

# Madden & Finucane

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Our Ref: JR/26088/PJM

Public Prosecution Service  
Belfast Chambers  
Chichester Street  
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BT1 3JR

Dear Sir

## **MICHAEL KELLY, DECEASED 30 JANUARY 1972 - BLOODY SUNDAY**

We represent the family of Michael Kelly, who was shot dead on Bloody Sunday, Derry, 1972.

Michael was seventeen years old when he was shot behind a rubble barricade on Rossville Street. He sustained a single gunshot wound to the abdomen as he faced in a northerly direction towards soldiers positioned further north along Rossville Street.

We would refer you in particular to Chapter 86.3 to Chapter 86.59 (Volume V) of the Report of the Bloody Sunday Inquiry, in which the Tribunal review *inter alia* the medical and scientific evidence, photographic, and the evidence of civilian and media eye-witnesses concerning Michael's death.

The area of the Bogside in which the shootings occurred on Bloody Sunday was divided by the Inquiry into five broad areas, known as sectors.

The rubble barricade on Rossville Street is in Sector 3.

The Tribunal are in no doubt that Michael Kelly was shot by Lance Corporal F, a member of the Anti-Tank Platoon of Support Company of 1 Para.

A bullet recovered from Michael's abdomen was forensically tested and matched to the rifle of Lance Corporal F. We would refer you in this regard to Chapter 86.18.

Lance Corporal F made four statements to the Royal Military Police after Bloody Sunday, including two statements on 31 January, again on 4 February and then on 15 February. He did **not** mention firing any shots in the direction of persons standing behind the Rubble Barricade in any of those statements.

He claimed that he fired four aimed shots at a window high up on Block 1 of the Rossville Flats, followed a further four aimed shots at a different window, also on Block 1.

Lance Corporal F did not apparently recall firing any shot towards the Rubble Barricade until he made his statement to Colonel Overbury, a solicitor and Assistant Director of the Army Legal Services at the Ministry of Defence on 19 February 1972.

His statement on 19 February was that he fired a round at a man that he allegedly saw behind the barricade about forty yards from his position and who was about to throw a bomb. Lance Corporal F described the bomb as a large object and alleged he could see sparks coming from it. He further alleged, as he had done previously, that two nail bombs had earlier exploded near him as he moved towards the Rossville Flats.

Lance Corporal F's role in events on Bloody Sunday was not confined to Sector 3.

The Tribunal find it more probable than not that Lance Corporal F or Private H (also from the Anti-Tank Platoon) mortally wounded William McKinney; and that one or other of those soldiers was responsible for wounding Joe Mahon and Joe Friel in Sector 4.

The Tribunal also report that they are sure that Lance Corporal F shot dead Patrick Doherty and Bernard McGuigan in Sector 5 and that it is highly probably that he also wounded Daniel McGowan and Patrick Campbell in the same sector.

The Tribunal have reached the following additional significant conclusions:

1. Lance Corporal F's evidence cannot be relied upon by the Tribunal (Chapter 89.14)
2. Lance Corporal F **did not tell the truth** when he told the Tribunal that he had no recollection of what he did on Bloody Sunday
3. No one else was shot at the Rubble Barricade at the time that Michael Kelly was shot
4. Accordingly the submission by the representatives of the majority of the soldiers, (including those representing Lance Corporal F), that Michael Kelly was the unfortunate victim of a 'shoot through', and that the shot had earlier hit a nail bomber, is rejected by the Tribunal.
5. The Tribunal found no evidence to suggest that any of the casualties in Sector 3 was or might have been shot by accident.
6. The Tribunal "**reject**" Lance Corporal F's evidence that he fired at a nail bomber at the Rubble Barricade.
7. The fact that for many days he did not admit to firing across the Rubble Barricade but instead **invented an account** of firing additional shots into the Rossville Flats, in order to account for the rounds he had expended, means to the Tribunal's mind that he could not have believed that he had identified someone posing a threat of causing death or serious injury, otherwise he would not have concealed the shot.
8. The Tribunal reject the notion that Lance Corporal F may have fired in panic or fear without giving any proper thought as to whether he had identified a person posing a threat of death or serious injury
9. Lance Corporal F had no reason to believe that he or his colleagues were in immediate danger
10. "**Lance Corporal F fired across the rubble barricade either in the belief that no-one there was posing a threat of causing death or serious injury, or not caring whether or not anyone was there posing such a threat.**"
11. The Tribunal state that whether Lance Corporal F specifically targeted Michael Kelly remains in doubt, as the bullet that hit Michael Kelly had previously hit something else, but in view of the number of people who were at that stage behind the rubble barricade, Lance Corporal F must have appreciated that his firing was, at the least, very likely indeed to cause injury or death among these people.
12. On his account, in any event, he did fire at someone
13. The Tribunal's conclusions about the state of mind of Lance Corporal F is reinforced in view of his subsequent conduct in Sectors 4 and 5, and the false evidence he gave about what happened in those sectors.

14. The Tribunal reject as wholly implausible Lance Corporal F's explanation that until he was shown maps and photographs that he had forgotten about shooting not only Michael Kelly behind the rubble barricade, but also another man in Sector 5.

In our view, the foregoing conclusions reached by the Tribunal point unmistakably towards the evidential test for a successful prosecution being satisfied concerning the murder of Michael Kelly on Bloody Sunday.

In circumstances where the State, by its agents, are responsible for the death of one of its citizens (in this case, an unarmed youth) by the use of lethal force, clearly the public interest limb for bringing a prosecution has also been met.

In addition, it is clear that the evidential and public interest test is satisfied to prosecute Lance Corporal F for perjury in respect of the untruthful evidence he gave on oath to the Bloody Sunday Inquiry and for perverting the course of justice in respect of the evidence that he concealed from the Inquiry.

Accordingly, we should be grateful if you would consider the contents of this correspondence, submitted on behalf of the family of Michael Kelly, in advance of issuing a direction in respect of the prosecution of Lance Corporal F for his murder of Michael Kelly, and perjury in relation to his sworn evidence.

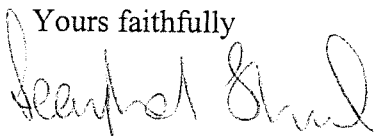
On behalf of the family of Michael Kelly, we would invite you to prosecute Lance Corporal F for their brother's murder, and for his subsequent conduct before the Tribunal.

In addition, we should be grateful if in advance of issuing a direction in respect of the prosecution of Lance Corporal F for the murder of Michael Kelly and his perjury on oath, and for perverting the course of justice, that you take into account the Tribunal's conclusions (and our submissions) in respect of the shooting of William McKinney, Joe Mahon, Joe Friel, Patrick Doherty, Danny McGowan and Patrick Campbell and its conclusions in respect of the shooting of Bernard McGuigan.

In the event that you decide not to prosecute Lance Corporal F, we should be grateful if you would provide your substantive written reasons for your decision.

We await hearing from you by return.

Yours faithfully



Peter Madden

**Madden & Finucane**

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