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REGINA

-v-

BRIAN NELSON

Before

THE RIGHT HONOURABLE LORD JUSTICE KELLY

On

WEDNESDAY, 29TH JANUARY 1992

At

BELFAST CROWN COURT

EVIDENCE OF WITNESS : COLONEL :

PLEA IN MITIGATION BY MR BOAL QC

1 Wednesday, 29th January 1992

2 R. v. Brian Nelson

3 MR BOAL: I propose, my Lord, first to call a witness and,
4 because of the highly sensitive nature of the witness and
5 his present and past activity, I would ask leave that he
6 should not in fact be required publicly to give his name,
7 that he should write his name, hand it to the Court and it
8 should be available to the Court and to nobody else.

9 LORD JUSTICE KELLY: Very well.

10 MR BOAL: Would you come forward, please?

11 Witness Colonel . . . Sworn

12 Examination in chief by MR BOAL:

13 Q. I will call you Colonel, all right? A. Thank you, yes.

14 Q. You are a Colonel in the Army? A. I am, yes.

15 Q. In 1985, in 1986, '87 what was your position? A. I was
16 in 1986 or from '86 to '89, I was commanding a unit of the
17 British Army in Northern Ireland engaged in agent handling.

18 Q. In that position did you come to be aware of the existence
19 of Brian Nelson the accused? A. Yes, I did. In January
20 1987 we were reviewing our current agent coverage and we
21 identified a gap in our coverage of the Loyalist
22 paramilitaries and we examined the case of Brian Nelson and
23 decided that we would try and re-recruit him.

24 Q. Where was he at that time? A. He was in Germany at that
25 time.

26 Q. Doing what to your knowledge? A. He was, he had
27 employment I believe as a roof tiler.

28 Q. Had you been aware of his involvement in UDA activities
29 before he went to Germany? A. Yes. When his name was
30 first disclosed to me obviously we looked at the past files

1 so I was, therefore, made aware of his previous activities.
2 Q. What did you do as a result of your decision to re-recruit
3 him? A. Well, I first had to consult with the security
4 service, but having done that and gained permission to go
5 ahead with the recruitment, or the re-recruitment, we then
6 initiated the procedures and brought him back from Germany
7 and continued with the case from then on.
8 Q. To your knowledge did he have employment in Germany at that
9 time? A. Yes, he did.
10 Q. Was that lucrative employment? A. I believe he was well
11 paid, yes.
12 Q. And was he settled there with his wife and family?
13 A. He was indeed.
14 Q. In order to encourage his return what did you do? A. We
15 discussed the matter with him and explained to him our aims,
16 our aims being that we wished to infiltrate him into the
17 Loyalist paramilitaries in order to gain inside knowledge of
18 their workings and in order to prevent or at the very least
19 limit their murderous activities. Having explained that we
20 then said that we would obviously make recompense for the
21 disruption of his life-style, the consequent disruption to
22 his family and the difficulties they were going to incur and
23 that we would help him to settle in Belfast and make sure
24 that he had enough money to look after and support his wife
25 and his sons.
26 Q. From what you say your arrangements, financial arrangements
27 would involve two matters, his transfer from Germany to
28 Northern Ireland? A. That is correct.
29 Q. And the consequential expense that would be for him, and
30 secondly his financial maintenance from there on?

1 A. That is correct, yes.

2 Q. What arrangements were made for his financial arrangements
3 from then on? A. From then on he was paid a retainer or
4 a salary if you want to call it that, which was aimed purely
5 at helping him support his family. He was not paid by
6 results. That's the single most effective way of running
7 agents.

8 Q. How much was he paid? A. He was paid approximately £200
9 a week.

10 Q. Was it to your knowledge that that was considerably less
11 than he was earning in Germany in the position he was in?
12 A. I think bearing in mind the disruption to his previous
13 life-style and the difficulties the move placed him in, he
14 was not placed at an advantage by that sort of payment. I
15 don't believe he gained materially at all from his time
16 cooperating and working with us.

17 Q. Did you ascertain directly what he had been earning in
18 Germany? A. No, but I believe it was in comparative
19 terms more than the £200 a week.

20 SB TO AS 11.10

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1 Wednesday, 29th January 1992

2 R.v. Brian Nelson

3 AS FROM SB 11.10

4 WITNESS 'COLONEL'

5 (Cont'd) Examination in Chief MR BOAL:

6 Q. Now, you have already said that, in fact, he was not paid by
7 results, was he ever paid a retainer more than two hundred
8 pounds a week? A. From my memory of our files in which

9 we record all these matters I don't believe so.

10 Q. Now, the general purpose of re-recruiting him you say has
11 been explained to the Court when he was brought back from
12 Germany in the manner you described. Did he, in fact, join
13 the UDA again? A. Yes, he did, yes, but we had a

14 difficulty here. our aim was to gain inside knowledge and at
15 the same time we did not want him to get involved in the
16 murder gangs associated with the UDA or the other Loyalist
17 paramilitaries therefore we had to decide where he could
18 best be infiltrated in order that we could gain information
19 about possible targets for assassination and pass them on to
20 the RUC in the shape of warning reports without getting him
21 involved in the murder gangs themselves and so for
22 that reason -----

23 Q. What was the best niche as you saw for him? A. The
24 best niche at the time we could see was to infiltrate him
25 into the intelligence structure.

26 Q. Of course I'm sure it was to your knowledge that he had been
27 involved in the intelligence structure before he went away
28 in 1985? A. Yes, it was and therefore he had some
29 credibility with his associates.

30 Q. Yes.

1 LORD JUSTICE KELLY: Well, was it your intention he should get in
2 touch with the RUC and be in contact with them throughout?

3 THE WITNESS: No Sir, the system we use is that we would run the
4 agent and that we would be responsible for passing on his
5 information to the RUC which we did, of course, in all
6 cases.

7 MR BOAL: He was your agent? A. He was our agent.

8 Q. To whom was his identity known? A. His identity was
9 known to a very small circle of people. They included
10 senior Special Branch officers at Regional and Headquarters
11 level and two senior members of the security service. They
12 were not incidentally known to senior officers in the Army.
13 His identity was not known apart from myself and my own
14 colleagues in my own unit.

15 LORD JUSTICE KELLY: Were they known to the RUC?

16 THE WITNESS: Yes, sir they were, yes my Lord.

17 MR BOAL: When you say 'they' that is his identity.

18 LORD JUSTICE KELLY: His identity?

19 THE WITNESS: His identity was known to the senior Special Branch
20 officers at Regional and Headquarters level in the RUC.

21 MR BOAL: Now you have indicated to the Court what your purpose
22 was and the difficulty that you saw in achieving that
23 purpose, that is not to involve him in murder gangs. What
24 instructions would he have been given at that time in order
25 to effect your purpose? A. This was a very difficult
26 matter because there are no really laid down guidelines that
27 are applicable to the situation in Northern Ireland where
28 we're talking about infiltrating terrorist organisation.

29 Q. Just stop there. Are there, in fact, guidelines at all
30 issued by the Home Office for such a situation?

1 A. There are Home Office guidelines that I'm aware of.

2 Q. What are they appropriate for? A. In my opinion
3 they're more appropriate for dealing with the criminal
4 fraternity in the East End of London rather than the reality
5 of the terrorist situation in Northern Ireland.

6 Q. Why do you say that? A. I say that because in order to
7 gain inside knowledge which we desperately need of the
8 terrorist organisations in order we can save life, that we
9 can prevent attacks taking place, that we can prevent
10 assassinations that we can make arrests, that we can get
11 recoveries of weapons and explosives you must have an agent
12 who is in a terrorist organisation. Now, the current Home
13 Office guidelines from my memory of them make it quite clear
14 that any such activity by an agent is, in effect, a criminal
15 act.

16 Q. If, for example, the Home Office guideline were that the
17 agent should not commit a criminal offence by being a member
18 of the IRA or a member of the UVF or such proscribed
19 organisation he would be committing a criminal offence?

20 A. Absolutely, yes.

21 Q. And therefore he would be debarred from being used if the
22 Home Office guidelines were followed rigidly?

23 A. Correct.

24 Q. That's really what you're saying? A. Yes

25 MR BOAL: My Lord, I'm sorry I've got to put it in this way I
26 haven't got the Home Office guidelines. The defence has
27 asked the Home Office for it in order that the Court may be
28 properly advised as to the framework within which in fact
29 the agents should have been working, we were not granted
30 them and I've got, therefore, to put the questions in the

1 rather speculative way that I do I'm sorry about that.

2 LORD JUSTICE KELLY: He seems to imply that they're rather
3 irrelevant in this case.

4 MR BOAL: Not so much irrelevant as inappropriate. That's what
5 you're saying? A. Yes, I am, yes.

6 Q. Do you find any help from them at all in the Northern
7 Ireland terrorist situation? A. I think they make
8 things very difficult for anyone who is trying to run agents
9 or infiltrate agents into a terrorist organisation in the
10 midst of the terrorists in order to get the information we
11 require.

12 Q. Can you observe the guidelines and have an agent in the IRA
13 or UVF? A. No, not in my opinion.

14 Q. Do you know as a matter of interest if any attention has
15 been paid to this problem? A. This problem, to the
16 best of my knowledge, was actually raised at the outset of
17 the Stevens' Inquiry or around that time, I can't remember
18 the exact date, and we did raise concerns up until then I
19 hadn't actually, myself, been made aware that too closely of
20 what the guidelines had been they were not something
21 regularly used and it was not until around that stage Home
22 Office guidelines were shown to me. We raised concerns
23 obviously straight away and it was my understanding that
24 something was going to be done about this. I really do not
25 know whether since then anything has been done about it.

26 Q. It hasn't reached you anyway? A. No.

27 Q. Or this Court. Now, to go back to his return and
28 reinvovement to your knowledge what did he, in fact,
29 involve himself in, when he returned? A. What he did,
30 and he had a very difficult problem here because we had to

1 get him into a position where he had the confidence and
2 trust of his associates among the paramilitary groupings
3 and, therefore, we tried to get him to get involved in the
4 intelligence structure to make it clear that he was an
5 efficient collator, he was a person that could be trusted
6 and that would be able to research the intelligence records
7 that he already had and had come into his possession the
8 minute that he became involved again. And we really tried
9 to get into a position whereby any targets for assassination
10 were being discussed with him and his system so that he
11 could then inform us so we, in turn, could inform the RUC
12 and indeed that happened on many occasions. We were quite
13 clear that we could never guarantee one hundred per cent
14 that he would be privy to life-saving information all of the
15 time, that he would be privy in advance to the paramilitary
16 plans.

17 Q. I'll come to that in a moment. It's very useful that you
18 should say that, but just for the moment as an intelligence
19 officer he would be required to have a number of documents?

20 A. Yes he would, yes.

21 Q. You knew that? A. We knew that because once he had
22 managed to gain the confidence of his associates over the
23 first few weeks and months, he was given charge of a large
24 amount of material that was already in the UDA hands.

25 Q. What did he do with that? A. He brought it to us, we
26 studied it, photocopied it where necessary for reporting,
27 passed parts of it to the RUC that was relevant for their
28 comment and then generally, for security reasons obviously
29 for his security and gave them back to him and he took them
30 to where he would have them.

1 Q. So there's no doubt about what you were saying, that was a
2 bulk transfer that he made to you initially? A. Yes,
3 it was it was quite a large amount of documents that he
4 showed us.

5 LORD JUSTICE KELLY: Can you say when he did it, when he gave it
6 to you?

7 THE WITNESS: My Lord, from memory I think this was in the first
8 half of 1987. I think perhaps May 1987

9 MR BCAL: Pretty well as soon as he got his feet in the
10 organisation? A. Yes.

11 Q. And that was passed to you in bulk? A. Yes.

12 Q. It was analysed by you, some copies were taken? A. Yes
13 there was a large amount of material that was duplicated.
14 The sort of things we're talking about are photo montages,
15 reports from sectors of the security forces and all sectors
16 of the security forces and a large amount of material that
17 they themselves had researched and it was brought to us and
18 we looked at it and we reported on it.

19 Q. Now, that's the bulk transfer? A. Yes.

20 AS TO SB 11:20

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1 Wednesday, 29th January 1992

2 R. v. Brian Nelson

3 SB FROM AS 11.20

4 Witness 'Colonel'

5 (Contd) Examination in chief by MR BOAL:

6 Q. Thereafter, that is after the 1987, the latter part of 1987,
7 1988, '89, were you aware that he received further
8 documents? A. Yes, we were, and in almost every case
9 when it was conveniently safe for him to do so he brought
10 them to us and we would photocopy them and then pass them on
11 in the form of reports and then he would take them back to
12 his safe hiding place.

13 Q. And if at any time you required sight of a document, either
14 initially or a second sight of it, were you always able to
15 obtain that from him? A. From memory, I cannot remember
16 ever having difficulty getting documents from him. If there
17 was a difficulty or a delay it was because we had serious
18 security considerations for his own safety, but generally
19 speaking if we wanted the documents we got them and that was
20 of course exemplified when finally the whole of the
21 intelligence records within his personal possession were
22 brought out and we asked him for them and he gave them
23 willingly and we took them into our care.

24 Q. At one time the intelligence documents, we will call them
25 the intelligence documents of the UDA, were transferred from
26 one physical place in Belfast to another? A. Yes, they
27 were. And this was really -----

28 Q. Were you told about that beforehand? A. Yes, we were
29 and indeed we helped to facilitate this transfer by giving
30 him a sort of secure passage. And the reason we wanted him

1 to move them was because he had, I think I believe, them in
2 his own house and we wanted him to move them to another
3 house where they would be safer. And in doing so we tried
4 to make the position as safe as possible by informing the
5 RUC that we had an interest in that address, the new
6 address. I can't remember myself exactly how that was
7 briefed to the RUC, I can't comment on that, but we did tell
8 them this was a normal practice. If there were houses of
9 interest to either my own organisation or to Special Branch
10 or any other organisations, it was normal for the Special
11 Branch to keep a watch on these addresses so that if other
12 elements of the RUC, uniformed branch or the CID wished to
13 do a search for any reason, at least Special Branch
14 interests and our interests could be looked after in advance
15 and this was all for agent protection obviously.

16 Q. Does it just mean so that they wouldn't be searched?

17 A. Yes, unless absolutely necessary. It was to allow us to
18 maintain the agent's security.

19 LORD JUSTICE KELLY: You didn't consider the documentation was
20 enough, you wanted something more from him, did you?

21 MR BOAL: I'll be dealing with that, my Lord.

22 LORD JUSTICE KELLY: May I ask a question now?

23 MR BOAL: I'm dealing with documents at the moment.

24 LORD JUSTICE KELLY: What more did you want from him apart from
25 passing the documentation?

26 THE WITNESS: My Lord, we wanted as much information as we could
27 from him about the inner workings of the Loyalist
28 paramilitaries, his associates at the top level in the UDA,
29 what their plans were, what their policies were, anything he
30 could tell us about the workings, but most of all of course

1 we wanted to find out from him what their intentions were
2 with regard to murderous activities. And by placing him in
3 that position of course, and because he was in charge of the
4 records, this meant that if planning was going on in many
5 cases they would come to him or come to his structure and
6 say what do you know about this, what do you know about that
7 and that gave us an immediate clue as to the sort of people
8 that they were planning to assassinate or they were thinking
9 about planning to assassinate. And, therefore, that was
10 potentially life saving information.

11 MR BOAL: Now, you knew about the documents, you knew where they
12 were, you had copies of them when you wished them.

13 A. Yes.

14 Q. What use was he making of the documents to your knowledge?

15 A. Well, he of course is the senior intelligence officer,
16 as he eventually became, but as an intelligence officer had
17 to obey the orders of his superiors in the organisation and
18 they would be the ones that would come to him and say:
19 Right, we're interested in such and such a personality, have
20 you got any information on him, have you got a photograph of
21 him, have you got an address for him? In many cases he did,
22 in some cases he didn't and he would obviously give the
23 information if he had it, but at the same time he was then
24 telling us and we were passing it on in the form of reports
25 that there was an interest in this particular person.

26 Q. So first you knew that he was making use of them in this
27 way? A. We did indeed, yes.

28 Q. Secondly when he made use of them in this way how did he
29 convey that to you? A. He was normally met on a regular
30 basis and that sort of information would normally be passed

1 on when he was met. Occasionally, if it was a pressing
2 point and there was a worry that some action might be going
3 to take place in a short space of time, he would telephone
4 in. But telephoning is a particularly dangerous means of
5 passing information, it wasn't something that was
6 necessarily encouraged.

7 Q. How often would these regular meetings take place?

8 A. It's difficult to be precise because there would be no
9 pattern for obvious security reasons, but perhaps if I say
10 on a regular, almost a weekly basis.

11 Q. You, because of your position over the years, have some
12 understanding as to how these paramilitary organisations
13 work. There is a principle which is known colloquially as
14 the 'need to know' principle. Would you just explain that
15 to his Lordship? A. Yes, my Lord. The need to know
16 principle is quite clear. We wish to restrict knowledge of
17 the agent's identity to -----

18 Q. No, sorry, within the paramilitary organisation how do they
19 operate the need to know principle? A. Quite clearly
20 because they work in compartments and, therefore, in
21 relation to the intelligence structure, for instance, a
22 murder gang or a leader of a murder gang might well come
23 along to the intelligence officer and say what have you got
24 about a particular personality and would get the answer. He
25 wouldn't say any more necessarily. He could go away then
26 and plan whatever he had to plan or to take the thing
27 forward, and the intelligence officer was not really in a
28 position to know who was going to be involved or when
29 attacks were going to take place or how the planning was
30 going to be carried out. In some cases he might find out.

1 but by no means in all cases and there were many occasions
2 when Brian Nelson, as an intelligence officer, found out
3 only that there was an interest in a particular name or a
4 particular personality and he passed that on, but we weren't
5 in a position to find out any more about it. Whenever we
6 could we did or he did.

7 Q. There would be occasions, would there, when he would be
8 indicating to you, when I mean you I mean the intelligence
9 structure, that interest was being expressed on a number of
10 occasions against a particular person? A. Yes, indeed,
11 and there were several cases where targets for assassination
12 were brought to our notice by Brian Nelson and we produced
13 reports. I think in all, if you wish me to quote
14 statistics?

15 Q. Yes, could you give us some numbers? A. Yes. I think
16 in the period from 1985 to 1990, or until his arrest, we
17 produced on Brian Nelson's information something like 730
18 reports concerning threats to 217 separate individuals.

19 Q. That's threats to the life of you mean? A. Yes, threats
20 to the life of individuals. In all cases these were passed
21 on for action. Of the 217 of interest, that of the 217
22 personalities that were named in his reports and our
23 reports, five of them died. One at the hands of the
24 security forces in Gibraltar, one from natural causes and
25 three at the hands of the Protestant paramilitaries, and I
26 think I'm referring to three names Siane, Davidson and
27 Craig.

28 Q. And another. In your view what is that indicative of?
29 A. In my view it's indicative that he was a prolific
30 provider of information, that although there were occasions

1 when Loyalist attacks did take place, where murders did take
2 place, he was not privy to advance information about these
3 activities, but he did produce a tremendous amount of
4 information referring to their plans and their targets for
5 assassination and this was of course of life saving
6 potential.

7 Q. In the case of two of them, that is McDaid and Slane,
8 Mr Kerr's already dealt with that in opening, in fact I
9 understand he did provide information on a number of
10 occasions about both those people before their deaths.

11 A. Well, in the Slane case certainly. In the McDaid case
12 of course there was a mistaken identity. He had been
13 reporting on a number of occasions the possible threat of
14 the threat to Declan McDaid.

15 Q. That's his brother. A. He was not aware that there was
16 any interest in Terence McDaid and, therefore, when Terence
17 McDaid was killed he was shocked, the fact was that there
18 had been a dispute over addresses and he had made it quite
19 clear that the address at which Terence McDaid was staying
20 was not the address that Declan McDaid was staying. And
21 afterwards he took his associates to task and said, to the
22 best of my memory, my Lord, I did not tell you that that
23 address was Declan McDaid's address. I did not give any
24 clearance for further action.

25 SB TO AS 11.30

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1 Wednesday, 29th January 1992

2 R.v. Brian Nelson

3 AS FROM SB 11:30

4 WITNESS 'COLONEL'

5 (Cont'd) Examination in Chief MR BCAL:

6 Q. To remedy a clear misunderstanding that is publicly
7 entertained apparently, does your knowledge allow you to say
8 that although he gave information about McDaid he gave
9 information about Slane that that information was not
10 specific enough to prevent the deaths of either Slane or
11 McDaid? A. No, he was not aware, as far as I can
12 remember from my recollection of the facts, he was not aware
13 that there was a particular imminent threat to Slane, he
14 knew that Slane was, I think, one of about four targets that
15 were being considered and he passed that to us, and we in
16 turn passed it on.

17 Q. Quite frankly or quite bluntly are there a number of people
18 who owe their lives to him at the present time?

19 A. Indeed they are, including some very well known
20 personalities.

21 Q. Some perhaps who have been complaining about his activities?

22 A. That might well be the case, certainly in early '87
23 around May 1987 the then President of Sinn Fein, Mr Adams,
24 came under threat and on this occasion we were able, through
25 Brian Nelson, to gain quite a lot of knowledge about their
26 plans to assassinate him.

27 Q. It was quite specific on this occasion? A. Yes, it was
28 indeed, we knew where they were going carry out the
29 assassination.

30 Q. And the time? A. And when.

it

1 Q. And the manner? A. That's correct.

2 Q. And then? A. And then as a result of that we were able
3 to pass it on to the police. We were able to plan an
4 exploitation operation to prevent it happening.

5 Q. I don't particularly want to go into personalities but the
6 one you gave it us is a good example. Have you any doubt
7 that his life was saved by Nelson? A. I have no doubt
8 whatsoever that that attack might well have taken place
9 without anyone's knowledge.

10 Q. It was, I think, proposed to be done by a particularly
11 effective and deadly way? A. Yes, it was going to be
12 carried out by a limpet mine attack, my Lord, on Mr Acam's
13 car.

14 Q. On the roof of his car? A. Yes.

15 Q. He was passing this sort of information to you over a very
16 significant period of time, as you have said, and in a very
17 significant volume of cases. From your understanding of his
18 position, of your understanding of the workings of the UDA,
19 can you explain to the Court the difficulties that he would
20 have had in respect of his own security in doing that?

21 A. Yes absolutely. He was placed in a most difficult
22 position. Terrorist organisations in the U D and UVF and
23 other paramilitary organisations, they're all the same on
24 this, they are very mindful of their own security, they're
25 very conscious of the fact that they might have agents
26 within their midst and they're constantly on the look out
27 for them. Therefore, Brian Nelson, as an agent within their
28 midst, was in a particularly hazardous position. Meeting
29 his handlers was a very hazardous activity. There are known
30 incidents of agents being follow to a meeting, being

1 identified with their handlers and being compromised as a
2 result. Telephone calls are even risky. There are known
3 incidents of the agents being compromised through cross line
4 situations, even being seen in a public telephone box and
5 even telephone calls at home are risky because the danger of
6 being heard by children who might pass it on, pass some
7 information on. So he was in a particularly vulnerable
8 position there and he, of course, faced almost certain
9 brutal interrogation and an equally brutal death if he were
10 even compromised the slightest slip could have led to his
11 being compromised. He, therefore, was in a position of
12 great strain. His health suffered, I know, as a result of
13 the strain he was placed under over the three year period.
14 He was -- he had a Schizophrenic existence. He was torn
15 between the requirements of his terrorist associates, his
16 need to allay their suspicions at all times, to gain their
17 confidence and at the same time he had to satisfy the
18 requirements of his handlers to provide as much information
19 as he could. This was a very difficult thing for him to do
20 and we must remember, my Lord, that for ninety-five per cent
21 of the time he was on his own. Certainly he met his
22 handlers regularly but we're only talking about a few hours
23 a week where they could counsel him and help him and try and
24 instruct him. The rest of the time he was on his own. The
25 rest of the time he was, to quote a cliché, 'out in the
26 cold'. He was responsible for making the decisions about
27 the information. He had to rely on his own judgment. He
28 had to decide whether information was so important that it
29 needed to be passed immediately at risk to himself or
30 whether it could wait until the next meeting. He had to

1 decide whether he should go along with his paramilitary
2 associates in their activities because his life would be in
3 danger and he would come under suspicion if he didn't. He
4 had to decide whether to encourage them or to try and
5 discourage them by, for instance, saying: "No I don't think
6 that target is worth while because it's too dangerous", or
7 give some other excuse. He was responsible for making all
8 these decisions himself and it's no surprise, it's certainly
9 no surprise to me, that he didn't get it right all of the
10 time. He was in an extremely difficult position. I don't
11 believe there is anyone in this Court room here who would
12 want to be placed in that position, who would be as
13 courageous as Brian Nelson was in that position. He was
14 bound to make mistakes and undoubtedly he did. There were
15 times when he did not pass on the information quickly
16 enough, when he didn't telephone when he should have
17 telephoned. There are times when he perhaps got too
18 involved with the paramilitary associates, where he forgot
19 temporarily his true role but they're all very explainable
20 as far as I'm concerned because of the strain and the
21 dangers, the strain that he was under and the dangers he
22 lived with day in and day out. He is actually a very
23 courageous man.

24 LORD JUSTICE KELLY: In what way did he get too involved at
25 times?

26 THE WITNESS: There were times, my Lord, when he was asked to try
27 and provide information about people and he would get
28 involved in trying to find out where they lived, he would
29 take a personal interest in finding out where they lived so
30 he could tell the terrorist associates or try and find out

1 about a person's movement in order so he could tell the
2 terrorist associates and, of course, he did tell us as well,
3 and normally, in fact in all cases afterwards and for that
4 reason he was taken to task by his handlers but I go back
5 again to what I say, it was his judgment at the time and we
6 had to rely on his judgment and we could try and counsel him
7 as much as possible and say: You must not get too much
8 involved, you must play a neutral line, keep their
9 confidence and get the information to us. It was extremely
10 difficult for him, I do understand that.

11 MR SCAL: You recognise it was almost impossible to play a
12 neutral line and at the same time get information that was
13 worthwhile passing to you? A. I think it's worthwhile
14 saying there's absolutely no doubt in my mind that Brian
15 Nelson was not loyal to the UDA, Brian Nelson was loyal to
16 the Army. He wished to help the Army in its attempts to
17 counter terrorism and to save life, he wished to do that.
18 That was his prime motivation. He wanted to save life, he
19 wanted to make up for the past misdemeanours, he wanted to
20 help bring down the Loyalist paramilitary organisations and
21 he wanted to help the Army. He was a soldier by tradition
22 we shouldn't forget that and we wanted to continue to be a
23 soldier.

24 Q. It's an exemplification perhaps of the dangerous life he was
25 living, did you become aware of one occasion in which he, in
26 fact, came under suspicion and was interrogated in a brutal
27 way? A. He was indeed interrogated. He came under
28 suspicion, he was subject to brutal interrogation. He was
29 electrocuted with a cattle prod on a number of occasions,
30 and he survived through really the courage that we had come

1 to expect of him.

2 LORD JUSTICE KELLY: Can you say when this was?

3 THE WITNESS: My Lord, from memory I think it was in 1988.

4 MR EGAL: In case of misunderstanding you said electrocuted on a
5 number of occasions, it was one occasion but electrocuted on
6 a number of times? A. It was one occasion out the
7 cattle prod was used a number of times.

8 MR BOAL: August 1988 it was. A. Is it possible for me to
9 have a glass of water?

10 Q. Certainly. The Court has asked the date and you have heard
11 the date it was August 1988. Despite that he continued with
12 his work after that time? A. Oh yes, he did and he
13 survived that occasion really through courage and I remember
14 afterwards not surprisingly he had rather too much drink and
15 I remember that he phoned in on the records fairly drunk but
16 after that that released tension and he got on with it and
17 he survived and regained the confidence of the associates
18 and continued to report to us.

19 AS TO SB 11:40

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1 Wednesday, 29th January 1992

2 R v Brian Nelson

3 SB FROM AS 11.40

4 Witness 'Colonel'

5 (Contd) Examination in chief by MR SOAL:

6 Q. I would now like you to tell the Court the value that you
7 placed upon the reports and information you got from him and
8 the use that you made of it. A. Yes. In judging the
9 value of any intelligence reports there are two things that
10 we have to consider. First of all, the reliability of the
11 agent and secondly the likelihood or not of the
12 information. And we went to a great deal of trouble to
13 assess the reports in that manner, and all reports, all
14 intelligence reports that we sent out were graded
15 accordingly. As far as the reliability of the agent was
16 concerned, my Lord, we had to examine whether he was by
17 nature reliable, whether there was any history of him having
18 lied to us, whether there was any history of him having held
19 back information, whether he recalled names and dates and
20 places accurately or whether he had a bad memory. We had to
21 assess how he had got the information, had he got it himself
22 or had he got it from someone else and in what
23 circumstances. Was it, for instance, a pub conversation or
24 was it at a formal meeting? All these factors were
25 applicable to our assessment of the reliability of the
26 agent. When it came to the information we had to obviously
27 judge the information against information from other sources
28 to see if there were any corroboration. We had to judge the
29 reports, the likelihood of the reports against what we knew
30 to be the general intelligence picture. We had again to go

1 into the detail of how he had actually found out the
2 information, who had told him, what were the circumstances,
3 exactly what was said. And having done that we would
4 produce an intelligence report with an assessment of his
5 value. Now, having said all that the assessment of these
6 reports was carried out on a number of stages. It was
7 carried out by the handler himself. It was carried out by
8 his immediate superiors. It was then carried out by myself
9 and by my senior colleagues in my headquarters.
10 Furthermore, it was carried out by the recipients of the
11 information which would be Special Branch, RUC Special
12 Branch at regional and headquarters level, security service
13 desk officers, military civilian and police assessments
14 staff. All these people would have a say in commenting on
15 the report.

16 Q. In a sentence how did you regard the quality of the material
17 that you obtained from him? A. Well, as far as we were
18 concerned, and I had no reports from anyone else to the
19 contrary, the reports were of a high value, they were
20 accurate and they were passed on in that spirit and were
21 received in that spirit.

22 Q. Perhaps to illustrate the quality that you attributed to
23 these reports, to whom did you in fact pass them on?

24 A. Well, the reports were passed on in a variety of ways
25 and this was common to most of our reporting. As a routine
26 measure the essentials of the information were always passed
27 to RUC Special Branch in intelligence reports. They were
28 also passed to military addressees, to civilian addressees
29 in the security apparatus. In addition to that with an agent
30 of his standing and access, we would often produce extra

1 reports which were much more detailed and these reports
2 would go to people who knew his identity. i.e. we're talking
3 about senior Special Branch officers, security service
4 officers. In addition to that regular verbal briefings were
5 carried out on his information.

6 Now, I myself gave monthly briefings to GOC, to the
7 CLF, to the director and coordinator of intelligence and his
8 senior security service officers. And it would be quite
9 normal for Brian Nelson's case and his information to be
10 referred to in these monthly briefings. Furthermore we
11 would have further dissemination of these reports was
12 possible through these other agencies. For example, the
13 Chief Constable would have been made aware, it would have
14 been the Special Branch responsibility to inform the Chief
15 Constable, for instance, there was information relating to
16 leaks of information from the security forces to the
17 Loyalist paramilitaries and I know that that was brought to
18 the attention of the Chief Constable. At the same time
19 there was information produced that referred to possible
20 Loyalist attacks in the Republic of Ireland and Special
21 Branch would have been responsible for disseminating that
22 further to Dublin. As far as Stormont is concerned, and
23 obviously the Secretary of State might have an interest in
24 some of the reports. In other words Brian Nelson's product
25 and his reporting was passed throughout the intelligence
26 community and at a high level, and from that point of view
27 he has to be considered a very important agent, certainly as
28 far as we were concerned and certainly as far as I'm
29 concerned he was a very important agent of some standing and
30 his product was appreciated.

1 LORD JUSTICE KELLY: Do I take it that you had personal knowledge
2 of all these five conspiracies to murder that I am dealing
3 with?

4 THE WITNESS: I am aware, yes, my Lord. I am aware of the
5 information that was passed relating to these conspiracies
6 to murder. He in fact reported the threats to the
7 individuals concerned on more than one occasion, in some
8 cases. I think in the case of Mr Gillen there were at least
9 12 reports before the incident which led to the conspiracy
10 charges. I think there was something like 12 reports, out
11 in all there was something like 20 reports produced about a
12 threat to
13 Mr Gillen's life.

14 LORD JUSTICE KELLY: He seemed to initiate some of these himself
15 or with others.

16 THE WITNESS: My Lord, he was working within a structure and he
17 was the intelligence officer and he was expected to produce
18 intelligence that would include targeting intelligence or
19 targeting information.

20 LORD JUSTICE KELLY: But from your point of view was he supposed
21 to do this, to start a conspiracy off by furnishing a name
22 or possible target?

23 THE WITNESS: Sir, to the best of my knowledge I can't remember
24 him actually initiating something. There would be
25 discussions with his terrorist colleagues or his
26 paramilitary colleagues at which names would come up. It
27 was never our intention, nor indeed his intention, to
28 initiate procedures at any stage of the game and from my
29 recollection of the files I do not believe that that was the
30 case.

1 LORD JUSTICE KELLY: He was asked to provide a name or someone,
2 as the word was used, and he would choose a person as a
3 possible target.

4 THE WITNESS: Well, he was in a position, my Lord, where he was
5 the intelligence officer and they were saying to him: Right,
6 we want a target. you are the man with the records, you
7 produce a name. He wasn't really in a position for his own
8 security to say: No, I'm not going to give you any names.
9 So he would give a name, but then he would tell us if that
10 were the case and if that's the way it happened.

11 MR BOAL: Arising out of that, I will be telling the Court. In
12 light of questions the Court has just put to you presently,
13 I will be telling the Court that on one occasion a person
14 who was known by him to be a murderer took a card from him,
15 that's a personality card, looked at it and put it back in
16 the file again without telling him who it was. He reported
17 this to his handlers and his handlers said do your best to
18 avoid that sort of thing happening again, because now we
19 don't know who they're targeting, which led him then when he
20 was asked for a target, bearing in mind the advice of his
21 handlers, to give them a target and pass on that information
22 to the security services. Would you agree that that was a
23 proper way for him to act in the circumstances? A. Yes.

24 Q. I'm not saying whether it's legal or legalistic, but in your
25 context was that a proper way for him to act?

26 A. Bearing in mind the difficult position he was in,
27 bearing in mind the fact that he was constantly under
28 threat, that he was never sure of his associates, there was
29 always a doubt in his mind as to whether they really trusted
30 him. He had to be very careful as to how he played them

1 and, therefore, if tney were asking him for information and
2 asking him to do his job as an intelligence officer witin
3 the UDA, he had to show willing. And the key was that
4 whenever ne could, and in as timely a fashon as possible,
5 he would then report that to us so that we were in a
6 position to issue warnings and could take counter action.

7 SB TO AS 11.50

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1 Wednesday, 29th January 1992

2 R.v. Brian Nelson

3 AS FROM SB 11:50

4 WITNESS 'COLONEL'

5 (Cont'd) Examination in Chief MR BOAL:

6 Q. As to whether that could be said properly to initiate a
7 conspiracy or not I will deal with perhaps presently but did
8 you see from your point of view anything wrong with his
9 coping with that situation in the way I have described?

10 A. No, I believe he had very little alternative without
11 drawing attention to himself and without coming under
12 suspicion. They were too willing to jump on him from that
13 point of view if he had stopped co-operating and if he had
14 not passed information on -----

15 Q. If he had said: No I'm not going to give you one, what would
16 have happened? A. Well, he might well have got a clout
17 round the ear, on the other case it might have been a lot
18 worse than that, he would have come under suspicion.

19 Q. Would he have remained intelligence officer very long?

20 A. I doubt it very much.

21 Q. On one occasion, as an example of the sort of information
22 that you're talking about, do you recall one occasion in
23 which you were told by him that he had been asked by a named
24 person, a known killer, to provide him with a photograph and
25 that photograph contained two people? A. Yes.

26 Q. And both he and his handlers were misled into thinking that
27 the interest of the paramilitaries was directed to one of
28 them whereas in the event it turned out to be the other?

29 A. That's correct, yes.

30 Q. Would you explain that to the Court? A. To the best of

1 my memory, my Lord, there was paramilitaries wanted to
2 retaliate for a murder of one of their own, I can't rememoer
3 all the details I'm afraid. And they said they were
4 interested in a particular person and they said to Brian
5 Nelson did he have a photograph of that particular person.

6 Q. Coming out of the courthouse? A. Coming out -- well
7 they asked him for a photograph he said yes, he did. He
8 produced a photograph of this particular individual coming
9 out of the courthouse and showed it to them and then he
10 reported that to us and we had every reason to believe, as
11 he did, that that was the target they were aiming to
12 assassinate.

13 Q. But in the event it turned out to be the other person?

14 A. Indeed. it was, yes.

15 Q. But -----

16 LORD JUSTICE KELLY: Sorry, to interrrupt. Did Nelson only have
17 possession and custody of the pntographs and information
18 about these possible victims? Did the rest of the
19 organisation not have copies?

20 THE WITNESS: Yes, indeed they did and, of course, we have to
21 remember that there were othr paramilitaries, the
22 paramilitaries were in other regions and they had
23 sub-groupings as well as a main group. He was at the top
24 level and, therefore, he had what were really supposed to be
25 the central files but we were aware that there were other
26 files or other photographs and other information held by
27 other sections of the paramilitaries. We could only do what
28 we could within the area of his concern. For instance,
29 murders or attacks that took place really outside Belfast or
30 on the outskirts of Belfast, he would have no access to that

1 sort of information.

2 LORD JUSTICE KELLY: I would have thought there would have been
3 copies of the information and photographs available to other
4 members of the organisation apart from Nelson?

5 THE WITNESS: Well, of course, if he were asked to pass on
6 photographs and came under orders and was told by his
7 immediate associates we want photographs for so and so, or
8 for such and such a region, he would not really be in a
9 position to refuse that order.

10 MR BOAL: That was his position? A. Yes, that was his
11 position.

12 Q. Would you have been pleased if he had refused?

13 A. Well, if he had refused there is no doubt that his
14 position as the intelligence officer would have been
15 considerably eroded and therefore, in the long term we would
16 have lost out on his intelligence and at the same time he
17 would himself have been placed in danger.

18 Q. Lastly, I would like you to deal with your assessment of his
19 motivation; money, are you satisfied that money had nothing
20 to do with it? A. Brian Nelson's motivation was much

21 more honourable and reliable than money, than financial
22 motivation. There were two factors in determining his
23 motivation really. The motivation was something that we
24 looked at in all our agent case work in some depth as we did
25 all manner of other things to do with the personality of the
26 agent. We would often discuss with the agent family
27 problems, his worries, his anxieties, his aspirations, and
28 we would be constantly looking to assess and reassess his
29 motivation and that was done at various levels not just by
30 the handler often the handler wasn't in the best position to

1 judge that. he was often too close it had to be done further
2 back, by those sitting looking further back at reports with
3 a more objective view just to try and judge the man. Now,
4 as far as he was concerned I have no doubt in my mind that
5 his motivation was to make up for his past misdemeanours to
6 save life, and to bring down, eventually, the terrorist
7 organisations, but I think probably the biggest motivation
8 of all was team spirit and his loyalty to the Army. As a
9 matter of course it was our policy with Army agents to
10 encourage them in this business of team spirit. He wanted
11 to make clear to them that it was a team effort and they
12 were probably -- or they were the most important elements of
13 the team, the agent was at the sharp end and the handlers
14 were supporting them as they could and Brian Nelson took to
15 that, I believe, very clearly. He wanted to be a member of
16 the team and he wanted to continue to work with the Army
17 and, as I have said already, his loyalty was to the Army and
18 to the security forces and the security system not to the
19 UDA. He actually put country before family, I believe,
20 because of the risks he took and the disruption to his
21 family life. He put country before family and to that
22 extent he was very loyal to the system and it embarrasses
23 me, personally, that the system, and we've already discussed
24 the business of guidelines, has been unable to recognise the
25 real difficulties of running agents within a terrorist
26 organisation, has been unable to recognise the dichotomy
27 between terrorist or counter terrorist situation and a law
28 and order situation and as a result Brian Nelson is a victim
29 of the system to which he was actually very loyal. I feel a
30 personal moral responsibility to Brian Nelson because

1 whatever he might have done or not have done, he wouldn't
2 have done it if I hadn't been responsible for ordering his
3 re-recruitment in January 1987. I believe, however, that
4 the real moral responsibility doesn't lie with individuals
5 or any organisations that are involved in this business, but
6 within a system that hasn't been able to come to terms with
7 the peculiarities and the difficulties of the agent work in
8 Northern Ireland.

9 MR SCAL: Thank you.

10 LORD JUSTICE KELLY: Mr Kerr?

11 Cross-examination by MR B KERR:

12 MR B KERR: Colonel, has the acute moral responsibility that you
13 feel for Brian Nelson influenced the perception that you
14 have reached about the offences to which he has pleaded
15 guilty? A. No. I was in the business of running agents
16 and trying to recruit and infiltrate agents into terrorist
17 organisations in order that we could save life and bring
18 down and disrupt these terrorist organisations. I know that
19 the only way to gain inside knowledge that we desperately
20 need is by running and recruiting agents and infiltrating
21 them into the organisations and I believe that entirely and
22 we have got a situation here where we are trying our best to
23 save life in Northern Ireland, where we're trying to disrupt
24 these terrorist organisations and at the same time, when we
25 put someone into that situation, the most dangerous and
26 difficult situation, we don't have a system that allows us
27 to operate fully without the law.

28 Q. May I take it that the value that you obviously place on the
29 running of agents and your well developed sense of the
30 danger into which those people are placed, does not lead you

1 to the view that agents can involve themselves in criminal
2 activity? A. I think we've already covered this.
3 Agents by their very nature if they're in a terrorist
4 organisation are committing criminal acts just by membership
5 alone and, therefore, it is very, very difficult well nigh
6 impossible to avoid for an agent to avoid some sort of
7 criminality. Now, as I have already said in Brian Neison's
8 case perhaps there were errors of judgment and I have said
9 there were mitigating circumstances for these errors of
10 judgment in my opinion. But generally speaking we have to
11 be realistic and realise that an agent in the midst of that
12 sort of murderous type of organisation is bound to get
13 himself involved in some degree of criminality.

14 AS TO SE 12:00

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