

An Chartlann Náisiúnta
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Bloody Sunday Inquiry

Position after eleven weeks

1. The Bloody Sunday Inquiry commenced public oral hearings on 27 March with Counsel for the Tribunal, Christopher Clarke's, opening statement. Originally expected to last three weeks, Counsel will probably finish before the summer adjournment. His presentation is intended to give form and structure to the forthcoming oral evidence of witnesses. The undersigned has attended the Inquiry as the Government's official observer.

Overview of Counsel's opening statement

2. At the outset, Counsel said that the clear aim of the Inquiry was to find "the truth, pure and simple". To this end, Counsel divided his presentation into a number of sections, namely:

- the political and historical background to the events of Bloody Sunday;
- the political and military planning leading up to the day itself;
- a consideration of the position of the IRA;
- an analysis of what happened the day before the Army entered the Bogside;
- events in various parts of the area on the day (e.g. Glenfada Park, Rossville Flats etc., which Counsel divided into five sectors);
- the orders given to the Parachute Regiment;
- the alleged admission of Joseph Friel about carrying a firearm and how Gerard Donaghy came to have nail bombs on him;
- an analysis of the various statements made to the press in the immediate aftermath;
- an examination of the various journalistic investigations;
- and finally, an analysis of the significant audio and audio visual material available.

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Significant points to emerge - Week One

3. The evidence revealed that military thinking on how to deal with the 'no-go' areas in Derry had crystallised around an aggressive containment strategy but Counsel also uncovered the first indications of a possible 'shoot to kill' policy, in a draft and uncleared briefing document, written by a senior military planner on 27 January 1972, which recommended the use of lethal force as a last resort even though "it would not be the gunmen...but innocent members of the crowd" who would be killed.

Week Two

4. The issue of the location of the remaining rifles which had been fired on Bloody Sunday was dealt with. There are only three of the 29 such rifles still extant and disturbingly, it appears that fifteen were destroyed after the Inquiry was established. The Inquiry heard that both the Provisional and Official IRA gave assurances to prominent members of the Derry community that they would not be present at the march. Despite these assurances however, Counsel detailed eleven possible incidents where persons other than the soldiers allegedly fired shots. Counsel also referred to a document which purported to be a record of the debriefing of an agent (codenamed 'Infliction') in 1984 by British Security Services in which it is alleged that Martin McGuinness admitted to a third party that he fired the first shot on Bloody Sunday. Counsel asked that McGuinness confirm that he would give oral evidence because he could "advance that search [for the truth] in a major way...by coming forward...and conversely...retard it in equal measure by failing to do so".

Week Three

5. Counsel considered the evidence relating to the first two casualties of Bloody Sunday, John Johnston and Damien Donaghy. They were shot and wounded by Soldiers A and B. Counsel demonstrated his comprehensive and exhaustive

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approach to the evidence, detailing numerous civilian and military eye witness statements in relation to the incident. Counsel said that the Tribunal would have to consider the possibility that either the soldiers were genuinely mistaken or they deliberately tried to provoke a confrontation with the IRA. However, Counsel stated that there was no evidence to support the latter suggestion.

Week Four

6. Counsel dealt with the orders given to 1 Para and posed four questions for the Tribunal to consider: firstly, did 1 Para go in without orders; secondly, if there were orders, what exactly were they; thirdly, should the operation have been launched on the available information; and fourthly, was 1 Para's penetration up to Rossville Street inconsistent with an arrest operation and did it thus amount to a running battle. Counsel then went into an analysis of Sector 2 (events in Rossville Flats car park) and said there were four controversial issues, namely, when and how did the firing of live rounds start, who fired the first shot, did the Mortar Platoon come under sustained attack as the Army allege or not at all and, if they did come under such a sustained attack, did this occur before or after they opened fire. In particular, Counsel said that the Tribunal might think, on the basis of this evidence, that Soldier V's shots were not justified, either on the basis of the Yellow Card (a military guide as to when the firing of live rounds is permitted) or at all.

Week Five

7. Counsel stated that, while there was some evidence that Jack Duddy may have been someone who took part in rioting and other evidence that Duddy might have intended throwing a missile at soldiers, the general picture which emerged, on the basis of the civilian evidence, was that Duddy fell "having been fired upon with no apparent justification arising from any conduct of his".

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Week Six

8. Counsel dealt with the evidence of soldiers involved in events in Sector 3 and identified a number of important discrepancies in the soldiers' evidence. For example, Soldier F did not mention shooting his third target until two weeks after Bloody Sunday, because it had "slipped his mind".

Week Seven

9. Counsel continued his analysis of Sector 3 and amongst the new civilian eyewitness statements gathered by the Inquiry, there was consensus that while there might have been some stone throwing at the rubble barricade, no one was armed. The Inquiry heard evidence that the Paras slung three bodies into an APC "like cattle" and harassed medics and priests who went to tend to the bodies. There was also some evidence heard of alleged 'execution style' shootings by the Paras.

Week Eight

10. Counsel dealt with the "highly controversial" issue of Sector 4, events in Glenfada and Abbey Park. Disturbing evidence of indiscriminate and random firing by soldiers was heard and on the basis of one eye witness account, Counsel said that James Wray was murdered. Medical evidence confirmed that Wray received at least one bullet wound while lying on the ground and that Gerard McKinney was shot with his hands in the air. Counsel also referred to a statement in 1975 given by Soldier 027, which was supplied to the Tribunal by the Government, in which he describes a free for all, as soldiers jostled for shooting positions. The soldiers involved in Sector 4 said that they fired at nail bombers and gunmen who were threatening their lives. "In short", Counsel said, "the circumstances in which the known dead and wounded were shot do not appear to tally, to any substantial extent, with the account given by the Army..."

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Week Nine

11. The Tribunal dealt with several interlocutory matters. It ruled that photographs of Soldier 042 should be published with his face redacted, unless it became material to the Tribunal to publish the photograph otherwise. Three retired RUC Special Branch officers were afforded screening if and when they give oral evidence. Two of the officers claim to have interviewed a terrorist suspect who gave them information regarding Bloody Sunday, information which the terrorist suspect concerned now claims never to have given.

12. PIN 437 (who may be a civilian who admits firing a rifle at soldiers) was refused anonymity because his evidence was so crucial. The note of an interview with him, which is the material evidence, will be published alongside a statement which PIN 437 recently gave to the Tribunal. Observer B, who claims to have been a Secret Service informant and to have seen IRA Auxiliaries training in the days immediately prior to Bloody Sunday, was afforded anonymity and his statement will be published in a redacted form. The Tribunal said it would revisit this decision if it felt that its search for the truth was being hindered by the decision.

13. The Tribunal also decided, having heard a request from the families' legal teams, to defer consideration of the venue for the soldiers' oral evidence until nearer the time that they will give such evidence, probably around the last week of November. The issue of venue is crucial to the relatives and any decision to allow soldiers to give evidence in a location other than Derry will be fought all the way.

Week Ten

14. The Inquiry heard evidence regarding the nail bombs found in Gerard Donaghy's pockets at an army base. The soldiers' accounts of the incidence are almost entirely internally inconsistent while the civilians are unanimous that he was not in possession of any nail bombs when he was being driven to Altnagelvin.

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Scientific evidence also shows that Bernard McGuigan may have been shot with a 'dum-dum' bullet.

Week Eleven

15. Counsel completed his opening statement and the Tribunal heard civilian evidence of abuse and ill treatment of prisoners being processed at Fort George. There was also evidence of firing from the city walls and that soldiers maintained their own personal supplies of ammunition, in addition to their standard issue.

Assessment of the relatives and legal teams

16. Counsel's opening statement has generally been received positively by the relatives and legal teams alike. There would be two main viewpoints within the relatives' group, one positive and the other negative. John Kelly and Michael McKinney, who are liaison workers in the Bloody Sunday Centre, would best represent the positive viewpoint. While Kelly would have reservations about Counsel's selectivity in his references to evidence and his apparent habit of coming to conclusions, both would agree that the statement has been positive in that the civilian side of the story of Bloody Sunday is now officially in the public domain. McKinney would take the long view and focus on the objective of finding the truth of what happened on Bloody Sunday. The other more negative view would be represented by Michael Bridge and Michael Bradley, who feel that Counsel is biased and unfair. They see Bloody Sunday as the culmination of a political and military conspiracy and do not trust the Inquiry to find out this truth.

17. The families' legal representatives have adopted a 'wait and see' approach, noting points made by Counsel which they will address, as necessary, in their own opening statements. Michael Mansfield said that Counsel had a very difficult job in reviewing the huge amount of evidence uncovered but also said that he could be slow and meandering. Lord Gifford said that the Tribunal's position as part of

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the peace process should be recognised and that it cannot be divorced from it. In relation to the important issue of venue, all the legal teams agree that whatever the decision taken by the Tribunal, the issue will have to be decided by the Courts of Appeal.

Seamus Hempenstall
Security Section
26 June 2000

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