

An Chartlann Náisiúnta
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To: HQ
For: E McKee

From: Belfast
From: Joint Secretary

Subj: Meeting with Bloody Sunday Inquiry

1. In response to the various concerns which we have been raising here about the Bloody Sunday Inquiry since its inception, the British have been referring us directly to the Inquiry. My British counterpart put me in touch with Ann Stephenson, the Secretary to the Inquiry, who is based for the time being in London.

2. We arranged a meeting in London last Friday for the purpose of establishing generally how the Inquiry intends to proceed and pressing a number of concerns on behalf of the Government. Eamonn McKee, Christina McElwaine and I had a ninety-minute discussion with Ms Stephenson and Philip Ridd, the Inquiry's Solicitor, at the Inquiry's rather modest offices in premises which are being rented by the NIO in the City.

3. In overall terms, it was a positive and encouraging meeting. We found Ms Stephenson and Ridd sensitive to the concerns of the relatives and conscious of the need for the Inquiry to demonstrate scrupulous fairness towards all concerned. They reassured us on a number of points and were generally forthcoming and anxious to be cooperative. There was a tendency, however, to make rather glib equations between the needs of the relatives and those of the MOD/Army interest (despite the significant "David versus Goliath" aspect of this Inquiry). But on the whole we were impressed by their determination to have a thorough and far-reaching Inquiry which would be demonstrably independent of the British Government and its agencies.

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4. Prior to this meeting, we met Tony Beeton, the NIO official with administrative responsibility for the Inquiry, at the NIO's own offices. We underlined to him the political importance of a generous accommodation being reached with the relatives on the question of legal representation. Insofar as the NIO has ultimate budgetary responsibility for the Inquiry, we trusted that the necessary resources would be made available to ensure this outcome.

5. Beeton was sympathetic and agreed with the need to defuse this issue rapidly. When he had discussed it with the Secretary of State on Thursday, she had underlined her overriding concern that the relatives should have confidence in the Inquiry. While emphasising the independence of the Inquiry, and in particular the requirement under the Act for interested parties to agree their legal representation directly with it, he undertook nonetheless to use the NIO's contacts with the Inquiry to relay our concerns on this point. He made clear that whatever resources were required would be provided by the NIO ("money is not an issue").

6. At the outset of our meeting with Ann Stephenson and Philip Ridd, we were given the attached material which had been circulated to the relevant interests the previous evening (and also, in keeping with Lord Saville's keen interest in modern communications, posted on the Internet).

7. This material relates to a preliminary hearing which will take place at the Guildhall in Derry on 20 July and will deal with legal representation and a number of other matters. (The possibility of such a meeting was flagged in the opening statement delivered by Lord Saville in Derry on 3 April). Media reports have highlighted the indication that the main hearings would not begin until February of next year in view of the fact that a substantial amount of work remains to be done in gathering statements and expert evidence.

Legal representation and gathering of evidence

8. While making clear that we were there on behalf of the Government rather than the relatives, we presented nevertheless a strong case for a flexible and generous approach by the Inquiry on the legal representation issue. We explained in detail why the relatives believed that they were entitled to considerably greater representation than

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the Inquiry was currently envisaging and we emphasised the reasonable nature of their solicitors' proposal measured against this entitlement. We also explained the political and psychological background to these concerns. Noting the risk of a withdrawal by the relatives, which would deal a serious blow to the Inquiry, we hoped that the matter could be resolved satisfactorily at the preliminary hearing.

9. In response, Ann Stephenson said that they were highly conscious of this issue and of the sensitivities of the relatives generally (going back to experiences at the opening event in Derry on 3 April). The representation issue could only be resolved at the preliminary hearing, however. They were anxious to avoid any suggestion that matters of this kind could be stitched up in advance with either Government.

10. We noted the dilemma caused by, on the one hand, the Inquiry's responsibility to gather witness statements and expert evidence and, on the other, the families' very real suspicions, going back to their Widgery experience, that material supporting their version of events would be either overlooked or not sought in the first instance.

11. Ridd saw problems if solicitors representing interested parties were to take statements (which could prove to be coloured by the latter's interests). For the same reason, Treasury Solicitors should not take statements from Army witnesses. The Inquiry's approach was to have all statements taken by independent people. He mentioned that they would also ensure that all previous statements made by a witness were taken on board in the context of any new statement made (e.g. attached as an annex).

12. As one means of addressing the relatives' concerns, we proposed that specific budgetary resources be provided up front to assist the relatives in obtaining expert evidence. Ridd said that they had told Madden and Finucane that the Inquiry would seek its own expert evidence and that the instructions which it gave to the experts would be made public, as would their evidence. The instructions would include the testing of alternative theories. They had asked Madden and Finucane to wait and see what evidence emerged and then to refer this to their own experts and see if they were happy with it. Ridd's sense, however, was that the relatives' solicitors were approaching the Inquiry as an adversarial process, not an inquisitorial one. It was not clear, for example, whether the instructions given to their experts would be disclosed or the evidence fully divulged.

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13. Again highlighting the legacy of suspicion left by the Widgery exercise, and the families' belief that the MOD and the Army would spare no resources in building up their own case, we reiterated that it would be desirable to provide a "down payment" which would enable the relatives to engage their own experts before the Inquiry launched its evidence-gathering.

14. Ridd undertook to consider this idea. He reiterated the Inquiry's basic view, however, that all interested parties must join in the same inquisitorial process and everyone must know the origins of whatever evidence is published. Ms Stephenson stressed the Inquiry's intention to share all the statements obtained with everyone and to avoid unpleasant surprises arising for any of the parties.

15. We also explored ways in which, as a confidence-building gesture aimed at the relatives, the solicitors might be given an informal role in the initial gathering of statements (without compromising the statutory prerogatives of the Inquiry). Underlining the need for all sides to be treated equally, Ms Stephenson presumed that the relatives would object if such a role were to be allowed for the Treasury Solicitors representing the MOD and Army.

16. On the size of the legal representation for the relatives, Ridd asked what the numbers envisaged by Madden and Finucane would be doing. A large number of barristers seeking to cross-examine every witness could "lead to bedlam". We again mentioned the relatives' fears about the Army making use of limitless resources (well beyond those visible at the hearings) to bolster its case.

Privileges and immunity

17. Ridd noted that, under the Act, anyone giving evidence to the Inquiry has the same privileges as someone giving evidence before an ordinary court (including the privilege against self-incrimination). Whether the British Government would wish to claim, or waive, privilege for its witnesses is a matter for the Government.

18. As regards public interest immunity, no such claims have been lodged to date. The MOD are believed to be reflecting on this point. Ridd said that, if the Government (or any other party) were to claim public interest immunity, the Inquiry would have to

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be shown the relevant documentation. We suggested that it would be helpful to make this clear publicly.

19. On the issue of documentation generally, the Inquiry team are making what Ridd described as "vigorous efforts" to locate all relevant documents in Government Departments and a considerable volume of material has already been scanned onto their computer system.

Arrangements for the hearings

20. When the hearings begin next February, they will take place from Monday to Thursday each week. They will mainly be held in the Guildhall in Derry. However, the evidence of Army witnesses is likely to be taken at hearings in London. Both venues may, indeed, be in use in a given week.

21. In contrast to the Widgery exercise, there will be a lengthy opening statement delivered by the Counsel to the Inquiry, Christopher Clarke QC (who will be assisted by Alan Roxburgh JC). This will provide an exhaustive account of the material assembled by the Inquiry.

22. The next stage will be to hear witnesses. While no decision has yet been taken in this respect, the first group will probably be the eyewitnesses (a category which includes people who were personally involved in the run-up to Bloody Sunday and its immediate aftermath). The second group will be the professional experts.

23. In each case, the witness statements will be taken as read. To ease problems of comprehension for the public, who will not have seen these beforehand, the documents will be projected onto large screeens in the chamber. Laptop computers with screens offering "real time" transcripts of the proceedings will also be made available for the various Counsel. (It is estimated that the saving of time otherwise wasted while lawyers hunt for documents should shorten the overall duration of the Inquiry by one-third). The "real time" transcripts will also be posted on the Internet on a daily basis.

24. Witnesses will be questioned, in turn, by Counsel for the Inquiry, the relatives and the

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MOD. In contrast to their role in a courtroom context, where they would essentially remain silent until the moment of passing judgement, the three members of the Tribunal will intervene actively (as their purpose is inquisitorial only and they will have many questions arising from their own perusal of the material).

25. There could be hundreds of witnesses. We were told that this Inquiry will be far more thorough than the Widgery inquiry, which took only about thirty witness statements ("starting from Col. Wilford and working up"). It was unfortunate, Ridd commented, that the Counsel numbers might appear to the families to be the same as at the Widgery inquiry. They hoped, however, that the "vast disclosure of evidence" would in itself be confidence-inspiring.

26. As regards compellability of witnesses, the Inquiry has subpoena powers under the Act and expects to have to use these. However, this will not necessarily be because certain witnesses may be unwilling. In common with other organisations, the Army might wish for its own reasons to be seen to be under pressure before allowing its personnel to attend.

27. The public hearings are not likely to conclude before the summer of 1999. At that point, the Tribunal will go away to write its report, which could take some six months.

28. As regards the preparatory work in progress at present, the three members of the Tribunal are frequently in the offices to assess both existing and incoming material. Lord Saville is the most frequent attender (his two colleagues have some previous commitments). On the assumption that the preliminary hearing on 20 July will produce an understanding on the questions of legal representation and the taking of evidence, the latter process will begin in earnest. The intention is to get all available evidence to the interested parties by October/November.

Conclusion

29. We thanked Ridd and Ms Stephenson for the discussion and said we would be keeping in touch with them as the Inquiry proceeds.

30. We referred to the political pressures faced by our Government in connection with the

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Inquiry, exemplified in a number of PQs tabled for this week, and indicated that it would be necessary to make a brief public reference to our contacts with the Inquiry. Ridd and Ms Stephenson accepted this. They mentioned in passing, however, that Lord Saville had been slightly wary of the Inquiry having contact with the Irish Government, as he did not want any suggestion to arise that he and his colleagues might be influenced by either Government.

31. We mentioned, finally, that our Government had yet to decide whether or not it wished to be legally represented at the Inquiry. Our private forecast was that it might opt simply to have an official present to monitor the proceedings. The Inquiry team were entirely content with this.

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