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MRS M^cALISKEY'S TESTIMONY ON 5 OCTOBER
PAGES 3-23

3

1 TUESDAY, OCTOBER 5, 1993 9:15 O'CLOCK A.M.

2 PROCEEDINGS

3 THE CLERK: All rise. Hear ye, hear ye, all persons
4 having business with the United States District Court for the
5 Northern District of California shall now draw near. Give your
6 attention and you shall be heard. This Court is in session,
7 the Honorable Barbara A. Caulfield presiding.

8 THE COURT: Good morning. Please be seated. Good
9 morning, Mrs. McAliskey. For the record, you're still under
10 oath, please ma'am. Mr. Zanides.

11 MR. ZANIDES: Thank you, Your Honor.

12 JOSEPHINE MC ALISKEY, DEFENDANT'S WITNESS, RESUMES STAND

13 CROSS EXAMINATION

14 BY MR. ZANIDES:

15 Q. Good morning, Mrs. Mrs. McAliskey.

16 A. Good morning.

17 Q. My name is Mark Zanides and I represent the Government in
18 the case. Mrs. McAliskey, you have testified that the civil
19 rights movement arose in 1968, and was designed to attempt to
20 secure reforms in housing, voting and employment. Is that
21 correct?

22 A. Yes, and the removal of the Special Powers Act from the
23 statute book.

24 Q. And it's true, is it not, that the rate pay or requirement
25 was removed in 1969?

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1 A. No, it was removed in the early 1970's.

2 Q. It was removed not long after the civil rights movement

3 arose in Northern Ireland?

4 A. It was removed shortly before the abolition of Stormont

5 and when the Stormont Parliament refused to initiate any

6 further reforms and the Ulster Defense Association and the

7 Ulster Loyalist workers actually formed a general strike that

8 the Parliament was abolished because that was the only reform

9 they were prepared to introduce, and they introduced it --

10 Q. Excuse me, excuse me, ma'am.

11 A. -- under duress.

12 Q. I just asked when, okay? Can we --

13 A. Well, in 1972, --

14 THE COURT: Mr. Zanides --

15 THE WITNESS: -- just shortly --

16 THE COURT: -- just a minute. If you wish to have a

17 witness answer your question, address the Court please. Don't

18 argue with the witnesses.

19 MR. ZANIDES: Your Honor, I would invite the Court to

20 instruct the witness that if I ask when, and the answer is --

21 that's all that the question requires.

22 THE COURT: Next question please, Mr. Zanides.

23 BY MR. ZANIDES:

24 Q. It was abolished in the early '70's; correct Mrs.

25 McAliskey?

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1 A. Sorry, which -- the legislation or the Parliament?

2 Q. The rate payer requirement.

3 A. It was, yes, abolished in the 1970's.

4 Q. And in connection with housing, in 1971, didn't the Housing
5 Executive Act provide that public housing and its allocation
6 would become the responsibility of a central housing authority
7 called the Northern Ireland Executive?

8 A. That is correct.

9 Q. And, in fact, there was improvement on the question on the
10 basis of housing allocation as a result; isn't that true?

11 A. There was minimal improvement, but Northern Ireland still
12 has significantly the shortest housing staff and worse housing
13 conditions of the whole of western Europe.

14 Q. There was improvement; isn't that true?

15 A. There was minimal improvement, not sufficient to stay for
16 the public unrest.

17 Q. And there was the expenditure of considerable sums of money
18 in an effort to catch up with the housing deficiencies; isn't
19 that true?

20 A. Considerable amounts of money were spent and almost every
21 project built has since been demolished on the order of the
22 Government because of its substandard quality.

23 Q. In 1973 the Northern Ireland Constitution Act 1973 voided
24 any Northern Irish legislation to the extent that it
25 discriminated against any person or class of persons on the

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1 ground of religious belief or political opinion; isn't that
2 correct?

3 A. No, that is not correct.

4 Q. Now, you have -- well, is it your testimony that there is
5 legislation which is -- permits facial discrimination?

6 A. No, that wasn't the question that you asked. It didn't
7 void anything. The Northern Ireland Constitution Act merely
8 reaffirmed that discrimination was unlawful. A series of
9 further acts have been passed since recognizing the ineffectual
10 nature of the legislation and further legislation is now being

11 considered to replace -- in fact, four separate piece of
12 legislations, all of which have stated the obvious, that
13 discrimination is unlawful. It, nonetheless, is rampant.

14 Q. Mrs. McAliskey, with regard to employment, you would agree,
15 would you not, that the number of jobs available is affected by
16 the economic climate in which the economy finds itself; you
17 would agree with that, isn't that --

18 A. I would agree with that, yes.

19 Q. And I take it you would further agree that the terrorism
20 which has been employed by the IRA has discouraged investment
21 in Northern Ireland; isn't that true?

22 A. I disagree with that.

23 Q. So, it's your view that the bombings of commercial targets
24 have not discouraged investment in Northern Ireland; is that --

25 A. It is a statistical fact that despite the bombings, the

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1 profit margin and the man hours, the profit margin is higher in
 2 Northern Ireland than anywhere else in western Europe for
 3 outside investment, and despite 25 years of political upheaval,
 4 the number of man hours or woman hours lost per day in industry
 5 through absenteeism is the lowest in western Europe.

6 Q. It's not your --

7 A. It is, therefore, not my opinion --

8 Q. All right, it's not --

9 A. -- in fact, the -- in conjunction with that, the large
 10 financial offers made by the Government to outside investors
 11 mean that we have a regular inflow of investors. They leave
 12 when the tax concessions and the profit margin is no longer in
 13 their favor. They go back to Puerto Rico, or --

14 Q. And the tax concessions are offered by the Government in
 15 part to overcome the discouragement that is created by
 16 terrorist bombing campaigns --

17 A. No, the tax concessions have been --

18 Q. Excuse me.

19 A. -- an integral part of the state since its creation.

20 They're also offered equally successfully in the Republic of
 21 Ireland. It is difficult to retain outside investors for
 22 longer than seven years, which is the duration of the -- the
 23 financial package.

24 Q. Your current employment, Mrs. McAliskey, I don't think we
 25 heard that yesterday. Are you currently employed with the

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1 Irish Award Citizen's Organization?

2 A. No, I am currently unemployed and except for a period with
3 the Irish World Heritage Organization where I was allowed to
4 work for a year on the scheme for chronically unemployed
5 persons, which position I had to fight for. I have been
6 unemployed and unemployable all my life.

7 Q. You meant --

8 A. Apart from the period I served in Parliament --

9 Q. Excuse me. You mentioned your conviction yesterday. You
10 were not interned, were you, Mrs. McAliskey?

11 A. No, I was sentenced.

12 Q. You were convicted of a criminal offense?

13 A. I was convicted of riotous behavior, incitement to riot and
14 occasioning actual bodily harm to a police officer.

15 Q. Now, it's correct -- yesterday you were asked as a result
16 of the attack on you, was anyone in your family awarded
17 monetary damages; do you recall that question?

18 A. I do, yes.

19 Q. And you testified that your children received some funds;
20 isn't that correct?

21 A. Yes.

22 Q. But you didn't tell the Court about -- whether anybody else
23 had received monies.

24 A. My husband secured damages for his personal injuries and
25 loss of earnings.

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1 Q. And he got 100,000; is that correct?

2 A. No. He got awarded 50,000. It took him 10 years to

3 receive payment and the Court ordered that interest be paid, by

4 which time he owed 70,000 for living 10 years without income.

5 Q. You testified that you were not entitled to damages because

6 you had been convicted of an offense; is that correct?

7 A. Yeah, that is correct.

8 Q. And that statute applies to persons --

9 A. All persons who have been convicted of criminal offenses.

10 Q. And that may -- that also includes Protestant persons; is

11 that correct?

12 A. That includes all persons, members of the Protestant or

13 Unionist community who have served terms of imprisonment are

14 not entitled to payment either.

15 Q. Now, you received funds to compensate you for your

16 injuries; isn't that true?

17 A. No, I did not. I was given an ex gratia payment without

18 acceptance of liability to damage done to me 'cause he insisted

19 on taking the case to the European Court of Human Rights. The

20 Government gave me an ex gratia payment, at that time, because

21 I believe that case would not stand at the European Court of

22 Human Rights. Because of the extreme poverty of my family, my

23 husband accepted the payment, and accepted his own --

24 Q. You were not --

25 A. 50,000 for damages at that time.

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1 Q. You were not statutorily entitled to it; is that correct?

2 A. No.

3 Q. Yet you received a payment of approximately 50,000; is

4 that correct?

5 A. No, I did not. I received an ex gracia payment of 20,000

6 on the condition that any legislative activity by myself would

7 then cease. At which time, my family owed 25,000 and again,

8 the Court ordered that that should be paid with interest

9 because it took 10 years to receive it. My children, who were

10 the persons entitled to compensation for total innocence, my

11 children were the people who received 1,000, 1,500, and

12 2,000 to be paid to them with interest when they all reached

13 the age of 18. But they were the only ones affected by the

14 legislation of which I was speaking.

15 Q. You have stated yesterday that the Special Powers Act, by

16 the way, the Special Powers Act was replaced by certain other

17 legislation; correct?

18 A. The Special Powers Act was abolished and then Stormont

19 Parliament was abolished and then after the Stormont

20 Parliament was abolished, Britain became responsible before the

21 international community for the Northern Ireland legislation.

22 So, it is not correct to say that one series of legislation

23 automatically replaced the other. It was, the interim was a

24 period of protracted argument before the European Human Rights

25 Court.

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1 MR. ZANIDES: Your Honor, could I ask the Court to ask
2 the witness to confine her answer to the question?

3 THE COURT: I think she was answering the question,
4 Mr. Zanides. Put another question, please.

5 BY MR. ZANIDES:

6 Q. You referred, Mrs. McAliskey, to the Payment of Debts Act
7 yesterday; correct?

8 A. Yes.

9 Q. That Act is no longer in force; is it?

10 A. Yes, it is. It has been incorporated into everyday
11 legislation, used to be part of emergency legislation. It
12 remains on the statute book, but since the rampant red strike
13 for which it was used, has now come to an end. It is not
14 operative. It was originally permanent, or emergency
15 legislation and now the authority to remove payment from
16 debtors directly still remains as part of the civil law as
17 opposed to the emergency law.

18 Q. And what statute is that, Mrs. McAliskey?

19 A. As you even pointed out yesterday, I'm not a lawyer, but
20 I'll go and look it up for you and let you know.

21 Q. You stated yesterday that the United Kingdom derogated from
22 the European Convention on Human Rights with regard to that
23 statute?

24 A. It has -- yes, with regard to a number of statutes which
25 allowed --

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1 Q. With regard to that statute?

2 A. Which statute?

3 Q. The Public Order of --

4 A. Yes.

5 Q. -- sorry, the Payment of Debts Act.

6 A. No, the Emergency Provisions Public Order and Prevention of
7 Terrorism Act. That act, as you rightly now point out, is part
8 of the civil law.

9 Q. So that I understand your testimony, you are not saying
10 that the United Kingdom derogated from its obligations under
11 the European Convention with regard to the Payment of Debts
12 Act?

13 A. May well have done.

14 Q. Well, you testified yesterday that it did; isn't that
15 correct?

16 A. I may have done, Your Honor, in speaking of all of the
17 emergency legislation.

18 Q. But, that's not correct --

19 A. And I may, in that sense, been incorrect on the financial
20 penalties of the Payment of Debt Act. Basically, the Payment
21 of Debt Act simply meant that if you withheld for political
22 reasons monies owed to the Government, the Government could
23 seize such monies from your wage packet without your consent.
24 I'm quite sure that had we taken that case, the European Court
25 of Human Rights, they would have derogated.

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1 Q. Well, the fact is Mrs. McAliskey, there was no derogation;
2 is that correct?

3 A. None, probably not in that particular clause. You could be
4 right there. But they did --

5 Q. Now, excuse --

6 A. -- derogate on the right of silence, on the right of
7 treatment of suspects, on the right of holding people for
8 periods in excess of 48 hours, on the right of a person to
9 remain silent in their own defense. So, whether they derogated
10 on the right to steal money out of your pocket, I'm not sure.

11 Q. Mrs. McAliskey, you also stated yesterday that the United
12 Kingdom derogated from the so-called Public Order legislation;
13 isn't that true?

14 A. That is true.

15 Q. And that, in fact, is not the case; is it?

16 A. That is the case.

17 Q. The Public Order legislation permits the police to re-route
18 parades; isn't that correct?

19 A. Yes.

20 Q. And it is commonly used to prevent one group or another
21 from parading into the other group's area and creating a
22 dangerous situation; isn't that correct?

23 A. No, it is more commonly used to prevent Nationalists from
24 marching in thoroughfares and to protect Loyalists while
25 marching through Nationalists areas.

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1 and, therefore, being permitted to be in breach of its
 2 convention requirements were beginning to try the patience of
 3 the Court, and Britain was specifically asked then to remove
 4 her signature from certain aspects. That's a step further than
 5 accepting temporary derogation. And Britain formally derogated
 6 from her obligations under Mrs. Thatcher when she removed the
 7 right to remain silent in your own defense from those accused
 8 before the Court.

9 Q. And that case was litigated before the European Court of
 10 Human Rights; isn't that correct?

11 A. Which case?

12 Q. The Branagan case.

13 A. On the question of the right to remain silent.

14 Q. On the question to be taken immediately to a judicial
 15 officer.

16 A. No, that's a different case before the Human Rights. The
 17 right to remain silent is a different case.

18 Q. In Branagan, the Court held that a power of detention for a
 19 maximum of seven days under Section 14 of the PTA was justified
 20 in light of the emergency; isn't that true?

21 A. Yes. That's a consistent ruling. It doesn't say that
 22 Britain is not in breach of her democratic rights; it says that
 23 in the light of the emergency, Britain would be permitted to
 24 remain in breach of the convention while not being asked to
 25 remove her signatory from the entire convention.

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1 Q. It is correct, is it not, that the convention by its terms,
2 permits a derogation, so that the Court rule --

3 A. Yes, it may well --

4 Q. Excuse me.

5 A. -- permit a derogation.

6 Q. Excuse me, I'm not finished.

7 A. Sorry.

8 THE COURT: The lawyer has to finish his question. I
9 won't let him interrupt you if you don't interrupt him.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Zanides.

12 BY MR. ZANIDES:

13 Q. So that, in fact, the U.K. is not in breach of the European
14 Convention in that respect, in respect of the Branagan case;
15 isn't that correct?

16 A. No, I think, as you said yourself, sir, the Court, European
17 Court permitted Britain to be in derogation of her obligation
18 because of the emergency. The Court did not say that she was
19 not in breach of the principle, but the Court permitted the
20 derogation because of the emergency.

21 MR. ZANIDES: We will offer the case, Your Honor.

22 THE WITNESS: But that was, if I might clarify, there
23 were a number of clauses, and Britain, at what might best be
24 described as a running battle and there are endless cases taken
25 off specific clauses which, therefore, take up the whole

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1 question of the Act. And, therefore, there have been cases on
2 the right to silence. The cases you refer to, the period of
3 detention, the period of access to a solicitor, the treatment
4 of persons, all of those cases which constitute different
5 specific cases of taking up different aspect of the Human
6 Rights Convention.

7 BY MR. ZANIDES:

8 Q. Now the right to vote in Northern Ireland, there is a
9 secret ballot; is there not, Mrs. McAliskey?

10 A. There is, yes.

11 Q. You testified yesterday that people are militarily punished
12 if they vote in a manner not pleasing to the Government?

13 A. That is right.

14 Q. And I take it that, well, you were not saying I presume
15 that the Government secretly records how people vote; you're
16 not saying that, are you?

17 A. It's much simpler than that. I am saying, and I'm saying
18 with a great weight of evidence behind it, that people are
19 militarily and economically punished for voting Sinn Fein. In
20 the area in which I live, people vote Sinn Fein. They elect
21 Sinn Fein councillors. They are punished for it. They are
22 punished on their way to the polling station. They are
23 subjected to abuse on their way from the polling station.

24 The people that they elect are rendered useless in as much
25 as their public representative, whom they have democratically

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1 elected, and it is a right enshrined in the United Nation's
 2 Charter that the people have the right to choose the
 3 representation of their own liking. But people in Northern
 4 Ireland who vote Sinn Fein find their public representatives in
 5 district councils are often not permitted to speak. In
 6 Magherafelt District Council, the Loyalists councilors
 7 disinfect everything that Republicans touch. They frequently
 8 take the chair from Republican representatives when they
 9 attempt to speak, put the chair outside and when the
 10 Republicans go outside, they lock the door.

11 Members of Sinn Fein who are elected representatives have
 12 been shot and killed. People who put up and advocate and work
 13 in the electoral process for Sinn Fein are attacked and it's a
 14 common day occurrence. Areas like West Belfast who vote Sinn
 15 Fein have, for a long time, been economically punished. Groups
 16 like community groups and self-help groups who employ
 17 Republican ex-prisoners are politically vetted and more often
 18 than not, have their state funding reduced until they are
 19 prepared not to employ those people. There is more to
 20 democracy than putting people's names on electoral registers
 21 and giving them pieces of paper.

22 Q. And Sinn Fein is widely considered to be the political wing
 23 of the IRA; isn't that true?

24 A. With respect, that's hearsay. Sinn Fein is a registered
 25 legal legitimate political organization which offers itself to

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1 the public for election and which is elected.

2 Q. There have been a number of statements by Sinn Fein
3 councillors supporting violence; isn't that true?

4 A. I'd like to hear them. I'm not a member of Sinn Fein and
5 the question might best be addressed to a member of that
6 organization. But there are members of many organizations
7 which oppose and support violence. But Sinn Fein is a lawful
8 political party.

9 Q. You -- excuse me, excuse me. You testified yesterday that
10 you, yourself, oppose the use of violence; is that right?

11 A. I do -- in the --

12 Q. Has that always been your position?

13 A. It has always been my position. I understand where
14 violence comes from. I refuse to condemn those deprived of
15 alternative methods of airing their grievances when they are
16 forced by the system to resort to violence. If I actually
17 supported violence, I would use it. I have worked 25 years in
18 the political, social, and economic arena of Northern Ireland,
19 and despite all the odds, I have worked non-violently, openly,
20 democratically and peacefully, just --

21 Q. You stated --

22 A. I'm not --

23 Q. -- stated in 1979, "We use the force of arms if we have to,
24 and I declare that to be the right of all oppressed people."

25 Did you make that statement?

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1 A. I think that is a right. It's not a right I believe people

2 --

3 Q. Excuse me, did you make that statement?

4 A. Yes.

5 Q. Okay.

6 A. And I would still make it.

7 Q. And you have defended the killing by bombing of Lord
8 Mountbatten in 1970 -- what was it, nine?

9 A. No, I think you entirely misunderstand and misinterpret my
10 position. I will not condemn the oppressed to use violence
11 against a violent oppressor. That is not to say that I support
12 violence.

13 Q. So, you would not condemn those who, for example, would --
14 well, take a recent example, explode the bomb in Warrington and
15 kill two small children. You would not condemn those people?

16 A. I'll not condemn those people. I think it was a terrible
17 action, but then the American War of Independence was not won
18 with feather dusters. It's a sad reality of our lives that the
19 progress of history, as at all times, been predominated by
20 violent and violent change. It shouldn't be that way, and it
21 doesn't have to be that way.

22 Q. You, yourself, have called yourself a "Socialist;" is that
23 right?

24 A. I am a Socialist. I understand it's not longer
25 fashionable, but I'm still a Socialist.

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1 Q. And it's your view that you intend, you hope to build
2 within Ireland a democratic expression of the people which, if
3 necessary, will be expressed in arms to defeat the British; is
4 that true?

5 A. Sorry, would you repeat that?

6 Q. Your goal is to develop a democratic expression of the
7 people --

8 A. Yes.

9 Q. -- which, if necessary, in the future will be expressed in
10 arms and defeat the British?

11 A. That's probably a fair estimation of a reality, but that
12 would not be my goal. I'll always be one of the non-violent
13 dissidents marching down the back.

14 Q. Did you testify in the Doherty case in New York?

15 A. I did, yes.

16 Q. Okay. And were you under oath at that time?

17 A. I was, yes.

18 Q. Didn't you state as follows,

19 "In a longer period of time, it is my
20 personal political belief that it is through
21 a gestation [sic] and education and
22 organization on the working class of Ireland,
23 by which building of organization and
24 development of socialism that we can develop
25 within Ireland a democratic expression of the

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1 people which, if necessary, will at that
2 time, be expressed in arms and defeat the
3 British"?

4 MS. SNELL: I would ask that Mr. Zanides be required
5 to read the question that that was a response to.

6 THE WITNESS: Aye. I was going to ask that myself.
7 It sounds like very flowery language for me.

8 BY MR. ZANIDES:

9 "Q. Are there other methods dealing with the
10 problem that are in your judgement, more
11 likely to be effective in a shorter period of
12 time?

13 A. In a shorter period of time, no.

14 Q. In any period of time?"

15 A. The answer that I read. So, it's your view ultimately that
16 there will have to be a civil war; is that it?

17 MS. SNELL: And then I would ask that Mr. Zanides
18 complete the response to the question.

19 THE COURT: Please, Mr. Zanides, read the full
20 question, full answer.

21 BY MR. ZANIDES:

22 "Q. Are there other methods dealing with the
23 problems that are in your judgement, more
24 likely to be more effective in a shorter
25 period of time?

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A. In a shorter period of time, no.

Q. In any period of time?

A. In a longer period of time, it is my personal political belief that it is through a gestation and education and organization on the working class of Ireland by which building of organization and development of socialism that we can develop within Ireland a democratic expression of the people, which if necessary, will at that time be expressed in arms and defeat the British. Not very many people in Ireland, I suppose, share my over Socialist ideas, but the reality is that we have tried. We won the 1918 election peacefully and democratically by the ballot box. We asserted our right to independence. The British responded to it by war.

The War of Independence was fought. We attempted to peacefully settle with Britain the treaty which partition my country was signed under duress and threat of greater war by the British, and it's not our fault if that's all they understand. It's not our fault if force is the nature of politics in Ireland. It is the fault of the British who

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