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The role of the Media in Public Interest Litigation

*The PILS Project*

The Clayton Hotel, 22 Ormeau Avenue, Belfast



## INTRODUCTION

I am a partner in KRW Law LLP, a mixed legal practice whose portfolio includes criminal defence work and public law with an emphasis on human rights specifically in relation to the Legacy of the Conflict through challenges to the decisions of public authorities and through civil litigation. We consider that our work in this regard, although motivated by private instructions is overwhelmingly in the public interest, on behalf of a society emerging from an entrenched and generational conflict. We also conduct extensive engagements on behalf of our clients with those mechanisms currently constituting the Package of Measures, as agreed with the Committee of Ministers of the European Union (CoM) following the McKerr groups of judgments of the ECtHR, including Police Ombudsman, the PSNI HET, PSNI LIB and the Legacy inquest system.

The persistent recognition/perception of our jurisdiction as ‘a state of exception’ demands that access to justice be secured and that legal challenges to public authority decisions, expressed through powers and policies, and through civil litigation private law claims, be pursued as a right, in the absence of a human rights compliant mechanism to satisfactorily investigate the Legacy of the Conflict on behalf of the relatives of the victims and those who survived.

We are approached and instructed because litigation and the judgments and orders of the judiciary serve to fill the void in the absence of human right compliant mechanism to investigate the Legacy of the Conflict and to deliver truth, justice and accountability out-with any particular narrative endorsement from a political constituency and out-with a hierarchy of victims or hierarchy of perpetrators.

It is in this context that I propose to make my remarks.

### **The Truth Costs Nothing, Set the Truth Free.**

It is a professional duty of the highest calling to be instructed by people who but for the circumstances of a tragic moment in their lives, might never require the services of a solicitor or to embark on courageous litigation that may define the law for the entirety of the jurisdiction.

Very often when receiving such instructions, from a bereaved parent, child or sibling, you will not be surprised to hear that the refined complexities of the law relating to liability or quantum are not issues which dominate the conversation. In the context of deaths which may have occurred over 40 years ago in some circumstances, the next of kin, in the vast majority of instances, will seek to pursue very simple yet compelling concepts. A fact based account of

what actually occurred on the night their loved one was murdered, and in circumstances whereby there was an ‘official account’ which was plainly not true and was peddled for contemporaneous expedient political reasons, the families will want the truth to be rectified for the public record, that a slur which was visited by a right wing media on the memory of their loved one, be corrected forevermore.

I also will seek to explore the right wing media’s current backlash against such public interest litigation, which characterises families quest for the truth, as a financially motivated crusade by greedy lawyers. However, to appropriate an exceptionally apt slogan which was pioneered by local and internationally renowned NGO, Relatives for Justice, *The Truth Costs Nothing, Set the Truth Free*.

Before I turn to examples of how a lawyer can, and certain circumstances should embrace a proactive media approach to assist in realising a client’s objectives, it would be remiss not to highlight examples of how pioneering investigative journalism has led the way for the law to correct an historical inaccuracy, imbalance, or indeed a miscarriage of justice.

In 1918 US Senator Hiram Warren Johnson is purported to have said that ‘*The first casualty when war comes is truth*’. This maxim, which has such a resonance in our society, is sufficient evidence as to why an independent, robust and investigative media is required to stand as a bulwark against a state narrative, composed to look after its own interests.

### ***BLOODY SUNDAY – The Truth ‘Widgeried’***

The truth of what happened on Bloody Sunday is now well established. 28 unarmed civil rights marchers were shot by the British Army on 30<sup>th</sup> January 1972, 14 of whom murdered. Justice was an immediate casualty as well. The first official attempt at establishing the truth was, in hindsight, corrupt, with *Widgery* now a byword in modern parlance for a perversion of the truth.

On the day after the atrocity, the then Prime Minister Edward Heath asked the Lord Chief Justice, Lord Widgery to conduct a public inquiry under the Tribunals of Inquiry (Evidence) Act 1921. Widgery didn’t waste time. He defined his remit narrowly, to cover events

*“on the streets of Londonderry where the disturbances and the ultimate shooting took place’... over ‘the period beginning with the moment when the march ... first became involved violence and ending with the conclusion of the affair and the deaths”*

There was to be no examination of prior military or political planning or of suggestions of a cover up. Widgery sat for 17 days between 21<sup>st</sup> February and 14<sup>th</sup> March, hearing 114 witnesses of whom 30 were Derry civilians. Hundreds of statements collected by the Northern Ireland Civil Rights Association were ignored by Widgery. 6 of the 14 wounded survivors were not approached for an account of they’d come to be shot. Widgery passed his 39 page

report to Home Secretary Reginald Maudling on 10<sup>th</sup> April 1972, with it being published on 18<sup>th</sup> April, 11 weeks after the events.

Heath's government didn't wait for Widgery's hearings however, much less the report, before disseminating its own version of events. On 1<sup>st</sup> February 1972, as Widgery's appointment was being announced in the House of Commons, British Information Services was distributing to wire services and broadcasting outlets across the world a document headed:

*"Northern Ireland : Londonderry"* telling that :

*"Of the 13 men killed, four were on the security forces wanted list, one man had four nail bombs in his pockets... Throughout the fighting that ensued, the army fired only at identified targets - at attacking gunmen and bombers. The troops came under indiscriminate firing"*

As is often a motivating milestone, the 20<sup>th</sup> Anniversary of Bloody Sunday, was prefaced by a renewed activism on behalf of the families of those killed and wounded and led to a wealth of investigative articles, books, documentaries which contributed to a most effective campaign for a new independent judicial inquiry.

Brandon Books published '*Bloody Sunday – What Really Happened in Derry*' by Eamon McCann which profiled each of the deceased and denounced Widgery publicly as a liar and an accessory after the fact of the murders. A 30 minute documentary commissioned by Channel 4 was made by Margo Harkin, which espoused the view that until Widgery was repudiated it would remain unreasonable to expect areas like the Bogside and areas like it to endorse the rule of law. Two mainstream documentaries challenging the Widgery account were transmitted on Channel 4 and BBC1, along with a proliferation of newspaper articles. In 1996, Derry writer and social justice activist, Don Mullan was briefed with civilian statements gathered by NICRA in 1972, from which he composed the book "*Eyewitness Bloody Sunday: The Truth*" which was published in 1997. Solicitor Patricia Coyle, then of Madden and Finucane Solicitors, interrogated the Public Records Office in Kew, and drove a boot load of documents from Kew to Limerick to brief Professor Dermot Walsh, who would collate the documents into a single compelling narrative, published in 1997 as "*The Bloody Sunday Tribunal of Inquiry : A Resounding Defeat for Truth, Justice and the Rule of Law*". At the same time, Alex Thompson of Channel 4 News began compiling a series of reports which included interviews with soldiers on duty on the day, who confessed that 'command and control had broken down on the day and that shameful and disgraceful acts had been committed'. Alex Thompson won the 1997 UK Home News Award from the Royal Television Society in 1997 for the reports.

The combination between effective media engagement, and pioneering legal strategy by Madden and Finucane Solicitors, led to the calls for a public inquiry becoming irresistible, with the Inquiry being announced in the House of Commons by Tony Blair on 29<sup>th</sup> January 1998. An introductory statement was made by Lord Savile on 3<sup>rd</sup> April 1999, with oral hearings beginning on 27<sup>th</sup> March 2000. The Inquiry sat for 434 days with 912 witnesses taking the

stand, 505 of whom were civilians. By the time Inquiry Chief Counsel Christopher Clarke QC made his closing remarks on 23<sup>rd</sup> November 2004, 16 million words had been spoken. A further 25 million words were logged in statements of 1555 witnesses not called to give evidence and in documents gathered by the Inquiry<sup>1</sup>.

When David Cameron told the House of Commons on 15<sup>th</sup> June 2010, that he was deeply sorry for killings which were unjustified and unjustifiable, caused by soldiers losing their self-control, an entire city was vindicated, with former vice chair of the Policing Board, Denis Bradley commenting that “*this city has been telling the truth all along*”<sup>2</sup>.

### **McGurks Bar Bombing – December 1972**

Another example of confronting a well-established state narrative, based on a lie, is the McGurks Bar case. The Loyalist bombing of McGurk’s Bar on 4<sup>th</sup> December 1971 killed 15 civilians – men, women and children. It was the greatest loss of civilian life in any single incident throughout the conflict and until the massacre of the Omagh bombing in 1998.

Despite a mountain of evidence that loyalists attacked the bar, the state’s Security Forces blamed the victims for the attack and briefed the media that it was a Republican own-goal – a bomb that was meant for elsewhere but exploded prematurely. Either the victims were guilty by association or complicit in their own death.

But the British state created this fictitious pretext for the bombing and disregarded a mountain of evidence that proved Loyalists bombed the bar.

This evidence included a witness who watched the bombers plant and light the bomb before escaping in a car which the RUC discovered and finger-printed and a public admission to the Press by the Loyalists themselves.

From where, though, did such disinformation emanate?

The Investigative Bias, was immediate. The first instance of the lie, is to be found, without evidence, in an RUC Duty Officers’ Brief dated the following day, 5<sup>th</sup> December 1971, at 8 a.m., written a few hours after the atrocity and the deceased had been identified. Lodged in the Ministry of Home Affairs, the bomb-in-transit theory, the IRA own-goal, is recorded:

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<sup>1</sup> The Bloody Sunday Inquiry – The Families Speak Out. Eamonn McCann. p25

<sup>2</sup> <https://www.theguardian.com/uk/2010/jun/15/bloody-sunday-report-saville-inquiry>

RUC Duty Officers' Report : 8 a.m. 5th December 1971

At 8.45 p.m. on Saturday, 4th December, 1971, an explosion occurred at McGurk's Licensed Premises, 83 Great George's Street. The charge was estimated at 50 lbs completely demolished the two storey building. Just before the explosion a man entered the licensed premises and left down a suitcase, presumably to be picked up by a known member of the Provisional I.R.A. The bomb was intended for use on other premises. Before the 'pick-up' was made the bomb exploded.

This is at odds with the expert testimony of a British Army Ammunition Technical Officer (ATO), who happened upon the scene a few minutes after the explosion, in a secret briefing to the General Officer Commanding, Lt. General Sir Harry Tuzo. It too was dated the following day, 5<sup>th</sup> December 1971. The false theory found its way into the immediate press coverage:

Nevertheless, the baseless lie was issued to the press.

*The Times' John Chartres, 5<sup>th</sup> December 1971*

“ Police and Army Intelligence Officers believe that... an explosion in a Belfast bar last night was caused by an IRA plan that went wrong. [The] Army believe bomb was in transit...

John Chartres was the “independent witness” to the infamous Widgery Report in the aftermath of Bloody Sunday which sought to exonerate 1 Para for their killings on 30<sup>th</sup> January 1972. Chartres, of course, was not an independent witness to anything he saw on the streets here. He was a Major in the British Territorial Army and was very good friends with Hugh Mooney, Information Officer to the GOC in the Information Research Department.

The lie continued to be reported as fact in the national press:

*The Guardian, 24<sup>th</sup> December 1971*

*The security men are now convinced that the bar was a transfer point in the IRA chain between the makers and the planters of the bomb*

By the time that MO4, the department of the MoD responsible for military operations in Northern Ireland, had written its report for the month of December 1971, the branch was “fairly certain” that the atrocity was the result of an IRA own-goal:

*British Army: MO4 Monthly Report for December 1971, dated 10<sup>th</sup> January 1972*

*On 4 December McGurk's Bar in the Glenravel area was destroyed by an explosion in which 15 people died and 13 were injured... IRA propaganda tried to blame the SAS and Empire Loyalists. It is fairly certain that the bomb was being handed over by the "makers" to the "planters".*

This is how an unsubstantiated RUC Duty Officers' Report was fed into the intelligence stream, the media and the public consciousness at a time when we the dead were being buried. This is how their good name and their innocence were despoiled.

Were it not for the herculean efforts of the families, and in particular Ciarán MacAirt, who also wrote the definitive book on the atrocity, then this false narrative would have continued to stain the memory of the deceased. Along with Ciarán, a deliberate media strategy to ensure pressure was retained on modern investigators was engaged, to ensure that the 'own goal' theory was dispelled forever and that the truth was strongly placed on the public record.

A Police Ombudsman report published in February 2011 found that there was investigatory bias in the manner in which the murders were originally investigated. The report also found that RUC gave "*selective*" and "*misleading*" briefings to the government and media, which furthered the idea that it was an IRA bomb. The Ombudsman could not find an explanation why successive Chief Constables did not address that mistake. Ombudsman Al Hutchinson said:

*"Inconsistent police briefings, some of which inferred that victims of the bombing were culpable in the atrocity, caused the bereaved families great distress, which has continued for many years".<sup>3</sup>*

### **The Birmingham Pub Bombings 1974**

In 2014, 3 families of victims of the Birmingham Pub Bombings approached our office, via an NGO introduction seeking legal advice. As the legal process pertaining to the bombings had concluded in the conviction of the Birmingham 6, followed 15 years later by the most spectacular miscarriage of justice in British legal history, the families felt that their hurt and pain, had been lost or relegated in the narrative history of the bombings. From a legal perspective, no inquest had ever taken place, and with the event of the collapse of the convictions, several questions burned in the families' minds, which they felt required a formal answer in a formal judicial setting. As an inquest will not proceed, in circumstances where there has been a criminal trial, there was no concluded inquest, notwithstanding the quashing of the convictions. The families had witnessed and indeed been inspired by the campaign mounted by the Hillsborough Disaster families, and understood the cathartic experience that could be delivered by a fully engaged Inquest process. A legal application to the Senior Coroner for Birmingham was prepared however it was clearly understood by everyone that this

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<sup>3</sup> INVESTIGATIVE BIAS UNDERMINED POLICE INQUIRY: POLICE OMBUDSMAN 21<sup>st</sup> February 2011  
[https://web.archive.org/web/20130314082224/http://www.policeombudsman.org/modules/press/press.cfm/Press\\_ID/226/action/detail/year/2011](https://web.archive.org/web/20130314082224/http://www.policeombudsman.org/modules/press/press.cfm/Press_ID/226/action/detail/year/2011)

could not take place in a legal vacuum. There had to be a public understanding as to why the resumption of the inquests was the right and proper thing to do.

A significant issue in relation to that, would that the families should be entitled to partake effectively in the proceedings (a requirement under article 2)

The families had already formed a campaign group called Justice for the 21, and enjoyed local media support at The Birmingham Mail as the forgotten victims of the Troubles.

We travelled to Birmingham frequently to consult with the families to advise on the position pertaining to the State's obligations under article 2 ECHR, and met the Birmingham Mail face to face and established a positive working relationship immediately facilitated by J4the21. We were facilitated with further local media engagements with BBC Midlands Today, ITV and ITN. We also utilised our own existing media contacts to propel support specifically The Irish Times and The Guardian.

Media support was essential because we knew that:

- To resume the original inquests engaged complex points of law
- There would issues regarding a Irish lawyer representing English clients
- There would be funding issues post-Hillsborough

BBC Midlands Today came to Belfast with a client to interview Kevin Winters and to set the Birmingham Pub Bombings within the context of the Conflict.

The BPB74 issue was being worked out at the same time as the failure of the Stormont House Agreement, which provided a current political and legal backdrop which was complemented with attendance at events in Westminster and in Brussels with the Birmingham relatives which further propelled media interest given the cross-party support. Eventually, their campaign was successful and the Senior Coroner acceded to an application to re-open the Inquest.

The resumed hearings attracted significant media interest including national media outlets and we continued to brief in advance The Birmingham Mail, The Guardian and the Irish Times. TV and Radio exposure. Further media exposure following meetings with the Home Secretary (then Theresa May) and current Home Secretary (Amber Rudd) in London

The announcement of resumed inquests on 1<sup>st</sup> June 2016 was momentous for the families and lead to J4the21 being given The Long March to Justice Award by Liberty, for Andy Richards at the Birmingham Mail been made local media journalist of the year at the National Press

awards<sup>4</sup>, and KRW Law being nominated for Legal Aid Firm of the Year at the LAPG LALY Awards 2017.

The media asserted its support that the resumed BPB74 Inquests be funded by public money. This led to further media exposure of the funding matter. It coalesced solidarity between the firm and the clients – now representing 10 families. There was righteous local media dismay that the Hillsborough model of inquest was no longer available and reliance on Legal Aid post-LAPSO, which would have excluded our ability to partake in the proceedings, have worked on the case pro bono for two years.

We used articles in Legal Voice to explain to the legal community the problems re: funding. This ensured no ill will between English practitioners and indeed we enjoy support from Birmingham legal profession as well as solid Westminster backing from local MP Jess Phillips and former Shadow Home Secretary Andy Burnham. Westminster debates on funding including KRW drafting an Early Day Motion and numerous Briefs to MPs

This resulted in a change in the regulations to enable KRW Law to apply for an English legal aid contract as an NI supplier, which was achieved through a close working relationship with our clients contributing to J4the21 speeches and media responses on a daily basis.

The Inquests are due to re-open formally later this year.

### **The Loughinisland Atrocity 1994**

6 men were murdered in June 1994, including Barney Green aged 87, the oldest victim of the conflict, in a rural county Down pub, whilst they watched Ireland play in the World Cup against Italy in New York. It was the most successful sports event in Irish history to that date. Gunmen burst in and raked the bar with 29 bullets from a VZ58 automatic rifle, which the next of kin suspect was imported to Ireland by the British Ministry of Defence. Despite complaining to the Police Ombudsman about their concerns in 2004, no report was published until 2011, and on the topic of the arms importation, the report glibly stated '*the Police Ombudsman has no legislative remit to investigate complaints made about alleged military agents*'.

The families were devastated at the June 2011 report, and were emotionally exhausted. We agreed to take the Summer off, and away from each other, to spend the Summer collecting our thoughts and re-energising. We convened a planning day, away at a conference centre in Armagh, engaging the services of Mike Ritchie, then of the International Red Cross, to chair and facilitate an expression of what the families wanted and what was achievable. I outlined what I considered to be the legal options, a judicial review of the report and civil litigation but I caveated those options with the stark reality that neither was guaranteed to succeed, that they were both intertwined and that the law would be slow, stiff and inflexible. The families

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<sup>4</sup> <http://www.birminghammail.co.uk/news/midlands-news/birmingham-mails-pub-bombings-inquest-13065595>

overwhelming and collective objective, once it was skilfully teased out by Mike, was that they wanted recognition for what they had endured and that they wanted society at large to understand the vicious unrelenting nature of the collusion that had visited their lives in June 1994. The families, whom I have been privileged to represent since January 2005, had steadfastly honoured a request made of them by PONI and police to observe a silence in respect of their complaint and the facts known to them, however when served with a Widgery-esque cover up by Al Hutchison, their instructions were to spread the facts as widely across the world as possible.

The families would successfully challenge the report by way of Judicial Review, citing the investigative obligations on the State under article 2, and had same quashed by the High Court in Belfast in December 2013, however the case witnessed a public mobilisation beyond the courtroom.

In June 2012, Ireland had made it through to the European Championships in Poland and remarkably on the actual anniversary, 18<sup>th</sup> June, they were drawn to play Italy. The families were overwhelmed at the happenstance and instructed me to write to the FAI to enquire could the team wear black armbands<sup>5</sup> during the fixture, which was acceded to and provided an opportunity for a communal act of remembrance on an international scale.

In addition to this, and arising from the Planning Day, the families proactively instructed me to pursue the commission of a documentary to bear witness to their loss and indeed their journey to truth recovery. In 2011, just after the publication of the report, I had approached the BBC Spotlight program to enquire as to their interest in such a film, and spent two hours with one of their journalists, outlining the complex yet damning facts of collusion, which were irrefutable and to the families consideration required to be considered societally. Remarkably, Spotlight didn't take the case on as a subject matter, advising that they were only now interested in 'current affairs' issues, and were trying to move away from historical legacy matters – I found this incredulous as this case, as along with a damning Criminal Justice Inspectorate report, the resignation of the Police Ombudsman's then CEO, all contributing to the resignation of Al Hutchison 3 ½ years early and as such the case has influenced directly the most sensitive area of the peace process, i.e. public confidence in policing, although in Spotlight's view this was not current affairs. Indeed the reason that I had canvassed Spotlight specifically was because they had broadcast a film considering the stress of collusion from a police officers perspective, handling agents and as such retained footage of a detective re-enacting (!) meeting a loyalist terrorist and giving him £10,000 in exchange for the bag of gelignite and an VZ58 rifle. That program was called 'Inside Man' and was broadcast on 23<sup>rd</sup> May 2006.

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<sup>5</sup> <http://www.belfasttelegraph.co.uk/news/local-national/republic-of-ireland/game-armsbands-mark-loyalist-murders-28761792.html>

Dispirited with Spotlight's lack of apparent interest, I happened to mention this conversationally with Barry McCaffrey, formerly of the Irish News and then of The Detail, who has long been a champion of the Loughinisland families' case. He advised that the Detail had an investigative film making wing within the company and from that conversation a film was made by Oscar winning director Alex Gibney, commissioned by ESPN's 30 for 30 series, called Ceasefire Massacre, broadcast in North America on 29<sup>th</sup> April 2014<sup>6</sup>. The film was a success and the facts engrained themselves on the psyche of Alex Gibney, described in 2010 by Esquire magazine as "*the most important documentarian of our time*"<sup>7</sup>, to such an extent that Gibney has made a feature length documentary film, the largest such scale film ever made in Ireland, called 'No Stone Unturned'<sup>8</sup>. The film was meant to premiere in New York at the TriBeCa Film Festival on 23<sup>rd</sup> April 2017, however was withdrawn from screening due to legal issues. I am limited in what I can say in respect of these issues, however the spectre of state censorship looms very largely, and as Alex Gibney remarked in a tweet on 14<sup>th</sup> April 2017,

*"No Stone Unturned is a powerful story and so is the attempt to silence it.  
The truth will be told".*

The tandem approach of civic engagement, a defined and progressive strategy, coalesced with the publication of a new Police Ombudsman's report on 9<sup>th</sup> June 2016<sup>9</sup> which provided a definitive commentary on the failure of policing in the 1990's which rather than cauterising the conflict, exacerbated and prolonged it. Dr Maguire found that collusion was an unambiguous feature of the atrocity, a conclusion which would have been denied had they not challenged the previous report by way of Judicial Review. The entirety of this story will be illustrated in granular detail in Gibney's film, once the legal obstacles are removed, and perhaps the attempt at censorship may in fact form part of the narrative.

## **MEDIA FIGHT BACK BY THE STATE**

### *A Pernicious Counter Narrative?*

In a key note speech on Dealing with the Past, in February 2016<sup>10</sup>, the Secretary of State Theresa Villiers told an audience that we (we being the State) today faced "*a pernicious counter narrative*".

The comment parallels the British Government's position of granting itself a National Security veto that extends to all of the cases wherein a VZ58 was used to murder.

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<sup>6</sup> <http://www.espn.com/30for30/film?page=ceasefiremassacre>

<sup>7</sup> <http://www.esquire.com/entertainment/movies/a7206/alex-gibney-movie-0510/> Esquire. April 23, 2010.

<sup>8</sup> <http://www.thetimes.co.uk/article/heights-bar-massacre-to-get-film-treatment-jft8bphwk>

<sup>9</sup> <https://www.policeombudsman.org/PONI/files/17/17aea3d1-c4c6-4f02-8ebc-4eb39af9b168.pdf>

<sup>10</sup> <https://www.gov.uk/government/speeches/villiers-a-way-forward-for-legacy-of-the-past-in-northern-ireland>

The Ombudsman can merely issue a report and can only report on the role of the RUC. There is an accountability gap in terms of British Army intelligence and the role of MI5 in the weapons importation. The absence of the Rule of Law and the perfunctory and cosmetic nature of investigations as evidenced in Maguire's report, is akin to the state endorsed death squads, which operated in Central and Latin America at the same time.

It was remarkable that the Prime Minister of the time John Major was in Belfast on the day of the release of the report, with Tony Blair.

Villiers in her speech would go on to say that there were some who proposed a *“version of the Troubles that seeks to displace responsibility from the people who perpetrated acts of terrorism and place the State at the heart of nearly every atrocity and murder that took place”*. She went on to say that *“It wasn't the RUC or the Army who pulled the trigger at Loughinisland.”*

But it was the Army whose agent was involved in importing the weapons and it was the RUC who failed to follow intelligence on those weapons leaving them in circulation to commit these atrocities including the murder of at least 70 people.

It was RUC paid agents who pulled the triggers and it was the RUC who failed to investigate the atrocity, with houses not searched and no arrests made for a month, despite having names within a day. Alibis weren't checked out and evidence was persistently destroyed by the police. It was the RUC who destroyed the getaway car after 10 months denying future police investigations the opportunity to test for DNA.

It was RUC paid agents who pulled the triggers, sourced the getaway car, drove the getaway car and it was the RUC who destroyed the getaway car, the largest physical exhibit in the case, after 10 months denying future police investigations the opportunity to test for DNA. It was the RUC who failed to investigate the atrocity, with houses not searched and no arrests made for a month, despite having names within a day. Alibis weren't checked out and evidence was persistently destroyed by the police.

These are all facts which are true and are part of the common narrative surrounding Loughinisland, which have been persistently and assiduously reported by Barry McCaffrey,<sup>11</sup>, who reposes as much faith from the families as any lawyer or Police Ombudsman investigator. Indeed, I would encourage you to log onto The Detail's special feature section on Loughinisland to understand and appreciate the benefit that strategic media engagement can bring to litigation and truth recovery. Joanne Fleming of the Down Recorder also has ensured that the facts are kept accurately in the public eye, with several exceptional supplements on the case, in 2011 and 2016, for which she won the 2011 Journalist of the Year at Northern Ireland Media Awards.

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<sup>11</sup> <http://www.thedetail.tv/investigations/loughinisland>

Villiers theme of ‘cause lawyers’ pursuing a militant agenda was unfortunately developed at the Conservative Party Conference in October 2016 and has since taken on a much more sinister and significant character.

Controversial plans to enable the British military to opt out from the European Convention on Human Rights (ECHR) during future conflicts was announced on 11<sup>th</sup> October 2016 by defence secretary, Michael Fallon, to see off what the prime minister had described as an “*industry of vexatious claims*” against soldiers<sup>12</sup>.

A case of “*Universal values are universal, but they need not apply here.*” as Conor Gearty eloquently put it<sup>13</sup>. Gearty correctly comments as to exactly why we need to have the HRA apply to the British Army, noting that the Colonial Office bitterly opposed the ECHR in the late 1940s, because its officials knew exactly what the British forces got up to on their civilising missions abroad. Indeed, the first case in the 1950s – involving Greece, Cyprus and the United Kingdom – was sufficiently embarrassing to allow those Colonial Office officials to lament “we told you so”.

Fallon, in comments released ahead of his conference speech, said: “*Our legal system has been abused to level false charges against our troops on an industrial scale.*”

He added: “*It has caused significant distress to people who risked their lives to protect us, it has cost the taxpayer millions and there is a real risk it will stop our armed forces doing their job.*”

Lawyers have been excoriated by the government for taking these cases, but surely the large-scale damages paid out by the Ministry of Defence prove that their successful clients did not invent the facts.

The Tory party conference erupted in applause as the Prime Minister jeered “*activist left wing human rights lawyers*” who “*harangue and harass*” Britain's armed forces<sup>14</sup>.

Discussing forging “a bold new confident role for ourselves on the world stage,” Theresa May said the UK was “always committed to a strong national defence and supporting the finest armed forces known to man”.

She added: “*And this week our excellent defence secretary, Michael Fallon, proved not only that we will support them with our heart and souls, not only will we remain committed to spending two per cent of our national income on defence, but we will never again in any future*

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<sup>12</sup> May said the change would “put an end to the industry of vexatious claims that has pursued those who served in previous conflicts”.

<sup>13</sup> <https://www.theguardian.com/uk-news/2016/oct/03/plan-uk-military-opt-out-european-convention-human-rights>

<sup>14</sup> <http://www.independent.co.uk/news/uk/politics/theresa-may-tory-conference-speech-applause-attacks-activist-left-wing-human-rights-lawyers-a7346216.html>

*conflict let those activist left wing human rights lawyers harangue and harass the bravest of the brave: the men and women of our armed forces."*

The obtuse remarks were immediately rebuked by many, in academia and the media, with some highlighting the fact that the last time a Conservative front bencher selected a group of lawyers for target it led to the murder, within weeks, of Pat Finucane.

The dog whistle was enthusiastically embraced by the right wing tabloid press and within weeks, the Sun published a series of articles which sought to demonise our practice and two others.

They ran with the front page headline on Thursday 8<sup>th</sup> December 2016

### **Bloody Outrage – New Probe into 302 Army Ireland Killings**

This editorial theme was complemented the next day by an official press release by Theresa May's spokeswoman who reiterated her position on Friday 9<sup>th</sup> December 2016:

*'We've been very clear of the steps the Government will take to make sure that our brave soldiers should not be hounded unnecessarily and the investigations into allegations around Iraq should be properly focused and completed in the most efficient way possible.'*

The Daily Mail picked up the thread, also on Friday 9<sup>th</sup> December 2016

### **Why is the Army facing new witch hunt over IRA killers?<sup>15</sup>**

Whereas this article does not reference lawyers per se, it does pick up the theme of a witch hunt against soldiers and contains deliberate statistics and facts which allied to similar specifics in The Sun the day before, might lead one to consider that this was a specific Government briefing.

On Saturday 10<sup>th</sup> December 2016, The Sun, went completely beyond the pale, with an article which is now the subject of litigation, for which reason I cannot expand further.

The internet version of this article from The Sun on 10/12/16 facilitated a comments section, which attracted a threatening comment in respect of which we have made criminal complaints to PSNI in respect of incitement to murder and also offences under the Misuse of Telecommunications legislation and await the actions of Exeter Police in concluding their investigation into this matter.

### ***FURTHER EXAMPLES***

I have selected the above as emblematic examples of how the media can be successfully deployed in specific cases, to assist the quest by a Next of Kin to assist truth recovery and litigation.

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<sup>15</sup><https://www.google.ie/amp/www.dailymail.co.uk/news/article-4015524/amp/Why-Army-facing-new-witch-hunt-IRA-killers.html?client=safari>

Other such instances include the case of Gerard Lawlor, for example. He was the last Catholic to have been shot dead by loyalists, and notwithstanding the fact that it occurred in 2002, under the investigative auspices of the PSNI, there have been no criminal charges nor trial, and remarkably no inquest. A complaint made in 2006, has not yet received a report under section 62 of the Police Act from the Police Ombudsman and in 2012, the family and our practice frustrated at the inactivity or ability of the State to discharge its article 2 duties, convened a Community Inquiry, calling the witnesses that would be called to an inquest, to give evidence before the jury of their peers, and to lay bare the evidence before the Community. We empanelled a professional bench of respected human rights jurists who prepared a report. With the assistance of the local newspaper, the North Belfast News, the facts as known to the family were made public to the community and recorded in an Inquiry report.

## **CONCLUSION**

The former Chief of Staff of the Chilean National Commission on Truth and Reconciliation, Professor Jose Correa, once observed;

*“Although the truth cannot really dispense justice, it does put to an end to many, a continued injustice. It does not bring the dead back to life, but it brings them out from silence”*

The pursuit of truth recovery is a noble ambition of many engaged in public interest litigation, and as I hope to illustrate, this cannot occur in a legal vacuum. For many families, the benefit of an active media observation on the facts of their case, is as important as the case itself. For many, the recognition of the harm endured is a crucial stepping stone to accountability. An independent, responsible and accurate press can complement the best interests of a legal strategy.

Furthermore, a critical press can also assist the general public in comprehending complex and legalistic detailed reports. The Sir Desmond de Silva Report in to the murder of Pat Finucane is 892 pages, the Rosemary Nelson Public Inquiry Report is 478 pages, the Loughinisland Police Ombudsman report is 160 pages. Bloody Sunday was the longest public inquiry in British legal history, resolving in 10 volumes of a report. Focussed journalism can assist in refining these complicated narratives into comprehensive intelligible news reports, digestible and memorable for the man on the street.

The importance of an accurate public record cannot be underestimated to the moral fabric of a society. Public interest litigation is not a pernicious counter narrative. It corrects a carefully constructed official state narrative which is based on a lie. History is rectified by facts and the real truth emerges. As Roberto Canas, a politician from El Salvador states:

*“Unless a society exposes itself to the truth it can harbour no possibility of reconciliation, reunification and trust. For a peace settlement to be solid and durable it must be based on truth.”*