



**NORTHERN IRELAND OFFICE  
LONDON**

**SECURITY AND INTERNATIONAL DIVISION**

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**From:** Robert West  
**To:** Brian Morrow

**MESSAGE**

Example of deposition (from Simon  
Marsh in SP06) already used in  
Smyth case.

11.10.93.

Number of Pages \_\_\_\_ {including header}



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS

The Deposition of Simon Andrew Marsh, care of Security Policy and Operations Division, Northern Ireland Office, Stormont House Annex, Belfast, Northern Ireland, BT4.

1. I, Simon Andrew Marsh, say on oath that:-
2. I am an Assistant Secretary in the Northern Ireland Office and the head of Security Policy and Operations Division 2. I am one of those responsible for policy advice on matters relating to the security situation in Northern Ireland. I am familiar with the law and procedures relating to the use of force by members of the security forces in Northern Ireland.
3. It is the policy of the security forces in Northern Ireland in all practicable circumstances to arrest those suspected of involvement in terrorist activity, whether "loyalist" or Republican, and to charge those persons with relevant offences under the law. In accordance with this policy, 405 persons were charged in 1992 with terrorist-related offences; of these, 191 were "loyalists", and 214 Republicans. In the same period 354 persons were convicted of such offences following court proceedings.

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

Thomas Joseph Brennan  
Resident Magistrate, a Justice  
of the Peace for each and  
every County Court Division in  
Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

I attach a table of statistics on charges and convictions relating to the security situation as Exhibit 1 to this deposition and on the back of which Exhibit is marked "SAM1" and upon which I now sign my name.

4. The security forces in Northern Ireland do not operate a so-called "shoot to kill" policy against suspected terrorists, "loyalist" or Republican, nor would the British Government condone such a policy in any circumstances. The security forces are at all times subject to the rule of law. The law on the use of force in Northern Ireland is contained in section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which states:

"A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

Thomas Joseph Gavan

Resident Magistrate, a Justice of the Peace for each and every County Court Division in Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

This is the same law as in England and Wales, and applies equally to civilians as to members of the police and Army.

5. Case law in the United Kingdom has determined that it is for the courts, in considering all the facts of a particular case, to decide what is reasonable force in any particular circumstances. The European Commission of Human Rights has recently, in the case of John Kelly -v- United Kingdom, ruled inadmissible the applicant's claim that the use of lethal force by soldiers was inconsistent with Article 2 of the European Convention; and thereby upheld the decision of the domestic courts in Northern Ireland.

6. Over the past 23 years Northern Ireland has been subjected to a sustained and vicious campaign of terrorist violence from paramilitaries on both sides of the community, which has so far claimed the lives of over 3000 people and injured many thousands of others. Although the overall level of violence has declined considerably from its peak in the early 1970s,

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Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Treaven*

Resident Magistrate, a Justice  
of the Peace for each and  
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Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

the threat to the security forces themselves remains extremely high. During 1992, for example, the security forces came under potentially lethal attack on an almost daily basis. In the four years from 1989 to 1992, security forces came under fire on nearly 700 separate occasions (this figure excludes the very many attacks launched on them using explosive devices); by contrast, fire was returned on fewer than 100 occasions.

7. In responding to this threat, members of the security forces are subject to the same criminal law as everyone else, as well as to internal disciplinary procedures. Strict guidelines exist on the circumstances in which policemen and soldiers may open fire: these are fully consistent with the principles of minimum force and the protection of life. A thorough police investigation is conducted into the circumstances of any fatal incident involving the security forces. In the case of fatal incidents involving the police, the investigation is supervised by the Independent Commission for Police Complaints. The full police report is

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

Thomas Joseph Keenan

Resident Magistrate, a Justice  
of the Peace for each and  
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Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

then considered by the Director of Public Prosecutions who, in appropriate cases, directs prosecution.

8. During the period from January 1983 to December 1992 759 people died as a result of the terrorist campaign in Northern Ireland, including 258 members of the security forces (144 soldiers and 114 police officers), with a further 10,000 injured. This is in a jurisdiction of 1.5 million people. There were nearly 5000 shootings and over 3000 bombings, while around 5000 people were charged with terrorist offences over the period. 71 of the deaths (9% of the total) were caused by the security forces using firearms in the course of their duty. At present, there are some 13,000 police officers supported by approximately 18,000 soldiers serving in Northern Ireland.

9. 48 of those killed by the security forces were acknowledged by terrorist organisations as their members; of these, 47 appeared to have been armed or members of armed groups (ie weapons were recovered at the scene), while

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Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Graham*

Resident Magistrate, a Justice  
of the Peace for each and  
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Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

1 appears to have been unarmed. 26 of these 48 were killed while attacking, or immediately after attacking, security forces or civilian targets (3 members of the security forces and a civilian were killed, and around 20 members of the security forces injured by terrorists, in these exchanges); 17 were apparently en route to, or setting up, such attacks; 4 were intercepted at arms dumps; and 1 was shot while attempting to evade arrest.

10. Of the 23 civilians who were not claimed as members of paramilitary organisations, one was handling weapons at an arms dump when shot; 6 were armed, or apparently armed, robbers; 6 were 'joyriders'; 4 were innocent bystanders caught in cross-fire; 1 was killed by accident (a negligent discharge); and 5 died in confrontations with security force patrols.
11. The outcome to date of the investigations into these 71 shootings are set out in Exhibit 2 to this deposition and on the back of which Exhibit is marked "SAM2" and upon which I now sign my name. As can be seen, charges were not pursued against security force members in the 53 cases

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph McNamee*

Resident Magistrate, a Justice  
of the Peace for each and  
every County Court Division in  
Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

(76%) where illegally-held weapons or imitation weapons had apparently been involved, nor in the 5 cases (7%) where civilians were shot in error (though disciplinary action was taken in one case after a manslaughter charge against the soldier concerned was withdrawn). But in the 12 cases (17%), involving 11 civilians and 1 terrorist, where the security forces shot dead individuals who were subsequently proved to have been unarmed, a total of 7 members of the security forces have so far been charged with murder, 1 with manslaughter and 2 with attempted murder in connection with six cases, and the investigation into a further case is still ongoing; disciplinary action is being considered in a further case. To date this has resulted in 1 murder conviction and 1 acquittal of manslaughter: 6 members of the security forces await or are undergoing trial for murder in connection with the other incidents.

12. As noted above, 23 civilians not claimed as members of paramilitary organisations were killed over the period. Such deaths understandably

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Brennan*

Resident Magistrate, a Justice  
of the Peace for each and  
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Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
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The Deposition of Simon Andrew Marsh continued:-

give rise to particular concern. An analysis of the circumstances in which these shootings occurred is given below:

- (a) Robberies - 6 men were killed in 4 incidents arising from armed robberies. All six apparently carried, or accompanied those who carried, actual or replica firearms.
- (b) Joyriding - 6 joyriders were killed after failing to stop at checkpoints. (It should be noted that the European Commission of Human Rights, in Kelly -v- UK, accepted that the recklessness of joyriders may on occasion lead the security forces to conclude justifiably that the vehicles are being driven by terrorists.) One soldier has been charged with murder and 2 with attempted murder in connection with one joyriding incident (2 deaths): police disciplinary action is being considered in another case.

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Hannon*

Resident Magistrate, a Justice  
of the Peace for each and  
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Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
(Continuation Page)

The Deposition of Simon Andrew Marsh continued:-

- (c) Cross-fire - four innocent civilians were killed during exchanges of fire between the security forces and terrorists.
- (d) Accident - one death occurred as a result of a negligent discharge. The soldiers concerned faced disciplinary action.
- (e) Arms dump - one man was shot while handling weapons at an arms dump.
- (f) Other - 5 unarmed people were shot during incidents involving security force patrols. One youth was shot dead during a fracas with an Army foot patrol: a soldier was acquitted of manslaughter. Another man was killed following an encounter with another patrol, and a soldier was convicted of murder. Three soldiers and a policeman await trial for murder in connection with 3 other incidents.

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Gavin*

Resident Magistrate, a Justice of the Peace for each and every County Court Division in Northern Ireland



MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

DEPOSITION OF A WITNESS  
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The Deposition of Simon Andrew Marsh continued:-

13. Despite the serious and sustained threat against them, lethal force is resorted to by the security forces only infrequently, and in circumstances where, in general, they have already been attacked or have had reason to believe that their lives were in danger. The police and armed forces are expected to operate at all times within the rule of law and to maintain the highest standards of behaviour. Serious charges have been brought against policemen and soldiers when these standards do not appear to have been maintained.

Signed: Simon Andrew Marsh, Deponent

Taken before me this 2nd day of June 1993 at Belfast in the County Court Division of Belfast, Northern Ireland.

*Thomas Joseph Lavery*

Resident Magistrate, a Justice  
of the Peace for each and  
every County Court Division in  
Northern Ireland



PERSONS CHARGED WITH  
TERRORIST TYPE OFFENCES

1972 - 1992

	LOYALIST N	%	REPUBLICAN N	%	TOTAL
1972	178	34%	353	66%	531
1973	567	40%	851	60%	1418
1974	627	46%	735	54%	1362
1975	602	50%	595	50%	1197
1976	451	35%	825	65%	1276
1977	440	34%	868	66%	1308
1978	204	24%	639	76%	843
1979	227	34%	443	66%	670
1980	239	43%	311	57%	550
1981	231	25%	687	75%	918
1982	197	29%	489	71%	686
1983	256	42%	357	58%	613
1984	197	37%	331	63%	528
1985	140	27%	382	73%	522
1986	387	59%	268	41%	655
1987	216	46%	252	54%	468
1988	158	36%	281	64%	439
1989	185	43%	248	57%	433
1990	153	40%	228	60%	381
1991	152	39%	239	61%	391
1992	191	47%	214	53%	405
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Total over 21 year period	5998	38%	9596	62%	15594



Number of "Persons"  
arrested in NI under  
the Northern Ireland  
(Emergency Provisions)  
Acts and the Prevention  
Of Terrorism (Temporary  
Provisions) Acts

Number of "Persons"  
convicted for Scheduled  
Offences

Year

	4149	995
1975	8567	900
1976	6040	1148
1977	5029	837
1978	4769	844
1979	3570	550
1980	5043	562
1981	4017	744
1982	2873	577
1983	2475	454
1984	2068	625
1985	2283	567
1986	1951	620
1987	1782	467
1988	1670	414
1989	1614	440
1990	1788	388
1991	1842	354
1992		



DEATHS CAUSED BY THE SECURITY FORCES NOVEMBER 1982 - OCTOBER 1992

<u>Status of Deceased</u>	<u>Legal Action Against Security Force Members</u>
a. <u>Acknowledged Terrorists</u>	
Killed while:	
(i) attacking SF or civilian targets.	(26) None
(ii) en route to attack security force targets.	(17) None
(iii) intercepted at arms dumps	(4) None
(iv) evading arrest	(1) Investigation continues.
b. <u>Civilians</u>	
Killed while:	
(i) present at arms dump	(1) None
(ii) carrying out armed or apparently armed robberies.	(6) None
(iii) joyriding	(6) 1 soldier charged with murder and 2 with attempted murder in connection with 2 cases (3 others charged with other offences). Possible disciplinary action in a further case.
(iv) during cross-fire	(4) None
(v) by accident	(1) Soldier charged with manslaughter - charge withdrawn, fine imposed.
(vi) in confrontation with patrols.	(5) 1 soldier convicted of murder (1 case); 4 soldiers and 1 RUC officer charged with murder (3 cases); 1 soldier acquitted of manslaughter (1 case).



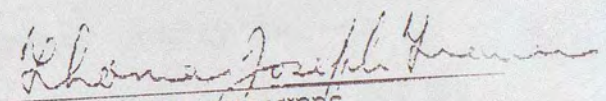
TOTAL P. 1

IN THE PETTY SESSIONS DISTRICT OF BELFAST, IN THE COUNTY COURT  
DIVISION OF BELFAST, NORTHERN IRELAND.

I, THE UNDERSIGNED, a Resident Magistrate, a Justice of the Peace for each and every County Court Division in Northern Ireland, HEREBY CERTIFY that the written and photographic matter attached is:-

1. the deposition of Simon Andrew Marsh taken before me on the 2nd June 1993;
2. at pages 1 - 2 the exhibit marked "SAM1" referred to in the deposition of the said Simon Andrew Marsh taken before me on the 2nd June 1993.
3. at page 3 the exhibit marked "SAM2" referred to in the deposition of the said Simon Andrew Marsh taken before me on the 2nd June 1993.

Dated this 2nd day of June 1993

  
THOMAS JOSEPH TRAVERS  
Resident Magistrate, a Justice  
of the Peace for each and  
every County Court Division in  
Northern Ireland.