

An Chartlann Náisiúnta
National Archives

Reference Code:	2022/84/7
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

OIFIG AN AIRE STÁIT AG AN ROINN GNÓTHAÍ EACHTRACHA
(Office of the Minister of State at the Department of Foreign Affairs)

BAILE ÁTHA CLIATH 2
(Dublin 2)

(2)

SEEN BY TAOISEACH

13 April 1999

COPY

14 APR 1999

The Rt. Hon. Mo Mowlam, MP,
Secretary of State for Northern Ireland,
Stormont Castle,
Belfast BT4 3ST.

Taoiseach
A powerful assessment: devastating in its implications.
14.4.99

Dear Mo,

I am writing to you about the report by British Irish Rights Watch into the murder of Pat Finucane which we both received on 12 February last.

I read the report and also asked our officials to examine it. The attached assessment sets out their views. In the light of the report and this assessment, I believe that the case for a public inquiry into all the circumstances surrounding Mr. Finucane's murder is compelling.

As the assessment argues, the Finucane case and the associated allegations of collusion, fulfill the fundamental requirement of a public inquiry i.e. that the matter under consideration is of urgent public interest. The accumulated evidence is sufficient to give reasonable cause to the public to believe that collusion may have taken place. Moreover, the allegations in question serve to undermine confidence in the rule of law and the concept of equality before the law. In my view, they can only be answered with confidence - one way or the other - through the mechanism of a public inquiry.

While it is invidious to select one victim as more deserving than another, I believe that the murder of a lawyer is different in symbolic terms, though not obviously in human terms for the relatives left behind. To blur the lines between client and lawyer by targeting the lawyer is a fundamental attack on the rule of law and thus the very basis of civilised society. This makes the case for a public inquiry all the more compelling. As you can see from the assessment, we very much approached the Pat Finucane case as a reckoning with the past so as to signal that the new dispensation of the Good Friday Agreement represents a new reality and the promise of a new future. The assessment was written before the heinous murder of Rosemary Nelson. Her murder has shocked all of us, North and South, including of course the legal/human rights community both here and aboard.

©TSCH/2022/84/7

In the spirit of the close cooperation and collegiality that marks relations between our two governments, we will not be taking a further public position on the case until we have had an opportunity to discuss it together. I hope this will be possible over the next few days.

Yours sincerely,

Liz O'Donnell, T.D.,
Minister of State

©TSCH/2022/84/7

CONFIDENTIAL

Deadly Intelligence - State Involvement in Loyalist Murder in Northern Ireland

An Assessment of the report by British Irish Rights Watch

General

1. British Irish Rights Watch (BIRW) states that its report into the murder of Pat Finucane, based on painstaking research over a number of years by a range of bodies and individuals, seeks to set out in good faith what it believes to be the facts of "an extremely sinister situation". It believes that the British Government knows the truth of what happened. It calls on the British Government to set up an independent inquiry to investigate the contents of its report.

2. The report notes that there has not been a public inquiry into these matters. Of the two investigations by John Stevens, only the summary of the first one has been made public. The report alleges that the security forces withheld information from and sought to frustrate and mislead the work of the Stevens investigations.

3. The report argues that if the material on which the allegations are based is authentic, then the report represents an "unanswerable case" for an inquiry. Such an inquiry should consider the murder of Pat Finucane, the activities of the Force Research Unit (FRU) and the deaths and crimes allegedly resulting from those activities.

©TSCH/2022/84/7

Source Material

4. The report is based on two sources of information, one public and one confidential. The first is a compilation of the results of investigative journalism and other information publicly available - trial transcripts and parliamentary debates, for example. The second is a body of material compiled by John Ware, a widely respected journalist working with the BBC's Panorama team, from confidential contacts and sources. This material purports to be copies of documents originating within the British security and intelligence establishment and a copy of a diary kept by a key agent, Brian Nelson. Should this second body of information be authenticated, then it qualitatively enhances the validity of the allegations made in the report regarding certain security force activities in the 1988 - 1994 period.

Primary Allegations

5. The report makes four primary and over-riding allegations:

- that the security forces were complicit in the murder of Pat Finucane.

- that elements within the RUC incited his murder in a number of ways, that named officers in the RUC procured his murder and that RUC Special Branch had detailed advanced knowledge of the murder plot.

- that his murder was part of a "systematic strategy" directed by a unit (FRU) within British military intelligence whose purpose was to direct loyalists to murder republicans in what the report describes as "state murder by proxy". If true, BIRW believes that it means that FRU committed serious crimes, "including conspiracy to murder, by

©TSCH/2022/84/7

collecting and providing information likely to be of use to terrorists and directing terrorism".

- that FRU's agent, Brian Nelson, enhanced loyalist intelligence and this, combined with his assistance in procuring a major shipment of South African arms for loyalists (in which MI5 agents were alleged to be instrumental and about which British military intelligence was aware in advance), allowed loyalists to double their capacity for lethal force long after Nelson's activities as an agent ended.

Secondary Allegations

6. Throughout the report there are a range of what can be termed secondary allegations. For example, it notes that an examination of Nelson's diary reveals that collusion was "rife" in Northern Ireland and that Nelson believed that the main sources for the UDA's intelligence were members of the UDR. Moreover, Nelson's diary indicates that a British Army handler known as "the boss" suggested that the UDA should start a bombing campaign in the South, even going so far as to indicate an oil terminal outside Cork as a potential target. It is also alleged that Nelson claimed that the photographs with the highest security classification came from RUC sources.

BIRW Profile of FRU

7. According to the report, the FRU had detachments in seven barracks across Northern Ireland. Its HQ was based in Lisburn. It was commanded by a Lieutenant Colonel and employed somewhere in the region of 80-90 army personnel, the core of whom handled agents in the field. Many of these agents were informants in paramilitary organisations, both loyalist and

©TSCH/2022/84/7

republican. The results of contacts with them were recorded on Contact Forms (CFs) under various headings (diary of events since last meeting, finance, security, tasks, etc). The information from CFs was distilled into Military Intelligence Source Reports (MISRs) which were copied to the RUC (Special Branch) or, if the material was particularly high grade, it was put into a MISR supplement with more limited circulation, though still including the RUC.

Question of FRU's Role

8. Colonel J, the head of the FRU who testified at Nelson's trial (and who is named in the report), claimed that the FRU existed to obtain information on possible targeting by paramilitary organisations and in doing so avert actions against those targets. However, the report claims that its examination of the Ware material reveals that FRU's real role was to provide accurate information to loyalists on active republicans for the purposes of assassination. FRU files and Nelson's diary suggest that Nelson was involved in 15 murders, 15 attempted murders and 62 conspiracies to murder, though this, in the report's view, may be an underestimation. The report provides details of Nelson's background and his role as FRU's agent within the UDA. He supplied "P" (for personality) cards and security force photo-montages of IRA suspects to the UDA. The information was intended to supply details for assassination. The report notes that it appears that Nelson also supplied information to members of the UVF and that information originating from Nelson also found its way to the Red Hand Commandos.

9. One of the few interventions recorded to save life involves an allegation that a named RUC officer sought to have Harold Mayners murdered. This was frustrated by FRU, despite the concern of a British Army handler (named in

©TSCH/2022/84/7

the report) that to do so would compromise Nelson's cover in what the BIRW believes to be a rare example of it fulfilling its alleged purpose. Indeed, the report suggests that this very concern underscores the contradiction between what FRU was claiming to do and what it was actually doing. For the value of Nelson was apparently such that his cover was protected even if it meant the frustration of what J. claimed in court was FRU's very purpose. In the light of what the report asserts about FRU, Colonel J's claim about FRU existing to protect life would be clearly untenable. The report notes that "the picture that emerges is not one of Nelson saving lives but of his active participation in numerous loyalist attacks". It goes on: "We (BIRW) believe that, far from having as its aim the saving of life, the aim was to direct loyalist violence against republican targets - it was, in effect a policy of shoot-to-kill by proxy .... Its unacceptability is underscored by the fact that some of those who died were innocent victims even within the policy's own terms."

10. Overall, BIRW believes that neither Nelson nor FRU were maverick or aberrant. Rather, that Nelson was a key part of FRU operations and that FRU was "an integral unit within the intelligence Corps, with detailed and clear lines of reporting within the army and clear links with MI5 and Special Branch."

Collusion or Direction?

11. The report notes the extent of collusion between loyalist gunmen and members of the security forces. Fresh allegations coming into the public domain since the report was handed to the Government have emerged from Peter Taylor's documentary *Loyalists* which includes an interview with UFF member Bobby Philpott alleging an extraordinary volume of material coming

©TSCH/2022/84/7

from the security forces to the UDA. Indeed, BIRW believes that some of this new information corroborates allegations contained in its report.

12. However, the report also questions whether collusion sufficiently conveys what the pattern of murders suggests and wonders whether it might be a misnomer. The loyalist campaign from 1988 to 1994 was, the report notes, markedly different in both volume and precision. There was an "uncanny ability for the perpetrators to arrive at and depart from the scene of the murder without being apprehended by the security forces, despite in some cases the presence of security cameras or the proximity of the attack to a police station or army base or checkpoint". The report goes on: "The pattern of killings suggests a far greater degree of direction and coordination between those sections of the security forces charged with collecting information and those sections capable of organising safe passage for loyalist killers than can be explained by random acts of collusion."

Is the BIRW Report Compelling?

13. While the impetus for BIRW's report stemmed from the existence of the material which came into John Ware's possession, the strength of the case presented by BIRW derives from this combination of information in the public domain with that provided by Ware. This combination creates a cogent case for a belief, on a prima facie basis, that elements in the security forces may have committed a range of serious crimes and breaches of the European Convention on Human Rights. Very disparate sources of evidence including sequences of apparently official and confidential reports, fragments of and omissions from those records, trial transcripts, the results of investigative journalism and investigations by various human rights organisations, have been brought together in a way which suggest

©TSCH/2022/84/7

corroboration and mutual reinforcement for the allegations.

14. The report also points to patterns which tend to confirm widespread suspicions that elements in the security forces were used, at the expense of the rule of law, to prosecute a campaign against those deemed enemies of the state and to conceal what that entailed and who was culpable. These patterns include the stark change in the volume and precision of loyalist lethal force between 1988 and 1994, the failure to apprehend those involved, the failure to convict members of the UDA/UFF for murder, the failure to thoroughly investigate the allegations of collusion, the failure to publish the reports of these police inquiries or pursue prosecutions and the failure to respond to compelling and growing evidence by establishing a full judicial inquiry.

Basis for a Public Inquiry?

15. A public inquiry is held when it is deemed that there are matters sufficient on the grounds of urgent public interest to warrant one. The decision to establish an inquiry is made by the British Government under the terms of the Tribunal of Inquiry (Evidence) Act, 1921. The chairman of the inquiry has the legal powers of a high court judge. As Lord Saville, chairman of the new inquiry into Bloody Sunday, has made clear, the role of the chairman is inquisitorial. The purpose of the inquiry is not, in other words, to preside over an adversarial process but rather to use the powers conferred on the inquiry to establish the truth regarding the matters of urgent public interest.

16. It is interesting to note of course that the term "urgent" should not be taken to mean contemporary - the Saville Inquiry is, after all, investigating events over a quarter of a century old but which remain a matter of urgent public interest.

©TSCH/2022/84/7

17. Nor should it be thought that new information is a requirement for an inquiry. That is to confuse the grounds for re-opening a case before the courts with the purpose of an inquiry.

18. A crucial question is whether the matter of public interest can reasonably be seen to justify an inquiry on the basis of merit alone. Generally inquiries are about matters in which the state or its agents (whether individuals or bodies) are believed to have been involved either through acts of omission or commission. The value of an inquiry in terms of the society as a whole is that it seeks to locate where culpability lies and thus establish a basis on which society, through its democratic system, can set about rectifying identified faults. Such faults can arise either through negligence (e.g. Dunblane) or because of systematic problems (such as institutional racism in the London Metropolitan Police in the Lawrence case).

19. In this context, there can be little doubt but that the Finucane case sufficiently meets the criteria for a judicial inquiry. The following points are germane:

- On a prima facie basis, the material contained in the BIRW report would seem to point to serious breaches of domestic and international law by individuals acting or claiming to act on the part of the state.

- the failure to hold a public inquiry into the issue of collusion.

- the failure to publish the reports of the two investigations undertaken by John Stevens.

©TSCH/2022/84/7

- the compelling circumstantial evidence presented by the marked change in the pattern of loyalist killings between 1988 and 1994 involving both a substantial increase in frequency and precision.

- the circumstantial evidence in numerous cases of security force activity immediately prior to the arrival of loyalist gunmen intent on launching lethal attacks and the consistent failure to apprehend, at any point over a six year period, any of the limited number of loyalist gunmen involved, despite the existence of a network of agents and informers, including crucially Brian Nelson as chief intelligence officer for the group primarily responsible, the UDA/UFF.

- the renewed admissions by loyalist paramilitaries that information from security sources was given to them on a regular and widespread basis, and that this information significantly enhanced their ability for targeting and lethal force.

- the allegation that agents of the state were involved in illegal arms shipments from South Africa to loyalist paramilitaries in Northern Ireland.

- the failure of the authorities to satisfactorily account for the purpose and activities of the FRU.

- the failure to prosecute a single RUC officer on grounds of collusion.

- the failure of the DPP to use Brian Nelson as a witness despite his admission of direct knowledge about a number of murders and their perpetrators.

©TSCH/2022/84/7

- the belief that RUC officers failed to cooperate with and possibly sought to frustrate the Stevens investigation, noting the account provided by John Stalker of his attempts to investigate allegations of shoot-to-kill detailing hostility and obstruction by members of the RUC.

- the belief that FRU sought to frustrate and misdirect the Stevens investigation.

- the widespread belief in the nationalist community that members and units of the security forces were involved in systematic purposeful collusion.

- the allegation that FRU and RUC Special Branch had advance knowledge of impending attacks by loyalists and took no action

- that unless and until the widespread concerns in the nationalist community that collusion between the security forces and loyalist paramilitaries was widespread, purposeful and directed are examined by a public inquiry, confidence in the administration of justice and the security forces will be undermined.

Consequences of Sustained Peace

20. In the Northern Ireland context, it is perhaps inevitable that after decades of both paramilitary violence and counter-insurgency measures, calls for inquiries into a variety of controversial circumstances involving the use of lethal force by the state would gain momentum in the context of a sustained peace. It has been a poignant characteristic of relatives who have lost loved ones in such

©TSCH/2022/84/7

circumstances that the desire for truth and justice reaches a particularly acute point during sustained peace where previously the perpetuation of violence and atrocity occluded from public view their own pain and loss. The lack of corrective action denied them the normal solace of the pursuit and prosecution of those who inflicted such pain and loss. Those failures endorsed an existing sense among nationalists of being under-valued and unequal in the eyes of the law. However desirable in terms of political reconciliation it may be to draw a line under the past, victims' relatives will inevitably carry their burdens into everyone's present and to continue to do so unless and until they have answers that help reconcile them with their loss. This applies equally to all those culpable of violence in whatever cause. The pursuit of certain cases can serve to be representative of that process of candour and truth. The Finucane murder would manifestly be such a case.

12 April 1999

©TSCH/2022/84/7