast. Secondly, there is no mention of whether there were checks made at Belfast Depot to confirm Sands story, even though the name and number of the Corporal he spoke to was provided. Lance Corporal Sands had no previous conduct problems and was described by his superior officer as a good fighting man – this did not seem to influence the confirming officer's views in any way. There doesn't seem to be any substantial evidence to support this sentence being handed out, nor why it was subsequently confirmed.

## Private J Graham – 2nd Battalion Royal Munster Fusiliers

**Information on File**
At FGCM on 9 December 1915 the court heard evidence alleging that Private Graham was present with his battalion in the trenches at Cuichy, but that he was absent from his Company from 26 January until the following November. Private Graham was apprehended in Bethune on 20 November following an altercation in a brothel.

In his defence he stated that on 25 January he was detailed by a Corporal Green to leave the trenches in advance of him. He did so, having left his equipment on the instruction of the Corporal, and arrived at Battalion HQ where the Corporal did not arrive. The Court offered the fact that there was an attack at Cuichy in the morning of 25 January as evidence against Private Graham.

No conduct sheet was available for Private Graham, and no submission on behalf of his fighting character was made. He was found guilty on the charge of desertion and sentenced to death. The sentence was confirmed and Private Graham was executed on 21 December 1915.

**Comment**
Further charges of posing as an officer and taking money by fraud during his time supposedly deserted were also put to Private Graham. Although there is substantial evidence against him on these counts in the file, he was found not guilty as the Court decided not to proceed with the charges subsequent to Graham being convicted and sentenced to death already for desertion. The absence of a conduct sheet or of a submission as to Private Graham's fighting character is notable in that in other files where this is the case they are requested as part of the confirmation process. They were not requested in this case.

**Private P Downey – 6 Leinster Regiment**

**Information on File**
At FGCM in Slakonia, Greece, on 1 December 1915 Private Downey, along with another four members of his regiment, faced a charge of disobeying a lawful command. At his hearing it was alleged that Private Downey had refused to fall in when ordered, and refused to put on his helmet when ordered. With a history of minor insubordination and pleading guilty to the charge, Downey was found guilty and sentenced to death.

In requesting confirmation of Private Downey's sentence, the Lt General of British Forces in Greece states "under ordinary circumstances I would have hesitated to recommend the capital sentence awarded be put into effect as a plea of guilty has been erroneously accepted by the court, but the condition of discipline in the Battalion is such as to render an exemplary punishment highly desirable and I therefore hope that the Commander in Chief will see fit to approve the sentence of death in this instance". The sentence was confirmed and Private Downey was executed on 27 December 1915.

**Comment**
All accused men were found guilty of their respective charges, and the transcripts of each are included in the Downey file as they were tried together in the same courts-martial. Although the notes are not extensive, the guilty findings are difficult to understand (given the allegations against some of the men), and the subsequent sentences imposed can only be described as inconsistent at best (with the other men being sentenced to field punishments and imprisonment).

As originally drafted, the charge schedule states that Downey was charged with a non-capital offence: "On active service disobeying a lawful command given personally by his superior officer in the execution of his office." However, the entry was amended

by Brigadier General Vandeleur, to read: "On active service disobeying a lawful command in such a manner as to show wilful disobedience of authority given personally by his superior officer in the execution of his office." The Brigadier initialled but did not add the date when he made the alteration. However, the amended charge rendered Downey, on conviction, liable to the death penalty. Although five other soldiers from the Leinsters were also tried for unrelated offences by the same court-martial that was assigned to hear Downey's case, no similarly crucial amendment was made to the wording of the offences with which they were charged.

Private Downey must not have been aware of the implications of his pleading guilty, or else he would not have done so since he was effectively signing his own death warrant. It is clear from the file that no prisoner's friend was available to Private Downey to assist him with his defence.

## Rifleman J Crozier – 9th Royal Irish Rifles

### Information on File

At FGCM on 14 February 1916 it was alleged that on 31 January at 9pm Rifleman Crozier was found to be absent from the trenches. He was apprehended on 4 February when walking aimlessly around without his identification or pay book. Crozier's conduct sheet indicated he had previously been found absent from a working party and from his billet.

In his defence Rifleman Crozier stated that on 31 January he went into the front line trenches with his platoon and was feeling very unwell, with pains all over his body. He stated that he did not remember what he did, or what happened. He was feeling dazed and could not remember leaving the trenches. When cross examined by the court regarding any bombardment nearby, Crozier replied that there were rifle grenades bursting about ten yards from his position, but that he had been unwell prior to this and the feeling worsened in the cold.

The Brigadier General recommended the extreme penalty, viewing the case as a deliberate attempt to avoid duty and further stated that "a deterrent to a repetition of offences of this nature" was necessary. However, in another note dated 16 February, the Brigadier General also states that "the accused absented himself on 31 January without reporting sick and was not apprehended until 4 February, it is therefore impossible to produce medical evidence as to the state of health of the accused when he absented himself". A subsequent medical examination dated 18 February certified Rifleman Crozier as in sound health - both in mind and body - and that there were no indications that this had previously been different.

The Major General stated "I consider that, in the interests of discipline, the sentence as awarded should be carried out". Private Crozier was executed on 27 February 1916.

### Comment

The medical examination of Private Crozier on 18 February 1916 is interesting in that it declares him sound in mind and body not only at that time, but also previous to the exam itself. There is no evidence as to how this conclusion of being sound in mind and body prior to being examined is reached, although it seems to be in direct response to the comments of the Brigadier General of 16 February when he stated that it was impossible to tell what state of mind Private Crozier was in when he absented.

In addition to this, the reference to the necessity for a deterrent in the interests of discipline, although battalion discipline at that time was considered to be good, was a major factor in the deliberations of those in the confirmation process.

## Rifleman J.F McCracken – 15th Royal Irish Rifles

**Information on File**
The conduct sheet for Rifleman McCracken shows four minor offences from his date of enlistment in September 1914 up to February 1916 (absent from working parade, having dirty ammunition, falling out of a working party and absent from a working party – the latter three entries all took place in January 1916).

At FGCM on 27 February 1916 it was heard that on 21 February McCracken reported to 15th battalion from hospital. It was alleged that his Sgt warned him that he would be for duty in the trenches with his platoon. Later that day McCracken could not be found – he gave himself up a few miles away the same night.

In his defence Rifleman McCracken stated that he had only just came out of hospital and was not feeling fit enough for duty in the trenches. He apologised for his behaviour. The court found him guilty and sentenced him to death. When requesting confirmation of sentence, a lapse on behalf of the members of the courts-martial is identified in that they did not request a medical evaluation. This was requested from further up the chain of command, as was McCracken's character as a fighting man. Medical reports then follow stating that on the night of 20 February McCracken attended a dressing station behind the lines complaining of pains in his back. He was cleared (the medical officer could "see nothing" wrong) and returned to duty the next morning.

A medical report subsequent to his courts-martial stated that he was fit for duty, and with regard to his character the Major Commanding 15th Bt RIR stated that the poor character shown by McCracken in the period leading up to his alleged desertion was attributable to the recent death of his mother. His behaviour raised no complaints prior to this happening. He further stated "I think the man really did not realise the seriousness of his action". Both the Brigadier General and Major General recommended the death sentence be carried out "as a deterrent to other men committing a similar offence" as "there have been several recent cases of desertion in the 15th RIR". Private McCracken was executed 19 March 1916.

**Comment**
The opinion of the Major Commanding Private McCracken, in that he was not entirely responsible for his actions, is outweighed in this case by the necessity to instil a tough disciplinarian regime on the Royal Irish Rifles. The fact that he was gone only a matter of hours, that his behaviour stemmed directly from the recent death of his mother, and that he did not realise the seriousness of his actions was not afforded any consideration. Previous cases of desertion in the 15th battalion of the Royal Irish Rifles were the main contributory factor in the deliberations, and ultimately condemned Private McCracken to death.

## Rifleman J Templeton – 15 Royal Irish Rifles

**Information on File**

Rifleman Templeton faced a FGCM on 26 February 1916 and evidence heard that on 20 February the 15th Battalion were told that they were to proceed to the trenches later that day, and Templeton himself was told that he would be on sentry duty on arrival. At the 9pm parade Rifleman Templeton could not be found. Three days later he gave himself up to an officer behind the lines.

Templeton offered no defence, and simply stated "I am sorry for what I have done". As to his character, his superior said that he was generally a stubborn man but that his behaviour had deteriorated three months previously into more serious infringements.

In confirming the sentence the Major Commanding 15th RIF stated that in his view Templeton was unaware of the seriousness of the offence he was committing. The Brigadier General recommended "the extreme example be carried out as a deterrent to other men committing a similar offence". The Major General concurred, saying that as there had been three previous cases for which the death penalty was not carried out that a deterrent was therefore needed. Rifleman Templeton was executed on 19 March 1916.

**Comment**
There is evidence in the file that the members of the courts-martial may not have been very well versed in legal proceedings. There is a request for them to alter the trial notes after the fact to include that the men were sworn in, and to include reference to the man's fighting character. Although neither request seem to be in any way untoward they do highlight the fact that these courts-martial were at times carried out by officers with little or no legal experience.

There is no indication of further investigation into why Templeton's behaviour deteriorated so quickly in the months leading up to his desertion, and no medical examination seems to have been carried out. The fact that Templeton's superior did not think he realised the seriousness of the offence was outweighed in the confirmation process by the supposed need to execute Templeton in an attempt to deter others from committing a similar offence.

## Private J Cassidy – 1st Royal Inniskilling Fusiliers

**Information on File**
The conduct sheet for Private Cassidy indicates four minor offences during 1916, mainly regarding improper replies to superior officers. At FGCM on 15 July 1916 it was heard that Private Cassidy was seen in his dugout in the trenches between 9am and 10am on the morning of 24 June. In evidence the court heard that when rations were distributed that morning to the platoon one was left over – it was then discovered that Private Cassidy was missing. (This man giving evidence was the only survivor of his platoon). On 30 June Private Cassidy was apprehended by the French authorities and handed over to the British military police.

In his defence Private Cassidy stated that on the morning he went missing he went to the latrine and while there a shell exploded beside him, covering him with clay. He states that he got nerve shock and proceeded down the trenches and did not know where he was going. For a couple of days he wandered around dazed before being picked up by the French. Cassidy further states that he was previously wounded twice, once in June 1915 and again in August 1915 – the latter injury keeping him in hospital

until January 1916 - and had ever since been nervous of shell fire. A sick report dated 15 July 1916 declared Cassidy fit, and there was no indication as to what or how serious his previous injuries were.

With reference to his character as a fighting man, there is an unsigned note that states Cassidy had been in the battalion since April 1916 and had served two periods of 10 days in the front line trenches. It continues "his general character was bad, but from a fighting point of view his conduct was fair – he has never shown cowardice in the firing line to my knowledge, he did his sentry and other duties satisfactorily in the trenches. My opinion is that basically he did not leave the trenches with the sole objective of avoiding duty there. He was of an insubordinate and morose disposition and I question whether he is entirely responsible for what he does – he was without a sense of discipline and would not in my opinion be capable of considering the consequences of his actions – I do not think he was at all the kind of man to consider his own safety at that time or any others".

The Brigadier General recommended that the execution go ahead, as he could see no mitigating features to the case. This was also agreed by the Major General and the General of the Reserve Armies. The Judge Advocate General could also see no extenuating circumstances. Private Cassidy was subsequently executed on 23 July 1916.

**Comment**
There are no indications on file that his claim of being nervous near shell fire was taken into account, or that he attended a shell shock clinic to treat his condition. Previous injuries brought to the attention of the court are not identified, or evaluated. Private Cassidy was recognised by his superior officer as a good fighting man, and one that had not shown cowardice in previous tours of the trenches. This officer also questioned Cassidy's ability to fully comprehend his own actions, and stated that in his opinion Cassidy did not leave the trenches with a view to avoiding a particular duty.

Presented with this most convincing of evidence that Private Cassidy was suffering some form of mental illness, and taking into account the excellent discipline in the battalion, how the confirming officers could see no extenuating circumstances in which to recommend leniency or to commute the sentence is very difficult to understand. This case personifies the blatant ignorance of the military at the time to the debilitating medical conditions experienced by men who carried out prolonged periods of service in the front line.

## Private J Carey – 8th Royal Irish Fusiliers

**Information on File**
Private Carey's conduct sheet shows only two entries since his enlistment in April 1915. At FGCM on 22 August 1916 Private Carey was charged with two counts of deserting while on active service, in that it was alleged on 14 June he absented himself until 15 June (which resulted in conviction for absence without leave and 90 days field punishment number 1) and on 20 June 1916, after being told to parade for the trenches, he absented himself until apprehended on 21 June.

An R.A.M.C witness gave evidence to the effect that he was a member of a medical board held on 18 August to enquire into the state of mind of Private Carey – this board concluded that he was not insane but could not say if he ever had been.

In his defence at courts-martial Private Carey stated that "I lose my head in the trenches at times, and I do not know what I am doing at all. My family is afflicted the same way. My father committed suicide over it. My brother's death in the Phoenix Park 5 years ago on 17 March 1916 was due to the same thing". After the guilty finding (although clemency was recommended on the grounds of defective intellect) Private Carey said in mitigation "Though I am affected the way I am by the heavy shelling I try to do my best. I came up voluntarily to serve my King and Country".

As to his character as a fighting man, his Lt Col stated that he was quite useless, and that "absence from the trenches is a common crime with him. In my opinion the crime was deliberately committed". The confirmation process is somewhat confusing to follow: -

- the Brigadier General recommended on 25 August that the sentence be carried out as he was of the view the crimes were deliberately committed, and because discipline in the battalion was not good.
- the Major General recommended on 26 August that the sentence be commuted and the prisoner given a chance to redeem his character in the near future.
- the Lt General on 27 August recommended that the sentence be carried out as the crime was apparently deliberately committed.

On 28 August Private Carey was evacuated to base – there then follows a series of communications attempting to ascertain why Private Carey was evacuated. The Fourth Army then assumed responsibility for Private Carey's Division (it was previously First Army) and the files were subsequently forwarded.

The Fourth Army then wrote to the Deputy Judge Advocate General requesting advice as to the validity of the conviction as "the medical evidence contained some hearsay, but I doubt if it need be taken as invalidating the case". This point of view was agreed with by the AG's Office (There is no indication as to exactly what 'hearsay' refers to).

It then becomes clear that Private Carey was evacuated to hospital with an abscess in the groin, and was released fit for duty again on 3 September 1916.

On 8 September the General Commanding Fourth Army stated "I am unable to account for the unusual delay in trying this man as the offence occurred in the First Army – had it not been for delay I should have recommended that the sentence be put into execution". The files were then submitted to Commander in Chief Haig on 10 September, who confirmed the sentence and ignored the call for clemency. Private Carey was executed on 15 September 1916.

**Comment**
This is a particularly shocking case. Presented with evidence of a family history of mental problems the court-martial verdict recommended clemency on the grounds of a defective intellect. That this recommendation was ignored in the confirmation process, taking into consideration the fact that the medical evidence contained some form of hearsay, is very difficult to comprehend. There is no mention on file that Private Carey was evaluated at one of the British 'shell shock' centres which

evaluated mental illness. It can only be assumed that his medical and mental problems were ignored as the discipline in the battalion was not good at the time, and an example was thought necessary in spite of the recognition by the court of his aforementioned difficulties.

## Driver J Mullany – 72nd Battery, Royal Field Artillery

### Information on File

At the FGCM of Drv Mullany on 18 September 1916 the court heard the evidence of Sgt Major Hughes, who stated that Mullany had been insubordinate following a direct order issued by him. Following two comments the Sgt Major placed Mullany under close arrest, and asked that he be escorted to the guard room. At this point Mullany is alleged to have turned around and went for the Sgt Major, knocking him to the ground and punching him when they fell. Bombardier Trueman is then said to have went to assist, and pulled the men apart but Mullany again went toward his superior hitting him and knocking him to the ground again. In evidence Trueman corroborated the evidence of the Sgt Major.

Bombardier Harrington also gave evidence to the effect that he had witnessed the accused on top of his superior, but did not see any actual punching. When questioned by Mullany about the whereabouts of Bombardier Trueman when the incident occurred, Harrington stated that he did not arrive until after the incident occurred.

In his defence Driver Mullany stated that he did not strike the Sgt Major, but that they had confronted each other and ended up tumbling to the ground. With regard to the remarks he is alleged to have made, Mullany said that he may have replied in an unsuitable manner, as he was disillusioned with the unit after being passed over for promotion prior to the incident.

Two character references were provided, both of which depict Mullany as a generally good driver (looking after, grooming and harnessing horses) but with a tendency to be insolent when refused a request. A cover note is attached to these references by a superior officer of Mullany who states "under pre war conditions (Mullany) should not have been in the service" and concludes by saying "I consider him an insubordinate man of low class". In any case, the President of Mullany's FGCM states when unable to contact a reference requested by Mullany "No evidence as to character that this officer could have given would have affected the sentence of the court".

During the confirmation process the General Commanding 6th Division stated "whenever lack of discipline appears it is almost invariably in the rear-ward services and one or two examples are necessary". The Brigadier General states "There are no extenuating circumstances and the state of discipline of this unit requires an example". The Major General states "The discipline in this battery appears to be bad. An example is necessary". Driver Mullany was executed on 3 October 1916.

### Comment

This case bears all the hallmarks of a miscarriage of justice:

- There is contradictory evidence on what actually happened with one witness supporting the allegations against Mullany while, according to another witness, not actually being present;

- There are discriminatory comments against Mullany which describe him as being of low class;
- There is a reluctance on behalf of the court to take character references into account when they are consistently used to gauge the fighting qualities of men accused of such charges;
- The confirmation process on three occasions makes reference to an example being necessary – not once is the actual evidence mentioned to support this man's forthcoming sentence of execution being carried out.

There is nothing on file to disprove the possibility that Driver Mullany and his Sgt Major had a personal dislike of each other that simply escalated out of control. What chance did Mullany or others like him, have of proving their innocence in the face of this type of treatment by superior officers?

**Private B McGeehan – 1/8 (Irish) King's Liverpool**

**Information on File**
Private McGeehan's conduct sheet only shows a number of relatively small infringements in the 18 months leading up to his execution (Losing by neglect etc). At his FGCM on 21 October 1916 it was alleged that he had gone absent on the night of 19 September – on the morning of 20 September his platoon had moved to Clairmont trench. McGeehan was apprehended 5 days later near Montreuil when looking for food and water.

In his defence McGeehan stated that ever since he had been in France (18 months) the other men had picked on him and made fun of him. He didn't know what he was doing when he went absent. Any time he was in the trenches the other men threw stones at him and pretended it was shrapnel, and they always called him names. With regard to his character, another soldier from Derry stated that he knew McGeehan previous to the war, and since, and that "he was inclined to be rather stupid".

Private McGeehan had been employed with Transport Section before being transferred about two months previous to the incident. He was described by his superior there as "in the trenches he was afraid and appeared incapable of understanding orders". He further stated "my opinion is that this soldier committed the crime deliberately to avoid the particular service involved. He seems to be of weak intellect and is worthless as a soldier".

In confirming his sentence the Brigadier General stated that Private McGeehan's general behaviour was good. He further stated that discipline in the battalion was also good, but in respect of crimes of desertion it was bad. The sentence was subsequently confirmed and McGeehan was executed on November 2 1916.

**Comment**
All the evidence in this case points directly to Private McGeehan being of the disposition as to either not comprehend orders in a time of battle, or simply being unable mentally to cope with life as a soldier. His state of mind was further adversely affected by his treatment at the hands of the other men, but the question remains to be answered as to the intellect of a man who is so unnerved by being in the trenches that he can actually be convinced he is under attack when the other men are throwing stones at him.

It is a damning indictment to those in a position of confirming the sentence that they did not see the connection between the character references describing McGeehan as incapable of understanding orders, and his subsequent action in the trenches. This would seem to be a man that needed the protection of the upper echelons of the military during his service – in this regard his treatment is adequately summed up by the fact that no prisoner's friend was provided to assist McGeehan at his trial, even though it was well known that he was intellectually incapable of even the most basic of tasks. The influence of prior crimes of desertion in the battalion must also have been a contributory factor, in light of the mitigating factors surrounding McGeehan's intelligence.

## Rifleman S McBride – Royal Irish Rifles

### Information on File

At FGCM on 25 November 1916 Rifleman McBride was charged with desertion while serving on Vimy Ridge the previous May. Between 15-17 May it was alleged that McBride had absented himself and the court heard that during the time that they were positioned on Vimy Ridge they had been subjected to heavy and sustained shelling with McBride's platoon suffering severely, especially from trench mortars. McBride was subsequently apprehended on 17 September near Boulogne.

In his defence, McBride stated to the courts-martial that on the day in question he had felt very tired, very sore in his feet, had a headache and felt bad everywhere. He went into a dugout and fell asleep. When he awoke, about a day and a half later, he tried to find his platoon but could not. As he made his way struggling from one place to the next he continually asked about the whereabouts of the Royal Irish Rifles, and made no attempt to conceal his identity.

In some confusing pages in the confirmation process, McBride is described by Sgts Miller and Kelly, both having known him for some period of time, as a good and willing worker both in and out of the trenches – "willing at all times to volunteer for any dangerous work to be carried out". However, there are an additional two pages signed by a Major Goodman which describe McBride as previously being in prison, and that his character was not good.

Rifleman McBride's sentence was confirmed without much comment, and he was executed on 7 December 1916.

### Comment

Rifleman McBride and his battalion were subjected to a prolonged and heavy bombardment prior to his alleged desertion – this resulted in severe casualties and so much confusion that his absence could only be said to have occurred between 15 and 17 May. The symptoms described by the accused in his defence would seem to be consistent with what we know of shell shock, in that tiredness and general non-specific pain were very much evident. This, the fatigue experienced as a result of enduring a prolonged bombardment and the effect of so many colleagues being lost were not taken into account by the courts-martial, or the confirmation process.

## Private A Hamilton – 14th Battalion Durham Light Infantry

### Information on File

Private Hamilton enlisted in October 1916 and had only two entries on his conduct sheet, one for irregularity while on guard being the most serious and earning him 28 days field punishment number 1[14]. At his FGCM on 15 March 1917 evidence alleged that on the morning of 8 February Private Hamilton left his position in the trenches and was absent from his scheduled duty later that day. When questioned at Calais on 15 February a witness stated that he had no Army Book on his possession, and that he had given a false name.

In his defence Private Hamilton stated that he had left to go to the dressing station and the canteen in the nearby village. He had been attending the doctor for some time previous suffering from trench foot and bronchitis and did not feel fit for duty. He claimed the name he gave in Calais was his proper full name, and one that he had used when previously enrolled with a different regiment – he had provided names of people who could corroborate this. In mitigation after being found guilty, Private Hamilton stated that he had spent a month in hospital in October 1916 – soon after he went back to hospital and was told he also had vascular disease of the heart. He was returned to his battalion without being properly discharged from hospital, and also stated that he had received no pay from the previous November.

A hand written medical form in this file states that he was fit to undergo FGCM, but has no further details on what exactly was carried out. Although he had only been with the Durham Light Infantry for a short period his superior described his behaviour as bad. During the confirmation process, in spite of the above claims by Private Hamilton, both the Major General and the Lt General could see "no extenuating circumstances" to excuse his actions, and recommended the sentence be carried out. Private Hamilton was executed on 27 March 1917.

**Comment**
The health of Private Hamilton should have warranted a thorough evaluation of his condition. The hand written medical report on file states nothing beyond the fact that he was fit to undergo courts-martial – it contains nothing further as to his fitness for duty or the current condition of whichever illness put him in hospital the previous October. With ailments such as trench foot, bronchitis and vascular disease of the heart, and considering Private Hamilton was an experienced soldier having served in the army prior to the war, it is not unreasonable to expect that some weight would have been given to his assertion that he was unfit for duty in the trenches.

## Private T Murphy (aka T Hogan) – 2nd Battalion Royal Inniskilling Fusiliers

**Information on File**
In a file that actually states 'shot for example' on the cover, Private Murphy's conduct sheet indicates a number of minor offences in 1916 and 1917, primarily centred on alcohol and a tendency to speak back to superior officers.

The actual courts-martial of Murphy for desertion on 26 April 1917 alleged that he had, the previous March 17, willingly deserted subsequent to being told to be ready to move forward that evening. Private Murphy was apprehended on April 3 1917, and in

[14] Field Punishment Number 1 consisted of the convicted man being shackled in irons and secured to a fixed object, often a gun wheel or similar. He could only be thus fixed for up to 2 hours in 24, not for more than 3 days in 4, or for more than 21 days in his sentence – this humiliating punishment was often referred to as crucifixion.

his defence stated that he thought his platoon were staying in a dugout for the night, and he had not known they were readying to move forward. Two witness accounts placed Private Murphy in attendance when the order was handed down.

Private Murphy stated that he went to look for wood to make tea, had become lost in the trenches and, as he had been standing guard the previous night, began to experience severe pain in his feet. He eventually found himself in a village, where he was later discovered in a dishevelled state.

The Brigadier General stated that Murphy was reported by his superior to have been indifferent as a fighting man and "was addicted to absence without leave and insubordination to NCO's". He further states that the discipline in the Battalion was very bad, with six convictions for desertion in a short period of time. "At the time Private Murphy deserted it appeared probable that the Brigade would shortly be engaged. This, combined with the prevalence of this particular offence during the period the Brigade was engaged in arduous operations, in the most inclement weather conditions, makes it essential if discipline is to be upheld to make an example of this man". The Major General further stated "I recommend that the sentence be carried out on account of the prevalence of this crime in the Battalion, and also on account of the man's bad character". Private Murphy was executed on 14 May 1917.

**Comment**
Private Murphy's courts-martial contained a number of references to an example being necessary as the discipline in the Battalion was very bad at that time, and considering the difficult operations faced by the battalion in very bad weather conditions. Private Murphy's previous record as a fighting man seems to have taken second place in the deliberations of the confirming officers to the need to remove the prevalence evident in the battalion for crimes of this type. The evidence was not referred to, and it is therefore difficult to judge whether Private Murphy would have been executed if one of the earlier cases in the battalion had received the death sentence before his case was heard.

## Private J Wishart – Royal Inniskilling Fusiliers

**Information on File**
Private Wishart, from the 7th Battalion of the RIF, was faced with FGCM on 31 May 1917 charged with two counts of desertion. On March 31 at Hazebrouck he absented himself and was apprehended in Boulogne on April 20. On April 30, he again absented himself and was again apprehended in Boulogne on May 11 (Boulogne is on coast of France and geographically very close to England).

In his defence, Wishart stated that in December 1916 he received a telegram from his wife who told him that their child was ill. He applied for leave to return home but was refused and as time passed and he received no further information from home he became more worried. He stated "It was only worrying about my child that made me absent myself. It was not through cowardice". In evidence as to his character, his CO stated that he had known Wishart for four months and that he viewed him as a good character, and that he had always done well in the trenches. Wishart was found guilty on both counts of desertion and the sentence was confirmed without any additional comment. Private Wishart was executed on 15 June 1917.

**Comment**
The courts-martial finding, sentence and subsequent confirmation in this case show a complete lack of understanding by the military toward the impossible position faced by the accused. Private Wishart was of good character and had always done his duty well in the trenches. On top of the stress of carrying out his duties in the trenches, and being in constant fear of death at any moment, he was also fearful for the health of his child at home. Wishart spent three months agonising whilst awaiting further news, and he applied for leave to visit but was refused. If his request had been granted, or if an alternative method of ascertaining the situation at home had been proposed, there would have been no need for his absence, and therefore no need for his subsequent execution.

## Private J Hepple (aka R Hope) – Royal Inniskilling Fusiliers

**Information on File**
The FGCM of Private Hepple on 9 June 1917 heard that the accused allegedly went absent on 21 January 1917 following an order for his company to proceed to the trenches. Private Hepple's commanding officer stated that he had definitely been there when the company were informed that they were for the trenches later that evening (thereby willingly evading duty in the trenches).

Private Hepple was arrested in an abandoned house on 1 May 1917. The defence, and evidence as to character, are either not contained in the file or not offered for the court. Therefore it is impossible to shed further light on his intentions, or fighting character during his two years of previous service. In his defence Hepple made no statement other than saying that when found he was attempting to rejoin his battalion.

There were no entries on his conduct sheet to indicate a predication toward avoiding duty, or the like. The courts-martial verdict found him guilty and sentenced him to death, which was confirmed by Haig on 29 June, although there are no signatures further confirming the decision, and no additional comments as evident in other files.

**Comment**
The material in this file is very threadbare - with no real defence put up by Private Hepple or any evidence as to his previous character as a fighting man the court were left with little option but to find him guilty. However, when character references were not contained in the courts-martial files of other cases there is evidence of them being requested for during the confirmation procedure. This is not the case here –there are no comments from superior officers or evidence that the file passed its way through the normal chain of command to the office of the Judge Advocate General as in other files.

## Private M Monaghan (aka S Byrne) – 1st Battalion Royal Dublin Fusiliers

**Information on File**
Private Monaghan's conduct sheet indicates a few small infringements (being dirty on parade twice and missing parade) between his enlistment in January 1916 and his subsequent arrest and courts-martial for desertion in October 1917.

At his courts-martial on 12 October 1917 Private Monaghan was charged with wilfully absenting himself to avoid service in the front line on 5 August, and also with escaping following his arrest on 22 September.

Evidence heard that the accused was told along with the rest of his battalion to prepare for moving forward to the trenches. When called for parade later in the day Monaghan was absent. In his defence he stated that on the morning of 5 August he had felt very unwell with rheumatic pains in his head and feeling very cold and ill, he lay down in a hedge and slept. When he awoke he found his battalion had left, so he wandered around looking for them, afraid to report himself for fear of what may happen. The accused was found on 9 September by the French.

On the charge of escaping while in custody, the court heard allegations that Private Monaghan and other prisoners went to the canteen on 22 September and did not return. In his defence he stated that he had gone to the YMCA hut and had his feet dressed there before reporting back the following day.

A Captain Kelly testified that he may have treated Private Monaghan prior to 5 August for pains in his head, but stated that had he been unfit for duty he would have been sent to hospital. In mitigation, Private Monaghan stated that he had been over the top previously in 1917 with another battalion before his transfer to the RDF. He had been suffering with bad eyesight, and stated that in the afternoons he could sometimes not see at all. Glasses did no good for his condition. Private Monaghan was found guilty on both charges, the sentence was subsequently confirmed and he was executed on 28 October 1917.

**Comment**
Private Monaghan supplied clear medical evidence that on the day he allegedly absented himself he was suffering from severe pains in his head and was generally feeling very ill. Private Monaghan also supplied information that he had been having serious problems with his eyesight which resulted in him being unable to see at times in the latter part of the day. This evidence was not taken into account and was effectively dismissed by the testimony of a medical officer who may or may not have treated Private Monaghan.

No connection was made between the two symptoms described by Monaghan, even though it would seem obvious that one may have been causing the other. No medical report is on file, and no thorough evaluation was carried out prior to his execution. In addition, there is no indication as to Private Monaghan's fighting character in the deliberations of the court or those involved in confirming his sentence.

## Private G Hanna – 1st Battalion Royal Irish Fusiliers

**Information on File**
Private Hanna was charged and convicted of desertion on two prior occasions in early 1915 and late 1916 and sentenced to death – both were reduced to penal servitude.

On 16 October 1917 Hanna faced a FGCM on the charge of deserting when previously informed of moving forward to the trenches. It was alleged that on 28 September Private Hanna was one of a battalion told to parade that evening in preparation for proceeding to the trenches. When parade was called Private Hanna was absent. On 1 October 1917 Private Hanna was apprehended when asking for food and declared himself to be an absentee.

In his defence Private Hanna stated that he had no intention of deserting – he had been on service for 3 years, and had lost 3 brothers in that time to the war. His last leave was in December 1914 and he had since heard from his sister in Belfast who was not well. He absented himself because he was upset at not being able to go and see "his people". Private Hanna was found guilty and sentenced to death. The sentence was subsequently confirmed and he was executed on November 6 1917, in Ytres.

**Comment**
Private Hanna's absences seem to stem from family problems, in that he had apparently lost three brothers to the war and was understandably worried about his family in Belfast. At the time of his execution he had not been home in almost three years and this undoubtedly influenced his decision to attempt to get back to Belfast and see his family. While there is no challenge to his claim that he had lost three brothers in the war, neither is there evidence on file that any attempt was made to verify his claim. Nor is there evidence that the military hierarchy thought twice about taking a fourth son from the family by executing Private Hanna.

## Private J Seymour – 2nd Royal Inniskilling Fusiliers

**Information on File**
Private Seymour's conduct sheet shows that he had previously been sentenced to prison for 2 years for leaving his post without permission, and also to death in 1916 for desertion which was later commuted to penal servitude. He was released from prison for this offence in October 1917. At FGCM on 10 January 1918 it was alleged that on the morning of 27 November 1917 the accused was absent from roll call after being informed the previous day that the platoon were forming up into the line. Private Seymour was arrested in a YMCA hut on 28 December 1917.

In his defence Private Seymour stated that on the night of 26 November 1917 he was sent to get some rations. Along the way he met some men who gave him some rum. The next morning he woke up about 3 kilometres from his last position and tried to find his regiment but failed to do so.

As to his character, there is a reference on file as to Private Seymour performing all right under shell fire. In mitigation, after being found guilty, Private Seymour said "My nerves get the better of me sometimes". In confirming the sentence the Lt Corporal stated Seymour's character as bad, and was of the opinion that he had deliberately committed the crime. In addition, he mentioned that 300 new recruits in the Battalion could be unduly influenced if the sentence was not carried out. The Brigadier General stated "There have been far too many cases already of desertion in this Battalion. An example is needed as there are many men in the Battalion who never wished to be soldiers but were…. …. out and who do not understand the seriousness of the offence of desertion".

Private Seymour was executed on 24 January 1918.

**Comment**
A better method of understanding the seriousness of the offence of desertion may have been to inform those troops recently arrived of the potentially fatal consequences of their actions. Given the level of illiteracy among the lower ranks, especially following the introduction of conscription toward the end of the war, the soldiers

handbook which detailed what was expected from each soldier in a time of war may not have been an appropriate approach in informing soldiers of their duties. The fighting character of Private Seymour, in the opinion of his regimental Sgt Major, provided a negatively influencing factor in the deliberations of those in the confirmation process. There is clear reference here to Private Seymour being executed as an example to others, and as a consequence of previous desertions not being dealt with so severely.

**Private B O'Connell – 1st Battalion Irish Guards**

**Information on File**
Private O'Connell's conduct sheet demonstrates a number of infringements in the period leading up to his courts-martial in the summer of 1918.

At FGCM on 25 July 1918 it was alleged that on 7 July the 1st battalion were in the reserve trenches and Private O'Connell was noted as absent during the evening roll call. In his defence he stated that he was unaware his battalion was going on into the front line, and left to find a woman in one of the surrounding villages. As he was unable to read or write, he stated that he was unaware of the seriousness of his offence, and had intended to return to his battalion. During his courts-martial he did have a prisoner's friend to assist, but there is not much of an indication that he was helpful in any meaningful sense.

Lt Col Baggallay, Commanding 1st Battalion Irish Guards, stated that Private O'Connell was only with the Battalion for 3 weeks and it would therefore be impossible to give an indication of his character in or out of the line. He does however state his opinion that the desertion was deliberate, that the maximum penalty should be enforced, that the example to others would be beneficial and that Private O'Connell was useless to the battalion or to the British Army.

The Brigadier General and Major General of 1st Guards Brigade also agree with the courts-martial verdict, and cite the desertion and absence rates in the Battalion as a contributing factor in their deliberations. They also state, contrary to this, that the discipline in the Battalion was very good. The Lt General Commanding VI Corps notes the contradictory nature of the recommendation, but agrees anyway. The General Commanding Third Army recommends that the sentence be carried out, and further states "useless as a soldier, and leniency has no effect". Private O'Connell was executed on 8 August 1918.

**Comment**
It is clear from the file that Private O'Connell was prone to lapses in discipline during the period leading up to his courts-martial for desertion. However, his claim that he was illiterate and that as a consequence was unaware of the seriousness of his actions should have been taken into account. In addition, the prevalence of desertion in the battalion would indicate that there were others of a similar view – this points to a lack of leadership on behalf of the 1st battalion to adequately instil in the men the knowledge and responsibility for their actions that they needed to satisfactorily carry out their duties.

The contradictory comments of the Brigadier General and Major General with regard to the discipline in the battalion being good, whilst also saying that the desertion rates necessitated an example was commented on by the Lt General but not explored in any

meaningful sense – these two statements must be viewed as mutually exclusive and therefore require a full and complete explanation. It is clear that an example to other men played a contributory factor in the deliberations of the confirming officers, but if discipline was good then why was an example necessary?

## Private P Murphy – 47th Battalion Machine Gun Corps

### Information on File

Private Murphy's conduct sheet shows a breakdown in conduct in October 1917, until his courts-martial in August 1918. Private Murphy served with the Royal Dublin Fusiliers from 1914 to end 1916, before being wounded, and did not resume service until joining the Machine Gun Corps in October 1917. He was previously sentenced to death for desertion in March 1918, but commuted. Again deserted toward the end of March 1918 and was sentenced to 90 days field punishment number 1 the following July.

During FGCM on 19 August 1918 the court heard that during a working party the previous July 31 the accused had absented himself until his arrest on 12 August. Evidence was heard that there had been shells landing near the position of the working party before Private Murphy disappeared. During the courts-martial the accused did not make any statement, was found guilty and sentenced to death.

The confirmation process resulted in Private Murphy being condemned, with his Brigadier General stating that "this man's value as a fighting soldier is NIL". The Major General stated "the state of discipline of the unit as a whole is good, but there are individuals (such as the accused) in the unit who take advantage of leniency and for whom an example is needed". Private Murphy was executed on 12 September 1918.

### Comment

The poor character of Private Murphy only surfaced following his transfer to the Machine Gun Corps in October 1917. It is unclear whether his injury in December 1916, following two years service with the Royal Dublin Fusiliers, contributed toward his subsequent absences in any way. It is also unclear whether this injury kept him out of active service until he rejoined in October 1917. This may be relevant, given that on the charge he was convicted and executed for shells fell close to his position just before he was noticed as missing, although it was not explored by the court or the confirming officers. There is also no evidence on file as to his conduct or fighting character prior to his injury, which may have had a positive influencing factor on the judgement in the same way that the comments of the Brigadier General and Major General had in calling for an example to be made.

## CONCLUSION

87. The argument for granting retrospective pardons is essentially founded within the belief that there existed in the Fields General Courts-Martial a fundamental flaw that denied the accused from receiving even the elementary notion of a fair trial. A general read through the case files of the twenty-five Irish soldiers reveals starkly that each man was subjected to an inconsistent, capricious and unpredictable courts-martial system.

88. It is evident that only one of the twenty-six Irish soldiers executed had the assistance of a prisoner's friend. Illiteracy, a lack of a basic understanding of military law and a failure to grasp the seriousness of being absent without leave for a relatively short period of time (45 minutes in one case), are very much evident in the men facing courts-martial. As qualified barristers were not permitted to take the role of a prisoner's friend, the defending officer was usually hampered by his inability as an advocate and his lack of knowledge of the law and procedure. The Darling Committee, established in 1919 to inquire into the law and rules of procedure regulating military courts-martial, acknowledged this fact, and stated in paragraph 54 "Evidence has been given before us to the effect that in some instances superior authorities have actively discouraged officers from appearing on behalf of accused persons".

89. In most cases neither the prisoner, nor his defending officer, were aware of what exactly would constitute or contribute toward an effective plea for mercy following the finding of the court. The Darling Committee also recognised this ignorance of soldiers as to their rights. It stated "it is possible that all soldiers are not aware that any petition against the legality of a conviction or the severity of sentence will be considered. We think a definite statement to this effect should be included in the King's Regulations and in the case of death sentences, added to Army Form 3996". This effectively acknowledges that scores of men had been executed without being given the chance to make a last effort to save themselves from their untimely fate.

90. Owing to the confusion evident in the conditions at the front, it was often impossible to contact or identify key witnesses for the defence that may have held significant influence on the outcome of the court. Rather than the evidence in each case being examined thoroughly for the truth, claims by soldiers in defence of their actions were not investigated, and no effort was made to apply credibility to what they said in their defence.

91. In addition, the files describe a military system of justice that ignored clear evidence of medical afflictions and extenuating circumstances in favour of the need of the upper ranks to impose a tough disciplinarian regime on men who had little or no idea of the consequences of their actions - the record shows this was acknowledged by senior officers on a number of occasions. There are eleven cases where medical evidence (ranging from conditions such as vascular disease, to possible shell shock, to stomach cramps) were ignored by the court, and not considered by confirming officers. There are a further four cases where extenuating circumstances, such as the death of family members or concern with regard to an illness at home, is not considered as a contributory factor in the crimes supposedly committed by those facing courts-martial.

92. The decision to confirm a death sentence had little to do with the merits of the case, but depended on disciplinary circumstances viewed from afar in a survey covering the whole army. The military hierarchy were interested in the state of discipline in the battalion to which the accused belonged, and the fighting character of the accused when in battle. There are eleven clear cases where, during the confirmation process, an example was thought to be necessary because of the bad discipline in the battalion of the accused man. Comments appended during the confirmation process on a man's fighting ability compounded this unfair approach. Soldiers were effectively condemned to be shot because of both the behaviour of others, and the opinion of others as to their fighting potential.

93. Executing a soldier simply to deter their colleagues from contemplating a similar crime, or because their attitude in the face of the gravest of dangers was not what was expected – in some cases after only a matter of weeks of basic training – must be seen as unjust, and not deserving of the ultimate penalty.

94. The disparity in the treatment of Irish soldiers is difficult to explain. For so many of those recruited in Ireland to be condemned to death indicates a disciplinary approach markedly harsher than that faced by men from other countries. It is suffice to say that the figures are another indication of the system of military justice lacking impartiality in the treatment of soldiers from differing ethnic backgrounds facing courts-martial.

95. This lack of impartiality is reinforced when considered in conjunction with the evidence of class bias. The figures comparing the punishments meted out to officers in comparison to the lower ranks indicate a mentality of 'different spanks for different ranks'. When added to the recent revelations of King George V granting pardons to officers for offences some of those shot at dawn were executed for, then the preferential treatment toward officers is very much evident. The use of significant influence by those in the military hierarchy in petitioning the King to restore the honour of officers, such as Lt Tracey who was cashiered (and not executed) for cowardice following FGCM on 11 June 1915, is particularly difficult to accept given the details within the case files of the Irish soldiers.

96. The Pardons for Soldiers of the Great War Act 2000 represented a unique and sensitive resolution to this issue. The New Zealand Government recognised that doubts exist as to the veracity of the executions of those shot at dawn, and that their fate was not one they deserved. This is not an issue of compensation,

and will not open a legal quagmire from which will stem untold horrors. The passage of the New Zealand Act has proved that this matter can be resolved to restore the good names of those men executed for example, and grant them a dignity in death they were denied in life. The pardons granted by King George V in the immediate aftermath of the war represent a precedent, in that cases have previously been overturned, quashed and commuted.

97. This year marks the 90th Anniversary of the outbreak of World War 1, and provides a unique opportunity to endorse the overwhelming support in Ireland and the United Kingdom for a retrospective action that fully accepts the sacrifice made by not only the twenty-six executed Irish soldiers, but all those campaigned for by the Shot at Dawn Campaign.

98. People in Ireland, north and south and across long held religious and political divides, fully support the finding of a resolution that will finally lay to rest the memory of those shot at dawn, and provide them with the respect they undoubtedly deserve for their remarkable courage in the Great War.

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**ANNEX 1.**

## MINISTER COWEN PLEDGES SUPPORT FOR THE SHOT AT DAWN CAMPAIGN

The Minister for Foreign Affairs, Mr Brian Cowen T.D., today announced his support for the Irish Shot at Dawn Campaign.

"The offences with which each Irishman was charged, convicted and summarily executed were repealed by the British authorities in 1930 following sustained lobbying by ex-servicemen disillusioned by the military system of the time" stated the Minister. "That itself indicated serious public concern at the time about the credibility of the convictions and sentences passed by the British military system of justice in the awful conditions prevailing on and near the battlefields.

"Moreover, it reflected serious concerns that the regularity and severity of disciplinary action for offences such as desertion, especially in the Irish Divisions, was envisaged by military commanders of the era as a means of deterrence to others rather than an expression of justice. In addition, the failure to give consideration to ameliorating medical conditions known at the time undermine, in my view, those convictions. I have instructed my officials to begin discussions with their British counterparts to re-establish the good names of these Irishmen."

The Minister commended the work of Mr Mulvany and also that of Mr John Hipkin, the British Shot at Dawn Coordinator. "The determination and selfless effort of those involved in the Campaign over the last number of years does them great credit and I applaud the substantial efforts made by them toward recognition of their goals."

The Minister concluded: "Over the past decade, great progress has been made on this island in embracing all of our rich and varied heritage. The Good Friday Agreement is a part of that process and represents an historic accommodation between nationalists and unionists. As part of the momentum toward reconciliation, we have also embraced the sacrifice made by Irishmen who joined the British Army prior to Independence on the basis that they were fighting for small nations, men who were urged by political leaders to see Ireland's fate bound up with the outcome of World War I. It is an intrinsic part of this process that we show our concern at the treatment of those men, particularly in regard to treatment which resulted unfairly in their disgrace and execution."

**14 November 2003**