

Committee on the Administration of Justice 1981 - 2011

Just News Special Anniversary Edition

To mark our 30th Anniversary year, this month's edition of Just News will take a look back at some of the areas we have covered in Just News throughout the years, and provide a 2011 update on each issue. Of course, there are many issues of relevance and interest, and we cannot focus on them all. Instead, we have chosen to concentrate on a limited number that we think will be of interest to you, our reader. Enjoy.

Fionnuala Ní Aoláin Editor, Just News

Just News, 1983

The 'Supergrass' Debate

The 'supergrass' controversy has generated discussion within C.A.J. and whilst generally members would seem to be expressing opposition to this we believe there should be more public awareness of the issues, legal and moral. C.A.J. is therefore hosting a major debate on this issue on November 24 at the Law Club. The motion to be debated is:

"The use of supergrasse evidence has undermined respect for the legal system"
Distinguished speakers from the legal and political world have been invited to put the case for and against. All C.A.J. Members will have the opportunity to attend and participate although, as numbers must be limited, admission will be strictly by ticket only. Tickets must be obtained in advance. There will be an admission charge of £1 to cover the expenses of the meeting.

2011 update

28 years on and the Supergrass debate continues. In 1983 CAJ committed to increasing public awareness of the issues surrounding the use of "supergrass" evidence. The use of evidence of this type has come back into focus since the enactment of the Serious Organised Crime and Police Act 2005 (SOCPA) which provides a legislative framework for its use. The legislation refers to 'assisting offenders' and 'assisting defendants' giving evidence on behalf of the prosecution. In recent months we have been monitoring the trial of 14 defendants in the case of R v. Haddock & Ors. In this case, two brothers are giving evidence on behalf of the prosecution having entered into an agreement to do so under SOCPA. The brothers sentences have already been reduced as a result of their agreeing to give evidence.

The use of evidence from a 'supergrass' source rose sharply in Northern Ireland from 1981 to 1985 and was challenged for a number of reasons: first, the evidence was inherently suspect, given that the person providing it had either been promised immunity from prosecution, a reduction in sentence, a financial inducement or a combination of all these factors. Second, the evidence was often not corroborated by other independent evidence. The use of supergrass evidence began to decline however, for reasons including that those who initially agreed to give evidence then subsequently failed to do so. A significant number of defendants convicted using 'supergrass' evidence also successfully appealed and had their convictions quashed.

Differences between the use of this evidence in the 1980s and its use under SOCPA include provision for a court to substitute a greater sentence if the 'supergrass' fails to give their agreed evidence. SOCPA therefore provides a (problematic) legislative framework to address the issue of a 'supergrass' reneging on a commitment to give evidence, however what the legislation was not designed to do was introduce safeguards which address the fundamental issue of ensuring the evidence is credible.

Resolutions:

1. "The Conference urges the CAJ, having regard to the European Convention on Human Rights and Article 27 of the U.N. International Convention on Civil and Political rights to:
 - i.) Set up a working party to draft a Bill of Rights with particular emphasis on group rights applicable to Northern Ireland.
 - ii) Give consideration to a mechanism for scrutiny and enforcement."
 - iii) Discuss its proposals as widely as possible within the Community.
 - iv) Report back to a re-convened conference by February 1st 1985.
 - v) Submit its proposals to the British and Irish Governments.
 - vi) Give the proposals the widest possible publicity".

Action:

Volunteers to join the working party from CAJ membership are required to look at the contents of the proposed Bill of Rights which will then be drafted by our members from the legal profession. Please respond by coming forward at the general meeting on 2nd July or contacting one of the committee.

2011 update

Regrettably, on the 30th anniversary of CAJ the Bill of Rights for Northern Ireland still remains a key piece of work for the human rights programme area. A parallel process on a UK Bill of Rights is underway in Britain, which has the potential to either undermine or subsume the Bill of Rights guaranteed in the Belfast/Good Friday Agreement.

The Agreement recognised the need for further rights protection, given the "particular circumstances of Northern Ireland," and proposed a Bill of Rights that would include all the Convention rights plus necessary additional protections. We still do not have a Bill of Rights for Northern Ireland, even though in 2008 the Human Rights Commission fulfilled its obligations and gave detailed advice to the UK Government as to its content. It refuses to act on this advice because of a stated "lack of consensus" on the subject amongst Northern Ireland parties. This ignores the fact that the Bill of Rights was one of those subjects, like policing and criminal justice reform, which were made subject to independent review and recommendation, precisely because local political consensus would be unlikely.

In November 2011 in a meeting with a select group of UK Bill of Rights Commissioners on their fact finding engagements in Northern Ireland CAJ, amongst other civil society organisations, clearly outlined the separate process in the NI landscape. CAJ's submission placed particular emphasis on the evidence concerning the impact of the conflict on civil, political, economic, social and cultural rights in Northern Ireland. This information was well received. In early December in written answers to questions in the Northern Ireland Assembly on an update on the proposals to create a Bill of Rights, the First Minister and Deputy First Minister stated that 'as part of a separate process, the UK Government is considering the creation of a UK Bill of Rights'. Through this process the NI Executive will send two advisory panel members to 'assess the implications of any Bill of Rights for this devolved administration while proposals are being developed and following publication of the Commission's advice to the UK Government.' CAJ continues to monitor and engage with both processes.

Entering 2012, CAJ now urges all signatories to the Agreement to fulfil the commitment made in 1998 and deliver one of the last pieces of this Belfast/Good Friday Agreement provisions, building on securing a lasting peace for all in Northern Ireland...just as it was urged to engage with the Bill of Rights issue three decades ago.

Just News,
January 1985

European Convention and Bill of Rights

It was reported in the press that Lord Scarman has launched a campaign in Britain to incorporate the European Convention into British Law. Brice Dickson has written on behalf of C.A.J. to the Constitutional Reform Centre which is organising the campaign requesting further information. Brice has also informed Just News that the Bill of Rights Group has papers on various subjects including the European Convention on Human Rights, Group Rights, Existing N. Ireland Legislation, Views of Political Parties in N. Ireland and Canadian and U.S. Bills of Rights.

2011 update

Twenty-six years on from this article and the ECHR and a Bill of Rights for Northern Ireland are still subjects of lively debate. Some things have moved on considerably. The incorporation of the Convention into UK domestic law was part of New Labour's election manifesto in 1997 and for Northern Ireland, also became a vital part of the Belfast Good Friday Agreement. Designed as part of the infrastructure of human rights protection that would help create a new society in Northern Ireland, the Human Rights Act 1998 also covered the other parts of the UK.

There is currently a threat from the Conservative Party to row back from the incorporation of the Convention and instead create some kind of "British" alternative list of rights – despite British influence and jurisprudence being central in the creation of the Convention.

Just News, January 1985

2011 update

Police Complaints

The Belfast Telegraph of 15 January 1985 reported under the heading 'New Complaints System is on the Way', that a new Police Complaints Authority is to be set up to replace the Police Complaints Board. This will be civilianised and have a greater degree of independence than the old Board. As members will recall C.A.J. has been pressing for sweeping changes in the police complaints procedure and submitted detailed proposals to the Secretary of State. We are watching developments closely as there is a degree of concern that a new Complaints Authority will not have the level of independence required to satisfy public opinion.

CAJ has worked over 30 years for the establishment of a truly independent police complaints mechanism and of all the accountability mechanisms, the establishment of the Police Ombudsman's Office has been vital to enhancing the legitimacy of new policing structures. The Office has a 'dual mandate' in the sense that it has assumed the role of a surrogate 'truth recovery' mechanism in its investigation of historic cases into some of the worst atrocities of the conflict, although the Office's statutory remit to investigate historic cases is restricted. These cases have created an international level policing controversies and include a number of high-profile investigations into past police activities including collusion with illegal loyalist paramilitary organisations (Operation Ballast, 2007).

Today we have a very different state of affairs from that of 2007 when the first Police Ombudsman Nuala O'Loan left Office. Then, public confidence in the police complaints mechanism was high and the Office was regarded internationally as an instance of exemplary police oversight. However this year, three reports from three distinctly different organizations – our own report from CAJ, a report commissioned by the Department of Justice, and a report from the Criminal Justice Inspection, have identified political interference in the Office in a variety of forms – culminating in a lowering of 'operational independence' of the Office. After extensive research CAJ maintains that the 'lowering of independence' began during recruitment proceedings for the current Police Ombudsman and our research uncovered irregularities in recruitment procedures including the addition of the criterion of 'prior Northern Ireland experience' by the NIO after the post had been advertised. The present Police Ombudsman has now submitted a post-dated resignation and the Criminal Justice Inspection has recommended a temporary suspension of investigations into historic cases until the Office is once again "fit for purpose."

CAJ in numbers

In the May edition of Just News, we reported that CAJ had appointed its first ever member of staff.
We've seen quite a few people come and go since then...

Just News, May 1985

2011 update

Staff

INFORMATION OFFICER APPOINTED

C.A.J. has appointed its first full-time officer. The interview panel interviewed several well qualified candidates for the post but were unanimous in their choice of Paddy Sloan who had the right blend of experience and qualifications. She has accepted the position and will be free to take up the post on 1st July. In the meantime final arrangements are being made to organise accommodation to be used by C.A.J. at the Unemployed Advice Centre, Donegall Street, where space, typing, telephone and photocopying facilities will be available. This will provide Paddy with a base until C.A.J. finds permanent accommodation. Full details should be available within the next few weeks.

1985 - first staff member

2001 – **7** staff (full-time and part-time)

2011 – **12** staff (full-time and part-time)

Staffing has been made up of:

4 different Directors;

6 different admin staff;

4 different solicitors;

1996 – employed **2** researchers to work on policing

2000 – employed **2** researchers to work on a Bill of Rights and Equality

2009 – employed first Communications Officer

2010 – employed first Public Affairs Officer

Volunteers and Interns

1986 – the year the first US intern (now Professor Martin O’Flaherty of Fordham Law School) arrived and wrote the “Blessings of Liberty: An American Perspective on a Bill of Rights for Northern Ireland” on behalf of CAJ.

Over the **30** years, there have been more than **30** visiting interns from the US.

21 – volunteers from EIRENE (peace keeping organisation based in Germany)

10 – students on work experience

50 – volunteers of all age groups e.g. university students, retired persons and CAJ committee members

Our longest-serving volunteer, Rose Perry, is still with us **21** years later!

Sub groups

10 different sub groups e.g. emergency laws, policing, prisons, racism, gender/equality, fair employment and economic justice, lethal force, children & young people’s, public order observing, criminal justice

Written materials

Made **369** submissions

Produced **61** publications

Funding

CAJ has been financially supported by a total of **20** various funding bodies over **30** years.

"BULLY BOYS" AND THE LAW

The Chief Constable's decision to allow a Twelfth parade through Portadown's overwhelmingly Catholic Garvaghy Road produced a flood of criticism from both sides of the controversy. Orangemen complained of the re-routing of its traditional march along Catholic Obins Street. Catholic and nationalist leaders labelled the decision as a victory for the "bully boys," especially in light of police assurances which implied that Orange marches would no longer go through Catholic areas.

Rarely emphasized in the coverage of the resulting strife was the role of the law concerning situations like Portadown, specifically the Public Order (Northern Ireland) Order 1981. Whether this statute left the RUC and the Northern Ireland Office with no other options than the Garvaghy march remains a matter of interpretation. But several things about the order do seem clear.

This article from August 1986 was Just News' first mention of parading and the Garvaghy Road. In same year CAJ was 'encouraged' by the RUC Chief Constable's suggestion in his annual report that "responsibility for decisions on the holding and routing of parades should rest with an independent public tribunal". The following year saw fresh public order legislation, whilst this was largely in light of new legislation in Britain, the new law did end the long-standing exemption to notification requirements for parades "customarily held along a particular route" and repeal Stormont's notorious Flags and Emblems (Display) Act (Northern Ireland) 1954 (which in part had been introduced to provide a clear power to prevent Tricolours being carried at nationalist gatherings). The new law did however leave decision making on parades with the RUC.

By the mid-1990s the contestation over parades, and in particular the annual crisis over Drumcree, threatened to collapse the peace process. By this stage CAJ was organising significant human rights observing at parades with a focus on the actions of the police. The CAJ 1986 *'Misrule of Law'* report catalogued numerous instances witnessed by CAJ and others of the RUC using sectarian and abusive language, an incident of insubordination by RUC officers, and eyewitness testimony that in the Short Strand area of Belfast RUC "beatings were indiscriminate...police were running amok and that abusive

language of a sectarian nature was used." The report also recorded a significant differential in the plastic bullets fired during 4.5 days of predominantly Unionist protests (622) and 3.5 days of nationalist protest (5340). The British Government's response to events was to commission the "North Report" (Independent Review of Parades and Marches) which recommended transferring the RUC decision making powers on parades to an independent Parades Commission. It took the incoming new Labour government to take this forward under the Public Processions (Northern Ireland) Act 1998. This Act also sought to move away from the primacy of making decisions purely on public order grounds, which government had recognised provided an incentive for violence, by introducing other criteria for restrictions including 'disruption of community life' and impact on 'relationships within the community'.

A decade later in the context of opposition from the Loyal Orders to the Parades Commission the British Government commissioned a further 'strategic review' chaired by Paddy Ashdown. Its interim report in 2008 proposed a new decision making framework based explicitly around ECHR Article 11 (freedom of Assembly) permitting restrictions, in accordance with ECHR Article 11(2), when parades impacted on the 'rights of others', which the review proposed should include the 'right of freedom from sectarian harassment' contained within the Belfast/Good Friday Agreement. Whilst a final report from the review was never published the proposals were revamped in the 2010 DUP-Sinn Féin Hillsborough Castle Agreement. This led to a public consultation on the draft 'Public Assemblies, Parades and Protests Bill 2010'. One element of the Bill was a proposal (long requested by some Loyal Order representatives) to extend parades regulation to many other forms of public assembly, yet questions of ECHR compatibility and widespread public outcry eventually led to this proposal being dropped. Orange Order disagreement with the broader proposals on parading in the draft Bill led the DUP to withdraw its intention to formally introduce it into the Assembly. The 1998 Act and Parades Commission therefore remain in place.

Mental Health in Prisons

A report at the end of Dec '89 that a newly sentenced lifer had hanged himself in Dublin's Mountjoy jail highlights the problems facing many prisoners inside. This article looks at an oft-forgotten problem.

First Some Definitions

"Mental illness" as opposed to "having a mental health problem" is a definable clinical condition. Any prisoner diagnosed as having a mental illness can under Section 53 of the **Mental Health (NI) Order (1986)** be transferred to an appropriate hospital to receive treatment.

The extent of defined clinical mental illness in prisons is, to a certain extent, hidden. This is because any prisoner diagnosed as mentally ill is usually moved out of the criminal justice system and into the mental health system during the arrest/re-mand period. These periods of assessment often result in an hospital order.

Similarly, prisoners suffering from mental handicap can under the term "mentally disordered" (cf Mental Health Order, '86) be subject to a transfer direction from prison to hospital.

The machinery of the mental health system caters adequately for the needs of those prisoners transferred for either illness or handicap.

The inadequacies of the prison system arise with those prisoners who are suffering from mental health problems not covered by the '86 Order. Prisoners are more likely to suffer from poor mental health because of the limited options and resources open to them when they are trying to cope with the pressures they face.

2011 update

Mental health remains a major issue within Northern Ireland's prison system. Responsibility for healthcare within prisons passed from the Northern Ireland Prison Service (NIPS) to the Department of Health, Social Services and Public Safety (DHSSPS) in 2008. Healthcare is now delivered by the South Eastern Health and Social Care Trust (SE Trust). However, the great majority of staff who provide healthcare are not directly employed or managed by the SE Trust, but by NIPS. In October 2011 the Prison Review Team (PRT) published its '*Final Report Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons*' in which they recommended a joint healthcare and criminal justice strategy. The PRT also noted that too many people with mental health problems end in prison by default, as there issues are not picked up or treated earlier.

In our 1990 article, CAJ noted that those prisoners diagnosed as having personality disorders were not, under the Mental Health (NI) Order 1986, recognised as having a treatable condition. This still remains the case, although new legislation proposed in the Mental Capacity (Health, Welfare and Finance) Bill will include personality disorders within its scope. However, it is unclear at this stage whether this legislation will extend to the criminal justice system.

The issues of suicide and self-harm remain tragically prevalent within the prison system. CAJ noted in our December 2010 report '*Prisons and Prisoners in Northern Ireland: Putting human rights at the heart of prison reform*' that there was a need for a review of suicide prevention and self-harm policies within prisons, as well as the monitoring of such incidents and of policy implementation. The PRT has since expressed serious concerns in their final report regarding the implementation of the supporting prisoners at risk (SPAR) process, such as poorly completed suicide prevention documentation in Maghaberry and vague care plans. It was also noted that the attitudes amongst most staff were that self-harm was manipulative and attention-seeking behaviour. The Final Report recommended that the Prisoner Ombudsman be invited to conduct random reviews of SPAR documentation, with her findings then being reflected in training for managers and staff.

March 1985

2011 update

**FAIR EMPLOYMENT (N.I.) ACT 1976 -
SECT 42**

Brice Dickson and Patricia Mallon are still looking into the possibility of stating a convincing case to the effect that S.42 is in breach of Article 6 of the European Convention which guarantees the right to a fair and public hearing by an independent and impartial tribunal whenever a person's civil rights are being determined. Members will recall that this matter of discrimination in employment was raised in the December 1984 'Just News'.

The Fair Employment (NI) Act 1976 ('the 1976 Act') was the first piece of legislation in Northern Ireland to address discrimination in employment on the grounds of religious belief or political opinion. It was considered to be ground-breaking at its time. However, section 42 precluded the application of the 1976 Act to 'an act done for the purpose of safeguarding national security or of protecting public safety or public order.' In order to prove that such a situation occurred, the Secretary of State could sign a certificate which would then become 'conclusive evidence'. This section, therefore, gave the government an expansive opportunity to restrict the

application of the 1976 Act, without any effective scope for challenge. In 1998, the European Court of Human Rights found section 42 of the 1976 Act to be in breach of the right to a fair trial under Article 6 of the European Convention of Human Rights. In the case of *Tinnelly & Sons and Others and McElduff and Others v the UK*, the Court unanimously found that 'the conclusive nature of the section 42 certificates had the effect of preventing a judicial determination of the merits of the applicants' complaints that they were victims of unlawful discrimination.' As a result, the 'section 42 certificates constituted a disproportionate restriction on the applicants' right of access to a court or tribunal.'

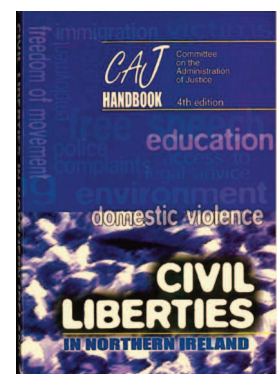
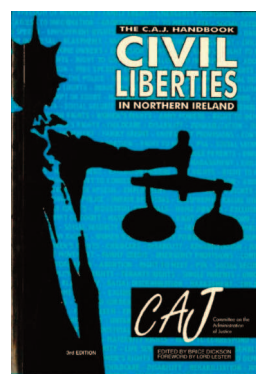
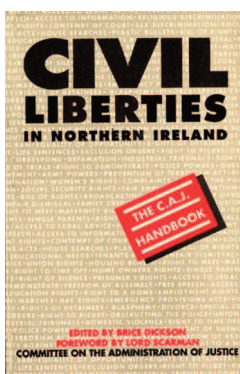
The 1976 Act was repealed by the Fair Employment (NI) Order 1998 ('the 1998 Order'). The 1998 Order does allow for unlawful discrimination not to be found where an (otherwise discriminatory) act is 'done for the purpose of safeguarding national security or protecting public safety or public order' (at section 79). However, the exception under the 1998 Order is much narrower than that under the 1976 Act. First, it is possible to challenge the claim that an act is 'done for the purpose of safeguarding national security or protecting public safety or public order'. A governmental certificate cannot provide conclusive evidence. Secondly, the act in question must be 'justified for that purpose', which limits the extent of the exception and allows for a further head of challenge in the courts.

Handbook on Civil Liberties - Should plan publication of handbook on civil liberties in N. Ireland comparable to those produced in England, Scotland and Republic by respective Council of Civil Liberties.

April 1985

2011 update

CAJ has now produced four editions of our flagship publication, '*Civil Liberties in Northern Ireland: The CAJ Handbook*.' Many of the core chapters of the book have remained a feature in the publication over the years, but with the change in time, the Civil Liberties too has changed, incorporating emerging rights based issues of interest. In celebration of CAJ's 30th anniversary year, work is underway on a 5th edition of the handbook, which will be co-edited by Brice Dickson of Queen's University Belfast and CAJ Director, Brian Gormally. We anticipate that the new edition which will be entitled 'Human Rights in Northern Ireland: The CAJ Handbook' will be printed in mid 2012 and will keep readers informed of its progress.



Civil Liberties Diary, Jan 1989

Tuesday January 3 Labour accused the Government of deliberately flouting the ruling of the European Court in the Brogan Case, after a decision to extend the detention period of several people held after the discovery of an IRA bomb factory in London.

Wednesday January 4 Kevin McNamara, in a letter to Tom King, called on the Secretary of State to make public the views of the judiciary here, which are believed to be critical of the changes to the right to silence.

The NIO was correct in releasing 320 prisoners on Christmas parole, and so, "...resisting the demands of those who want all prisoners incarcerated for the duration of the emergency," said NIACRO.

Thursday January 5 The Law Society recommended, that if changes to the right to silence must be made, they should be coupled with safeguards, such as the tape-recording of all interviews, and the use of the modified caution recommended by the Criminal Law Revision Committee, for those suspects who insist in remaining silent.

Friday January 6 Following soundings of dissent from the head of Rupert Stanley, Belfast's Further Education Colleges were warned that they were statutorily obliged to co-operate with any FEA investigation into employment practices.

Wednesday January 11 In the resumed Commons debate on the Elected Authorities (NI) Bill, the Government resisted attempts to make the DPP or Attorney General responsible for bringing cases against Councillors who infringe the oath of non-violence.

Thursday January 12 The Home Office stated that the new Prevention of Terrorism Bill would not be amended to meet European Court concern at 7-day detention periods. Labour rejected the suggestion that the Government was continuing to search for an acceptable judicial solution to the ruling.

An industrial tribunal, found that a Belfast woman was unsuccessful in her application for a job, simply because she was pregnant at the time of the interview.

Friday January 13 Seamus Mallon and Labour MP Claire Short, asked if the Security forces were making 'blanket searches' of homes in the North, instead of basing them on reasonable suspicion. Tom King denied any random policy, and pointed out, that of 43 houses searched recently in west Belfast, 7 terrorist hides were found.

Monday January 16 The Home Secretary, Douglas Hurd, announced that he has referred the case of the 'Guildford Four' to the Court of Appeal, for a review based on new evidence.

Labour announced that it was seeking to amend the Prevention of Terrorism Bill so as to more strictly regulate the rules for strip-searching.

Tuesday January 17 During the Commons debate of the 'Security Service Bill,' a proposal to bring MI5 under Parliamentary scrutiny was defeated 232-163.

Wednesday January 18 Robert Russell, the Maze escaper, became the first defendant to be affected by the changes to

the right to silence. He was told that his refusal to take the witness stand could be taken into account in reaching a decision in his case.

The Court of Appeal has found that the conditions imposed on prisoners, when kept on solitary confinement, in NI's gaols, are unlawful. An example of such treatment now ruled invalid is the deprivation of bedding, known to prisoners as, 'on the boards.'

A group of journalists were granted leave to apply to the High Court in a bid to overturn the 'media ban.'

Thursday January 19 SACHR criticised recent Government initiatives to curb the "terrorist threat", since they were introduced without the necessary consultation.

Friday January 20 The Government applied to the House of Lords in a bid to overturn the Belfast Court of Appeal decision that RUC men responsible for the killings of unarmed IRA men in Armagh in 1982 must take the witness stand at the inquest.

Monday January 23 Labour's submissions to Lord Colville in his review of the EPA, suggested a 110 day maximum remand period, and called for the replacement of Diplock Courts, with a 3 Judge panel.

Tuesday January 24 The Government's guillotine motion was passed with a majority of 58. This left a Labour attempt to tighten the rules on strip searching, in the final session of the Committee Stage, doomed to failure.

Thursday January 26 The ICTU has said the Government's Bill on Fair Employment, has failed to measure up to what is necessary to tackle discrimination.

Friday January 27 The FEA in it's response to the Bill has called for the banning of flags and emblems likely to cause offence or fear, and for an increase in compensation available, beyond the present statutory maximum of £8,500.

The independent investigation into ITV's 'Death on the Rock,' following the Government's accusation that it prejudiced the subsequent inquest, rejected most of the criticisms levelled at it. The Tories, however, refused to withdraw their remarks.

Tuesday January 31 A home in the St James' area which had been the subject of an RUC search some 9 weeks earlier, was again searched. Nothing was found in the search, which caused much damage, and lasted 30 hours.

A Belfast judge ordered the DPP to supply defence lawyers with all the tapes that would be used in evidence, against the men charged in connection with the deaths of two army corporals in Andersonstown in March last year.

The Government achieved a majority of 101 in it's third reading of the Prevention of Terrorism Bill. It stuck tightly to it's timetable and prevented Labour from proceeding far with a plan to end exclusion orders, and amend the Bill as regards 7-day detention, following the Brogan decision.

Martin Wolfe