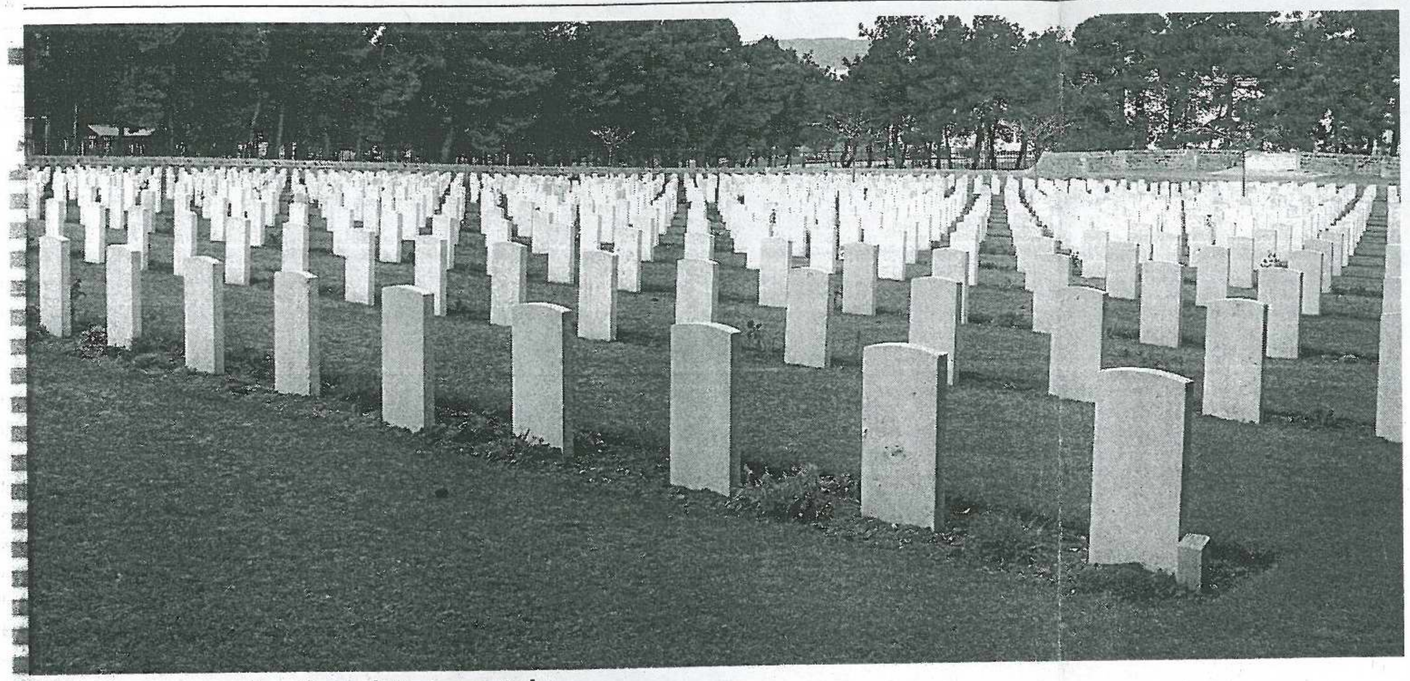


Mikra Cemetery: resting place of Pte James Daly

Battling to clear a soldier's name

By MIKE DWANE

TWO days after Christmas 1915, a Limerick soldier who pleaded guilty to disobeying orders was marched out in the cold morning air of Hasanli, Serbia and shot dead by firing squad.

Pte Patrick Downey of Kelly's Range, Vize's Field, was one of 26 Irish soldiers executed while serving with the British army in the Great War for whom the Government is seeking posthumous pardons.

And, according to Parteen-based military historian Patrick J McNamara, 19-year-old Pte Downey's case is exceptional and, if not revisited, will remain a stain on the honour of the British army and on the British legal system

In an eight-page submission forwarded by the British Embassy's defence attaché to the Ministry of Defence in Whitehall, Mr McNamara argues that even by the legal standards of the day, Pte Downey's court-martial was illegally convened and the death sentence carried out amounted to "judicial murder".

During one of the shortest trials in British military history, the convening officers allowed the hapless Pte Downey to plead guilty to a capital offence, flying in the face of a military precedent set the previous February.

Mr McNamara argues that Pte Downey's offence was changed from a non-capital to a capital charge and in pleading guilty, the near-illiterate Pte Downey would have had no idea that this was tantamount to suicide.

No sworn evidence was heard and no medical examination carried out at a time when psychological conditions such as shell shock were rife in the ranks. Pte Downey had survived the horrors of the Gallipoli campaign.

while Patrick was still a boy, enlisted in September 1915, initially with the Royal Munster Fusiliers and was subsequently transferred to the 6th Battalion, Leinster Regiment.

After Gallipoli, Pte Downey's battalion was redeployed to Salonika in October 1915.

Mr McNamara concedes that Pte Downey was one of many in his regiment who appears to have had a poor disciplinary record.

On December 1, 1915, he was one of six who faced a field court martial, charged with the non-capital offence of being "on active service disobeying a lawful command given personally by his superior officer in the execution of his office".

If such a charge were proved, Patrick Downey could have expected penal servitude or a lighter sentence. But while researching a book on Limerick's war dead, Mr McNamara discovered that the charge against Pte Downey was amended to read "on active service disobeying a lawful command in such a manner as to show wilful disobedience of authority given personally by his supe-

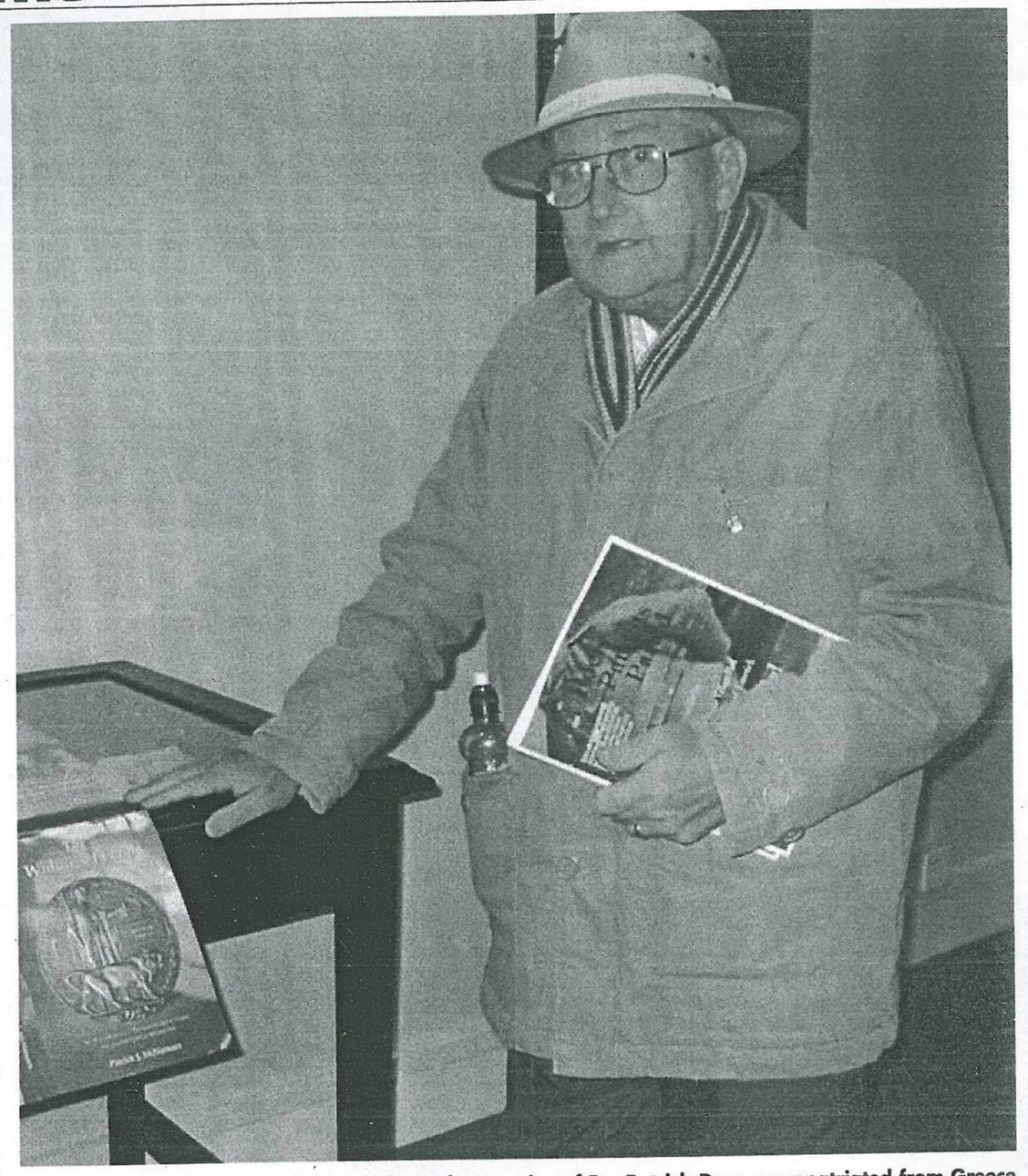
Though the difference may appear slight, it meant that by pleading guilty, Pte Downey exposed himself to paying with his life.

Mr McNamara explains that under Section 9 of the Army Act then in force, a soldier who simply says "I will not do it" does not necessarily disobey "a lawful command"; this constituted insubordinate language and actual non-compliance with the command must be proven.

But Pte Downey was not legally represented and there was no examination of the evidence. His only words in mitigation were that he had never been in trouble in civilian life.

The reason the guilty plea should not have been accepted came about after the execution of Pte Joseph Byers at Locre on February 6, 1915.

That Pte Byers had pleaded guilty to a capital offence and no sworn evidence was heard proved to be a concern to General Sir Smith-Dorrien and instructions went out that soldiers would not be permitted to plead guilty and sworn evidence would have to be given in future courts-martial



Patrick J McNamara: campaigning to have the remains of Pte Patrick Downey repatriated from Greece to his native Limerick

"It would appear," said Mr McNamara, "that the inexperienced officers who constituted the Downey court martial panel did not realise the procedures had changed, or did they?

It "beggars belief", he said, that the instructions issued after Byers's execution were not also known to the convening officers where a human life was at stake.

Ironically, Pte Downey's grandnephew, Patrick Thomas O'Callaghan, from Warrington, was awarded an MBE by the Queen in 2001 for his missionary work in Papua New Guinea.

The Department of Foreign Affairs sent its report on the execution of Pte Downey and 25 others to Whitehall in late 2004.

Defence Secretary, has argued that the judicial standards of today could not be retrospectively applied.

But MPs campaigning to have executed British soldiers exonerated are demanding Whitehall now publish the Irish Government's report.

The Department of Foreign Affairs could not say when it expected a reply from the British but has confirmed that Pte Downey is one of the soldiers for whom they feel a pardon would be appropriate.

But Mr McNamara feels this does not go far enough to address the injustice meted out to the young Limerick man.

He feels the remains of the soldier, who is buried in Greece, should be repa-

FREE FINANCE
ON BOGBALLE SPREADERS
— Pay 50% today & 50% in 12 months' time
• Spinners & Wagtails from €475
• Vacuum Tanks, Agitators, Tine Harrows
• Grass Harrows, Rollers, Land Levellers
• Cement Mixers - Petrol, Electric and Tow around
Visit our store for Tractor and Machinery Parts
ROCHES
Kilmallock
Phone 063 98289
afmar11/c

CITYWEST HOTEL
Conference, Leisure & Golf Resort
DUBLIN
ST PATRICKS WEEKEND
2 nights B+B; 3rd night free
For only €140pps
2 golf courses-Fine dining
Indoor Pool-lively bars
Book now at
www.citywesthotel.com
Tel: 01 4010500
Subject to availability. Terms & conditions apply.