

The Northern Ireland Experience*

By Peter Madden†

I want to thank the organisers of this conference for inviting me to speak here today. I am honoured to be here and I hope that this contribution will help the families of those who were murdered four years ago in their struggle for justice. I was glad to meet again the lawyers from Adalah who travelled to Ireland in February 2001. We spent a long time together in Belfast and Derry going over the detail of the law and the Bloody Sunday inquiry process. They have worked very hard for the families.

By way of some information about my own background, I have been practising law in Belfast for the last 31 years. Over those years we took many cases against the state for killing civilians, for brutality in prisons, for unlawful arrests. We also defended many people who were charged and tried under the emergency laws in the north of Ireland. My law partner, the lawyer Pat Finucane, was murdered by a pro-British death squad in 1989. He was shot and killed in front of his family while eating a meal in his home. His wife was shot and wounded. I mention this because it relates very much to what the families of those who were murdered here four years ago are doing, and what Adalah is doing for the families. There is much evidence that the British Government was involved in his murder. Pat's family have campaigned for over 15 years for a public inquiry into the circumstances surrounding his murder. Only this month did the British Government concede that an inquiry should be established, but they did not say it would be a public inquiry, and we do not know what kind of inquiry is going to happen. They have told us that they are going to pass special legislation to deal with that inquiry. It remains to be seen whether or not we will get a proper inquiry or whether we will get something less.

As you know, we represented most of the families in the Bloody Sunday Inquiry, and the current position with the inquiry is that the public hearings have ended. There were over 500 sitting days and over 1000 witnesses were called. Millions of pages of documentary evidence were produced. At the moment we are waiting for a summing-up session next month and then the Tribunal is due to report next year.

When I got the very kind invitation to address this conference and started to read about the murders of the 13 young men who are being remembered today, I was immediately struck by the similarities with the murders of the 13 young men who were murdered by British soldiers on Bloody Sunday in Derry 32 years ago. These murders in 1972 and 2000 arose out of protest. Protest against injustice, protest against discrimination and protest against violent and brutal repression.

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Irish nationalists, who formed the majority in Ireland, became a minority overnight in the north of the country after the country was partitioned by the British in 1921. However, in Derry, the majority of the people of the city were nationalists. They were discriminated against in jobs and housing allocation. Voting rights were rigged by the Unionist minority by gerrymandering the electoral areas giving unionists control in the nationalist city. In the late 1960s, taking the lead from the civil rights movement in the USA, people began non-violent protest demanding their entitlement to equal treatment. This movement was suppressed with violence, brutality and murder by the forces of the state. Resistance in the form of armed struggle was resorted to.

BLOODY SUNDAY AND WIDGERY

The young men in Derry in 1972 were part of a crowd of 30,000 men, women and children taking part in a peaceful unarmed civil rights protest against internment, which is administrative detention or detention without charge or trial. Internment had been introduced the previous year and was applied only to nationalists, and led to the arrest and detention of many non-activists. The unarmed demonstrators were fired on by rampaging paratroopers, under cover of an arrest operation. Within a period of 20 minutes, 13 young men were shot dead by those soldiers and 14 people were wounded, including one woman. None of the soldiers were injured. The IRA had stayed away from the area due to the large numbers of people expected that day.

In the aftermath of Bloody Sunday there was such an outcry of protest throughout Ireland and the rest of the world that the British Government had little choice but to hold a public inquiry into the events. However, they were very careful about the type of inquiry they chose. The Lord Chief Justice of England, Lord Widgery, was appointed. He decided to hold the inquiry alone, without the usual tribunal panel of three judges. He held hearings which lasted only three weeks. His report exonerated the soldiers, exonerated the Government and blamed the march organisers for causing the deaths of those killed by having the march in the first place. The Widgery report was a whitewash and a cover-up.

The British Government announced an inquiry on the day after Bloody Sunday, and on that same day, British embassies throughout the world were given a briefing paper which referred to a gunfight between the IRA and the British Paratroopers in which gunmen and bombers were killed. None of that was true. The attempt to influence world opinion on the Bloody Sunday incident was successful. The embassies were able to deflect international outrage almost instantaneously by giving a lying account of what happened by way of press and media briefings in practically every country in the world. Instead of Government resignations and the arrest of the perpetrators, a massive cover-up was mounted. There was no apology. No sympathy. No support. No proper inquiry. No truth. The voices of the families were powerless.

The civil rights movement was also murdered on that day. Many people saw no alternative but to join the IRA to fight the British occupation. The armed struggle which had existed alongside the non-violent protest of the civil rights movement became paramount. Many people saw no hope of change in non-violent struggle. Bloody Sunday more than any other single event in our history ensured that the conflict continued for many years. Bloody Sunday was a message to the Irish nationalists in the north that their protests would not only be ignored, but that their protests would be crushed.

A NEW INQUIRY

So how did a second public inquiry come about? The families here today know about the pain and suffering and the shock of sudden bereavement, which is almost unbearable. They also know about the added burden of having to deal with the lies and deceit perpetuated by a government against its own citizens. That is what the Bloody Sunday families had to cope with all those years ago. For the Bloody Sunday families, like the families here, their suffering was immense. But there was a determination among those families to get to the truth about what happened and to have those responsible brought to justice. There was also a determination to have the Widgery Report discredited.

Their campaign started almost immediately after the Widgery Report was published and lasted a long, difficult 26 years. The campaign was initially a publicity campaign by the families. They were supported at first by the people of Derry and the nationalist political parties. They then got help from international academics like Sam Dash of Georgetown University in Washington, who critiqued the Widgery hearings' transcripts and the report itself. They were able to circulate as widely as possible legal flaws in the Widgery Report.

But it was an uphill battle. The key was the sheer determination and dignity of the families. For many years they made little or no progress. The conflict was continuing. Many people were getting killed and injured. Injustice and hardship was widespread. Many people fell victim to the harshness of the state. Bloody Sunday was not the only injustice: there were hundreds of them. The families brought their campaign out of Derry. They brought it to Belfast, Dublin and the rest of Ireland. They brought it to London and other parts of England. They travelled to the USA, where there is a large Irish American community, and sought their support. They tried to bring the issue as far and wide as possible. They did not have an embassy network at their disposal.

In 1992, on the 20th anniversary of Bloody Sunday, the families sought legal advice and a legal strategy was developed, the objective being the official repudiation of the Widgery findings and the establishment of a proper public inquiry to seek the truth. All legal avenues were considered. The legal strategy was to initiate legal proceedings wherever possible. The legal process helped to focus press and media attention on the issue.

By this time the families had their own appointed family members as spokespersons, who had over the years developed press and media skills to get their message across. They did not have expensive media training programmes at their disposal. They learned by trial and error. They learned how to handle the hostile questions from those with hidden agendas trying to discourage them from continuing the campaign or trying to discredit their cause before the camera.

Legal cases were taken to the High Court in Belfast to challenge the refusal of the government to hold a new inquiry. Cases were also taken to the European Court of Human Rights in Strasbourg, where arguments were made under Article 2 – the right to life under the Convention – and to the United Nations in Geneva, where the legal papers were lodged before the Human Rights Commission, again on the right to life issue. The families travelled and attended the courts and lobbied on the issue.

However, it was the families who spearheaded the campaign and the legal cases supported that campaign. The legal cases became another part of the campaign. Human rights groups got involved, particularly the brilliant British Irish Rights Watch and the Belfast-based Committee on the Administration of Justice, as well as Amnesty International. They lobbied governments on the issue, and brought it to the attention of the human rights community. Other people got involved. The distinguished author, Don Mullan, a native of Derry who witnessed the events of Bloody Sunday wrote a book about it, *An Eyewitness: Bloody Sunday*, which included statements of many witnesses who had not been called to the Widgery Inquiry. His book was widely published and a vital focus for the campaign.

Jane Winter of British Irish Rights Watch, who had written numerous papers on Bloody Sunday and who was a very important member of the campaign group, discovered papers in the Public Records Office in London, which confirmed the families' suspicions that Lord Widgery was handpicked by Prime Minister Heath to do his duty to the British State, and that he knew his role in "the propaganda war" against the IRA. A private, personal letter to that effect was found in the Public Records Office. The British Government thought it was all over, and they dumped all those papers into the Public Records Office.

Dermot Walsh, a professor of law at Limerick University, was commissioned by the families to analyse many Widgery statements that were deposited in the Public Records Office. He wrote an analysis for the families' campaign. He found that many of the documents were not disclosed to the families' lawyers during the Widgery Inquiry, and this prevented them from following lines of questioning. Soldiers who carried out the shootings changed their statements – some a number of times – to fit in with the known facts and the ballistics evidence, and many of those statements were withheld by Lord Widgery to the disadvantage of the families. It became clear when the transcript of the Widgery hearings was matched up with these statements, that these statements were not disclosed. Nobody knew about this until these documents were found in around 1993.

The Irish Government, which supported the families' campaign, commissioned its Department of Foreign Affairs to research the incident and they published a detailed report, which brought all the new evidence into place and was handed to and personally read by Prime Minister Tony Blair, and ultimately led to his personal statement setting up a new inquiry.

So there was a combination of factors, a growing number of people in a campaign which got closer to its objective when the new Labour Government came to power in 1997. The political climate had changed: people started to look at state violence and looked for accountability; political negotiations were commenced; an IRA ceasefire had been in place since 1994 and after a short lapse when negotiations did not go quickly enough, was reinstated in 1997 shortly before the Labour victory. That ceasefire is still in place and the negotiations are ongoing slowly but surely. A second inquiry would probably not have been established in an atmosphere of conflict. But the campaign would have gone on. The families would never have given up. In fact, the campaign was into the next generation. The children of the campaigners were coming of age and getting involved.

In his statement, announcing the new inquiry to be chaired by Lord Saville, Tony Blair said, "*...Bloody Sunday was different because, where the state's own authorities are concerned, we must be as sure as we can of the truth...*" He was articulating what is now recognised international law that the state has an obligation to provide proper public investigations when

state agencies are involved in the killing of citizens. From a family's point of view, that investigation must be effective. It is not enough to put a law in place which allows the state to conceal the facts, with a toothless process presented as proper public scrutiny of very serious issues.

THE SAVILLE INQUIRY

There was such a wide gap between Widgery and Saville, and not just the gap of 26 years. Widgery was discredited by the announcement of the new inquiry. Lord Saville declared that his duty would be to seek the truth with fairness, thoroughness, and impartiality and he would start from scratch. He set up a large team supporting him. He selected two other members of the tribunal – senior judges from Canada and New Zealand and later the New Zealand judge was replaced by a senior judge from Australia. He set out to accumulate all relevant material and interview all relevant witnesses. The Inquiry itself lasted six years, as opposed to the three weeks held by Lord Widgery. He provided funding for the legal representation of the families and those wounded. He engaged the services of experts in forensic medicine, ballistics and politics, and put in place the latest state-of-the-art technology to record the proceedings. He allowed funding for the families to engage their own experts.

The families, just like the families here, had a number of questions at the outset. Most distrusted any inquiry in which an English Law Lord was in control after the experience of Lord Widgery. They all wanted to know:

- Why did Bloody Sunday happen?
- Who carried out the shootings?
- Who ordered the military action?
- Who directed it?
- How far up the chain of command did the orders originate?
- Was there a secret specialist unit involved?
- Where did it fit in with political and military policy at the time?
- Were the shootings the result of a direct order from the British Cabinet to stop the protest marches?

There were many problems. There were many issues which the families and their lawyers did not agree with. We didn't expect to get everything we wanted.

One very important issue during the Saville Inquiry was the interference of the English High Court in the tribunal proceedings. Although Lord Saville had set up all the mechanisms of a major inquiry, and went through the motions of getting all the relevant paperwork – and there were millions of papers – Lord Saville ruled, for example, that the soldiers should be identified and should give their evidence in public in Derry in their own names. This was overruled by an English High Court in Judicial Review applications in London by the soldiers' legal representatives. The soldiers, most of their commanders and many of the political civil servants, gave their evidence in London and were only identified by number.

There were also applications relating to National Security and Public Interest in which material was withheld from the public, and therefore from the families and their lawyers. There were in-camera secret sessions from which the families and their lawyers were excluded. All of this means we never really know what is withheld by the government no matter sort of inquiry is set up. In the Saville Inquiry, there were witnesses who could not be

identified and who were not called who purported to deflect blame on the IRA. They made accusations to that effect in written statements, but then were not called either through illness or on the basis that their right to life would be violated by attending. We all thought that it was ironic that soldiers and people who had been making statements against the interests of the families were seeking the support of Article 2 of the European Convention on the right to life.

DID THE FAMILIES GET THE TRUTH?

This is a very important question at this stage: did the families get the truth after six years of inquiry? The answer is that there was no confession of wrongdoing by the soldiers, their commanders or the political leaders including Prime Minister Heath, who was cross-examined by the families' representatives in London at the hearings. But their main line of defence was not credible. They pleaded loss of memory. They all stuck to the original statements they made, including those soldiers who changed them. These were the statements mentioned earlier that were hidden from the families' lawyers at the Widgery Inquiry. For the most part they could add nothing to those statements on the basis that they had no recollection. The senior military and political witnesses denied murder. But we got access to a considerable number of documents which pointed to a military policy of force, which included the Army commander of the day suggesting six months earlier in a top-secret position paper that unarmed stone-throwers should be shot dead. He even went into the detail of what sort of weapons should be used. That document was never meant to see the light of day. But it was produced, along with a bundle of other papers, by the Saville Inquiry team. I am not sure if we really should have got it. Obviously, somebody did not get to it quickly enough to prevent us from getting hold of it. We were pretty satisfied that there was a large amount of material we did not obtain.

Unarmed people were indeed shot dead with no provocation. There was no gun battle. Over 50 press and media witnesses gave evidence to that effect, not to mention the 400 or so civilian witnesses who had come forward after all that time. We also had photographs and film of the incident. There was no evidence of a gun battle there, apart from what the soldiers said in pre-prepared statements.

British Prime Minister Heath and his cabinet met shortly before Bloody Sunday to discuss the civil rights march. We got to see minutes of that meeting as well as other relevant meetings. This was no ordinary march on Bloody Sunday. It was discussed at the highest level of government. The questions the families were asking were: was a decision made at this meeting to stop the march? Were military plans drawn up to stop that march in the way it was stopped as a result of that decision?

But, of course there was no record of wrongdoing. There was no admission of responsibility. But, as one witness stated, there was never going to be a note or record or minute of any order to commit murder, if that is indeed what actually happened. That is not the sort of thing you find in minutes of meetings. What we had to do was get as much contemporary circumstantial material as possible and examine the scenario and context of what happened on Bloody Sunday. Relating to the Or Commission evidence and report, I was interested to read the minutes of the Barak meeting held in his own home on 1 October 2000, when the tape recorder did not work. It is easier to construct sanitised minutes than doctor a tape recording.

The one thing that was achieved was that the soldiers were obligated to give evidence in front of the families. They were cross-examined by the families' own legal representatives. That was traumatic for the families, coming face-to-face with the killers. They were challenged by the legal representatives, and accused of murder and lying about it. For many families that experience was part of the accountability process. This has to be contrasted with the Or Commission, in which the families, as I understand it, were not even represented, and were not permitted to ask any questions or cross-question any of the witnesses, and certainly not the witnesses who were involved in the murders of their loved ones.

A transcript of all the evidence is available on the internet. Lord Saville will report and his conclusions are important. But whatever he concludes, the evidence that he bases his conclusions on will be available for people to read, and they can make their own minds up.

LOGISTICS

If I could just touch upon the practical side of the inquiry - we have already held many meetings with the lawyers from Adalah, giving them the details of what we actually did, and what we were able to get out of the Saville Inquiry, and contrasted it to their own position in the Or Commission. We knew from the outset that there would be a massive amount of relevant material. There was therefore a logistics problem to overcome. We expected that they would avalanche us with a lot of paper and try to confuse the issue, which is what they did.

The British Government had set up a large legal and support team for the representation of their soldiers and politicians. This was not disclosed to us at the time, but we suspected that they were not going to be given second best. We had to set up legal representation for all the families and all the wounded initially. We divided the representation and set up separate legal teams within the main team. There were over 100 individual family members altogether. We initially recruited a full-time archivist to catalogue the material as it was distributed by the Inquiry, and we were lucky to have done so as later we were swamped with documents particularly in the last two years.

We had to organise a communications system to liaise with the family members and the team lawyers, and to liaise with the inquiry team and the other lawyers representing the other families. This also involved arranging a distribution system for all the material received. Many family members were reading all the material and we had to make sure that anybody who wanted copies was facilitated. The inquiry set up new technology to record the hearings, but we had to obtain the latest computers and software to manage the teams and the large volume of material.

One area that needed special attention in the early stages of the Inquiry was accommodating differences of opinion, sometimes with the legal teams, sometimes among the families, about which way to go at particular stages in the process. In any large group of people there will be differences of opinion. There were differences of opinion even among individual family members. The objective remained the same, but the methods needed discussion, particularly where there were options. That was achieved by organising meetings in which these issues were thrashed out. It was always difficult for us lawyers to make sure that we were actually carrying out the work and the representation that we were engaged to do, and we always had to keep in close contact with the families to achieve this. Each family delegated one or two family members to liaise with the legal team, which made communication easier. We had to make sure that all the families and all the individual members were in agreement about

everything, but especially about the crucial issues. Overall there wasn't a major problem about this. It did not take long to reach agreement when differences of opinion arose.

With the large amount of material, it was always difficult to make sure that everything was covered. There was always the possibility that important documents would be missed in such a large volume. We had to divide up the work and then arrange liaison meetings to coordinate those efforts. Those are just a few of the practical issues we had to deal with that I mention by example to give some idea of what was involved behind the scenes as the inquiry was progressing.

But we are here today to remember what happened in October 2000: to remember and honour those 13 young men who were murdered and to honour their families, and to help bring those responsible to justice. The Israeli police committed acts of murder four years ago. The Israeli Government set up a commission of inquiry to establish the truth. But, like the British Government in 1972, have they been very careful in the setting up of the Commission? Was the Commissions of Inquiry Law put in place to ensure that the truth would not come out? I do not have a lot of knowledge about the Or Commission, but the truth can only be obtained when proper procedures and mechanisms are put in place so that the families can have access to all the relevant material and all the relevant witnesses.

The families need input into the proceedings. Their lawyers need to be treated as interested parties and the state should pay for it. After all, the state pays for its own lawyers out of public funds, so why should the families be disadvantaged? They need to get all the relevant documentation. The lawyers need time to study the material and to formulate enquiries relating to that material. They need to establish the relevant witnesses themselves in relation to that material. They need to identify all other relevant witnesses. And most important of all is that the families need to have their own lawyers cross-examining the people responsible for the deaths of their loved ones. Some of the questions that the families' lawyers would ask would not even occur to a tribunal of judges who do not have any contact with the families at all. Anything less will probably not achieve the objective. If the objective is to get the truth, then mechanisms must be put in place so that there is a likelihood of getting the truth. Pat Finucane's widow, after a 15-year campaign by her family, is waiting to see if the British Government will establish a proper inquiry.

Finally, I would say to the families here today and to their lawyers – Don't give up. Keep fighting for justice. You will achieve it. It may take a long time. If the Or Commission is your Widgery, and I do not know if you agree totally with its findings, then challenge it. Try for something better. My understanding is that the Or Commission did not go into the details of the deaths, but recommended police investigation. I am not sure how far that would go. You certainly would not have much input into a police investigation. You have the support of your own extended families, friends, your own people and many, many friends throughout the world. You have the support of the Bloody Sunday families.

I want to end by quoting from the words of an Irishman – very well known in our country – Terence McSwiney, who was the Mayor of Cork City and who died as long ago as 1920. This quote is from his inauguration speech as mayor. His words have been quoted many times, and the words are significant because of the way he died. He died in Brixton prison in London on the 74th day of a hunger strike in a prison protest against the British. His words are also very pertinent today as they were then, and very pertinent to what happened on Bloody Sunday in Derry in 1972, to what happened here in 2000, and indeed what is happening throughout your

country today. He said, "It is not those who inflict the most but those who suffer the most who will conquer."

I want to wish you luck and support in your difficult but not impossible quest for justice. Thank you.