Your Royal Highness, to be invited to give the lecture which bears your name is to be granted a great honour by a judge and jurist of international repute.

It is an honour which I feel I hardly deserve, especially when I consider the distinction of those who have given this lecture in the past.

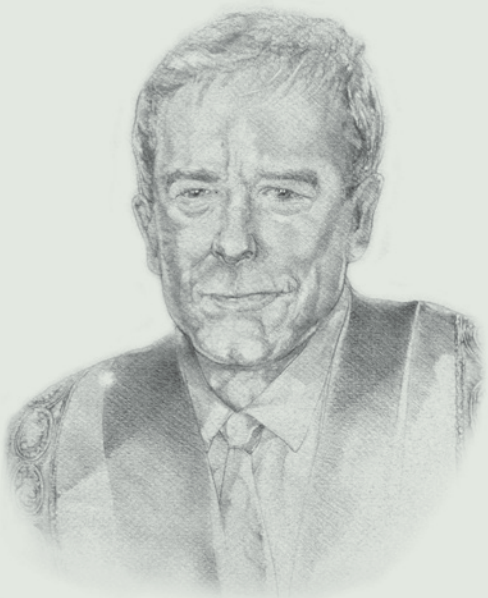
Lord Saville of Newdigate

Information Technology: A Tool for Justice

18th Sultan Azlan Shah Law Lecture, 2004

The Right Honourable Lord Saville of Newdigate

Information Technology: A Tool for Justice



Mark Oliver Saville
(b. 20 March 1936*)*

Lord Saville of Newdigate was born in 1936. He was educated at Rye Grammar School and read law at Brasenose College, Oxford University. There he graduated with a first class Bachelor of Arts in Jurisprudence and also a first class Bachelor of Civil Law, and was awarded the Vinerian Scholarship, the prestigious prize awarded to the University of Oxford student who achieves the best performance in the Bachelor of Civil Law degree examination.

Lord Saville was called to the Bar by the Middle Temple in 1962. He became a Queen's Counsel in 1975 and a Bencher of the Middle Temple in 1983. He was appointed a Judge of the High Court in 1985, and later became the head of the Commercial Court, acquiring a reputation for streamlining the

commercial court, making hearings efficient and cutting costs. He was appointed a Lord Justice of Appeal in 1994, and his meteoric rise through the ranks of the judiciary culminated in his appointment in 1997 as a Lord of Appeal in Ordinary.

Between 1994 and 1996 he chaired a Committee of the Department of Trade and Industry concerned with arbitration legislation. The Committee produced an Arbitration Bill, which Lord Saville is said to have drafted almost single-handedly, and which has now been enacted as the English Arbitration Act 1996, an Act which has been very "highly regarded around the world" (*The Guardian*).

Lord Saville received an Honorary Doctorate in Law from Guildhall University in 1997 and was made an Honorary Fellow of Brasenose College, Oxford in 1998. He also received an Honorary Degree of Doctor of Laws from Nottingham Trent University in 2008.

Lord Saville enjoys a strong reputation as one of the outstanding commercial lawyers and judges of his time. Sir Scott Baker, a retired English Court of Appeal judge, described Lord Saville as being without doubt the most brilliant of his generation. "A meticulous perfectionist", Lord Saville has been praised for "his clear mind, his attention to detail, and his aptitude for hard work" (*The Times*). He is also well-known for being one of the most tech-savvy judges in the English judiciary.

On 29 January 1998 Lord Saville was appointed to chair the second Bloody Sunday Inquiry into the events of 30 January 1972 in Londonderry, Northern Ireland. Lord Saville's report on the Inquiry was published on 15 June 2010. The final report is between 4,500 and 5,000 pages and runs to some 200 chapters, and can be accessed online at http://bloody-sunday-inquiry.org/. The Inquiry was the longest running inquiry in British legal history and cost approximately £200 million between 1998 and 2010.

Lord Saville has been praised for the way he used new information technology to assist in the Inquiry and his enthusiasm for the way advances in technology can be used to change the way in which the courts currently work. Professor Richard Susskind, the information technology adviser to the Lord Chief Justice, has said that the Inquiry is "the leading showcase demonstrator of what technology can achieve in the modern court. There is nowhere in the world where information technology has been used so pervasively." Therefore, it was most appropriate that the Eighteenth Sultan Azlan Shah Law Lecture which Lord Saville delivered was entitled "Information Technology: A Tool for Justice".

Upon the conclusion of the second Bloody Sunday Inquiry, Lord Saville resumed his duties as a Justice of the newly-established United Kingdom Supreme Court, including delivering judgments in two cases involving areas of law for which his expertise is renown, namely *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2011] 1 AC 763, the first arbitration dispute to come before the United Kingdom Supreme Court, as well as *Global Process Systems Inc v Syarikat Takaful Malaysia Berhad* [2011] 1 All ER 869, an important marine insurance case. He also had occasion to deliver the judgment of the Privy Council in *Borrelli & Ors v Ting & Ors (Bermuda)* [2010] Bus LR 1718 involving the issue of duress.

Lord Saville retired from the United Kingdom Supreme Court in September 2011 at the age of 74, a year before the mandatory retirement age.

Lord Saville is married to Jill Gray and they have two sons. He has been a Member of the Garrick Club since 2002, and his recreations are sailing, flying, computers and gardening.

The Rule of Law is the bedrock of a just society. But however good our laws may be and however independent and impartial our judges may be, justice (the reason for the Rule of Law) is not truly justice if it takes too long, if it is too expensive for people to use, or if it is not available to all.

I firmly believe that the use that we have made of information technology has saved substantial sums of money, has given us a tool to enable us to do a better job than would otherwise have been the case and has made this an Inquiry which, whatever its other shortcomings may be, has been truly public.

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Information Technology: A Tool for Justice

Lord Saville of Newdigate
Lord of Appeal in Ordinary, House of Lords

Text of the Eighteenth Sultan Azlan Shah Law Lecture delivered on 22 September 2004 in the presence of His Royal Highness Sultan Azlan Shah

Your Royal Highness, to be invited to give the lecture which bears your name is to be granted a great honour by a judge and jurist of international repute. It is an honour which I feel I hardly deserve, especially when I consider the distinction of those who have given this lecture in the past. What is more, it has given me the opportunity to revisit your beautiful country for the first time for nearly twenty years; and for my wife and me to enjoy your boundless and gracious hospitality. Thank you very much indeed.

The Rule of Law is the bedrock of a just society. But however good our laws may be and however independent and impartial our judges may be, justice (the reason for the Rule of Law) is not truly justice if it takes too long, if it is too expensive for people to use, or if it is not available to all.

I have believed for some years that information technology has the potential to change our justice systems for the better in all these respects. As Professor Richard

Delay, expense, and unavailability do exist and I am convinced that the appropriate application of information technology is a formidable means of tackling these defects in our justice system.

Susskind has pointed out, information technology has reached the stage where it can now not just automate existing procedures and practises, but can provide entirely new ways of doing things.

Of course, in the context of justice systems, indeed in the context of any form of human activity, doing something in a new or different way is not an end in itself. "If it ain't broke, don't fix it" is a very sound, good rule.

There is no point in spending time and money on devising new methods of doing things if the end result is not an improvement on what went before. However, delay, expense, and unavailability do exist and I am convinced that the appropriate application of information technology is a formidable means of tackling these defects in our justice system.

It so happens that since 1998 I have been given a unique opportunity to demonstrate what can be achieved with the use of information technology. At the beginning of that year I was appointed Chairman of a public inquiry into something that happened in Northern Ireland over thirty years ago. That Inquiry is still continuing, though it is now reaching its closing stages.

At this point some of you, if not all of you, may be wondering how I am able to extol the application of information technology to judicial proceedings in the context of an Inquiry that has already lasted over six and

> The island of Ireland has had an unhappy history, with an unhappy relationship with Great Britain. One result has been a division in that island along sectarian lines. This is known nowadays as the sectarian divide, but what in truth that means is that between Catholics and Protestants there has been great fear, hatred and mistrust, and a significant lack of religious tolerance or willingness to compromise.

a half years and has cost astronomical sums of money. I shall do my best to explain why I believe in the worth of the technologies that we have used.

To put the Inquiry into context it is necessary to set out some of the background to the particular events with which I am concerned. This can only be done in the most general of terms, since there are aspects of that background that are in dispute in the Inquiry, and on which it would be wrong for me to express any view until we have heard and considered all the evidence and submissions.

The Bloody Sunday Inquiry—Background

Northern Ireland is part of the United Kingdom. It is a small part of the island of Ireland, about the same size as the state of Connecticut. The rest of the island is the independent country of Ireland; also known as Eire or the Irish Republic. The whole of the island used to be part of the United Kingdom, but in 1921 Eire became an independent state.

The island of Ireland has had an unhappy history, with an unhappy relationship with Great Britain. One result has been a division in that island along sectarian lines. This is known nowadays as the sectarian divide, but what in truth that means is that between Catholics and Protestants there has been great fear, hatred and mistrust, and a significant lack of religious tolerance or willingness to compromise. To many people looking from a distance, even from only

The majority of people in the island of Ireland have been Catholic, but for historical reasons there is in the north a substantial and majority Protestant population.

These people did not want to be independent. They wanted to remain part of the United Kingdom and did not want to become part of a Catholic country.

across the Irish Sea, it is difficult to understand how such deep divisions along religious lines between two religions which have so much in common have survived into modern times.

The majority of people in the island of Ireland have been Catholic, but for historical reasons there is in the north a substantial and majority Protestant population. These people did not want to be independent. They wanted to remain part of the United Kingdom and did not want to become part of a Catholic country. They opposed every attempt to give the island even a modicum of what was called Home Rule. So when after the First World War the British Government finally decided to give Ireland its independence, it was confronted with the problem of what to do about the people there who did not want it. This was a serious problem, because this part of the population was so opposed to leaving Britain that any attempt to make them do so would undoubtedly have led to a civil war in Ireland.

The solution that was adopted was to divide the island into two parts, leaving the six counties in the north that had a predominately Protestant population as part of Britain. That is why the present full name of my country is the United Kingdom of Great Britain and Northern Ireland.

This division may have been the only solution at the time, but it was far from perfect. The Irish in the south thought it wrong that part of what they regarded as their island should remain British. Furthermore, though in a

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minority, there was a large Catholic population in the north, who thought the same. The Protestant majority in the north held the view that they were and should remain British. Since they were the majority, they dominated the provincial government of Northern Ireland and were determined to do everything in their power to keep Northern Ireland part of Britain. The Catholic population regarded itself as the subject of religious discrimination, treated in effect as second class citizens in many respects, including the areas of housing and jobs.

The British Government in London apparently did little about this state of affairs. It must be remembered that Ireland had been a problem for Britain for hundreds of years, and when independence was granted to the south, Northern Ireland was given its own provincial government to run its own affairs. Many felt that the British had in effect heaved a sigh of relief and largely looked the other way, hoping that at last the problem of Ireland had gone away.

The problem of course had not gone away. There were those in Ireland who thought that if they used violent methods, they could achieve union with the rest of the island. They believed (or at least expressed the belief) that Britain was clinging onto Northern Ireland as one of its colonies and that they could and should use force to fight the colonial power (as other colonies had done) in order to achieve their aim of a united independent Ireland.

This to my mind was always a simplistic view and as time went on, more and more grievously mistaken. The

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problem lay not in delusions of empire, but in the fact that a majority of people in Northern Ireland wanted to remain British, a fact which fundamentally distinguished it from other places where people had sought independence by forceful means.

Matters came to a head in the nineteen sixties. That was a decade when the concept of violent action in support of civil rights swept across the world. Northern Ireland was no exception. The Irish Republican Army (IRA—terrorists or freedom fighters, depending on your point of view) grew in strength and engaged in increasingly violent and deadly activities. There were good people in the government of Northern Ireland who realised that the Catholic people there should have the same civil rights as everyone else and who worked towards this, as well as many equally good people who wanted union with the Republic, but only through peaceful and non-violent means. Sadly the fear, hatred and suspicion that divided the two parts of the population ran too deep for these good people to turn others away from violence.

This violence grew. The police began to lose control and in 1969 the Northern Ireland government asked the British Government to send troops to help to keep order. This was done and at first the Catholic population in Northern Ireland welcomed the soldiers, thinking that they would act to protect them from what they perceived to be a government and police force intent only in keeping them subjugated. But the violence continued and in the course of it a number of Catholics were killed and injured,

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leading the Catholic population in the main to believe that the soldiers were simply the agents of the Northern Ireland Government, no better than the police.

In August 1971 the Northern Ireland government decided to introduce internment without trial of suspected terrorists, expressing the view that this was the only feasible means of reducing violence and restoring law and order.

With hindsight, the introduction of internment, at least in the form that it took, may well have been a mistake. Because in those days much of the violence came from those who wanted union with the Republic, most of those interned were Catholics. It would seem that poor intelligence had led to the internment of many in respect of whom there were no good grounds for suspecting them of terrorism. The Catholic population saw internment as a gross breach of their civil rights, as one more example of discrimination against them.

The Northern Ireland Government simultaneously introduced a ban on marches. This infuriated both sections of the sectarian divide. The Protestants were prohibited from conducting their traditional marches; while those who wished to march in support of civil rights were also prohibited from doing so. The reason given for prohibiting all marches was to reduce the opportunity for the violence that sadly so often accompanied these events.

Notwithstanding this prohibition, the Northern Ireland Civil Rights Association decided to hold an anti-

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internment civil rights march in January 1972, in the city of Londonderry. This small city, which many call Derry, lies in the far west of Northern Ireland, close to the border with the Republic.

The authorities decided to stop this march from reaching its objective, the City Guildhall, using the army to do so. The city had been the scene of violent riots over the preceding months and of deadly attacks by the IRA on the security forces. Much of the city lay in ruins through arson and bomb attacks. So the authorities used the army to set up barriers, so as to keep the march in the Catholic areas of the city, known as the Creggan and the Bogside.

The march took place during the afternoon, on Sunday, 30 January 1972. It would seem that many of those who marched that day were intent on making a peaceful protest, but there were others, mostly young people, who engaged in rioting and stoning the troops manning the barriers. Then, between about ten to four and twenty past four that afternoon a number of people were killed and injured through army gunfire on the streets of the city. The circumstances in which this occurred are matters of great controversy and form the subject matter of the present Inquiry.

Within a very short time the British Government announced that there would be a public inquiry into the matter, to be conducted by Lord Widgery, then the Lord Chief Justice of England. In a matter of weeks this inquiry

“There were those in Ireland who thought that if they used violent methods, they could achieve union with the rest of the island. They believed (or at least expressed the belief) that Britain was clinging onto Northern Ireland as one of its colonies and that they could and should use force to fight the colonial power (as other colonies had done) in order to achieve their aim of a united independent Ireland.”

produced a report, which many on the Catholic side of the sectarian divide categorised as an outrageous cover-up and whitewash of the actions of the soldiers. They expressed the belief that in truth the soldiers had deliberately shot dead innocent people, some indeed alleging that this had been done on instructions from those in government.

The years passed. The violence continued. There were many atrocities. Over the last thirty years people continued to be killed and injured, as the result of violence not just by the IRA, but by those in the Protestant population who also thought that violence was the way to solve the problem as they saw it, as well as deaths and injuries arising from the actions of the security forces. The British and Irish governments made attempt after attempt to try and work out a peaceful solution, acceptable to all. Finally in 1998 a peace agreement was reached, though on both sides of the sectarian divide there remain those who are violently opposed to this peace process.

Over three and a half thousand people have died violently over the last thirty years as a result of the troubles in Northern Ireland. But to the Catholic population that Sunday in January 1972, which immediately became known across the world as Bloody Sunday, remains of particular and special importance, not just because of the deaths and injuries on that day, but also because of the belief that the inquiry held immediately afterwards was an unforgivable denial of justice.

> A majority of people in Northern Ireland wanted to remain British, a fact which fundamentally distinguished it from other places where people had sought independence by forceful means.

Many continued to campaign for a new inquiry and finally, in 1998, the British Government, as part of the peace process, agreed to set one up. That is the Inquiry that the British Government asked me to chair, and which I am now conducting with the assistance of two judicial colleagues, one from Canada and one from Australia.

Tribunals of Inquiry (Evidence) Act 1921 and Public Inquiries

This Inquiry was set up by Parliament and is running under the provisions of the Tribunals of Inquiry (Evidence) Act 1921. Its terms of reference are "*to inquire into the events of Sunday, 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day.*" With the exception of the last twelve words, the terms of reference are identical to those for the previous inquiry.

There have been about 21 public inquiries under this Act. There are also many public inquiries conducted under the provisions of other statutes, for example planning inquiries and the like. It is interesting to note that the 1921 Act started life as a Bill designed to deal with a specific matter (allegations against certain officials in the then Ministry of Munitions) and it was only during its passage through Parliament that it was decided to adapt it so that it could be used in the future in order to set up an independent tribunal to inquire into any matter of urgent public importance.

> The violence continued and in the course of it a number of Catholics were killed and injured, leading the Catholic population in the main to believe that the soldiers were simply the agents of the Northern Ireland Government, no better than the police.

This was in theory a good idea, since in the past previous inquiries into alleged misconduct by public servants had usually been conducted by a Select Parliamentary Committee or Commission of Inquiry, with the result that there was a tendency for party political considerations and loyalties to play a part in the conclusions reached.

This tendency came to a head when a Select Committee was appointed to investigate what was known as the Marconi scandal. In 1912 the Liberal Government had accepted a tender from the English Marconi Company for the construction of a chain of state owned telegraph stations throughout the Empire. There were rumours that the Government had corruptly favoured this company and that certain of its prominent members had improperly profited from this contract.

The result of the Inquiry was that the majority Liberal members of the Committee produced an exonerating report, while the minority members found that there had been gross impropriety. When the report came to be debated in the House of Commons, the House divided along strictly party lines, with the result that the majority view of the Committee was accepted.

This was the last time a matter of this kind was investigated by a Select Committee. But the haste with which the 1921 legislation appears to have been drafted and passed through Parliament meant that the Act in a number of respects was defective.

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In 1966 Lord Justice Salmon (as he then was) was asked to report on inquiries and his report contained a number of recommendations for improvements, (as well as a fascinating summary of the history of inquiries), but the Act has not been amended and remains as it was originally enacted.

However, Lord Justice Salmon also expressed his views on how the proceedings of an inquiry under this Act should be conducted, principally so that the procedure should be fair to all concerned, particularly those in respect of whom serious allegations were being made. These views have become known as "the Salmon Principles" and as often happens in the law, have tended to become words writ in stone and to take on an almost statutory importance.

However, in my view the real importance of what Lord Justice Salmon said lies not so much in the procedures he suggested should be adopted, but in the reason for such suggestions, which is to ensure that public inquiries are conducted fairly as well as thoroughly and impartially. I myself believe that the correct procedures for ensuring fairness often depend on the subject matter and form of the inquiry; and that slavishly to apply the same procedures without regard to their efficacy in any given case is to lose sight of the wood for the trees, and to confuse the means with the end.

> The Northern Ireland Government simultaneously introduced a ban on marches. This infuriated both sections of the sectarian divide. The Protestants were prohibited from conducting their traditional marches; while those who wished to march in support of civil rights were also prohibited from doing so.

The Bloody Sunday Inquiry and Information Technology

Public inquiries of the present kind are inquisitorial in nature, rather than adversarial. As I said in my Opening Statement in the Inquiry, from the point of view of the Tribunal, unlike ordinary litigation, there are no sides, nor, again unlike ordinary litigation, is the task of the Tribunal to decide which side has put up the better case, acting as sort of referee to ensure that the litigation is conducted within the rules and giving the result at the end of the day.

In contrast the task of a Tribunal conducting a public inquiry under the 1921 Act is to try itself to seek the truth, in the present case about what happened on Bloody Sunday. It is for the Tribunal to take the initiative in trying to discover what happened, by collecting the relevant material, deciding such matters as who should be asked to give oral evidence and (through its Counsel) being the principal questioner of the witnesses.

It has sometimes been exceptionally difficult to maintain the inquisitorial nature of the present Inquiry, since there is of course a very sharp division between the families of those who died and the wounded on the one side, and the soldiers (and certain government departments) on the other.

The families believe that their relatives were shot and killed or wounded without any justification at all.

> The march took place during the afternoon, on Sunday, 30 January 1972. It would seem that many of those who marched that day were intent on making a peaceful protest, but there were others, mostly young people, who engaged in rioting and stoning the troops manning the barriers. That afternoon a number of people were killed and injured through army gunfire on the streets of the city. The circumstances in which this occurred are matters of great controversy and form the subject matter of the present Inquiry.

The soldiers insist that they were reacting to incoming fire from terrorists and were, in effect, simply seeking to defend themselves in a proper and lawful way.

In addition the families felt that they were not allowed to be either properly represented at the previous inquiry nor given all the relevant evidence, and so came to the present inquiry with an understandable anxiety that matters should be conducted differently this time round.

However, we were convinced that the Inquiry had to remain inquisitorial in nature, since we alone started with no preconceptions save for our duty to seek the truth with fairness, thoroughness and impartiality. To allow the Inquiry to drift into an adversarial battle would, we considered, gravely hamper the search for the truth and leave the Tribunal with the risk of deciding instead who had made the better case before it; something that of course may not correspond with the truth at all.

Thus we are not engaged in determining whether the families or the soldiers are right, but in what in fact happened, which may or may not correspond with what they believe and assert took place on that day.

This particular public inquiry has raised formidable problems. Our basic task was to try and discover what happened in those few minutes thirty years ago, but we could not confine ourselves to the actual incident, since to our minds it can hardly be understood unless it is placed in the context of the overall situation at the time.

“The Catholic side of the sectarian divide expressed the belief that in truth the soldiers had deliberately shot dead innocent people, some indeed alleging that this had been done on instructions from those in government.”

The present position in Northern Ireland is far from perfect, but it is entirely dissimilar to the situation in 1972, where there were daily bombing and shooting incidents, rioting and arson and violent confrontations with the security forces. For example, three days before Bloody Sunday two police officers were murdered by gunfire as they patrolled the streets of the city. Thus we have looked at the situation as it developed in Northern Ireland over the preceding months, including the plans and actions of the Northern Ireland and British governments and of the way in which the police and army were used to try and keep order.

We also looked at the plans and actions of those who decided to organise a march on that day, as well as the plans and actions of the soldiers and of the IRA, the latter having been on any view engaged in deadly violence in the city in the days and weeks preceding Bloody Sunday; and, it is alleged, on the day itself.

We have listened to the evidence of politicians and civil servants in both the British and Northern Ireland governments, including that of Sir Edward Heath, the United Kingdom Prime Minister at the time. We have also listened to the evidence of many of the people who took part in the march, many of the large number of journalists who were present, many of the soldiers who were there (including those who admit to firing), and a considerable number of those who were members of the two wings of the IRA (Official and Provisional) present on the day.

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We have looked at the many photographs and the footage that was filmed on the day; and examined the statements that were taken soon after the event, as well as the evidence that was given to the previous inquiry. We have had to bear in mind that with the passage of so much time, memories in nature of things are often likely to become dim or distorted.

Above all, and particularly because there had been an earlier inquiry which many regarded as flawed, it was clear from the outset that to the greatest degree possible, this must indeed be a *public* inquiry, so that all concerned could see how we were conducting it, and have access to the evidence and materials that we were examining, as well as to our proceedings, to the greatest degree possible.

I believe that without using information technology we would simply have been unable to achieve this aim of conducting what can properly be called a public inquiry. We have tens of thousands of documents and photographs, tens of hours of video footage, statements from well over fifteen hundred witnesses, and hearings that have taken over 450 days.

Those days started with Counsel to the Tribunal going through the documentary and other material and drawing our attention to the most important statements of evidence, having necessarily taken many months to prepare that presentation, which took many weeks to complete.

> The Inquiry's terms of reference are "to inquire into the events of Sunday, 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day."

We then heard much shorter submissions from the lawyers acting for the families of those who were killed and the wounded and the soldiers. We then embarked on hearing oral evidence, though on a number of occasions we have had to spend substantial periods of time hearing arguments and then preparing and giving rulings upon a variety of interlocutory matters. We have heard oral evidence from hundreds and hundreds of people.

In addition to the general need to hold a public inquiry, it is clearly of prime importance that the relatives of those who died should be given a full opportunity of seeing how we are conducting the inquiry, since under Article 2 of the Human Rights Act (a statute which incorporates the European Convention on Human Rights into our law) they have a right to a proper inquiry into deaths at the hands of state agencies.

Simply to hold the inquiry in public would not really suffice. In any legal proceedings involving documentation of any size, the public will have very little understanding of what is going on, since it is simply not feasible to provide them with copies of the documents.

What we have done in this regard is to scan the documents, photographs and films, together with the statements of evidence that we have taken, and which were taken at the time, into computers, so that they exist in digital form. This then enables us to do a variety of thing that would otherwise be impossible.

> The Tribunals of Inquiry (Evidence) Act 1921 started life as a Bill designed to deal with a specific matter (allegations against certain officials in the then Ministry of Munitions) and it was only during its passage through Parliament that it was decided to adapt it so that it could be used in the future in order to set up an independent tribunal to inquire into any matter of urgent public importance.

In the first place, those who attend the Inquiry were able to see the material in question, as it was presented to the Tribunal and examined with the witnesses, because it was put on large screens for the public to see. It was also made available in like form to the media.

The Inquiry was principally held at the Guildhall in the city where Bloody Sunday occurred. However the evidence of the soldiers and some others was taken in London at the Central Hall, Westminster, since the courts directed that for security reasons the evidence of these witnesses should not be taken in Northern Ireland.

Not all who live in that city and have an interest in the proceedings were able to come here to watch and listen, so we had a video link which enabled the proceedings and the material being considered by us to be seen on screens at the Guildhall, where we had previously been conducting the Inquiry.

Public interest in the Inquiry is not, of course, limited to those who are able to attend the hearings in London or the Guildhall. Bloody Sunday is of international interest and concern. So we have a web site on the Internet. On this site much of the evidential material may be found, together with a daily transcript of our proceedings and such things as the many rulings that we have had to make during the course of the Inquiry.

By these means we have, I believe, really been able to make this Inquiry public, to a degree that formerly would

Lord Justice Salmon expressed his views on how the proceedings of an inquiry under this Act should be conducted, principally so that the procedure should be fair to all concerned, particularly those in respect of whom serious allegations were being made. These views have become known as "the Salmon Principles" and as often happens in the law, have tended to become words writ in stone and to take on an almost statutory importance.

simply have been impossible. At present there are over 120 gigabytes of electronic evidence, 60,000 pages of digitised documents, 2500 digitised photographs and 20 digitised videos amounting to many hours in length. Each of these pieces of evidence is uniquely indexed, using the system we have developed for referencing documents, and may be retrieved and displayed in the manner that I have described in a matter of a second or so.

This Inquiry has taken a very long time indeed. But the task that we were given was immense. We had to interview and take statements from a very large number of people, some of whom now live abroad. We had to retrieve documents from the Public Record Offices of both Great Britain and Northern Ireland and from numerous government departments and other sources.

We have employed experts in many fields, ranging from the historical to the forensic. We have had to examine the whole of the evidence and material submitted to the previous inquiry, and to investigate how that inquiry was conducted, so as to be able to form a view as to the reliability of the testimony given on that occasion, which at least had the advantage of being more or less contemporaneous.

We have had to collate and analyse all this evidence and material and, through our Counsel, present it in the clearest way possible.

Without information technology, I believe that the time needed would have been far greater than we are likely to take.

“The real importance of what Lord Justice Salmon said lies not so much in the procedures he suggested should be adopted, but in the reason for such suggestions, which is to ensure that public inquiries are conducted fairly as well as thoroughly and impartially.”

For example, there are many interested individuals who are legally represented at the Inquiry. The lawyers of course must be provided with all the material relevant to their clients so that they can properly represent them. It is simply impracticable for them all to attend with paper bundles of the documents. It would in any event mean that whenever a particular document was to be examined, each of the lawyers would have to select the appropriate bundle and turn to the appropriate page.

The Tribunal and the witness would have to do likewise. Anyone who has conducted litigation with an appreciable number of documents will know how time consuming this exercise can be. Some will be unable to find the right bundle or the right document. The numbering or referencing system often breaks down, with some having a different system from others. The witness will have to be helped to find the right bundle and the right document. Much of the day will be spent in taking out the appropriate bundle, finding the document, then replacing the bundle and doing the same exercise with another bundle, rather than examining the document and asking questions about it. Over the course of a hearing day the time taken for these purposes would be very long indeed. This is truly wasted time; by digitising we have reduced this to insignificance. Any document, photo, video, statement or transcript can be brought up on screen in a couple of seconds.

The team needed to conduct an Inquiry like this is substantial. The Tribunal is assisted by Counsel, who

I myself believe that
the correct procedures
for ensuring fairness
often depend on
the subject matter
and form of
the inquiry;
and that slavishly to
apply the same procedures
without regard to
their efficacy in any
given case is to lose sight
of the wood for the trees,
and to confuse the
means with the end.

present the evidence to it. This, of course, involves a very large and time consuming amount of preparatory work. Our Counsel have divided between themselves the work of actually questioning the witnesses before the Tribunal, but obviously they must be constantly aware of what is taking place, even if they are elsewhere preparing for the next witnesses. They must also have access at all times to the evidence and material. They therefore have access to CCTV as well as to the computers holding the evidence and materials, so that they are never out of touch with the proceedings. The same applies to the lawyers acting for the interested parties.

The overall administration of the Inquiry is in the hands of a senior civil servant. This person has responsibility for the staff, for managing the financial provisions, for dealing with government departments and outside contractors, for matters of security, for organising the accommodation required for the Inquiry, and for a variety of other matters. She and her assistants again had to have the means to be able to follow the proceedings, having no time to attend the hearings themselves. This could not be provided without the use of information technology.

We are also served by the legal secretary to the Inquiry. He is primarily responsible for the gathering of evidence, to be the main interface between the Inquiry and the interested parties, to liaise with government departments and other organisations over the collection of evidence and like matters, to deal with ancillary litigation connected

> Unlike ordinary litigation, there are no sides, nor, again unlike ordinary litigation, is the task of the Tribunal to decide which side has put up the better case, acting as sort of referee to ensure that the litigation is conducted within the rules and giving the result at the end of the day.

with the Inquiry, together with a host of other duties. He and his assistants again had to be constantly aware of what was going on, so again they were provided with electronic means of following what is taking place at the hearing.

Because the Inquiry had to move to London from its primary site at the Guildhall, we had offices in and near the Central Hall, Westminster, as well as in and near the Guildhall. Apart from Counsel, the Secretary and the Solicitor to the Inquiry, there are many others in our staff who can only function properly if they have full access to what is going on at the hearing, as well as the ability to communicate swiftly with each other, notwithstanding the hundreds of miles that divide them.

The ability to communicate without delay has been of inestimable advantage. We use internal email to the greatest possible extent. By this means the staff can keep constantly in touch with each other. Furthermore, unlike most legal proceedings, the Tribunal is also able to use this means of communication whilst actually sitting, so that it is not isolated from everything else.

By way of example, I got messages during the day informing me of the progress of matters of current concern so that I could, if appropriate, give an immediate response with my colleagues. Again, something may arise during the course of a hearing day which led my colleagues and me to decide that some further action should be taken. I could immediately communicate what we wanted to Counsel or

“The task of a Tribunal conducting a public inquiry under the 1921 Act is to try itself to seek the truth.”

the Inquiry Solicitor or other members of the staff, so that the necessary action could be taken without delay. I could do this whether the person concerned was Counsel sitting in front of me, or someone in an office on the other side of the Irish Sea.

A hearing day of course required a great deal of advance preparation by all concerned. The way we chose to proceed was to take written statements from potential witnesses, in the main using an outside firm of solicitors who could provide a sufficient number of properly qualified and experienced lawyers for this task. Those giving statements had of course the right to have a solicitor of their own present during this exercise, in order to see that their rights were properly protected. In view of the number of potential witnesses, the statement taking process took a very long time.

The written statements were scanned into the system and distributed to all the interested parties, who in the main comprise the families of those who died and the wounded and of course the soldiers. The Tribunal and its Counsel then considered which witnesses should be called to give oral evidence, and drew up a programme for attendance at the Inquiry, taking account to the greatest degree possible of the convenience of the witness.

In this latter regard we have developed what we called the Witness Liaison Team. They were responsible, among other things, for arranging for the attendance of the witnesses, but do much more.

> The Inquiry had to remain inquisitorial in nature, since we alone started with no preconceptions save for our duty to seek the truth with fairness, thoroughness and impartiality. To allow the Inquiry to drift into an adversarial battle would, we considered, gravely hamper the search for the truth and leave the Tribunal with the risk of deciding instead who had made the better case before it; something that of course may not correspond with the truth at all.

Those who attend court as witnesses are very often critical of the process as it applies to them. They are not kept informed of events and are often kept waiting an inordinate length of time with no adequate explanation for the delay. Giving evidence can be a nerve racking experience for those who are not used to the courts, but in the main scant regard is paid to this.

In this Inquiry the Witness Liaison Team meet the witness upon arrival at the hearing. We have a witness suite where the witness can relax and where the procedures are explained. For those witnesses who were present on the day, we have developed a computer programme to assist the witness in giving evidence.

The city is nowadays very different from 1972. In particular there were three large high rise flats in the area called the Bogside, the part of the city in which much of the action took place. These have long since disappeared. What we have done is to create a virtual reality representation of the city as it was on the day in question, using contemporary photographs and computer models of the buildings as they were. The programme starts by showing a map of the city with a number of hotspots (some 80 in all) marked on it. The system is interactive so by touching a particular hotspot the scene as seen from that position appears. It is possible then by touching the screen to expand the view and look round 360 degrees from the position chosen or indeed to "walk" through the scene. The witness can thus explain with the aid of the programme his location and what was happening and where, if necessary by touching the screen

“Our basic task was
to try and discover
what happened
in those few minutes
thirty years ago,
but we could not confine
ourselves to the actual incident,
since to our minds it can hardly
be understood unless
it is placed in the context
of the overall situation
at the time.”

to draw a line or other mark, which can then be recorded electronically as part of the evidence of that witness.

This virtual reality programme has been designed so that it can be used by all, even those with no previous experience in using computers. It only took a few minutes for the Witness Liaison Team to show the witness how to work the programme; and it has proved to be a most useful tool.

The Witness Liaison Team did all they could to ensure that the witness was comfortable. Some requested a mid-morning break for medical or other good reasons, and this request was communicated to the Tribunal together (often by email) with any other relevant details about the witness which it was important for the Tribunal to know in order to make the experience of giving evidence as comfortable as possible.

Witnesses were called to give oral evidence in cases where the Tribunal considered the witness to be of particular importance, or where it appeared that the witness could usefully expand upon his written evidence, though we have made clear that the written testimony of a witness (whether or not called to give oral testimony) is and remains part of the material that the Tribunal will consider in making its report.

In many cases the witness will have made previous statements; some indeed gave evidence to the previous

“With the passage of so much time, memories in nature of things are often likely to become dim or distorted.”

inquiry, some have given interviews to the Press or taken part in television programmes dealing with Bloody Sunday.

Many also made statements immediately after the events in question. In the case of a number of those who took part in the march that day, we traced to New York a series of tape recordings that were made at the time, where people were asked to recount what they saw and heard. Where these exist, they are played to the witness concerned by the Witness Liaison Team before giving evidence. Many had forgotten about these recordings and were amazed to hear their own voices from thirty years ago. Those recordings now form part of our digitised record. Statements and evidence of the witness (including any such recordings) are electronically filed so that there is a complete dossier for each witness, readily accessible at any time.

In order properly to question the witness, it is necessary to ensure that all relevant documents and statements are brought to the attention of the witness. We have made clear that we are conducting an open Inquiry where witnesses are not to be taken by surprise and must be given proper advance notice of matters that concern them, particularly of the details of any allegations of misconduct or wrongdoing. Those in respect of whom such allegations are made are, of course, entitled to legal representation, so that their interests are properly protected.

When the witness had been sworn, Counsel to the Inquiry started the questioning. Here we took advantage

> It was clear from the outset that to the greatest degree possible, this must indeed be a public inquiry, so that all concerned could see how we were conducting it, and have access to the evidence and materials that we were examining, as well as to our proceedings, to the greatest degree possible.

of the LiveNote method of transcription. This is a well known and respected form of real time transcription where everything that is said to or by the witness appears virtually instantaneously in typescript on the laptop computers used by all the counsel involved as well as the Tribunal.

One of the advantages of LiveNote is that each individual user (including the members of the Tribunal) can make private notes on the laptop as the hearing proceeds, and ascribe these notes to particular issues or in any other chosen way, so that they can be retrieved at any later time, and if necessary re-sorted.

LiveNote also has an automatic indexing system. It is a tool of very great value. Every evening the transcript for the day is posted on our Web Site, and so is available for anyone to read anywhere in the world.

The basic technology we are using is not today's cutting edge state of the art, for we have been using the elements of it for some years. But what we have done (and may well be the first to have done) is to bring all these elements together into one integrated system for use in a courtroom environment.

We have, of course, taken advantage of improvements in the basic technology as they have been developed, for example the increase in the storage capacity of computers, including laptop machines.

“Without using information technology we would simply have been unable to achieve this aim of conducting what can properly be called a public inquiry.

We have tens of thousands of documents and photographs, tens of hours of video footage, statements from well over fifteen hundred witnesses, and hearings that have taken over 450 days.”

The present position is that we can store on each laptop the entire transcript and will continue to be able to do so, with the result that everything said during the course of the hearings can be easily transported and will be instantly available. We are engaged in doing the same with all the documents and other evidential material that we have gathered.

We make an audio record of the proceedings. We have used technology which enables us easily to retrieve what was said at a particular moment on a particular day. This recording is of very high quality and thus is likely to avoid any disputes as to precisely what was said, or even the tone of voice being used. It may also have some historical value.

At the outset we decided, however, not to have a video recording of the hearings, since it seemed to us that this might well inhibit the witnesses. However, in some cases it was necessary to take oral evidence by means of a video link to another place, for example where the witness was abroad and unable or unwilling to come to the Inquiry; and where there were no means of requiring him to do so.

In general terms the information technology systems we use are as follows. The PC Network spans the two hearing sites and the two sets of Inquiry offices. There are approximately 100 PCs and laptops and some 20 servers, using Compaq and Fujitsu Siemens equipment. The PC Network is managed by Fujitsu Services and uses the latest Microsoft Windows. For the evidence display (which spans

> It is clearly of prime importance that the relatives of those who died should be given a full opportunity of seeing how we are conducting the Inquiry, since under Article 2 of the Human Rights Act they have a right to a proper inquiry into deaths at the hands of state agencies.

five sites) we use Trial Pro Version 4, with the evidence controlled and manipulated by legal teams using touch screen technology. For the Real Time Transcription we are using Version 7 of LiveNote. The Virtual Reality program was supplied by the Northern Ireland Centre for Learning Resources. CCTV and the audio (the latter managed by MK Audio) also span five sites, broadcasting the proceedings in the hearing chamber save where the Tribunal has ruled otherwise for reasons of security. In total these systems require some skilled 17 staff.

The Inquiry has cost to date a vast sum of money, and much more will have to be spent. It has been the subject of great criticism for this reason, though this has come in the main from those who were opposed to instituting a new inquiry at all. Every effort is made by the staff of the Inquiry to satisfy themselves that money is properly spent and not wasted and all expenditure has to be properly recorded and accounted for to the government department involved, which in this case is the Northern Ireland Office.

Much of the money has gone on paying the fees of the many lawyers attending the hearings. This has been the subject of particular criticism. But any public inquiry is going to be very expensive. To achieve its purpose it must be thorough, but it must also be fair and open. To my mind fairness dictates that those who face allegations of serious misconduct (in the present case, many of the soldiers face allegations of murder and others of either complicity in murder or of conduct which they must have appreciated

Bloody Sunday is of international interest and concern. So we have a website on the Internet. On this site much of the evidential material may be found, together with a daily transcript of our proceedings and such things as the many rulings that we have had to make during the course of the Inquiry.

was likely to lead to the death of innocent people) must have legal advice and assistance so that their rights are properly protected.

Similarly, the families of those who died have (as already observed) a statutory right to a proper open inquiry where death has been caused at the hands of state agencies, so they too in my view should have the benefit of legal representation in order that their interests are properly protected. Those who were wounded may not have the same statutory rights, but to my mind are also, as a matter of fairness, entitled to be legally represented for the same reasons.

Comparisons have been drawn with other Inquiries, where legal representation for interested parties has been limited and where such representatives have not been allowed to question witnesses; and it has been suggested that we should have followed the same path and thereby saved a lot of money and time. This however is wholly to ignore the subject matter of the present inquiry and the context in which it is being held, particularly the previous inquiry where the legal representatives of the families of those who died were not given all the relevant material, and though allowed to ask questions, were thereby substantially hampered in doing so.

In the course of the Inquiry, the Tribunal has had to consider and make rulings upon a number of matters of great importance, where the views of the families and those

> We have, I believe, really been able to make this Inquiry public, to a degree that formerly would simply have been impossible. At present there are over 120 gigabytes of electronic evidence, 60,000 pages of digitised documents, 2,500 digitised photographs and 20 digitised videos amounting to many hours in length. Each of these pieces of evidence is uniquely indexed, using the system we have developed for referencing documents, and may be retrieved and displayed in the manner that I have described in a matter of a second or so.

of the soldiers have been in very sharp conflict. Among other matters, we have made rulings on whether the soldiers were entitled to anonymity when they gave evidence, and on whether they should give their evidence in London or at the Guildhall. These rulings have been successfully challenged by way of judicial review in the courts. Court challenges to interlocutory rulings of a Tribunal of Inquiry are very time consuming and expensive, but to my mind are really inevitable in an inquiry of the present kind, especially where human rights are involved.

The successful challenges to our rulings on anonymity and venue have themselves entailed substantial delay and expense. All the documents have had to be examined and re-examined so that soldiers' names are redacted and ciphers put in their place, while the move to London meant the setting up of a new hearing room together with arrangements to enable representatives of the families to stay in London so that they can continue to observe the proceedings. The cost of that move alone was over £15 million.

The two rulings successfully challenged involved the question whether to any and if so what degree the public nature of the Inquiry should give way to other considerations, including human rights, in particular the right to life given by Article 2 of the Convention on Human Rights.

In addition we have made a number of other rulings on the right to life which have not been the subject of

> Without information technology, I believe that the time needed would have been far greater than we are likely to take.

successful challenge, for example that some of the police should give their evidence screened, since they had reasonable grounds for fearing that their lives (and those of their families) would be put at risk from paramilitaries were this not to be done. We have also had to grapple with questions concerning journalistic privilege and applications by government departments for Public Interest Immunity protection.

All in all, the Inquiry has turned into a massive exercise, taking a great deal of time and costing a great deal of money. The first two years were spent in collecting and analysing material. The public presentation of this material then took our Counsel over forty days to present. We then spent the following years listening to the evidence of hundreds of witnesses, reading the statements of hundreds of others, as well as examining new material as it continued to be collected.

By way of example, members of our team spent some two years examining secret documents held by the security services, to see if they had anything of relevance to our Inquiry. Unfortunately, these services did not keep Bloody Sunday files as such, so it was necessary to sift through the voluminous paperwork created in the course of thirty years of the Troubles in Northern Ireland to see if there was anything of value.

To my mind, however, the decision to use information technology is one that has saved and will continue to save

> We have made clear that we are conducting an open Inquiry where witnesses are not to be taken by surprise and must be given proper advance notice of matters that concern them, particularly of the details of any allegations of misconduct or wrongdoing.

very substantial sums of money. Of course we have to pay for the technical staff we employ and the hardware and software that we use, but the efficiency gains are very great. It is impossible to provide a precise estimate of the savings we hope to achieve through the use of information technology, but in terms of time it seems to me that the Inquiry would have taken many months if not years longer had we not been able to employ these tools. The daily cost of the Inquiry when it is sitting runs into many tens of thousands of pounds, so every day saved means a significant saving of money.

We have now reached the end of the evidence gathering part of the exercise. We have received written and oral closing submissions from the interested parties, which we are now considering. These are voluminous (as one would expect, given the amount of material we have collected) but our task of considering them has been greatly assisted and speeded up by scanning the submissions onto our servers, and hypertexting the references said to support their arguments. Thus I can sit at my desk, using one screen of my desktop computer to look at the submission and click on a link which brings up the material relied upon on another screen, and then, on that other screen, look forward or backwards from the particular reference to check, for example, its context. All this material being on central servers, I can cut and paste to my laptop which I use for the purpose of writing myself.

At the end of the day there will be time for reflection, in particular whether there might be different and better

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ways of dealing with public concern over an incident like Bloody Sunday. However, despite the criticism of the time and money the Bloody Sunday Inquiry has cost, there is a curious absence of any viable suggestions as to how we could have taken less time or spent less money, given the nature and size of the task. But I firmly believe that the use that we have made of information technology has saved substantial sums of money, has given us a tool to enable us to do a better job than would otherwise have been the case and has made this an Inquiry which, whatever its other shortcomings may be, has been truly public.

Editor's note

On 14 June 2010, *The Report on the Bloody Sunday Inquiry* was made public: See http://www.bloody-sunday-inquiry.org/.

The Saville Report found, inter alia, as follows:

> None of the casualties shot by soldiers … was armed with a firearm or (with the probable exception of one victim) a bomb of any description. None was posing any threat of causing death or serious injury. In no case was any warning given before soldiers opened fire.
>
> We have concluded … that … many of these soldiers have knowingly put forward false accounts in order to seek to justify their firing.
>
> In the case of those soldiers who fired in either the knowledge or belief that no one in the areas into which they fired was posing a threat of causing death or serious injury, or not caring … it is at least possible that they did so in the indefensible belief that all the civilians they fired at were probably either members of the Provisional or Official IRA or were supporters … and so deserved to be shot notwithstanding that they were not armed. (*The Guardian*, 16 June 2010.)

See also *A Statement to the House on the Saville Inquiry by the Prime Minister: The Telegraph*, 15 June 2010.