

Bulletin of the Committee on the Administration of Justice

## Rosemary Nelson – Third Anniversary

**It is difficult to believe that three years have now passed since the murder of our friend and colleague Rosemary Nelson. The Port investigation, which now appears to be in the process of winding down, has resulted in a number of prosecutions but none for Rosemary's murder itself.**

CAJ has met with the Port Investigation team on various occasions but has continued to press for a public inquiry into Rosemary's case and a number of others. We believe there is sufficient evidence of collusion by some elements of the police and army to warrant a full independent inquiry.

To date, the government has resisted this call, as it has done in relation to the Finucane case, the Hamill case and the Wright case.

However, within the last year there has been some limited movement from the British government in relation to these cases. During the intense political negotiations leading up to the Joint Proposals from the two governments to fully implement the Agreement published in July, the four cases were discussed. An agreement was reached between the two governments to deal with Rosemary Nelson, Robert Hamill, Billy Wright, Patrick Finucane, and also cases of alleged Garda/IRA collusion leading to the deaths of RUC officers Buchanan and Breen and Lord Justice Gibson and his wife.

The two governments agreed that they would appoint an international judge to examine these six cases and report to the two governments as to what further action should be taken. The judge's recommendations, which would be made public, could include recommending a public inquiry. In such circumstances the two governments would commit to establishing a public inquiry. There are of course many weaknesses in this scheme and much of the detail still needs to be worked out. CAJ's position remains that there should be full public inquiries into all four cases we have worked on. It remains to be seen if this mechanism will bring public inquiries closer or not. What is however certain is that the delay in appointing a judge and publishing his/her terms of reference have reinforced the suspicion that this plan is simply another means of delaying public inquiries.

CAJ members will of course be aware of our concerns in relation to the investigation of threats against Rosemary Nelsons forwarded by us to the Minister of Security seven months before Rosemary died. Although these were

immediately passed to the Chief Constable, it appears no effective action was taken to properly investigate these threats. Had proper steps been taken in relation to the various threats against Rosemary which were notified to the authorities, she may have been alive today.

Despite numerous attempts to get answers in relation to the serious questions we had raised about the investigation of the threats, the authorities have refused to provide us with an adequate explanation as to the lack of progress in investigating these threats. We were therefore left with little choice but to lodge a complaint against the Chief Constable for failing to properly investigate the threats which were forwarded to him in connection with Rosemary's death. This was in late 2000.

Since then the Ombudsman's office has been investigating this matter. Statements have been taken from various relevant witnesses and we are hopeful that there will be a successful outcome which fully explains the actions or inactions of the police in the period leading up to Rosemary's murder. However, we are very concerned at the refusal of the Police Ombudsman and the Chief Constable to provide us with relevant documents which she has obtained from the RUC. Our concern is such that we have been forced to institute judicial review in relation to this refusal.

CAJ remain committed to establishing the truth of what happened to Rosemary both for her sake, that of her family and the proper functioning of the justice system within this jurisdiction.

*Paul Mageean*

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## CAJ Plans Ahead

One of the tools that CAJ uses to give direction to our work is that the executive and the staff go away together for a planning weekend each year at about this time. This year we went to the Rural College in Draperstown, and were made very welcome there - free to do our thinking about CAJ's direction for the forthcoming year. As well as helping us plan ahead, it also meant that the executive and staff got to spend some valuable time together. The weekend was particularly helpful to the newer members of the executive to become clearer about CAJ's work and philosophy, and to contribute to both.

The following highlights some of the key themes that emerged from the weekend.

### A Changing Climate

A number of changes are underway which are altering the overall climate of opinion and the political context in which CAJ works. We recognised that if CAJ is to remain effective we need to take account of these changes.

On the one hand, there are a number of the issues on which CAJ has worked for several years which have seen improvements. For instance, CAJ worked for the establishment of a criminal justice review, a policing review, a Human Rights Commission, and an independent Police Ombudsman. There has been important movement in all these areas. It is important on occasion to recognise that there have been successes for CAJ and others who have worked for such changes for many years. Now, however, these changes mean that CAJ's work is likely to move from demanding that "something be done", to verifying that the various new institutions actually bring about human rights improvements.

On the other hand, there was also a recognition that the political context was changing. In the last few years, the environment had been particularly uncertain, and planning proved very difficult. However, the political situation had now changed somewhat, in that institutions such as the Northern Ireland Assembly and Executive seem to hold a greater degree of permanency than before. Whilst this could change, advance planning seemed less speculative than it had in recent years.

Last but not least, the post-September 11 climate may have created a general swing away from human rights protection and an emphasis on the need to protect states and their citizens from attack. To quote a New York Times piece: 'The heyday for human rights is over'. CAJ and others who wish to uphold human rights will find greater difficulties in this climate. Such a climate is also likely to cast a shadow over the way in which minority ethnic groups

and asylum seekers are treated in Northern Ireland as well as in other parts of the world.

### CAJ's Response

Although we like to think we are reasonably effective, we are not likely to be able to change this global post-September 11 climate – which has been described as a 'cold house for human rights.' CAJ will work within this climate and do the best that we can, working with other groups internationally who wish to uphold human rights. More locally, however, the changes which come with the devolved Assembly will oblige CAJ to find new ways of working. CAJ has expert knowledge and experience, which can be shared with Assembly members across the political spectrum. We will be looking for ways to raise human rights issues within these new structures.

### CAJ Priorities

We came to the conclusion that the four major priorities that we have been working on since the mid-90s are still valid. These are Equality; Criminal Justice; Policing; and Protection of Rights (including work on the Bill of Rights).

However, *how* we work on these priorities may need to change so that we respond effectively to the changed context described above. We need, as ever, to seek to be strategic and ensure that work is prioritised with a view to effecting real change in people's lives. For example, we feel that the work CAJ has been doing around equality, both by itself and through its co-convening of the Equality Coalition with UNISON, is very important. That work must continue. But we should more routinely ask ourselves – what would make the most fundamental difference in the protection of rights? What are the key inequalities that need to be addressed? Similar questions need to be posed about all our areas of work, to ensure that we are using our limited resources to the best possible effect.

### How do we manage all there is to do?

Indeed, the setting of priorities was a key focus of the weekend. It was felt that the majority of CAJ's work should concentrate on work which could potentially achieve transformative and systemic change in human rights policy and practice. Examples of what this would mean in practice include changes that will:

1. Significantly improve the accountability and openness of state institutions and / or
2. Enable individuals and groups to seek effective redress for human rights grievances and/or
3. Make significant shifts towards greater equality in society.

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# Analysis of Budgets in Cuernavaca

**A meeting was organised recently in Cuernavaca, Mexico, by the Ford Foundation (and others) as an attempt to bring the two worlds of budget analysis and economic/social and cultural rights together. Apart from myself, there were people there from Bolivia, Ecuador, Argentina, USA, Mexico, Kenya, India, and South Africa. It was a fascinating experience that could hold a lot of interest to different people and groups in Northern Ireland.**

A highlight of the event was the close examination of several case-studies. One explored the horrendous impact of welfare cuts in New York City, and how groups had developed an action programme to challenge the cuts on a rights basis. In an Argentinian country-study, a local human rights group has taken up a case where the government had cut back funding on an important social project, even though a condition of the World Bank loan had been no such cutbacks (there might be interesting parallels here with EU funding?). The Childrens Budget Unit in IDASA (a major South African NGO) explored the methodology of constructing a Children's Rights Budget by merging a child-focused budget analysis with an analysis of children's socio-economic rights. A Mexican group provided an analysis of health funding starting from the perspective of international human rights principles, Mexican constitutional provisions, Mexican health legislation, and then applied the provisions to problems on the ground.

Half of the 25 or so participants were people who worked in applied budget analysis. This is apparently a relatively new skill, with people and groups, independent of government, commenting upon the impact of budgetary options and decisions, in terms of the poor, of women, children, etc. The other half of the meeting consisted of people who work on economic, social and cultural rights. While this work has a much longer history, it is only relatively recently that groups working on disability, or housing, or health, or trade union rights... have started to describe themselves as 'rights' groups.

The key lesson from this exchange was that influencing the way a government both raises and spends money is crucial to anyone interested in rights and wanting to effect real change on the ground. The rhetoric in Northern Ireland of a 'Programme for Government' has little significance if it does not translate into specific budgetary allocations for those most in need. Accordingly, organisations working to alleviate poverty, ensure economic regeneration, further the concerns of the elderly, or to campaign for better health provision etc. etc., need to think about, and seek to influence the budgetary process. Similarly, people who technically work on the budget, or who critique it as academic commentators, or who think of themselves as economic 'think tanks', should be encouraged to inform their perspective from a rights basis. This challenges the view that socio-economic rights are inherently incapable of being monitored and tracked judicially or otherwise.

The immediate first step taken after the meeting was to invite Sean Healy and Brigid Reynolds (CORI) to speak to the Equality Coalition, that CAJ co-convenes with UNISON, about the amazing work that they, through the Conference of Religious in Ireland (CORI), have been doing around budget analysis and critiques in the Republic of Ireland. For the last fifteen years CORI has closely monitored the government's budgetary process and sought to influence its formulation, and critique it, from a poverty perspective. The briefing, the first of several most probably, was well attended and there is clearly lots of practical advice available as to what needs to be done and how it might be done. As usual, the question is one of priority-setting. But then as Sean and Brigid challenged the assembled (already over-worked) activists "Surely the issue is one of - causes or consequences? Some people and groups are understandably interested in alleviating poverty and helping the poor. But perhaps more people should be asking society as a whole why people are poor and what can be done to fundamentally challenge that dynamic?" The message from Cuernavaca, Dublin, and indeed CAJ's executive planning weekend just recently (see opposite), was that if one is to engage with systemic issues of poverty and the denial of fundamental human rights, then priorities may well need to be re-assessed.

**Maggie Beirne**

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## Towards a Just Society

Sometimes, it is only when groups give themselves time away from the day-to-day work, that they can really think through what they are really about. CAJ is no different, and we found ourselves thinking about our vision for society. As only one of the many players in bringing about that vision, we reiterated CAJ's mission statement to the effect that we "work for a just and peaceful society in Northern Ireland where the human rights of all are protected".

## Last but not least .... CAJ's coming of age

All of this work will need to be given a new lease of life in this CAJ's 21<sup>st</sup> Birthday year !! Watch this space for news of activities throughout CAJ's 21<sup>st</sup> year – from May 2002 to May 2003. We think we've got things to celebrate, and we certainly intend to do so. At the same time, there is much much work still to do. We hope that you will join in both the work and the celebrations!

**Ann Godfrey**

## Avoiding Accountability – The Right to Life

### *Post the Jordan, Kelly, Shanaghan and McKerr Decisions*

**On the 4<sup>th</sup> May 2001, the European Court of Human Rights delivered its most significant decision to date on Article 2 of the Convention. That article concerns the protection for the right to life. In the joined decisions of Jordan, Kelly et al, McKerr and Shanaghan v UK, the Court found that the state had violated the right to life of the deceased by, among other matters, failing to provide an adequate and effective investigation into their deaths. The inadequacies of the investigative process identified by the Court included; the police investigation into these deaths, the inquest process, the role of the Director of Public Prosecutions and the role of civil compensation as a remedy when the state is responsible for the death of a citizen. In addition to finding the state in violation of the Convention, each victim was awarded the sum of £10,000. In the ECHR system, where monetary compensation is generally set at a low threshold; the financial reparations are a measure of the concern the court was expressing at the state's behaviour in the context of these deaths.**

The finding of the European Human Rights Court was significant not only because the state's behaviour was found wanting in these four cases. These cases are only a small fraction of a long series of controversial incidents involving state use of lethal force in Northern Ireland. Moreover, the finding in the *Shanaghan* case - where the issues before the Court included detailed information concerning the collusion of security force personnel in the death of the deceased - opens up a raft of cases to fresh international and local scrutiny. In finding the state wanting, the Court was also effectively signalling that the methods and structures of investigation into lethal force deaths in Northern Ireland required radical overhaul.

Almost a year later the state response to these cases has been muted and inadequate. To respond to the lacunae the CAJ and British Irish Rights Watch organised a legal seminar to reflect on the ECHR decisions and specifically to focus on the appropriate role for inquests into lethal force deaths. The seminar took place on 23<sup>rd</sup> February and was attended by a mixed group of lawyers, governmental officials, coroners and judges. The event was sponsored by the School of Law at the University of Ulster.

Opening remarks were made by Michael O'Boyle, registrar at the European Court of Human Rights. He reflected on the jurisprudence of the European Court on the right to life generally – tracing the decisions made by the Court in the joined cases through a series of earlier pronouncements on lethal force incidents from Turkey. He stressed that that any state investigation into a lethal force death must be effective and adequate. Moreover, the obligation on the state to thoroughly investigate such deaths arises automatically. This means that the state cannot simply wait for the next of kin to raise the issues through legal proceedings. The state must take the investigative initiative. He stressed that the findings of the Court had direct consequences for ongoing legal proceedings concerning these particular deaths, and more generally for the organisation of investigations generally.

Following Michael O'Boyle, members of the government appointed Review of Coroner Services addressed the seminar. The Chair of the Review, Tom Luce outlined the composition and terms of reference for the panel. He stressed that the Review was 'fundamental' in nature and had a mandate to look across the board at the various investigative mechanisms available and their suitability to the United Kingdom. He referenced such incidents as the Alderhay hospital scandal and the Harold Shipman affair as having focused public attention on the role and adequacy of the inquest process. He outlined that particular attention had been sparked by the following categories;

- (a) Death Certification
- (b) Child Deaths
- (c) Elderly Deaths
- (d) Deaths broadly speaking 'in the hands of' the police/state custody.

Another member of the panel Deirdre McAuley outlined the work undertaken by the Review panel to date, and their regional approach to the issues under consideration.

Thereafter two local legal personalities took the floor. Seamus Treacy Q.C. addressed the local litigation context, focusing particularly on the legal trail pending in the Jordan case. As counsel for this case seeking to conclude the inquest into his death, he has sought to determine the legal basis upon which the Coroner intends to proceed following the ECHR determination. A number of judicial review proceedings have taken place (and decision is pending in another) to determine what exactly is the scope of the Coroner's interpretation of the Coroner's Rules as regards both the compellability of witnesses and the ability to deliver a verdict in Northern Ireland. Following Mr. Tracey, Mr. Justice Brian Kerr, who had withheld judgement in the Jordan judicial review gave his assessment of the judicial

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response to the decisions. While not wishing to stray into matters which were sub judice he indicated that change was inevitable in the legal rules which addressed the investigation into lethal force deaths. He concluded by reflecting that Coroners would be called upon to act with imagination and 'flexibility of procedure' in addressing the issues as they came before them on a case by case basis.

Finally, Professor Fionnuala Ni Aolain of the University of Ulster addressed the broader international human rights context. She reflected upon the other international human rights obligations to which the United Kingdom is bound in respect of the right to life, notably the International Covenant on Civil and Political Rights and the 'soft-law' standards such as the United Nations Standards on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Professor Ni Aolain argued that in constructing a new investigative standard to investigate the taking of life by agents of the state, the UK should be aware of the multiplicity of its international obligations. Moreover, the Review of Coroner's Services could avail of these standards to ensure that any new inquest process was compliant with all international human rights obligations.

In the ensuing discussion it was evident that the UK's response to the Jordan, Kelly, Shanaghan and McKerr decisions has been lacklustre. The substance of the Court's findings require a radical overhaul of investigative process in Northern Ireland. Thus far, a piecemeal approach has been adopted as individual governmental departments are being left to respond as issues arise in individual cases. There has been no concerted reflection or 'lead' department/official designated to lead a structured response to the cases themselves and the structural inadequacies the judgements identify.

A governmental response might be that the Review of Coroner Services constitutes such a root and branch overview. This is a mistaken characterisation. It is evident that the driving force behind the review of Coroner Services is the identification of certain key weaknesses within the English Coroner's system. While some of these weaknesses are shared by its Northern Ireland counterpart, it is disingenuous to suggest that the driving concerns about inquests in Northern Ireland are the same as those experienced in England and Wales. Lethal force and collusion deaths in Northern Ireland form a discrete class of cases about which there is overwhelming concern in this jurisdiction. One can imagine a scenario in which general reforms to make the Coroner's office more efficient and responsive are instituted in all three jurisdictions, and yet such reforms would completely fail to address the concerns raised by lethal force deaths in the Northern Ireland context.

Moreover, it is also evident that post the Jordan, Kelly, Shanaghan and McKerr cases the government is effectively making the Coroner's Inquest the primary site for interface with lethal force deaths. While it is quite clear that Northern Ireland's Coroners' Court are in need of substantial reform

– specifically to address the lack of parity of powers with their English counterparts – to place the onus of response on the Coroner's Court is both counterproductive and insufficient. Such a strategy fails to come to terms with the required reforms mandated by the ECHR and will inevitably continue to ensure that lethal force deaths will be perceived as continually inadequately addressed by the state.

It is evident that accountability for state use of lethal force and concerns of state collusion with paramilitary actors during the conflict in Northern Ireland is a complex task. It is not entirely evident that without some form of imaginative and responsive strategy the government will be able to set this issue to rest. However, it is equally problematic to pretend that these cases will easily fit into our existing legal mechanisms of accountability. These cases (and they may number in the hundreds) are sorely in need of a home. Such a home would provide the context within which the broad social, political and accountability issues could be cohesively and individually addressed. Moreover, such a process would acknowledge both the individual and group dimensions of the use of force – and thereby set in motion the procedures to ensure that such aspects of state behaviour are neither experienced individually nor communally again.

**Martin O'Brien**

***Up to date with CAJ***

There have been meetings of the Bill of Rights, Equality, Membership and Policing and subgroups.  
 CAJ staff and executive committee held their annual planning session (see page 3)  
 Paul spoke to a delegation of young European lawyers to discuss the work of CAJ  
 A seminar on article 2 and the inquest system in Northern Ireland took place (see pages 4 and 5)  
 Aileen attended a further meeting of the Ad-Hoc Consortium on Human Rights.  
 Paul attended the opening of the new offices of Tar Anall.  
 Tim attended a seminar/meeting in Belfast on Age Discrimination.  
 Tim attended a meeting hosted by the Parades Commission.  
 Martin was in Washington, US to attend events associated with St. Patrick's day.  
 Maggie attended an event in London hosted by National Union of Journalists in relation to the death of Martin O'Hagan.  
**Liz McAleer**

**CAJ - New Members Meetings  
 scheduled for 2002**

- **Thursday, 11th April at 7.00 pm**
- **Thursday, 12th Sept at 7.00 pm**

***All new members welcome***

## *Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane*

**The Lawyers Committee for Human Rights, an international human rights organization based in New York, released an extensive report on the Patrick Finucane case on February 12, 2002, the 13<sup>th</sup> anniversary of the murder. The report is entitled *Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane*. The Lawyers Committee has been working on the Finucane case for more than ten years. Our work on this case is part of our long-standing program for the protection of human rights defenders worldwide.**

Elisa Massimino, the director of our Washington, D.C. office, and I traveled to Belfast to launch the new report. We held a press conference on the morning of the anniversary. The panel at the press conference also included Geraldine and Katherine Finucane, the wife and daughter of Patrick Finucane – as well as Martin O'Brien of CAJ, Halya Gowan of Amnesty International, and Jane Winter of British Irish Rights Watch.

*Beyond Collusion* pieces together the evidence of state involvement in Patrick Finucane's murder that has emerged over the past 13 years. It also presents new allegations of state involvement in the killing and subsequent cover up. These new allegations are based primarily on information gathered during fact-finding missions to Northern Ireland and on a series of follow-up interviews.

### **Factual Findings**

One of the people we interviewed for the report was a former member of the British Army's Force Research Unit (FRU) who spoke to us under the pseudonym "Martin Ingram." The FRU was a covert Army unit that infiltrated agents into Northern Ireland's paramilitary groups. In 1987, the FRU infiltrated Brian Nelson into the Ulster Defense Association (UDA), the loyalist paramilitary group that murdered Patrick Finucane. Nelson served as the UDA's chief intelligence officer. According to various sources, including Ingram, Nelson prepared the targeting information on Finucane.

Ingram told the Lawyers Committee that there had been three separate UDA plans to murder Patrick Finucane. He said that the first two plans were thwarted, but the third succeeded. According to Ingram, both the FRU and Special Branch, knew there had been two attempts on Finucane's life in the run up to the murder. Despite this, Finucane was never warned of the dangers that he faced.

The Lawyers Committee also interviewed Johnston Brown, a recently retired officer from the RUC's Criminal Investigations Division. Brown has become well known in the press for his allegations that Special Branch blocked his and his partner's efforts to prosecute one of the two gunmen in the Finucane murder. Brown claims that a prominent loyalist confessed to the murder in 1991, but that Special Branch decided to recruit him as an informer rather than follow up on the confession.

In interviews with the Lawyers Committee, Brown told us that he had vehemently opposed Special Branch's decision not to pursue the prosecution. He said that as a result, both he and his partner had been harassed and threatened by Special Branch officers. He told us, for example, that Special Branch officers had warned the confessor about Brown's desire to prosecute him, a move that placed Brown's life in immediate danger. He also says that they tried to fabricate a loyalist threat against him to get him moved out of Belfast.

Brown gave a statement to the Stevens III team about the 1991 confession in April 1999. He told the Lawyers Committee that a Special Branch officer subsequently threatened to have guns planted in Brown's home. Brown also told us that although he has retired from the RUC and is in the Key Persons Protection Program, he still feels very much under threat from Special Branch.

### **Conclusions**

The Lawyers Committee believes that this and other information discussed in our report is more than sufficient to justify an immediate public inquiry in the Finucane case. In the final chapter of the report, we lay out our deep concerns about the current proposal to appoint "a judge of international standing" to "conduct a thorough investigation" of collusion in the Finucane case, as well as five other contentious cases. According to the 2001 Weston Park Agreement, the judge will be asked in all six cases to "review all of the papers," interview "anyone" who can help," and report back with recommendations (which could include the establishment of a public inquiry). The Lawyers Committee believes that this proposal could prevent the truth from emerging publicly in the Finucane case for many years to come. How is one judge – with currently undefined powers – to take on such a momentous task? The Finucane case, alone, has been under active investigation for much of the past 13 years.

In publishing *Beyond Collusion*, the Lawyers Committee hopes to force the UK government, by weight of evidence, to establish an immediate public inquiry in the Patrick Finucane case. The full report is available [www.lchr.org](http://www.lchr.org).

**Fiona Doherty**

## Case by Case

### Christy Walsh

**The Christopher Walsh case is a reminder that some miscarriage of justice cases from the days of Diplock courts remain unaffected by legal reforms. The Northern Ireland Court of Appeal last month determined that Walsh's conviction remains safe, and denied Walsh any further domestic remedies.**

Walsh was convicted of the possession of a coffee jar bomb in 1992. Walsh always vehemently maintained that he had not been in possession of the bomb, but that it had been present on the scene before he arrived and had been wrongly attributed to him by the Army. The forensic evidence in the case was inconclusive, and the case largely consisted of his word against that of the security forces. Walsh lost his appeal before the Northern Ireland Court of Appeal in 1994. When the Criminal Cases Review Commission (CCRC) was established in April 1997, his case was passed to them for consideration. In the meantime, Walsh was released after serving his sentence.

In March of 2000, the CCRC referred Walsh's case back to the Northern Ireland Court of Appeal. They cited six issues for reference, because in the CCRC's eyes, these areas had a potential bearing on the safety of his conviction. In their investigation into this case, the CCRC interviewed two new laypersons that had come forward after Walsh made an appeal in the *Irish News* for witnesses. The CCRC also received evidence from a new forensic expert, whose testimony cast doubt upon the Crown's conclusions. Additionally, the CCRC re-interviewed several of the military witnesses in this case, and this revealed inconsistencies from their original testimony at the time of trial. The CCRC was also concerned with the fact that Walsh's trial judge had drawn an adverse inference during a period when he did not have access to a solicitor, the fact that the trial judge had not made a good character direction, and the also allegations of non-disclosure of some relevant material by the Crown.

In June of 2001, after the reference back from the CCRC, the Northern Ireland Court of Appeal held a hearing on this case, at which time Mr. Walsh called two new witnesses – one of the civilian eyewitnesses and the new forensic expert. Despite this new evidence and the various potential weaknesses raised by the CCRC in their ruling, the Court of Appeal's January 2002 decision rejected all of the issues raised by the CCRC. They concluded that Mr. Walsh's conviction remained safe. CAJ has very serious concerns about this ruling and its implications.

The Court of Appeal was not persuaded by the fresh evidence, and quickly dismissed the additional forensic

testimony presented by the expert in the June 2001 hearing. In relation to the eyewitness testimony, the Court ruled not only that they found the new eyewitness testimony incredible, but they also drew a problematic inference from this, saying that "*the fact that such clearly false evidence was called by the appellant removes support from his case rather than adding it.*" CAJ maintains that the reliance on fresh evidence, which Mr. Walsh did in accordance with his rights in the Appeal process and which was accepted by the CCRC as potentially rendering the conviction unsafe, should not be grounds for the Court to cast additional doubt on his trustworthiness.

The Northern Ireland Court of Appeal also disregarded the inconsistencies raised by the new statements from military witnesses, stating that it was not a desirable practice for witnesses to be re-interviewed after a trial "by the defendant's solicitors." Contrary to what the Court's decision asserts, the re-interviewing in this case *was not* conducted by the appellant's solicitors, but rather by the CCRC in its proper capacity to gather information through the course of its investigation. Clearly the CCRC felt this re-interviewing was a desirable practice in this case, and that the inconsistencies that resulted warranted consideration by the Court of Appeal. In a move that appears to challenge the integrity of the CCRC, the Court of Appeal refused to consider these contradictions.

The Court appears to accept the appellant's argument that the adverse inference without legal advice may have constituted a breach of Article 6's right to a fair trial under the European Convention on Human Rights. In its ruling, the Court of Appeal acknowledged that if a defendant has been denied his or her right to a fair trial under Article 6, it is almost inevitable that the conviction will be regarded as unsafe and unsatisfactory. Despite this fact, the Walsh case in their view "constitutes an exception to the general rule." It is not clear from the judgement why the Court of Appeal believes that the Walsh case is an exception to the general rule that a breach of Article 6 inevitably renders a conviction unsafe and unsatisfactory. They suggest that the conviction remains safe largely because they felt that the new eyewitness testimony was so egregiously unbelievable. On the bases it was taken to constitute additional evidence of appellant's guilt, to the extent that this additional evidence of guilt mitigates the breach of Article 6. CAJ remains unconvinced by the reasoning behind this conclusion.

Mr. Walsh sought leave to appeal to the House of Lords, but the Northern Ireland Court of Appeal rejected this request last month. He now plans to take his case to the European Court of Human Rights as soon as possible. CAJ will continue to follow this case... **Katie Wiik**

## Civil Liberties Diary

**Feb 1** According to the document "Equity, Diversity and Interdependence Framework", developed by the University of Ulster and Counteract, a trade union anti-intimidation unit, organisations and businesses in NI must learn to promote trust and equality in the workplace, if the economy is to prosper and peace is to flourish.

**Feb 2** Kieran Kearney from The Falls Community Councils, has called on the Stormont Executive to dedicate urgent resources to targeting social need in West Belfast. This comes after the publication of a new report confirmed that West Belfast is still one of the most chronically deprived areas in the north.

**Feb 4** An estimated 40,000 people attended the Bloody Sunday commemoration in Derry.

The Chief Constable and the Police Ombudsman will have separate discussion with the Policing Board, as efforts intensify to resolve the Omagh bomb controversy. The onus is on the Policing Board, which includes representatives of the SDLP, UUP and DUP to resolve the dispute.

**Feb 5** The Bloody Sunday Inquiry was halted yesterday by last minute applications on behalf of police witnesses. The move by an unknown number of former RUC officers meant the hearings in Derry were rescheduled until the applications were heard in full.

**Feb 7** The Policing Board met to finalise a compromise package which will advance the Omagh bomb enquiry and help end the stand off between the Police Ombudsman and the Chief Constable. Yesterday a working group of 4 members worked on a formula which falls short of demanding resignation and which is centred on proposals which will enhance confidence in the bombing investigation.

**Feb 12** Leading human rights groups, including CAJ and Amnesty International marked the 13<sup>th</sup> anniversary of the murder of Pat

Finucane, by denouncing the lack of a public enquiry on the killing. The groups claimed that evidence suggested that there was official collusion by both the army and the police in his killing and a subsequent cover up by both.

Sir George Quigley, appointed to reassess the Parades Commission has promised to conduct a "thorough rigorous review of the way contentious marches are handled in Northern Ireland. He stated that his aim was to achieve more consensus on the issue and temper some of the controversy.

**Feb 13** The Lawyers Committee for Human Rights, based in New York has joined with Pat Finucane's widow Geraldine, and called on Tony Blair to immediately set up a public inquiry into his murder, rejecting as a waste of time, plans for an international judge to decide if a tribunal is necessary.

In papers lodged in the high court in Belfast, the Police Association launched a legal bid aimed at quashing the Police Ombudsman's highly critical report of the RUC's handling of the Omagh bomb investigation. They claim that Nuala O'Loan's investigation was beyond her powers.

**Feb 19** Taoiseach, Bertie Ahern and Tony Blair met in Downing Street. High on their agenda was their search for an eminent international judge to determine the form of inquiry to be held into allegations of "collusion" in the murders of Patrick Finucane, Rosemary Nelson, Robert Hamill, Lord and Lady Gibson, Chief Superintendent Harry Breen, Superintendent Bob Buchanan and Billy Wright.

**Feb 20** John McDevitt who was jailed for life for his part in the murder of a British soldier is to test a European landmark ruling in a bid to have his conviction quashed. He was convicted by a Diplock

court despite concerns over his detention of Castlereagh holding centre. The move to seek on appeal comes in the wake of a landmark ruling by the European Court of Human Rights, on the treatment of defendants at detention centres.

**Feb 23** The West Belfast Partnership Board hosted a consultation day recently to discuss the rights of children as part of an on going campaign to give West Belfast residents their say in the proposed Bill of Rights for Northern Ireland. Geraldine McAteer, Chief Executive of the Partnership said the Bill of Rights will continue to be a key consideration of the Board over the next 12 months.

**Feb 26** Applications for places at Holy Cross Primary school in North Belfast, which was at the centre of a loyalist protest last year, have dropped by half from 30 to 17. Principal Anne Tanney said she realised people had real fears about going to the school and hoped that eventually pupils would return to Holy Cross.

*Compiled by Moya Gahan from various newspaper sources.*

## Just News

**Just News** welcomes readers' news, views and comments.

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