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MEMORIES OF NIALL McCARTHY



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No sooner had the participants in the Balliol Colloquium returned to their homes but they learned the terrible news of the death of one of the participants, Justice Niall McCarthy of the Supreme Court of Ireland.

Niall McCarthy was killed in a car accident in Seville, Spain on 1 October 1992. The news will fill everyone who knew him with grief and a sense of loss.

Niall McCarthy came to Australia three years ago for the Australian Institute of Judicial Management. He made firm friends amongst judicial officers who admired his delicacy of expression, his facility with words, and the wit with which he delivered some rather telling remarks upon the judicial and legal scene as he found it. In Ireland, working with the constitution, he was keen to develop a questioning approach to old problems and indigenous solutions to special new problems. He urged the same technique upon his Australian audiences.

At the Balliol Colloquium, it did not take long for Niall McCarthy to shine. In an early intervention, he stressed the importance of courage and a rigorous approach by judges to cases involving fundamental human rights issues. It is when the judge must uphold the rights of individuals against noisy and powerful interests that he or she is truly tested. He explained the decision of the Irish courts in the *Trimbole* case, concerning a fugitive from justice in Australia who had been illegally arrested and was set free by the Court.<sup>1</sup> He could equally have told of his own part in Irish Supreme Court decisions in which he held that criminalisation of homosexual conduct infringed basic constitutional rights;<sup>2</sup> and that a young girl, the victim of rape, should be permitted to go to Britain for an abortion.<sup>3</sup> He was an example of a strong judge, true to the basic principles of fundamental human rights, when those principles matter most - when they are invoked by beleaguered individuals or unpopular minorities.

As chance would have it, Niall McCarthy sat opposite me during the Colloquium. When my eyes strayed from the chair or the speaker, there in my field of vision was McCarthy, sitting with his fellow Celt, Lord Ranald MacLean of Scotland. At one point, I photographed them both in irreverent laughter - doubtless when some unduly solemn

point was being made by one of the rest of us. His friendship with Sir Anthony Campbell of the High Court of Northern Ireland was manifest. They were seen to go off to dinner together - exploding the myths about the enmities of Ireland. Indeed, towards the end of the Colloquium, Niall reminded the participants that on the very day of our meeting, in Dublin, were collected leaders of both communities in Ireland. They were sitting under the chairmanship of an Australian, Sir Ninian Stephen. They were discussing for the first time in decades the institutional questions presented for the good government of all of the people of Ireland. With a proper amount of passion, but not too much, he reminded us, the participants, of the terrible pressures which were exerted upon the judiciary of Northern Ireland. He extrapolated from the statistics of the murderous attacks on judges of Northern Ireland the equivalent figures if they were translated to England. They would amount to more than 200 judges attacked or killed. He declared that this needed to be said to bring home the assault on the rule of law caused by people of violence. You could have heard a pin drop during this intervention.

The concluding statement made by the participants at Balliol contained a paragraph which reflected the hopes of all of us that common ground for peace with justice could be found in Ireland, deriving strength from the adherence of both the United Kingdom and the Irish Republic to basic human rights as expressed in the *European Convention* and the *International Covenant*.

At the closing dinner in the great dining hall of Balliol, it was natural that this fine judge should be chosen to speak for us all in response to the Secretary-General of the Commonwealth of Nations. Niall fully lived up to his high reputation as a raconteur and after-dinner speaker. He told us of a judgment of his in which he had cited the authority of the two Marxs - Karl and Groucho. Groucho

had once said, he declared, "Money isn't everything. But it's everything else". Solemn judges from the four corners of the world laughed together. Surrounded by portraits of the past alumni and lit by the flickering candles, the whole company of us felt enveloped by the warm glow of friendship. Relieved for a short moment from our responsibilities, we felt the tangible bonds of kindred interests and the enduring connection of the common law. We were brought to that feeling by the voice of a man who, in his time, had clearly been a great advocate. He was still an advocate for vital causes.

Now he is gone. The loss to Ireland, to the common law and to the cause of human rights is enormous. Yet the work of judges lives on in their writings and in the example they set for the next generation of lawyers and fellow citizens. I can still see Niall opposite me. Laughing - but then sharp and incisive: making a telling comment, with power and economy of words. It is a blessing of the Balliol encounter that we met him. His death, and that of his wife Barbara, is a tragedy for their family, the judiciary and the nation of Ireland.

As an Irishman on the far side of the world I believe I can say that it is also a terrible blow to a wider community of friends and admirers. Including those whom Niall McCarthy won at Balliol.

#### NOTES

1. See *The State (at the Prosecution of Robert Trimbole otherwise known as Michael Hanbury) v The Governor of Mountjoy Prison* [1985] IR 550 (SC), 578f.
2. See *David Norris v The Attorney General* [1984] IR 36 (SC) at 80ff (dissenting). See now *Norris v Ireland* (1989) 13 EHRR 186 (ECHR).
3. See *Attorney General v X* [1992] IR forthcoming (5 March 1992). See also (1992) 13 *Human Rights LJ* parts 5/6.