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re Bloody Sunday.

JUSTICE DENIED

A Challenge to Lord Widgery's Report on "Bloody Sunday"

by

SAMUEL DASH

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The International League for the Rights of Man

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CHAIR

Why This Report

This report has been prepared under the auspices of the International League for the Rights of Man, a private organization, having consultative status with the United Nations. The writer of the report, Professor Samuel Dash, Director of the Institute of Criminal Law and Procedure of Georgetown University Law Center, served as a consultant to the International League in the response it made to an urgent request from the National Council of Civil Liberties* of England, which is an affiliate of the International League for the Rights of Man.

Tony Smythe, the dynamic General Secretary of NCCL called on us to assist his organization in their efforts to assure a fair investigation of the killing and wounding of Catholic civilian residents of Londonderry** by British paratroopers on January 30, 1972. The Catholic community leaders in Londonderry and the families of the dead and wounded had decided to boycott the official Inquiry into the deaths to be conducted by the Lord Chief Justice of England, The Right Honorable Lord Widgery.

NCCL had attempted to send observers to Londonderry to cover the events surrounding the March on January 30; these observers however were stopped by the military. Later that day they were able to reach the Creggan area and to work with the Derry Civil Rights Association and the Derry Citizens Defense Committee in

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* NCCL is located in London at 15 Camden High Street, N.W. 1.

** Londonderry is the official name of the city and shall be used in this report. However, the Catholic community uses only Derry when they refer to the city.

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the collection of many civilian eyewitness statements. These statements were entrusted to NCCL, whose staff directly participated in collating them with reference to individual deaths and woundings.

NCCL had sought, without success, to have stablished an international tribunal to hear the eyewitnesses who refused to appear before the Widgery Tribunal. Only several days before the Tribunal was to begin hearing testimony NCCL made its emergency call to the International League for the Rights of Man. Mr. Smythe of NCCL sought our assistance in sending impartial observers immediately to Northern Ireland to study the events of January 30 and the Widgery Tribunal procedures for the purpose of providing guidance to the families of the dead and wounded, and Catholic community leaders of Londonderry, as to whether they should seek the creation of an international tribunal to hear their testimony, or should, instead, participate in Lord Widgery's official Inquiry, despite their dissatisfaction with the Inquiry.

As Chairman of the International League, I asked Professor Dash to join me in going to Northern Ireland in the hope that foreign lawyers, acting for an international organization, and having no axe to grind, might be able to help in a situation fraught with bitterness and distrust. We flew to London on February 18, 1972. In London, we were joined by Professor Louis Pollak, former Dean of the Yale Law School, who was spending a Sabbatical year in England. Tony Smythe was our indispensable advisor and guide when we flew to Belfast and then drove to Londonderry on Sunday, February 20, 1972.

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It is not necessary here to relate the details of our mission, which was generally rewarding, and at times, dramatic. It is sufficient to say that we quickly decided it would be inappropriate for us to promote an ad hoc international tribunal to hear the civilian eyewitnesses of Londonderry who had not made themselves available to the Widgery Tribunal. We chose, instead, to go to Coleraine, where Lord Widgery would conduct the Inquiry, to observe the first session of the Tribunal on Monday, February 21, 1972. This would permit us to make our own assessment of the kind of forum the Inquiry would provide for the Catholic community of Londonderry.

We became satisfied that the procedures adopted by Lord Widgery would provide the families of the dead and wounded and civilian eyewitnesses with a fair opportunity to present their own testimony in an open hearing, attended by the press of the world, and to permit their counsel to fully cross examine the army witnesses. That evening, we returned to Londonderry and advised the families and Catholic community leaders that it was our professional opinion they should actively participate in the Widgery Inquiry. After deliberating most of the evening, near midnight, they voted. Their decision was to go to Coleraine and offer their testimony and the services of their counsel to the Widgery Tribunal.

The following morning, the second day of the Inquiry, Lord Widgery warmly welcomed the participation of the families. Their counsel immediately took part in the proceedings and began to cross examine witnesses. From this moment, the Inquiry became an

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adversary proceeding and produced a record which made this report possible.

The Catholic community of Londonderry were by and large not confident about the kind of report Lord Widgery would write. But after their participation in the Inquiry, they were bound to be embittered by the realization that the story of "Bloody Sunday" as they saw it and knew it, would not be told to the world.

This, then, is the reason why the International League for the Rights of Man offers this report. The League is in possession of the entire record of the Inquiry, not as a mere volunteer, but as a participant at the outset of the Inquiry in a mission which made this record possible. The League in response to the request of the National Council of Civil Liberties played an active role in assisting the families of the dead and wounded and community leaders in their decision to end their boycott of the Inquiry and fully participate in the proceedings of the Widgery Tribunal. It, therefore, believes it is obligated to the people it counseled to use the established legal process to seek justice to publish a report that would attempt to fairly and objectively reflect the record of the Inquiry, which these people and their lawyers helped makde. While we may differ with Lord Widgery, it is commendable his Inquiry did take place, and promptly.

The report is the work of Professor Dash. He spent approximately 300 hours during the entire month of May reading and analyzing the twenty volumes comprising the record of the Inquiry, as well as hundreds of statements of civilian eyewitnesses, and writing the report. In asking Professor Dash to undertake the task, the League believed he was exceptionally qualified as an

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experienced investigator, trial lawyer, and legal scholar. He has been District Attorney of Philadelphia, Pennsylvania as well as a prominent criminal defense lawyer. He has been both President of the National Association of Criminal Defense Lawyers and Chairman of the Section of Criminal Law of the American Bar Association.

Professor Dash gained special recognition as a fact finder when he made his nationwide investigation of wiretapping for the Pennsylvania Bar Endowment, which was published as a book entitled "The Eavesdroppers". In his present position as Professor of Criminal Law and Director of the Institute of Criminal Law and Procedure of Georgetown University Law Center, he has made important contributions to our knowledge of how the American system of criminal justice works.

In writing this report, Professor Dash came fresh to the facts as they appeared in the record without any bias or prejudgment. He had no knowledge of, or relationship with the problems in Northern Ireland other than that which is possessed by a reasonably well-informed reader of newspapers and journals in the United States, prior to his participation in the Northern Ireland mission of the International League for the Rights of Man. Indeed, he has enjoyed a pleasant and friendly relationship with many members of the English Bench and Bar, including the Lord Chief Justice, and respectes them as representatives of a profession dedicated to traditions of justice common to our two countries. It is as a lawyer acting within these traditions that he has written this report at the request of the International League.

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Since the Northern Ireland mission of the International League was performed at the request of the National Council for Civil Liberties in England, we are transmitting this report to NCCL for whatever further action it deems appropriate.

John Carey
Chairman
International League for the Rights of Man

June 7, 1972

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JUSTICE DENIED

A Challenge to Lord Widgery's Report on "Bloody Sunday"

SUMMARY OF FINDINGS

1. The record of the Widgery Tribunal justifies a finding that the 13 known civilian dead were unarmed when they were killed on January 30, 1972 in Londonderry, and that they were shot either recklessly or deliberately by paratroopers of the First Batallion Parachute Regiment.

2. The military plans and strategy approved in advance by the Commander of Land Forces in Northern Ireland and the leadership of the Stormont government for dealing with the civil rights march in Londonderry on January 30 reveal that these officials should have known that they were exposing thousands of peaceable citizens to a high risk of death or serious bodily injury.

3. Those in command decided to accept a high risk of civilian deaths and injuries, despite the urgent warning of this risk by the Chief Superintendent of Police in Londonderry and his strong recommendation that the march be permitted to take place without Army military interference. This senior police official, who had greater experience with the Catholic community of Derry than the higher authorities who ignored him, informed the senior army commanders that he was satisfied that the marchers would be non-violent, with the possible exception of a hooligan fringe group, made up mostly of teenagers, whom we suggested could be photographed, if they rioted, permitting arrests at a later time.

4. The Northern Ireland Civil Rights Association (NICRA) which organized the march on January 30, planned, and took steps to

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insure, a non-violent march. They wanted to avoid any confrontation with military and police forces. Without any support from the record of testimony before him, Lord Widgery apportions a major share of the responsibility of the civilian deaths in Londonderry on January 30 to NICRA. His grounds were that the march made "a clash between the demonstrators and the security forces almost inevitable." But NICRA had informed the Chief Superintendent of Police of their plans to assure that the march would be non-violent. They had no way of learning about, or anticipating, the secret military strategy for the march, which involved substantial Army reinforcements, and they did not expect the special assignment of an aggressive combat paratroop regiment for arrest operations.

5. The senior Army officers' claimed expectation that the march would be used as a cover by a large number of terrorists, armed with guns and bombs, who would attack the military and police forces is unsupported in the record of the Widgery Tribunal. It is significant that Lord Widgery, in his report, omits any conclusion supporting this Army claim.

6. The record supports a finding that there were some civilian gunmen in the Bogside area on January 30 who occasionally shot at the paratroopers after they charged into the Bogside and started to shoot at civilians. But the presence of some gunmen did not justify the paratroopers in firing aimed or reckless shots at unarmed civilians.

7. The Commander of Land Forces in Northern Ireland made a reckless decision when he personally assigned the First Batallion Parachute Regiment to Londonderry with the special mission to

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conduct arrest operations. His action made a military attack on civilian demonstrators more likely, creating a high risk of civilian deatjs and injuries. The record of the Inquiry shows that the First Batallion Parachute Regiment had a notorious reputation in Northern Ireland for brutality to civilians. The paratroopers were trained to be quick on the trigger to kill in aggressive warfare against a dangerous enemy and were singularly unsuited for action against civilian demonstrators or rioters.

8. A large scale arrest operation by the paratroopers was unjustified. The main body of the marchers had accepted the military action to contain the march in the Bogside area and had avoided any confrontation with the military or police forces. Although a hooligan group had thrown an assortment of missiles, none of which were explosive, at the soldiers behind the containment barriers, the soldiers were successful in dispersing these rioters by the use of rubber bullets, CS gas and a high pressure water canon. Photographs had been taken by the Army and arrests of the rioters could have been made later, at a time which would not endanger the large number of peaceable civilians who were in the Bogside area because of the march.

9. The record of testimony before Lord Widgery raises serious questions as to whether a formal order authorizing the arrest operation by the paratroopers was in fact issued.

(a) The arrest operation was required to be authorized by the brigade commander and there is persuasive evidence in the record placing in doubt Lord Widgery's conclusion that the brigade commander gave the order to launch the arrest operation.

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(b) The official brigade log entries of orders for that afternoon show that Support Company, which fired all the Army live rounds on January 30, never received any order to leave their barrier.

10. If the brigade commander issued an order for arrests, the only order, which is attributed to him in the record, authorized a very limited arrest operation by Company C of the paratroop regiment in the perimeter area of the Bogside. It specifically prohibited a "running battle down Rossville Street." The paratroopers of both Company C and Support Company violated this order and did charge down Rossville Street where all the known civilian deaths occurred. The brigade commander's later interpretation of this order at the Inquiry, in support of the paratroopers' action, was unconvincing. However, it was understandable in light of the tragedy that had occurred. Lord Widgery finds that the kind of arrest operation carried out by the paratroopers was covered by an order by the brigade commander and dismisses the official Brigade log entry, supporting a contrary finding, as having been mistakenly entered.

11. The strong weight of the civilian testimony heard by the Tribunal, including the numerous eyewitness statements which were submitted to the Tribunal, support a finding that the soldiers first fired on the civilians immediately upon leaving their Army vehicles, rather than Lord Widgery's finding, which accepts the paratroopers version that they were fired on by civilian gunmen before they returned fire.

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12. Although some of the paratroopers claimed they came under steady and heavy firing when they entered the Bogside to make arrests, none of the many paratroopers in that area was even slightly wounded. The testimony of Army commanders on the spot and of all the civilian witnesses does not support this claim of heavy civilian fire, which must be considered as spurious.

13. The record justifies a finding that none of the known dead or wounded held or threw any nail bombs at the time he was shot. Lord Widgery's report generally supports this finding. However, the explanation Lord Widgery provides for the paratroopers that they could have reasonably mistaken a brick thrower for a nail bomber is totally unsupported by the paratroopers' own testimony.

14. The record compels the conclusion that the only nail bombs claimed by the Army to be found in the possession of any of the known dead were deliberately planted in Gerald Donaghy's clothes. In the face of clear and convincing testimony supporting this conclusion, Lord Widgery's statement in his report that the argument of the planting of these bombs is speculative is unacceptable.

15. A reading of Lord Widgery's report in its entirety, together with the testimony of the paratroopers, make unacceptable his finding that the paratroopers were, for the most part, telling the truth.

Further, Lord Widgery neglected to call many additional civilian eyewitnesses who could give evidence on a number of crucial matters which were the subject of conflicting testimony between Army and civilian witnesses he heard. These additional civilian eyewitnesses had given written statements, which had been submitted to the Tribunal. Many of these witnesses

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would have testified if they had been invited to the Inquiry by the Tribunal.

16. Lord Widgery was unjustified in deciding that the evidence concerning the wounding, as opposed to the killing, of civilians was not germane to his Inquiry. The wounding of civilians by the paratroopers should have been a crucial subject of the Inquiry. Findings as to the woundings were necessary to help resolve the issues concerning the judgment used by the paratroopers in shooting at the civilians who died on January 30. Yet Lord Widgery ignored the woundings in his Report, other than by some incidental references.

17. The particular forensic test used to determine whether any of the known dead had fired a weapon is subject to too many limitations to justify any positive findings. This test is not prefered by major crime laboratories anywhere. Thus, Lord Widgery's conclusion that "there is strong suspicion that some (of the known dead) had been firing weapons or handling bombs in the course of the afternoon and yet others had been closely supporting them" is without reliable scientific foundation.

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> "For the situation in question (the amount of shooting in the Bogside on January 30) a great number of possibilities of contamination exists and it would indeed be frightening to a forensic scientist trying to interpret the results. No forensic scientist could be as effective in this situation as he would otherwise be in a routine homicide investigation. For this reason, the results of Dr. Martin would be of limited use only in this situation."

Dr. Martin's admissions on cross examination as to the uncertainty of his findings due to the numerous possibilities of lead contamination should have caused Lord Widgery to draw no conclusion at all based on the forensic evidence submitted at the Inquiry. However, it is obvious that Lord Widgery was not aware of the questionable validity of the wet chemical test for lead, alone, which Dr. Martin used. With the additional opinion of such an authority in this field as Dr. Krishnan, it would seem clear that there is now no reliable basis for even Lord Widgery's finding of a "strong suspicion" that some of the known dead fired weapons.

IX. Conclusion

Though this report is already long, it has only outlined the record of the Inquiry into what happened in Londonderry on January 30, 1972. Many more pages could be written. But it is believed that enough has been said for the purposes of this report to show that an official Inquiry which began with promise did not fulfill that promise.

It is not enough to set the record straight, as this report attempts to do. There remains the unfinished business to see that a full measure of justice is provided for those who were killed and wounded, as well as their families. Great Britain and the world cannot simply walk away from "Bloody Sunday".

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